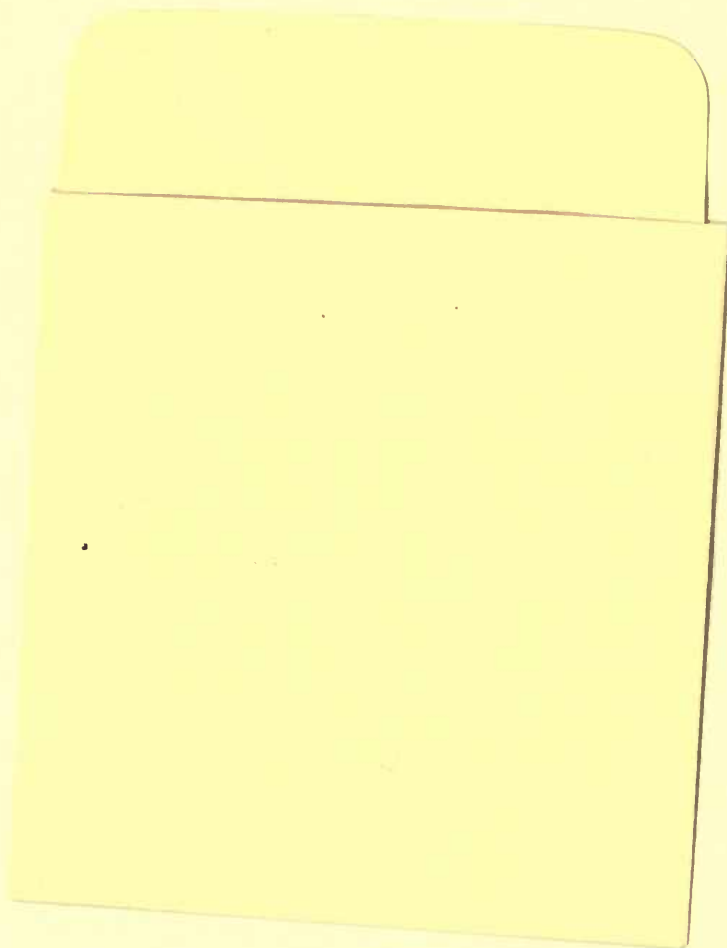


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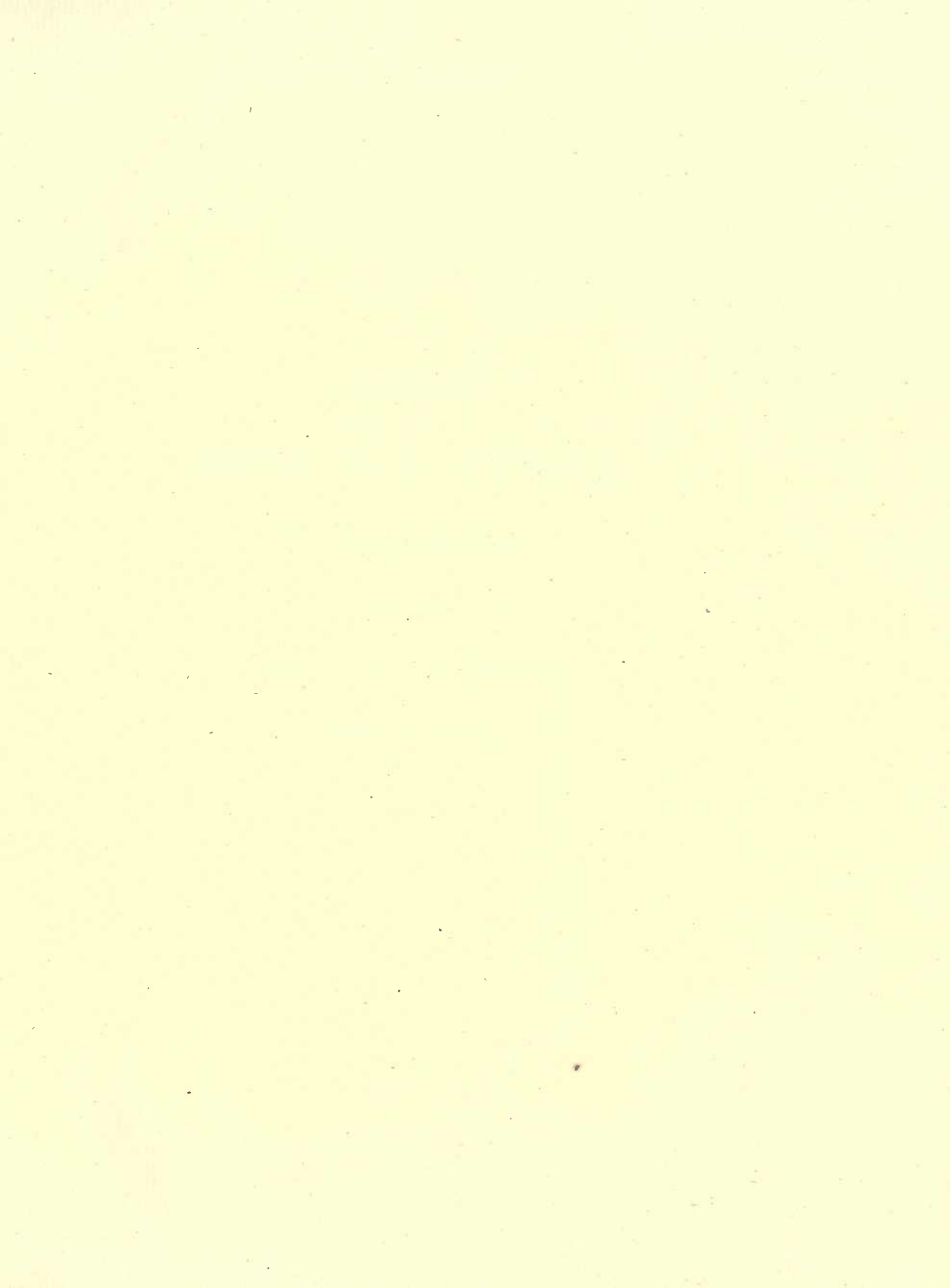
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Ancient criminal trials in
Scotland

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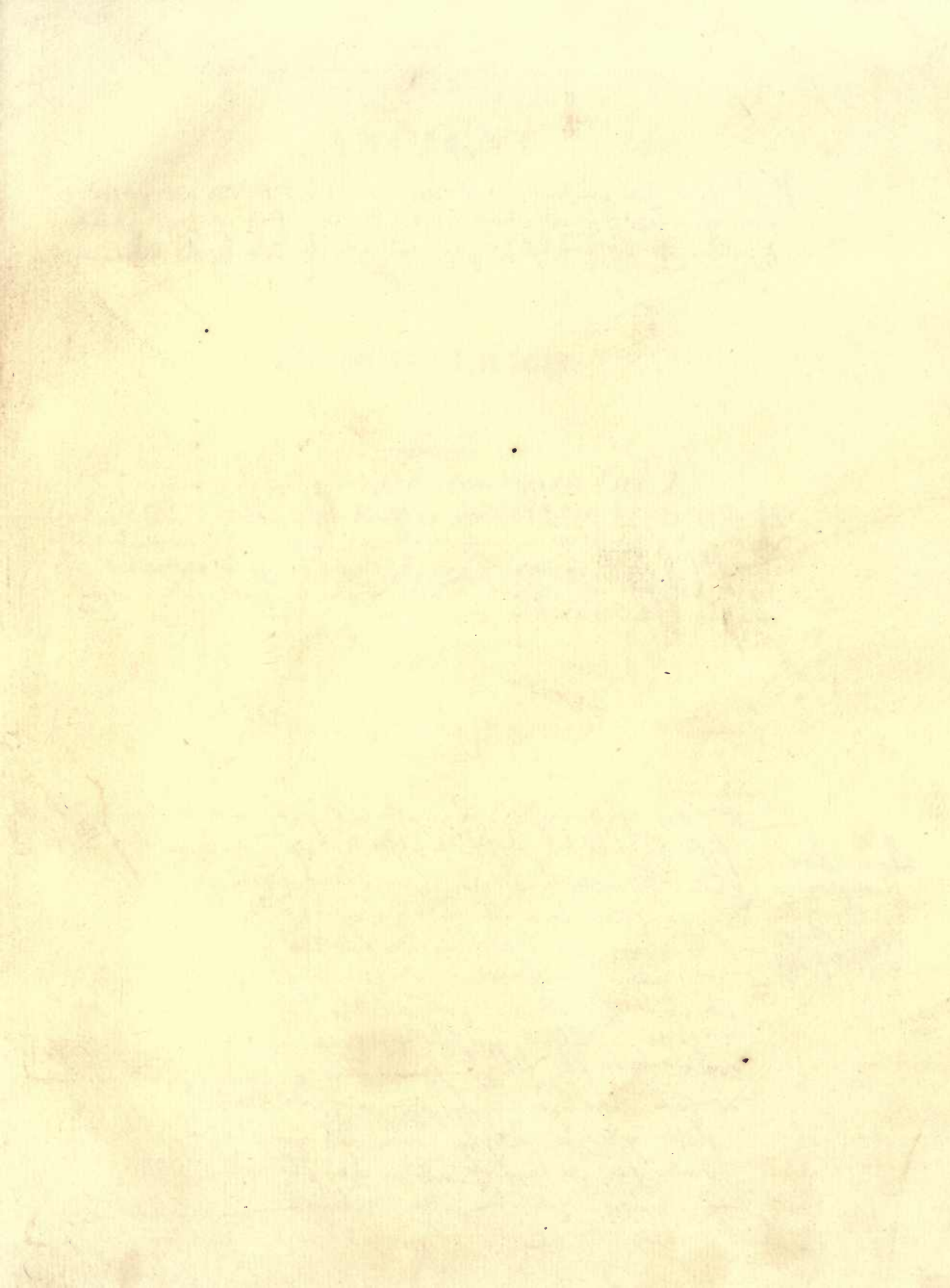
ANCIENT
CRIMINAL TRIALS
IN SCOTLAND.



VOL. III. — PART I.

1609—1615.





**ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;**

COMPILED

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

BY

ROBERT PITCAIRN, ESQ.

**VOL. III.
PART FIRST.**

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



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

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

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

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

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

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

¹ Vol. I. p. 224, Jan. 19, 1590-1.

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

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

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

With regard to *Sir James Makconeill* of Knokrynsay and Kintyre, as he lived in a district so remote from the seat of Government, and seems to have had his hands full at home, the first known mention made of him is—(Aug. 5, 1598,) 'M^cLEANE was flayne be M^cONEILL,⁶ in Ylla, he being moder-brother to the said *Schir James M^cconeill*, and ane of the brow man that wes in this cuntrey, in his tyme. Thair wes flayne that day betuix thame, on bayth fydis, to the number off 150 menne.'

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

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

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

period of his apprehension and imprisonment, is the extraordinary attempt to escape out of Ward, from the Castle of Edinburgh,¹ which was so boldly planned, and so successfully accomplished by *John Lord Maxwell*. The event is thus briefly described in the above mentioned Chronicle, where the cause of Sir James Makconeill's failure is rightly attributed to the circumstance of his having been unable to extricate himself from his heavy irons, whereby he dislocated or broke his limb, in leaping over the wall. This breaking of ward forms one of the leading Articles of Dittay against Makconeill. (1607, Dec.) 'In the beginning of December, THE LORD MAXWELL, being wairded in the Castle of Edinburgh, deviseth a play² for the keepers, whereby it behoved them to runne out of the house where he lay. They lay afide their swords; Maxwell and another gentleman who came purposlie to assist him, with the advice of *Mackoneill*, take their swords, cloffe them in a house, come to the Castle gate, hurt the porters, lappe the Castle-wall at the utter-gate. *Maxwell* and his friend departed. *Mackoneill*, because he had the boyes³ on his legges, wrested his kute⁴ in leaping; yett he creeped to a dunghill. The crye⁵ rising, he was diligentlie fought, found casting the muck upon himself, and was brought to the Castle agane. This fell furth in the gloming.⁶ The rest of the Wairders were kepted the fraiter. *Clofburne* was intified be thame, but refused to breake waird.'

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

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

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

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

² Sport, frolic.

³ A cant phrase for gyves, or heavy irons used for desperate offenders.

⁴ Sprained or dislocated his ankle.

⁵ *Spraiche*; hue and cry.

⁶ After sunset; towards

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

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

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

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

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

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

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

¹ Preserved in the Library of the Faculty of Advocates, Edinburgh.

² Mr GREGORY'S Historical enquiries must throw much light on every point connected with the Isles and adjacent Highlands; and the authentic sources from which his materials are derived, must stamp the highest value on the work he has undertaken.

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

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

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

May 13, 1609.—SIR JAMES MAKONEILL of Knokrynfay, kny^t.¹

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

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

¹ See Jul. 3, 1615, &c.

² Recklessness, wickedness. Old Fr. *meschanceté*.

had flane your fader¹) was verrie desyrous to haif pair lyves ; ze, accompaneit with your broper, Angus Oig, and the said Laird of Loupe, with tua or thre hundredreth barbarus, wikked and bludie Hieland-men, foirneris, and avowed maliefactouris, all bodin in feir of weir, with hagbutis, pistolettis and vtheris forbidden wappones, vpon the . . .² day of Januar (fyftene dayis or pairby eftir zule) in þe zeir of God, I^m.V^c. fourfcoir fevintene zeiris, (1597) come in the nycht to the said hous of Askomell, quhair þe said Tutour of Loupis sones war, takand þe nychtis rest, lipning for no trubill, danger or invasioune to haif bene maid be ony man aganis þame ; and invironed þe samyn, in all fydis, with grit numberis of your airmet men ; and about þe brek of day, calling in to theas who war within, to rander þe hous and þame selffis to zow, thay, for feir of pair lyves and of þe mercieles crewaltie of zow and your bludie assisteris, refuseing to rander ; albeit ze knew that Angus M^cconneill,³ your faper, was within the hous, with whome ze had privat and freindlie meiting and conference that same nycht, and had partitit frome him in sic professioun of love and naturall deutie and reuerence, as ze had presentit and gevin to him ane pair of pistolettis : NEUERÞELES, casting of all bandis and respectis of conscience, honestie, and of nature, to your faper, and to your moþer Fynwall Nikclane,⁴ quhome ze knew to be also within þe said hous, ze godleslie, barbaruslie, viprouslie and tresonabillie, be your self and your complices, in your name, of your causing, command, assistance and ratihabitoun, set ffyre in all þe four coirneris of þe said hous ; quhairby your saidis parentis, and haill remanent perfones being within þe said hous, being brocht at þe verrie instant to extreme danger of pair lyves, and your moþer crying out to zow, ‘ THIEF ! Will thow burne thy moþer ? ’ ze nawayis causit stay or flokin⁵ þe ffyre, bot sufferit þe samyn to rage, quhill⁶ þe ruif of þe hous began to fall ; and your faper, haifing sufferit most crewall extremitie, and being brunt in thre or four partis of his body with þat fyre, was forcet to rusch to the dur, quhair ze had preparit ane number of grit treyis to be laid croce þe dur, aper to stay his furth cuming, to þe effect he micht be brunt within the hous, or micht be so hinderit in his furthcuming, as he fould indoutitlie fall in your mercieles handis : Accoirding to the quhilk proiect, he, falling amangis þe said treyis, was pudillit in ane myre⁷ be your servandis, in your sicht ; and þaireftir transportit, in his fark, to Smerbie, tuo myles distant from Askomell, quhair ze fetterit him in irnes, with ane vther

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

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

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

² Struthers.

3e lykwayis vnhonestlie, crewallie, and tressonabillie hurt and woundit Margaret Phillope, wyfe to the said Alexander, in þe heid, with 3our fuordis, to þe grit effusioun of hir bluid, and left hir also lying for deid: And then, haifing no forder resistance, 3e 3eid¹ forwartis to þe Myd-3et of the said Castell; and þair 3e and þe said Lord Maxwell tressonabillie inuaidit Archibald Cunninghame, Maifter-porter of þe said Castell, for his slauchter; and becaus he wald nocht delyuer to 3ow þe keyis of þe said 3et, 3e gaif him ane grit and dangerus straik, in þe left airme; be þe paine quhairof, and abundance of þe bluid rynnig frome him, he being almost in found,² 3e rest the keyis frome him, and tressonabillie forcet þe said 3et, and past furth þairat; and than going to þe Bak-wall, 3e and 3our saidis complices lap ouer þe same; and þairby tressonablie brak þe said waird, and fled to haif escaiped; quhill³ 3e, being followit be þe Conftable of þe said Castell, and vþeris, his Maiesteis guid and faithfull subiectis, 3e war tane and brocht bak to þe said Castell. QUHILKIS tressonabill crymes war most wicketlie and contemptiouflie committit be 3ow and 3our saidis complices; and 3e war and ar airt and pairt þairof: And þairfoir aucht and fould be pwneifchet be tynfall and fforfaltour of 3our lyfe, landis and guidis; accoirding to þe lawis and practik of þis realme.

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

Mr Johnne Russell, Aduocat, compeirand iudiciallie, in presens of the Justice, declairit he wald nocht compeir in defence of the pannell, without his Maiesteis speciall Warrant and Commiffioun, commanding him to compeir.⁴

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

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

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

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

ASSISA.

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

The said Sir James produceit to the Affyse ane Warrant, subfcryuit be his Maieftie, allowing¹ the taking of his father Angus M^cconeill, the maner, forme, and circumstances done thairin; quhilk is of the dait, att ffalkland, the aucht day of August 1598: Quhilk he tuik vp agane, and wald not vse.

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

Our said fouerane lordis Aduocat, for verificatioun of the said Dittay, producet to the saidis perfones of Affyse, Angus M^cconeill of Dynnievaig, father to the said Sir James, and Fynwall Nickclane, his mother, thair Depofitiones; togidder with his awin Depofitiones; made be thame, in prefens of the Lordis of his hienes Counfall; for verifeing that article and poynt of Dittay, anent the raifeing of the ffyre, and burning of the hous of Askomell. And ficlyk, for verificatioun of the laft article of Dittay, repeittit the said Sir James awin Judiciall Confefioun, maid be him in the said Justice and Affysfouris prefence; confefing the breking of the said waird of the Castell of Edinburgh: And als produceit, for verificatioun thair of, the saidis Archibald Cunninghame, Maifter-porter, and Alexander Strutheris, thair Depofitiones maid and subfcryuit be thame, in prefens of the saidis Lordis of Counfall; quhilkis tua Depofitiones was ratifeit and approvyn, in Judgement, be the saidis Archibald and Alexander, in prefens of the said Sir James: Quhilkis our fouerane lordis Aduocat also repeitit. And in respect thair of, protestit for Wilfull Errour, in cais the saidis perfones of Affyse Clange or Acquit him of the saidis crymes.

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

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

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

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

APPENDIX OF ORIGINAL PAPERS.²

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

I. DEPOSITION of *Sir James Makconell*.³

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

SIR JAMES M^cONEILL, knycht, fworne and demandit, How lang is it fen he hes bene detenit and haldin prifoner? Deponis, that he wes tane be his fader, in Kintyre, vpon informatioun maid to his fader, that he wes to tak some course aganis him; and efter he had remanit ane certane space with his fader, he wes delyuerit be his fader to *Auchinbrek*,⁴ be whome he wes detenit ane certane space; and

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

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

³ From the Original, preserved among the Warrants of the Privy Council, General Register House.

⁴ Sir Dougald Campbell.

thairefter delyuerit to *the Erll of Ergyll*, who keipit him whill he wes chargeit be THE COUNSAILL to exhibite him; quhilk he did at Sanct Johnnestoun: fra that, he wes fend to the Castell of Blaknes. Demandit, yf at ony tyme he had tane his fader? Deponis, that he tuke him in Kintyre, in ane house callit *Ajkomilne*, the deponer haueing his bruther, young Angus, (and) a cumpany of the gentilmen of Kintyre with him. And that this wes about Candilmes, aucht yeir fyne, or thairby. Denyis that he rased ony ffyre in the house; and depones, that he hes Warrant of HES MAJESTIE, allowing¹ the taking of his fader as gude seruice.

Anent the interprise of his Breking of Warde furth of the Castle of Edinburgh, and demandit yf he wes the first mover to THE LORD MAXUELL, or yf the *Lord Maxwell* wes the mover thairof to him? Deponis, that vpoun Sunday at even, afoir the interprise, *Robert Maxwell of Dynwiddie* come to the deponer, and tauld him, that within few dayis he sould heir the best newis that he had hard this lang tyme bigane; and the deponer anfuert, that he wald fane heir gude newis. And the deponer insisting with Robert, diuers times thairefter, to haif vnderstand quhat gude newis these wes? Robert evir conceillit the mater, whill² Fryday thairefter, quhilk wes the day that thair interpryse wes putt in executioun. And grantis, that the said Robert cam to the deponer, about tua efter none, and putt him in remembrance of the wordis that he had spoken to him vpoun the Sunday preceding; and tauld him, that that nyght *the Lord Maxwell* wes to brek warde, and wald tak the deponer with him; and craved the deponeris opinioun, quhat he thocht of that mater? To whome it wes anfuert, be the deponer, that the executioun of that interprise wes fa suddanelie to be done, that the deponer could gif no awife thairin; and he thocht that *the Lord Maxwell* sould haif communicat that mater to him selff, yf he wald haif had him to be ane affister thairin. And depones, that schortlie thairefter, about foure efter none, *the Lord Maxwell* come in to the deponer, fatt doun beyde him, drank tua pypis of tabaca,³ and spak no thing of his interprise to the deponer, quhill the deponer past to the windo, to haif maid water. *The Lord Maxwell* come to him to the windo, and tauld him, that he wes refolued that nyght to eschape and brek warde; and desyrit the deponer to prepar him to go with him; for he had men attending vpoun the yettis, to hald them oppin, and had horfes awaiting vpoun the feildis to carry thame away:⁴ And the deponer anfuert to *the Lord Maxwell*, that fik ane interprise required goode advise and deliberatioun; and desirit him not to be suddane, bot to be weill advisit and refolued thairin. To whome the Lord replyis, 'Tushe, man! sic interpryses ar nocht effectuat with deliberationis and advifments, bot with suddane resolutionis!' And then the Lord caufit fetche in tua quartis of wyne; and, haueing maid some confaitis of pastyme in the house, he desirit *Williame Simfone*, ane of the deponaris keiparis, to gif him his sward; whilk he refuseing to rander, he shored the said *Williame*, held ane drawin quhingear quhilk he tuke fra *Williame Maxwell*, avowing to haif his lyfe, yf he randerit nocht the sward; and sua, violentlie tuke the sward fra *Simfone*: Tuk ane vther sward fra *James Stewart*, ane vther of the deponaris keiparis; and tuke ane vther sward fra *Williame Arme strange of the Gyngellis*: And haueing the swardis, he then tauld planelie, that he wald brek warde; and sayd to *Young Clofburne*, 'Yee ar heir for a civile caus, yf it pleis yow to go, yee salbe welcome!' And *Clofburne* desisting, *the Lord Maxwell*, with *Robert of Dynwiddie*, *Williame of Kirkhous*, and the deponer, past out of the chalmer, and come to the yettis; quhair sum of the portaris wer hurte: Bot denyis that he hurte ony of thame him self. And sua, haueing forceit the yettis, they lap ower the wall. Demandit yff *William Maxwell* delt with the deponer in this interprise? Deponis, vpoun his aithe, that he nevir delt with the deponer in that mater; and that he knowis no thing of *Williames* doing; bot that he oppynnit the Nether-yett of the turnepyke, quhare the deponeris chalmer is.

(Sic subscribitur) S^r J. MAKDONALL. S^r T. HAMILTON. S^r J. ARNOTE. M^r W^m HEART.

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

II. LETTER, *Sir James Mackoneill to the Duke of Lennox.*¹

PLEIS YOUR GRACE,

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

FROM ED^a CASTELL,

Your graces serwand duiring lyfe,

27 Junij, 1607.

S^r J. MACDONALL.

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

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

MY GRACIOUS SOVERAN,

MAY it pleis your Maiestie to apardoune my importunitie, being inforfid pairto, throw the grett misery q^{ik} I aknawleg to have maist justly deseruid, for my bypast offences towardis God and your Ma^{tie}: 3ett my foueran, your Ma^{tie} hes gracioufly forgiuein gretter offences; 3ea, the gretteft Treson 3att euer was deuyfid aganst aney Prence, 3our hienes hes forgiwein. For Chrystis caus, Sir, ance forgiue me my bypast offences, and with Godis grace I fall euer behawe my selff deutiffully heirefter; and fall find caufion to obey quhatt your Ma^{tie} will injune² to me; befeiking pat pe Declaratioun of your Ma^{ties} will may be sent to pe Consfall; feing, without pe fame I can gett na ansuer of pair Lordschipis. Humble kissing your Ma^{tie} handis, I commit your Ma^{te} ewer to Godis protectione.

Your Maiesties maist humble and pair subiect

FROM EDINBRUCHE CASTELL,

to be employid to dethe,

28 of Junj (1607.)

S^r J. MAKDONALL.

TO THE KING HIS MAIST EXCELLENT MAIESTIE.

IV. LETTER, *Sir James Makoneill to the Earl of Caithnes.*³

MY VERIE HONOURABLE GUD (LORD,)

FEIRING that your lo., to whose fauor I am so much obifhid,⁴ fuld not mistaik pe caus of this my last offence, in braicking of Ward, I haue beine this⁵ bauld to vrytt to your lo. the only mofion quhilck, I protest to God, maid me to braik Ward. It is trew, my lord, patt *the Laird of Calder* said to honest men, wha can beir record, patt how soever my pairt was anent Donnoveg, 3ett he had ane Warrant past be HIS MA^{ties} hand, quhilkis pe *Consfall* saw nott, to command pe *Consfall*, presently efter pe ficht of patt Warrant, to putt me to exsecutioun; and how lyttill refone I had to trust my lyfe to *Calder*, your lo. self and vthers of pe *Counfall* knawis; for, be his misreport, he did all he culd to have perallid my lyfe. And jis trewly was pe caus I fled with my avin lyfe, and for no mistrast I had in HIS MA^{ties} clemence, or in *the Consfallis* favor; nor 3ett, for oney feir I had off oney thing pay culd try aganes me, anentt Dunoveg; for as I said when I was in ward, I will say now; God is my vittnes, my pairtt, ever, anent pe talking or keiping of Dunoveg aganes HIS MA^{ties}, hes beine ever most

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

honeft and lyall;¹ and efter all juft tryall, I will defy my onfreindis² prive³ vtherways. And fence pe braik of Waird I maid with pe *Lord Maxwell*,⁴ by⁵ my expectione, to pis night I brak Ward laft, be God him felf, I was never privie nor a confenter to aney Platt aganes HIS MA^{TIE} or my cuntre, I mein his MA^{TIE}s dominions. And now, feing my braik of Ward was nott, as God is my judge, for no defyre of Rebellion, nor no vther defing,⁶ bott only for faiftie of my avin pur lyfe, I will moft humblé befeik your lo. fpeik fuch as is your freindis in *Confall*, patt HIS MA^{TIE} might be moveid, nott to tak no hefte or violent curfe⁷ aganis me, onto⁸ the tyme thatt pair lo^s will heir my Peticione. And give⁹ your lo. will gett me pat fawor that my Peticion faibe hard, and patt oney whom I fall fend with my Letters to your lo. fall nott be trubled; and I being advertesid by your lo., I will, be your lo^s advyfe, do aney thing patt may beft fatisfie HIS MA^{TIE} and *Confall*; my lyfe, and the lyfis of thefe patt helpid to faif my lyfe being faiff. So, with pe remembrance of my humble deute, I reft

Your lo^s pur freind euer to ferve you,

S^R J. MAKDONALL.

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

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

MY VERIE HONORABLE GOOD LORD,

PLEAS your lo., the ondeferued fauour and courtesee which I refaued by your lo., in showing your felue my frend, that tyme at Court, when my onfrendes did misreporte of me to his Maieftie, makes me now this bold to befeek your lo. to continew my frend, according to my reasonable fute. And, in fpeciall, that your lo. will meane my caife to your frendes in Counfall; for I protest my beeng ten yeeres in warde in the Caffe of Edinburgh, and the difponeing of my kyndlie landes, made me not fo much to tak that haiftie refolution to efheap, as when I was affured, by his owine frendes reportes, that my lyf wes geven over in *the Larde of Caddelles* handis; who beeing, as your lo. knowes, nowife my frend, or one to trust my lyf to; alwife¹⁰ now I befeek your lo., as yee fhall till death have my poore fervice, try by the Counfall, yf vpone any conditions, not diminifhing his Maieftis comoditie,¹¹ I may have this peece of old poffeffiounes, which is Illa, to fufteane my felue and all my kinne that now folowes me; that his Maieftie may have his owine, with honour and eafe, and wee to leeve in peace and offend no manne, and I, getting furetie of my lyff and of this peece land, fhall find fufficient fuiretie, both for my obedyance and good ordour, keeping by all my kinne and frendes. As your lo. learns in this, or can be hable to do me fauour in getting me his Maieftis peace, your lo. will aduertefe me. And I befeech your lo., fo far as you can, croffe *the Campbells* to gett any employmentes againes me—for they caire not how much they trouble the countree¹² and put his Maieftie to charges needles. As for the Houfe of Dwnoveg, I tooke it from *Calderis* menne, in the fpeace of one day,¹³—killed parte of thame, vpone the Greene of the Houfe,—chaifed in the reft,—tooke there watter and the two Barmkines¹⁴ from tham,—and forced thame to yeeld in my will, the next morning. So I have the Houfe, neuer to be gevin to thefe that is not worthie of it. But yett, his Maieftie may ever command it and my felue, I feeng how I may leeve with the affurance of my lyff and my poore frendes. So, abyding your lo. aduertement, with the remembrance of my humble fervice, I fhall ever remaine,

Your lo. affured frend to ferve yow,

S^R J. MAKDONALL.

ILA, 2 Julii.

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

TO THE ERLE OF CAITHNES.

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

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

MY LORD,

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

Your lo^s ever to serve you,

(Without date.)

S^A J. MAKDONALL.

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

VII. LETTER, *Sir James Makconeill to the Bishop of the Isles.*⁸

MY VERIE GUD LORD,

I DOUTT nott bott, or⁹ now, your lo. hes hard of my braiking of Ward; and *pe* only caus quhilk maid me ventour *pe* fame, quhilk, as God knawis, was for no vther caus bott only for *pe* faifte of my lyfe, quhilk *pe Laird of Calder* said was in his will only. Allways,¹⁰ prais to God, I am out of *Calder's* denger; and zett, geve¹¹ be oney meines I may have HIS MA^{T^{ES}} graciuss pardon to my self and these gentill men patt asifted me, I will latt your lo. se HIS MA^{T^{ES}} commodite fall novayis be impaired, *pe* pace of *pe* contrie fall novayis be trublid, nor HIS MA^{T^{ES}} putt to no chargis, be giveing employment to *pe Cambellis*, wha crawis ever to fish in drwmly¹² watters; and pairfoir, I pray your lo. deill with HIS MA^{T^{ES}} and *Confall*, for a continewatioun of oney violent curse¹³ to be tane be HIS MA^{T^{ES}} aganis me, ontill yow may gett one of your avin to cum to me; and with patt man, or with your lo. self, geve I know how to fie you, I fall fend such Offers as I hop fall content HIS MA^{T^{ES}} and *Confall*. So, as my trest is and was ever in your lo., I pray you vryt to me, what I may luik for? As for pat erand of Dwnveg, God is my vittnes, I am inofent pairof; and I pray your lo. try pat erand, as geve I war in ward; and I trest ze will find my pairtt honest. So, luiking your lo. ansver, I committ you to God; and rest

Your lo^s ever att command,

Junij 3.

S^A J. MAKDONALL.

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

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

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

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

MY VERIE GOOD LORD,

PLEIS your Lo. war not I hard your lo. was in Ireland, and could find no meanes to wreit to yow, I was not four nightes out of Ed^r, quhan I would have writtin to your lo. as to one quhom I haue euer found my friend. And now, my Lord, I proteft, albeit I was xij zeires in waird, and all my kyndlie landis difponed to strangeres, my lyff left in his Maiefties handis, zett the fame maid me not fo mvche to braik ward as it did quhan I was offered be the Laird of Calderes awin freendis, quha can not deny it, that his Maieftie, be his secreit Warrant, had gevine ower my lyff in the Laird of Calderes handis. And now, my lord, I proteft to God my defyre is not to rebell or truble the Efteat of the cuntrie, bot ferue his Maieftie with all humilitie, and mak my kin and freindis paceable men, iff I may haue his Ma^{ties} pace, with the affurance of my lyff and the lyfe of my pur freendis, and some meanes to fufteane ws rather nor to fors ws, for want, to opres otheres. Heirfoir I befeek your lo., feing my Race has bene tenne hundreth yeeris kyndlie Scottis men, vnder the Kinges of Scotland; and war I willing to leive vpoun ane pur pairt of that quhilkis our foirbeiraris had, and I to find gud fuirtie for all that becomes loyall fubiectis to do, both for myfelf and my quholl kin that followes me, that your lo. will, as ze euer did, interfeed for me at his Ma^{ties} handis to fie quhat grace or fauour your lo. may obtain to me; and in fpeciall, to fie give, without diminifching his Ma^{ties} commoditie, I may have the Iland to my felf and my kin to fufteine ws; wtherwayis that your lo. will get that fauour that no hefte curfe falbe taine aganys me, be geveing employment to my onfreendis, till your lo. may have tyme firft to fpeek with me; att quliche tyme, albeit I gett not the Iland, zett, provyding his Maieftie will hauld it in his awin hand, I will fhaw your lo. how his Ma^{ties} commoditie heir may be increffed, and I to be fatisfied, and this cuntrie to be frie of ony truble of me or my freendis.

As for this Houfe of Dunovege, I proteft to God, give aither his Maiefteis Gaird or your lo^s men war keepares of it, I wald neuer enter within it, albeit it war without keeping—bot finding in it fuche as ferued them quha foght my lyf and landis, and quho crewally opprest this pur Iland in fuch fort, that I proteft to God thair defing was rather to waift it, nor mak it able to pay his Ma^{ties} rentes. The fame maid me preferwe the hous; and albeit that Hous coft his Ma^{tie} muche money in putting it in Calderis handis, it pleaed God that, in one day (I took it), with the lofe bot of one man. And now if your lo. may get me ony fauourable conditiones be his Ma^{tie}, ze may affuir your felf I will give yow the Hous, provyding it be in your handis, and nane of the *Cambellis* to gett it. As your lo. does in this, or is lyk to do, advertis me. And fo, repofeing in your lo^s conftand freendfchip, I committ your lo. to God, and reftis

Your lo^s ever affuired to command,S^r J. MAKDONALL.

IN hope, with Goddis grace, I will geve your lo. zitt ane better propyne, I pray your lo. fend me ane Inventare¹ with this bearer, for I am far from the clock,

S^r J. MAKDONALL.

TO THE BISCHOP OF THE ILLIS.

IX. LETTER, *Sir James Makcneill to the Privy Counfall of Scotland.*²

MY VERIE HONOURABLE GUD LORDS,

PLEIS your lo^s, my offence in braiking ward fuld mak me to be loth to prefume to vrytt vnto your lo^s, zett, feiring the mofoun quhilk maid me to efchep fuld be vtherwayis thocht be your lo^s nor the trewth of my intencion, I am this³ bauld to deleaitt vnto your lo^s the only caus quhilk maid me to braik ward; and this is itt. *The Laird of Calder* fald to twa fewerall honest gentillmen, patt how

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

foever my tryall past anent the erand of Dwnoveg, zett he had ane Warand, in his avin keiping, past be his MA^{TS} quhilk pe *Confall* novayis did sie, commanding, immediatly efter the presenting pairof to putt me to exsecutione, butt¹ farther profes; and so, my lyfe as itt war gevin be HIS MA^{TS} over in the hands of him wha had not only medlid with my kyndly lands, my frends lyfes, and withall pe only man who reportid warft of my self, to haue gottin my lyfe with my lands, pe only feir pairof maid me sie with my lyfe, and no desire of Rebelion; nether aney mistrust I had of HIS MA^{TS} clemencie, nor of your lo^s favor; nether wald I braik ward for oney thing (they) culd try aganes me, anent pe erand of *Dunoveg*; for God is my vittnes I am inofent pairof. And I beseik zour lo^s try pe fame, as giwe² I war in ward to be accusid, and I trest your lo^s fall find my pairt, in all that buiffines, honest and loyall. And now I will, in all humilyté, beseik zour lo^s to pité my cace, and grant me patt fauor as to suffer me to send in ane humble Peticione to zour lo^s, be the quibilk I hop to give such satisfacion to HIS MA^{TS} and zour lo^s as I may best, to satisfe his Ma^{tes} will and your lo^s in all thingis, my avin lyfe and these wha hes assistid me being faiffe. And, in pe meintyme, praye your lo^s most humblé, befor I be hard, not to wis³ oney violent curse aganes me, ether to putt his Ma^{te} to expenceis, and me to disparatione. So, beseiking pe grett God to move HIS MA^{TS} hartt and your lo^s to pité me, according to the intencione I have to be ane paceable man, with the affuurance of my lyfe; only luiking your lo^s will latt me know what favor I may luik for, committing your lo^s in Gods protextione, I humbly taks my live, and rests

Your lo^s humble servitour,

Junij 3.

S^r J. MAKDONALL.

To my verie honourable gud Lords, my LORD CHANCELLAR of SCOTLAND, and the remement of HIS MA^{TS} honourable PRIVIE CONSALL.

X. LETTER, *Sir James Makconeill to the Earl of Crawford.*⁴

MY VERIE HONORABLE GUD LORD,

IT may be zour lo. think it streng patt I obscurid my intenciou of braiking Ward, fra your lo., in regair of our luif and familiarité; zett I hop your lo. will excuis me. For pe reveilling pairof to your lo. nicht do zou hairme, being whair ze ar, and no furtherance to my intencione. Allwayis, as God fall judge my faule, my braiking ward was nott throw aney mistrust I had in HIS MA^{TS} clemencé, nor in the *Confalls* fawor, nor zett for feir of oney thing culd try aganes me, anent patt treson of *Dunoveg*; bott the only thing which moued me was only thatt I was credably informid, be honest men, patt *Calder* said it to (pame,) patt howsoever pe erand of *Dunoveg* zed,⁵ he had ane Warand past be HIS MA^{TS} patt com never in pe *Confallis* sicht, commanding to put me to exsecutione, immediatly efter pe presenting pairof. Your lo. self and *M'intois*⁶ nicht heir *James Movat* say pis; bott my authours ar better nor *James*. Allwayis,⁷ as I said aft⁸ to zour lo. self, when I was in ward, I will now say; patt, as God fall judge my faule, I was never airt nor pairt of the taking or keiping of *Dunoveg* aganes HIS MA^{TS}, nor of no vther plaitt,⁹ sence pe braik of ward pat I maid with pe *Lord Maxwell* till now, and give¹⁰ efter such long miseré of imprifonment, lose of lands, and kin, my braiking ward for pe saifté of my lyfe, be thocht be ze sensuir of my onfrendis,¹¹ such ane offence as will not be pardonid, I most tak pacience; for I am better now, prais to God, nor¹² as I was; and I will, as long as I liwe, pray for HIS MA^{TS} long and prosperus regne. Zett, seing give I be crost now, it cumis moir be my onfreinds nor be HIS MA^{TS}, albeitt I will never preis¹³ to liue long in HIS MA^{TS} dominions, by¹⁴ his hienes ovin will, altho I nicht; I wov to God, or¹⁵ I liwe¹⁶ pe contré, I, and moir nor I, fall ether lose our lyfes, or than I fall, God willing, liwe¹⁶ ane remembrance to my onfreinds; I mein only sik of pe *Cambellis* as wilbe my onfreinds, patt itt falbe hard of when both they and I is deid and gone! I hop, to pair

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

small commodité: Bott I had rather gett live¹ to live in pace, and find gud fuirté for my obedience and gud ordour. I wish to God, with HIS MA^{TES} contentment, 3 our lo. war ane fré man, both for your avin weill and þe weill of 3 our friendis; and feing itt lvis in your avin hand, better be fré nor live pair with sik crois as I knaw men will have in patt place.² I heir maney of the *Keipers* of patt *Castell* ar putt in ward, for my braik;³ bott, as God fall judge me, pair was nane of þe keipers of patt Castell þat ever I thocht to mak privé to my defing. I protest to God, I love þe gud *Constable* and all patt is pair. I haitt none of þame; bott I culd nott bott love my self befor. Thair is nane within patt Castell to whom I am adebted, þat falbe oney wayis intrest⁴ be me, if God grant me HIS MA^{TES} pace. I defyre *Petrie Gilerif* keip my stare.⁵ Remember on our last discourfe, patt fame nicht I braik ward, anent *Margarett*. Sik newis as may nott be thocht offenceive, I pray your lo. vrytt to me. *My Lord Tuillibairne* and þe men of Atholl, on þat Fryday after I brak waird, perswid me so hardly, patt I was almost tane. We lost our hors, and all our clais. His lo. maid me to gett mair speid on fuitt, in one hour, nor⁶ I thocht to have gottin in ane 3eir, give⁷ sik sudent medefin⁸ had nott bein aplyid to me. Liewing⁹ to truble your lo. with longer discourfe, wishing 3ou ever all hap-pines, I rest
Your lo^s avin euer to command,

S^R J. MAKDONALL.

I PRAY your lo. as 3e do vther thingis, lovfe¹⁰ my mvntour¹¹ fra *Pettfindie*, for 48 lib; and get my buiks fra him, and fra *Elizabeth Gib*. Sho hes twa buiks. Commend me to *Christiene*. When your lo. vrytis to me, send itt to my *Lord Tullibairne* to be sent to me. For sum of your lo^s avin perticular, I wald glaidly sê your man *William Rattra*, or oney of 3ours; the erand tuichis only 3our self. To my verie honourable gud lord, my lord ERLE OF CRAWFUIRD.

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

MY VERIE HONORABLE GOOD LORD,

I WES not four nightes out of the Castle when I wrotte to your lo., but be not sure if your lo. hes ressaueid my Letter. I have now wrotten thir few lynes, praying your lo. to remember me 3our promese and conference with me. As for my felue; I am well, praised be God, and all my kyndlie men hes ressaueid me most glaidlie. I will do all I can to have HIS MA^{TES} peace, and find also good fuiretie for my obedience and yeirle dewtie¹² as may suffice. And if my onefrendis crofe me, I rest in God, how so euer the mater go, to be evin with thame. I pray your lo. see if it be possible yee may gett outhir manne or boy to come speak with me, and aduertese me moir of all your awin estate and dyett, and of all such newes as occurs. Any of my bookes that your lo. can gett, send them to me, and vse your moyen to gett from the Erle of Atholl the bookes that wes tane from me at that onfett in Atholl. They gatt the thrie converfiones of England, Burnes book, and it that Phillip sett out on the controverted heades, it 3e saw Makcartney wrotte, the Mekle old Cornikle, in wrett. Ther wes other bookes that I remember not, bot your lo. may seek thame all to your felue. I pray your lo. gett me word from Pittfindie, and try if I will gett my mounter and chifter¹³ to lovfe.

This wes the forme of the taking of Duneveg. We lay in ane buis¹⁴ about the hous, till the Captane and tuelf of his best men com out. We persewed ouer rafflie or they come far from the hous. The Captanes men fled, bot¹⁵ him felue and three or foure, they wer slane. We 3eid in at the vtter Barmkin with the rest, but they closed the 3ett of the inner Barmkin. Or tuelf hours we took the vatter,

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

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

I trest in God that all the Campbelles in Scotland, without HIS MA^{TIES} powar, shall not recouer it, so long as they live. I heare Patie Kilchriest is troubled for me; bot I proteft to God he is innocent of my break, and all that is in that Castele. No more, but remember me to all frendes, spicialie to Margrate, to Cristian, and all your owne frendes in the breathing; and also my homble seruice remem- bered, I rest
Your lo. owin to command,

July 3, Fra Duneveg.

S^r J. MAKDONALL.

TO THE ERL OF CRAUFURD.

XII. LETTER, *Sir James Makconeill to Lord Tulliebardin.*¹

MY VERIE HONORABLE GUD LORD,

TREULY the tyme hes beine, when I wald never a luiked patt your father sone fuld persue me so hardly of my lyfe; for I proteft I was never so hardly followid; and was so neir tane, patt your lo. self, and sum few with you, was within thre pair² to me. Bot I am much oblist to zour lo., for in faith ze maid me to be ane better fuitt-man, in one hour, nor I thocht to have beine in ane zier. All- ways,³ seing itt was HIS MA^{TIES} service your lo. did, I forgiwe you with my hartt; and I wish att God, my self had pe place to serue HIS MA^{TIE}, quhilk in my hartt I fall ever do. And this offence quhilk I have now committitt, I proteft to God, is nott for desyre of trubles or Rebellion, nether for oney mistrust I had in HIS MA^{TIES} clemencé, or his honourable *Consfall*, nor zett throw feir of aney thing patt can be tryed⁴ aganes me, anent patt erand of Dwnoveg; bot, as God knawis, my braiking Ward was only for pe saifté of my lyfe; for it is fertan, and I will gett veré honest wittnessis, to whom *the Laird of Calder* sald itt, patt he had ane Warrant from HIS MA^{TIE}, quhilk *the Consfall* never sawe, for to put me to present exsecutione, efter pe presenting of patt Warrant; so patt my lyffe was in *Calder's* will; and how lytill refone I had to trust to *Calder*, pairt of pe *Consfall* self knawis; for, not only all vther vrangis he did me, he vrett both to HIS MA^{TIE}, and vthers att Court and in *Consfall*, shawing, I was giltie both of pe talking and keiping of Dunoveg, pat pairby my lyfe might be tane. Bott now, pat pe world may se his mailith, whan I am, as I hop in God, out of his denger, I will say to zour lo., as I fall anser to God, I am and was ever as inofent of pe talking or keiping of Dvnveg aganes his MA^{TIE} as zour lo. is; and when all is tryid, I defy my onfreindis to try⁵ vtherways, be oney just tryell. And pairfoir, seing, efter such long miseré, and pe losf of all my kyndly⁶ lands, I bott only fled with my awin lyfe, I hop pe *Consfall* will evin pité me. And I befeik your lo. to be my freind, so far as ze may, without offence to HIS MA^{TIE}; only, in moveing your freinds in *Consfall* nott to be over hefté,⁷ att ze desyre of my onfreindis, to tak oney violent cursis aganes me, whairbé thay may gett preferment, and cairis nott what may follow, in expence to HIS MA^{TIE}, or truble in pe cuntre; quhilk fall nott be neidfull: For, give⁸ your lo. will gett me ane affurance, pat HIS MA^{TIE} honourable *Consfall* will heir pe same, I will give in such ane humble Peticione to pair lo⁹ in fullfilling HIS MA^{TIES} will, and pair lo⁹ in aney thing posebill to me; my lyfe and liberté being only reservid: And give HIS MA^{TIE} dispence with my lyfe, and offences, fall mak gud fuirté to truble no man, by⁹ ordour off law. So luiking for your lo⁹ anser, be pe *Barron Rid's* meins, committing your lo. in God's protex- tion, I rest
Your lo⁹ affuired freind to command,

Junij 2.

S. J. MAKDONALL.

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

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

XIII. EXTRACT OF A LETTER *from Sir Rorie Makcleud¹ to Lord Binning*
(received June 30, 1615.)

Now, since I perfave *Sir James (Makoneill)* hes brocken warde, and come to Lochquhaber, and out of that come to Moror and Knoddort, where he took per force a young youth, the secund sone of *Glengarrie²* on a worfe,³ and keepes him still in custodie; and the Captanes sone, a son of Donald McAllan McEan, Captain of the Clan-Ronald. And thereafter, come to Sleat, to *Donald Gorme's* bounds,⁴ where he gott a bigg boat, with oares, faile, and taikleing; and intercomoned at lenth with *Donald Gorme* there; and a number of *Donald Gorme's* folkes of Sleat, called Clann Tarlich,⁵ is gone with him. And thereafter, passed till the Yle of Egga, where he mett *Coill⁶* and his companyee, togidder with his bafe sone, and a sone of *Sir James Makforle* of the Route.⁷ And they ar in number, as I lerne, twelfue or thretteinth score, at the present tyme. And whidder they go South or North I can not tell, at the writteing heerof. It is my advyse to your lo. and Counfall, that your lo. derect a ample command and charge, till all and findrie the Superiours of the Yles, till convocat thame selues in armes, with a full Commiffion till⁸ everie one of ws, till perfew the said rebelles, by sea and land, with fyre and sword, in this form, in thrie severall armyes and companyees. That is, *Makclaine of Doward⁹* and *Makcleane of Lochbuy¹⁰* in a companye and armie; *Donald Gorme* and *the Captane of Clann Ronald¹¹* in a other armie; and I, *the Lairde of Coill¹²* and *Mackynnoun¹³* and *my Lord of Kyntaile's¹⁴* forces, in a other companyee; and lett euerie one of thir armies endeavoire thamefelues in HIS MA^{TIES} seruice; and he that doeth best therein, have the greatest honour, and preferment, and reward of HIS MA^{TIES} and *Counfall*. And becaus the said *Sir James* and his companyee hes taken thamefelues to the sea, in two barkes and findrie other boates, it were expedyent that your lo. and *Counfell* would send me ane Commiffioun and powar to embark any ship I can apprehend, in thir Iles, to the better perfute of thame in thir Iles; otherwise, your lo. and *Counfell* till furnishe out two or three shippes, well provyded, to thir Iles; and derect one of thame to me, that I and they may concure togedder, in his highnes seruice. And I desyre the Iles Superiours to be devyded in three sfactions, for this caus. *Sir James* and the rebelles of the *Clanndonald* ar of kynn, blood, and alia¹⁵ to *Donald Gorme* and to *the Captane of Clann Ronald*; and *Sir James* and his rebelles ar deedlie enemies to *Mackclene* and his name, and they will never aggree in a¹⁶ companyee and armee. And as for me, your lo. knowes verie well that I have geven a proof of my obedience and seruice to HIS MA^{TIES} and *Counfell* allreddye, in taking, and apprehending, and delyuering my own name and blood, the rebellis of the Lews;¹⁷ and in making these landis peaceable to HIS MA^{TIES}. Lett the rest do the lyk seruice now to HIS MA^{TIES}, and it is verie well known to HIS MAJESTIE and Nobilitie of Scotland, that my hous neuer rebelled, nor yett shall rebell.

Your lo. humble seruitor at powar,

DUNVEGANE, 18th of June, 1615.

S^R RORIE MAKCLEUD.

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

MY VERRIE HONOURABILL GOOD LORD,

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

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

by I perceave pat he is nocht previe to *Sir James* his brekking of Waird, and is resolut nocht to mell¹ with pair courffis, ffor *Sir James* and *M^cRonnald* did all pat pai culd, be messages, to haue met with him, vpon pretence to haue delyuerit him his sone; bot he onnawwis wald haue ony midling with pame, nor wald nocht reffauē his sone, becaus he wes in thair cumpany, without ane Warrand of your lo^s of pe *Counsell*. Bot I heir pat fenfyne, quhan *Sir James* tuik pe sea, he send him frome him. *Sir James*, at his passing out of Lochabber, wes onlie accompaneit with fourtene men and boyis, and *M^cRonnald* followit him with sextene men and boyis. They past out pat to *M^cEan of Ardnamurchais*² cuntrie, quhair I heir pat *M^cEan* bim selff, with all his cumpany with him; att pe leift, pair is an great pairte of pame. He gat sum boittis pair, and past pairfra, langis pe coift; bot he culd haue no landing, nather in *M^cAllane M^cEane* his cuntrie, *M^cclewd Hereis*,³ nor *Donald Gormis* cuntrie;⁴ ffor pai pat forcis on all pe sea-poirtis, to stop his landing; and I think pei had maid sum onfet on him, if pair boittis had not bene all sunk of befoir, for feir of suppryng pame.

I heir he landit into pe Isles of Rowme and Eg, quhair *Coull M^cGillefpic* did meit him with ane cumpany of hagbutteris, about pe number of sewin scoir of men. Thair forme of meiting, as I heir, wes this. *Sir James* and his cumpany stude in ane plaice be pame selffis, quhair pe wper with his cumpany went round about him, onis;⁵ and at pe nixt going about, salutit him with pair wolly of schoittis;⁶ and continowit sua schuitting and inuiring⁷ of him, for pe sspace of half ane hour; and pair-ester com to him euerie man, particularlie,⁸ chapping handis.⁹ Wpone pe morne, pai conuenit all pe haill bestiall, horse, and ky, to one plaice, quhilk pei thocht to haue slayne haill;¹⁰ bot, vpon better aduyfement, pei slew onlie ane number of ky, for meat, quhilk pei caryit immediatlie to pair boittis; and pair-ester tuik pe sea,¹¹ to pe number of Thre hunder men, of all. *Cold*¹² brocht him tua crearis,¹³ with sum wpir boittis pat *Sir James* him self gat in Ardmurche, and suppryfit in wpir pairtis. It is thocht pat pei haue tane pair woyage to Ilay; and if pe cuntrie be vpon pair gaird, as pai fuld, I think pai fall nocht proffeit mekill. The occasioun of my mannis flay; it wes long befoir he could get tryell¹⁴ quhair *M^cAllane M^cEan* wes; for he wes buffie, in gewing of ordour, pat *Sir James* fuld nocht land¹⁵ on any of his Isles; and abscuring¹⁶ him selff, pat pei fuld nocht get him. I vnderstand he hes send him Letteres to the *Counsell*, quhilk I think your lo. knawis of befoir now. I will request your lo. to lat me vnderstand, quhat directioun is cumit zit frome HIS MA^{TY}, concerning *Sir James M^cconneill*, and quhat conclusioun your lo^s of *Counsell* hes taiken pairant. Sua, hawing na farder at pis present, committis your lo. to pe protectioun of God; and restis

your lo. eur affuirit freind and seruant,

PERTHE, pe 24 of Junii, 1605.

TULLIBARDINE.

I VNDERSTAND *Glengarrrie*¹⁷ is presentlie in Edr, and is trublit be *my Lord Lowatt*¹⁸ in some actionis betuix pame. I wald request your lo. to be his freind and to sorder him hame our; for I mynd to meit with him, in his by-cuming, and fall lay him rycht to any thing pat concernis HIS MA^{TY} seruce, to my power. And becaus he is dealler betuix me and *M^cAllane M^cEane, Capitane of the Clan Ronnald*, pleas your lo. wret to me, quhat particular ze wald haue me to lay to thair chairge; and I fall do pe beff.

The pretext pat *Sir James M^cconneill* and *M^cRonnald* myndit to haue vfit, to haue persuadit *M^cAllane M^cEane* and *Glengarry* to haue taikin pair pairte, is pis auld actioun pat *my Lord Lowat* hes

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

aganis þame, and þe taking of *McAllane McEanes* landis our his head be *Sir James Stewart*. In my opinnioun, 3our lo^s of *the Counfall* fuld do weill to delay þe discuffing of þir debaittis for ane quhyle till þir wþer materis of *Sir James* war fetlit.

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

MY VERIE HONOURABILL GUDE LORD,

PLEIS your lo. I wald haue writtin to your lo. long or now, had not I culd find no bearer, becaus nane of my awin dar gō thair. Aluys,¹ I will euer think myself bund for the fauour your lo. schew me at my being laft in *the Castell*,² whanne God knawis vtheris wes bent to wrong me be thair fals accusationis; whose feir, and the report they gave out that my lyfe was onlye in thair willis, was the onlye motione of the braik of ward; and no intentione nor desyre I had, or hes, to live as ane Rebelle or outlaw; whiche traid, the Lord knawes, I abhorre; bot that I wald glaidlie live at libertye with my lyfe faif. And now, my lord, I befeik your lo., for the fauour of God and my perpetuelle seruice, pitie me and be my freind, that his Maieftie may be graciouslye moved not to 3ield to my vnfreindis, to ruit me and my whole race out, being fyve or sex hundreth 3eirris possessouris, and now willing to obey and serwe his Maieftie, in all humilitie, I, seing how I and my pure freindis may live; and if 3our lo. culd find the meanis that HIS MA^{TIE} and *Counfall* may be moved to let me posses this pure Iland, paying for it as anie vther may or hes 3it offerit to do, and getting my pardone, fall find sufficient furetie, both for my 3eirlie dewtye and the peace and quyettes of me and all that dwellis vnder me. Gif 3our lo. may or will do me any guid in this, I will not onlie be ane to do 3our lo. guid seruice, bot, with Goddis graice, let 3our lo. sie my thankfulnes. I befeik 3our lo., for Goddis cause, be playne with me, and if HIS MA^{TIE} may not be moved to let me haue this Iland, diminiffing nothing of HIS MA^{TIES} commoditie, that 3our lo. will let me know, be 3our advise, be what vther meanis HIS MA^{TIE} may be moved to grant ane generall pardone to me and all myne; and that we may haue to susteine ws in sum meafour, leif we be forcit, being without oure living, to opprefs vtheris. This abyding 3our lo. ansueir, committing 3ow to God, I rest

3our lo. euir to command,

Julij 1.

SIR J. MAKDONALL.

MY LORD, If HIS MAIESTIE be not willing that I fall be his heighnes tennent in Ila, for Goddis cause let HIS MA^{TIE} hauld it in his awin hand; for that is certane, I will die befor I sie a *Campbell* posses it. And HIS MA^{TIE} haulding it in his awin hand, HIS MA^{TIE} may haue ane thousand merkis mair be þat, nor *Calder* fuld pay; I making it quyt of me and my kin, whiche I will do vpoun fuche reasonabill conditiones as I will schow 3our lo., if 3e may assure me that 3e may get HIS MA^{TIE} brocht to this poynt, and in the meintyme no employment³ be gevin aganis me, till 3our lo. sie how this may be brocht to pas. As for this *Houfe of Duneveg*, which I tuik in four and twenty houris from *Calderis* menne, your lo. getting me fauour of HIS MA^{TIE}, the houfe salbe to serwe HIS MA^{TIE}, and neuer to be keipit aganis his hienes. And if HIS MA^{TIE} awin Gaird or *the Bischopes* had bein in the Houfe, befor God I wald neuer perfew it; bot finding these in it, who crewellie opprest the pure cuntrie, wes the onlie sutteris of my lyfe and landis, I wald I culd do thame mair disgrace! Referring all to 3our lo. consideratione and ansueir, I rest

3our lo. euer to be commandit,

Julij 1.

S^R J. MAKDONALL.

TO MY LORD SECRETARE.

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

RIGHT WORSHIPFULL,

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

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

my lord be gone to England, I pray yow fail not, as yee respect his lo. well,¹ to fend his Letter to him, with furetie that it may com to his handes; for I have wrotten to his lo. the thing that I hope thall come to his lo. honour and credite; and there is none leaueand vnder his Maiestie that I will do mor to, till do be, and do him all the honour and credite I can. Heir I will entreat yow, give² 3e be in Edr, and any of my Letters come to 3our hand, yee will delyver thame to fuche as I have wrotten thame to. And so, reposeing in 3our good will, and assureing 3ow I am to serve and honour 3our father and 3our felue, I rest

3our assured frend to command,

FROM ILA, 4 Julij.

S^a J. MAKDONALL.

(*Postscript.*) Sir,

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

3our assured frend,

S^a J. MAKDONALL.

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

XVII. LETTER *from Archibald Campbell³ to Lord Binning,⁴ 'anent his persute of Sir James Makoneill.'*

RIGHT HONORABELL,

AS I writt to 3our lo. from the Wode of Messen, SIR JAMES M^cONEILL and M^cRANALD went by pat way; and, as I was informed, he had stayed Wednesday night and Thursday in Murthlie. So I, heaving riddin Wednesday night and Thursday all day, I wachit at Murthlie all pat night, bot pay maid no stay pair: Bot M^cRanald sent a man of his for a 3oung boy of his awin pat he had in Murthlie, and convoyed him with him. On Wodnisday, at night, they were in a pure man's house in Strabrane; and on Thursday, at night, pay wer in the East end of Ranoch, quhair I might haue bene sex houris before pame, gif I had bene fartane of thair way. *The Erle of Atholl⁵* was advertifed by pe *Erle of Mar,⁶* and he followed pame. And on Fryday, in the morning, com in fight of pame; bot my lordis men had run so far, and his spayis pat went before him so wnprowdent, pat *Sir Jeames* and his companie wer advertifed be *Strowan* his wyf,⁷ quho is *M^cRanald* his dochter. They wer forfied to leive pair horffis and clothes, and teake pame to pe wodis. *The Erle of Atholl* apprehendit *Sir Jeames* his man, pat was with him in the Castell, and quho stayed efter him in pe Castell pat morning he brake ward, and too men of *M^cRanaldis*; bot my lord tels me he difmist pame all. My lord, so far as I culd learne, *the Erle* was exceeding willing in this persute, bot pair was sum wronge done him, pat I beleive his lo. as 3it knows not of. Those pat I send to be before pame ar not as 3it returned, nor no word from pame. I hope in God 3our lo. fall heir pat pay haue mett; for pay can hardlie pas by pame. *The Erle of Atholl* affuris me pat pair cam a compane of men to meit *M^cRanald*. My lord, if pair wer bot too hunder men and ane honest commander on pe feildis, they wer not eabell to do any thing be land; nor culd pay haue tyme to move⁸ any to follow pame: Bot in treuth, if pay be permittit, they will no dout grow stronge. *Sir Jeames* man pat pe *Erle of Atholl* apprehendit, told, pat pay resoluit to burne *Cadell⁹* his landis of Mukarne; and pat he thocht a grait many Illenderis ver on pair course.¹⁰ My lord, so schune as I heir from those I drectit estir pame, and pat I kno quhat course

¹ Weal; advantage.

² If.

³ Son of Sir James, and brother of Sir John Campbell of Lawers. Afterwards Sir Archibald.

⁴ Sir Thomas Hamilton, afterwards Earl of Haddington, Secretary of State.

⁵ James, second Earl of Atholl, son and heir of John, sixth Lord Innermeath, who had obtained the Earldom, Mar. 6, 1595-6. He married Lady Mary Stewart, second daughter of John, fifth Earl of Atholl, by his stepmother, Lady Mary Ruthven, and died without issue, anno 1625.—*Wood's Peerage.*

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

⁷ Robert Robert-son of Strowan married a daughter of Macdonald of Keppoch.

⁸ Induce; persuade; move.

⁹ John Campbell of Caddell or Calder.

¹⁰ Were his abettors and maintained his cause.

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

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

3our lo. ewer to serue 3ow,
 AR. CAMPBELL.

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

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

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

LOVING FREIND,

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

Your verie loving freind, at powar,

[BINNING.]⁶

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

HONORABLE GOOD LORD,

My humble dewtie remembrit, please 3our lo. to wit, that I am heer in the Tarbet, attending vpon our enemies coming farder in the cuntrie. 3our lo. fall vnderstand, since my last wryting to 3our lo., *Sir James* the traitour hes latlie directit out ane *fyrrie croce*⁷ from the head of Lockerrane, quhair he makes his residence for the tyme, to the Tarbart, vpon the pretence that all maner of man betuix the Mull of Kintyre and the Tarbart fould come and tak land of him. And to preveine this, that the cuntrie fould get no skaith, I have directit for to get more affistnce of men throw Argyle and Lorne. 3our lo. fall know that I was not anfuerit, according to my Commiffioun. The monyest⁸ that came to me was ane hundreth men; the number of the hail thrie hundreth men. Wifhing 3our lo. to tak ordour with the cuntries difobedience, for farder inconvenience; quhilk I fear will come to more

¹ Sir Robert Carr, Earl of Somerset, held the office at this time.

² A gentle hint that remuneration was

looked for, to quicken his zeal.

³ A son of Sir James MacSorle of the Route, formerly mentioned, both in this

Appendix and in the Introduction to this Trial.

⁴ Coll Macgillespick Macdonald.

⁵ In being; existing.

⁶ From a copy, marked by Lord Binning himself.

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

⁸ Most; greatest number.

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

TARBART, 30 July, 1615.

Your lo. to be commandit to my powar,

AUCHINBRECK.

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

MY MOST HONO^u GOOD LORD,

THINKING my self assured that your lo. wald, according to your promeis, contenit in your Lettre of the 24 sent to me, begin your journey homeward vpone the nixt day, and end it, at fardest, within ten or tuell dayes; I certified *the Counsell* pairof, and be Letteris to *Auchinbrek* and vtheris officeris, widowtedlie that your lo. wald keip that dyet; but now, wnderstanding your lo. cairlesnes of that weightie charge, quhilk we have wndertaine againis *the Tratoris*, who daylie growis in number, force, and presumptioun, becaus they find no resistance, far les perfute aganis them, quhairby they have left sum forces in Ila, to keip Duneveg and Lochgorne; and *Makoneill* self and sex hundreth with him, having maid thame selfis maisteris of Kintyre, ar so swelled in pryde, that they have sent the fyre-corse¹ throw the cuntrie, and wairned all the inhabitants betuix *Tarbart* and the Mull of Kintyre, to tak their land of the Traitour *Makoneill*. We heir of so much holdnes in the rebels and fear in the cuntrie people, as we expect daylie to heir of thair farder futing vpone your lo. cuntrie of Argyle; which your owne people does fearfullie apprehend. We ar assured of *Auchinbrekes* faithfulness to HIS MA^{ty}, and your lo. do exceidinglie distrust his governement, in respect of his owne feiklines, the disloyaltie of many of the Irische people, and boldnes and subtiltie of the Rebels, too able to keep advantage of him. Nather will I conceall, that your lo. name² is envyed, your owne autoritie and wounted estimatioun infinitlie impared, be your absence and neglect of your cuntrie; and releiff of your freindis, engaged and wraiked for your debtis: And now, if your lo. fall kythe³ cairles, or slouthfull and sluggishe in this great charge, we will increas the libertie of your ewil-willaris, who have boldlie spokin to your disadvantage and discredit, discourage HIS MA^{ty}s good subiects, embolden the Rebels, and mak your task more difficile nor⁴ your lo. apprehends. My affection to my maisteris honour, and respect and good will to your lo. self, makis me to wryt more liberallie⁵ in this mater nor vtheris will, which I hope and request your lo. may tak in good pairt; earnestlie beseiking your lo., all empeschments removed, to come heir with all possible expeditioun and resolutioun, to go forward with wisdom and diligence. Your lo. will find that your fallowing your owne will, aganis my opinioun, in purchassing ane Commiſſioun in this service, to ane particular number of the Counsell, will do hinder to the bussines. Bot the nixt best must be done; nothing being able to remove all difficulties, but your lo. presence and diligence; which I recommend to your lo., as we affect your maisteris favour and your awne honour. So, luing for your lo. extreme diligence, to amend bypast sleuth and ouersights, I commit your lo. to the protectioun of God.

Your lo. verie affectionat to serve you,

ED^s, the fyft of August (1615.)

[BINNING.]

XXI. EXTRACT from *Minutes of Privy Council, Jun. 20, 1615.*⁶

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

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

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

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

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

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

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

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

¹ Alexander Mc Donald or Mc Ronald of Keppach or Gargavache. ² George Earl of Enzie, afterwards second Earl of Huntlie, who was beheaded at Edinburgh, Mar. 22, 1649. ³ Father of Alister Mc Donald, Lieutenant to the great Marquis of Montrose in the civil wars. He was popularly stiled *Coll Keitach*, i. e. Left-handed Coll, from which his son Alister took his designation of Mc Coll Keitach, abridged to *Colkitto*. ⁴ Donald Mac Angus of Glengarrrie. ⁵ Alexander or Alister, father of the first Lord Macdonell of Arras.

Sassenach, having been educated in England. He married Mary, daughter of Hector MacLean of Dowart, leaving three sons. *Donald More*, the eldest, married Margaret, sister to Colin Lord Kintail; and dying, without issue, in 1616, his nephew, *Donald Gorme Oig*, son of his brother Archibald, by Margaret, daughter of Angus Macdonald of Dunniwaig and Glynnis, succeeded. See (Archdall's) *Lodge's Irish Peerage*, VII. 115. ⁶ Of Sleat, called *Donald McAllan McEan*.

⁷ Edited by Thomas Thomson, Esquire, quarto, Edin. 1825, p. 388. ⁸ The author either did not live to fulfil this intention, or at least did not complete his History, which terminates abruptly, anno 1617.

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

(1615, Sep.) IMMEDIATLIE efter that *the Erle of Ergyle* had receavit his MAIESTEIS Commiffioun of Lieutenandrie over THE ILLIS, he addreffit him felf, with all convenient diligence, in Duntroone,² quhair the greateft pairt of his forceis did meete him. And being fuirlic informit, that the Traytour *Sir James M^cConcill*, and his complices, to the nowmer of fevin or aucht hundreth men of weere, for that present in KINTYRE, and of full intention thair to remane, quhill³ thay wer by the gritter power forcit out of it, his lo. refoluit to mak ane onfett without ony delay, alfweill on thair vefchellis as on *the Rebellis* thame felfis; and thairfore commandit *the Laird of Caddell*, who had the conducting of the forceis of Lorne, to mak his onfet on thair vefchellis, quhair he could heir thame to be, ather in YLE OF GIGA, the ILE OF CARA, or on the MAINE-LAND OF KINTYRE. Lykewyfe fo, his Lordfchip gaif command to *the Laird of Auchinbrek*,⁴ and to fome speciall of *Auchinbrekis* freindis, to merch over land to the Tarbart, with his lordfchipsis forceis of Ergyle. My lord him felf, being accompaneid with the men of Coule,⁵ went by Sea to the Tarbart, on the vther fyde of the Maine-land. My lord went from Duntroone on the day of September, and wes that nicht in the Tarbart; quhair *Auchinbrek*, with the men of Ergyle, did meete him that fame nicht. *Coll M^cillefpik* haiving⁶ *Coline Campbell of Kilberrie*, fet out to him, come with fyftie men the foirfaid nicht to Loch Tarbert, quhair he apprehendit the faid *Coline*, and fome foure or fyve with him, quhome he maid his prifonairis. Airlie the nixt moirning, *Coll M^cillefpik*, being on his way bak agane, towardis the Ile of Cara, quhair he had left *M^cRannald*, and his fones, and *Sorle M^cJames*, who wer appointit to remane in Cara, for keiping of the Rebellis vefchellis; he being on his way, as faid is, perfautit *my Lord of Ergyle* his forces of Lorne, failling towardis Gigza; and fome of thame, haueing gone in the bak fyd of Gigza, maid ane onfett on the *Rebellis* who wer in Cara, bot wer preventit⁷ by fome of *the Laird of Largy*⁸ his fervandis, who perfautit *my lord of Ergyle* his forces going towardis Ergyle, quhair the Rebellis wer, and fet on grite beikynis⁹ to mak thame warr.¹⁰ The foirfaid Ila not being diftant frome land above twa or thrie myllis of fea, zit before *the Rebellis* could get away in thair boitis, thair wer fome of *M^cRannald* his men apprehendit and flane. *Coll M^cillefpik*, as faid is, being on his way to the Ile of Cara, wes adverteift be a fervand of *the Laird of Largyis*, that *my Lord of Ergyle* his forces had chaffit *M^cRannald* and thofe that wer with him out of the Ile of Cara, and had plantit thame felfis thair; fo he immediatlie was forcit to land in Kintyre. Some of *the Erl of Ergyle* his men, haueing forgadderit¹¹ with him in his landing, killit a fyftene or faxtene of his men, and took his foure vafchellis frome him. My lord of Ergyle, the foirfaid day, fend his forces of Couell and Ergyle, within twelf myles to the place quhair *Sir James M^cConcill* and his complices wer; bot he being adverteift that *my Lord of Ergyle* his forceis wer coming, by fea and land, vpoun him, fled away to *the Ile of Rachlie*,¹² quhair he remanit twa nichtis, and thairefter went to Ila. My Lord of Ergyle being adverteift thair of, and heiring that his Ma^{teis} fchippis wer arryvit at *the Ile of M^cacharunnik*, his Lordfchip went with his forces of Lorne and fome of the men of Ergyle, who had thair vefchellis on that fyde of the Meane-land, towardis his Maiefteis fchippis; quhair he was stormeftayd for the fpace of thrie dayis. And thairefter went to *Loddummes* in Ila, a harbour convenient for his Maiefteis fchippis to abyd in, and good for landing of his lordfchipsis forces, out of the danger of

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

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

³ Until. ⁴ Sir Dugald Campbell. ⁵ Cowell, a district of Argyle. ⁶ Some words appear to be omitted here,

such as 'set for,' or 'laid in wait for.' ⁷ Frustrated. ⁸ Macdonald, ancestor of Sir Charles Macdonald Lockhart. ⁹ Large beacons. ¹⁰ To make them aware; put them on their guard. Such beacons were usually large fires placed on the tops of the highest mountains or eminences, and carefully fed with tarred wood, &c.

until answered from adjacent heights. ¹¹ Met; rencountered. ¹² Rachlin or Rachrin.

the enemy. Hauing stayed thair twa dayis, for refrefcheing of his men, and till he fould heir quhair *the Rebellis* wer, immediatlie being adverteist that *Sir James*, with his complices, wer in *the Rindes of Ila*, and in a little Ile neir by, called *Illannourfay*, *my Lord* maid onfet on thame, by fea; quhairin his lordfchipis men wer preventit by some, who fet on beakynis in *the O of Ila*, quhairby *Sir James* was adverteist that my lord his forces wer comand on him, fo as *Sir James*, *McRannald* and his fones, and *Sorle McJames* fled over that nicht to *Inchdachele*, ane Ile on the coast of Ireland. *Coll Mcillispik* hauing the keiping of the CASTELL OF DUNYVAIG and the ILE of LOCHGORME, randerit thame bothe to *the Erll of Ergyle* and *Colin of Kilberrie*, quhome he had taikin captiue; and apprehendit *Mciphie*,¹ on of the principallis who followit *Sir James*, and deliuerit him to *the Erll of Ergyle*; and I haue presentit him this day before your Lordfchipis, with vther fyve of *Sir James* his complices. Efter that the Castell of Dunyvaig and force of Lochgorme wer taikin in, *my Lord* apprehendit fyftene of the principall men of Ila, who wer leadairis of the poore ones, to follow *Sir James*; whome he caufit be execute thair. And hauing deliuerit the foirfaid Castell of Dunyvaig and the force of Lochgorme to *the Laird of Caddell*, his Lordfchip come frome *Ila* in his Maiefteis fchipis, and arryved in *Loch-illcarrane*² on the sextene day of October laft. His Lordfchip no fhooner come thair, than thair come on of the faid *Sir James* his followaris who went with him to Ireland, and vndirtook to bring some of my lordis fervandis to the place quhair he left the faid *Sir James*; and gif he were not to be found thair, he wes fuire to find him in the town of Galloway, in Ireland, in *Vallentyne Blak* his houfe, or *Robert Blak* his houfe, thair; two, who are alledgeit to be refettairis of Jefuitis. *My Lord* being thus fuirle informit of the faid *Sir James* his proceedingis, hes directit threttie of his men, in two onfettis, to Ireland, efter him. As to *Sorle McJames* and the twa and twenty that he had with him, thay ar in *the Route and Glennes of Ireland*:³ It is alledgeit that the sub-officer thair hes gevin thame promeis of protection for two monethis. As to *McRannald* and his fones, thay ar fled to Loch-quhair; and my Lord his forces ar in perfute of thame thair. As to *Glengarrie* his fone, he is refat in his fatheris boundis, and my Lord hes some of his fervandis efter him. At my Lord his coming to Kintyre out of Ila, he apprehendit some of the principallis thair, who had followit *Sir James*, and thofe who maid wairning to the Rebellis of *the Erll of Ergyle* his forces coming to Cara. Lykwyfe his Lordfchip difmiffit *Capitane Wood*, *Capitane Monke*, with his Maiefteis Schipis, and the Bark quhairin his Maiefteis cannoun and munitioun wes, on the tent day of Nouember infant.

As afua, the faid *Archibald Campbell* gaif in the ARTICLES following, quhaironto he craved the faidis Lordis aduife and ANSUEER; off the quhilkis Articlis and Anfueris the tennour followis.

ARTICLES and ANSUEERIS.

FIRST, to inquire, gif your lordfchipis thinkis it not ane fufficient exoneratioun to the Erll of Ergyle, that *Sorle McJames* is in Ireland, and hes tua monethes Respett,⁴ as is allegit?

ANSUEER. *The Lordis thinkis that the Lieutenant hes done his dewtie, and fould be exonerat of Sorle McJames, gif he be in Ireland, as is alledgeit; feeing, his lordfchipis Commiffioun givis him nocht power to perfew Sorle McJames, in Ireland.*

SECUNDLIE, to crave thair Lordfchipis opinionis, gif thair Lordfchipis thinkis it nocht fufficient, that gif *McRannald* his fones may nocht be apprehendit be *my Lord of Ergyle* his travellis, before my Lordis coming to the Commiffionairis, that my Lord prove in qubais boundis thay haif had actuall refidence?

ANSUEER. *Gif McRannald and his fones can nocht be had afore the Lieutenents coming heir, gif the Lieutenant will verifie and prove quhair and by quhome they are refset, and within whose boundis thay haif thair actual refidence, he dois his dewtie, in that point.*

THRIDLIE, to inquire thair Lordfchipis, gif *Glengarrie* will nocht be obleigt for his fone, it being cleir-lic provin, that he has actuall refidence within his fatheris boundis?

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

² Loch-Kilkerran.

³ The property of Sir James

⁴ Respite.

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

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

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

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

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

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

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

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

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

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

was solemnly rescinded by Parliament,¹ and the title and estates were declared to revert to Regent Morton's lawful heir. Sir Walter Scott informs us,² that *the Laird of Johnstone* (John) was employed to apprehend Lord Maxwell, who had been declared his Majesty's rebel, on account of his Religion, &c. in 1585; and was intrusted with two bands of hired soldiers for that purpose, who were destroyed by the Maxwells. Johnstone himself was subsequently defeated and made prisoner, and his house of Lochwood taken and set on fire, 'that Lady Johnstone might have light to put on her hood!' This Laird³ shortly afterwards died of grief, in April 1586;⁴—and to these circumstances we must unquestionably ascribe the origin of the deadly hate between the two Clans, and especially between their chiefs.

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

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

Besides the occasional skirmishes with the Maxwells, it appears that the Johnstones, as well as Lord Maxwell, had given assistance to the Earl of Bothwell, in his numerous daring attempts in 1592, &c. It is probable that, on this account, Sir James had been warded in the Castle of Edinburgh, either for his own personal conduct, or as responsible for his Clan, and for failing to give security, &c. Nevertheless, it is certain, that (from whatever cause he was confined) he contrived to make his escape from the Castle, Jan. 4, 1693.⁶ Through powerful mediation, the rival Chiefs were induced to enter into mutual alliance, and bound themselves to support each other in all their lawful quarrels. On the faith of this, the Clan of Johnstone concluded they had little to apprehend from the *justice* of the new Warden, provided they did not plunder any of the name of Maxwell. They accordingly made a descent upon Nithsdale, where they committed sundry depredations on the Lord Sanquhar, the Lairds of Drumlanrig, Closeburn, and Lagg, and killed eighteen persons, who had 'followed their own goods.' Counting upon the hereditary enmity subsisting between the two names, a Commission was given to Lord Maxwell, who was instructed to pursue the Johnstones with all hostilities. Being

¹ *Acta Parl.*

² *Tales of a Grandfather*, 2d Series, I. 93.

appointed Warden of the West Marches and Justice in 1570.

³ John Johnstone of that Ilk. He was

⁴ *Wood's Peerage*, I. 73.

⁵ *Robertson's*

Hist. II. 357. *Redpath's Border Hist.* 672. *Moyses's Memoirs.*

⁶ See this Collection of Trials, I. 359.

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

MAXWELL, in his capacity of Warden, and also as holding the King’s special Commission, summoned the Laird of Johnstone to surrender; which he refused, on the ground of the illegal bonds into which Maxwell had entered. The Warden, therefore, without further parley, sent forward Captain Oliphant with some troops, to Lochmaben, to await his arrival in Annandale; but the Johnstones, marching suddenly upon them, killed the Captain and a number of his soldiers, and set fire to the Parish Kirk of Lochmaben, whither a number had fled for shelter, but were thus forced to surrender. In revenge, Lord Maxwell, intending to raise the inhabitants of the different towns in his aid, as his Majesty’s Lieutenant, entered Annandale; but Johnstone, having obtained early information of his motions, suddenly attacked him, and overthrew his forces, and slew Lord Maxwell ‘and sindrie Gentilmen of his name.’² This fatal affair took place, Dec. 7, 1593, and is well known by the name of THE BATTLE OF DRYFFE SANDS, having been fought close by the river of that name, near Lochmaben. Archbishop Spotswood remarks, ‘The Lord Maxwell, a tall man and heavy in armor, was in the chase overtaken and striken from his horse. The report went, that he called to Johnston, and desired to be taken,³ as he had sometime⁴ taken his father; but was unmercifully used; and the hand that he reached forth cut off; but of this I can affirm nothing. There always⁵ the Lord Maxwell fell, having received many wounds. He was a Nobleman of great spirit, humane, courteous, and more learned than noble-men commonly are; but aspiring and ambitious of rule.’⁶

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

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

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

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

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

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

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

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

⁵ *Ib.* 49.

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

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

The Countess of Caithness, (*Lady Jean Gordon*, only daughter of George, fifth Earl of Huntley,) who was Lord Maxwell's cousin, and greatly interested in his safety, was likewise deceived by her husband, who had told her that a report was spread abroad that it was already known at Court that Lord Maxwell was in hiding in Caithness; and that it was necessary, for their mutual safety, to set off for Edinburgh, to explain the matter; and thus, time would be afforded for Lord Maxwell's escape. The unfortunate Maxwell, then in poor health from his great exertions, was trained to leave Caithness, and pass through *Sutherland*, in order that he might be taken there; and thus spare the Earl the imputation of having so basely violated the laws of hospitality! But so anxious were his servants to execute their commission, that Maxwell was actually taken within the county of Caithness, conducted to Thurso, where Captain George Sinclair² was impatiently awaiting his arrival, and carried him back a prisoner to Castle Sinclair, where he had so lately been apparently a favoured and honoured guest.

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

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

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

Jun. 24.—JOHNNE LORD MAXWALL.

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

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

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

prefens of the said lord Commiffionar and of the hail eftaittis of this present Parliament, the said Lord Maxwell, being thryfe callit at the tolbuthe windo, to haue anfuert to the said fummondis of Treaffoun; and compeirit nocht, the saidis hail Eftaittis ffind the saidis fummondis, rafit be oure said fouerane lord and his hienes Aduocatt, aganis the said Lord Maxwell, and the hail thrie reffones and cauffes thairin contenit, and euerie ane of thame relevant: And thairfoir admittit the famyn to the said aduocattis probatioun. And immediatlie thaireftir, the said Aduocat, for preving of the pointis of the said fummondis of Treaffoun and hail reffones and cauffes contenit thairin, Repetit all the Depofitionis of the Witneffes, examinat befor the lordis of Articlis, and lordis of Secreitt Counsaill, ofbefoir, ffor preving of the saidis hail thrie reffones and euerie ane of thame; togidder with diuerfe Actis of Parliament, lawes and constitutionis of this realme, Sir James M'Conceillis Convictioun¹ for braking of waird fforth of the Caftell of Edinburgh; Lettre of Horning aganis the said Lord Maxwell, for nocht compeirance befor the Lordis of Secrete Counsaill, to anfuert befor thame, for his breking of waird furth of the Caftell of Edinburcht, for the Burning maid be him at Dalfeble, and for Slauchter of the LAIRD OF JOHNSTOUN; with diuerfe vtheris wryttis and probatiounes productit be the said lord Aduocatt, for preving of the foirsaid fummondis of Treaffoun, and hail thrie feuerall reffones and cauffes contenit thairin, and euerie ane of thame; and renuncit forder probatioun: And thairvpoun the said Aduocat askit Instrumentis. AND lykwayes, the said Aduocat productit, in prefens of the said lord Commiffionar and hail eftaittis, Lettres of Relaxatioun, beirand the said Johne Lord Maxwell to be relaxit, be James Dowglas, meffinger, fra the proces of all Horningis, at the marcatt croces of Lochmaben, and Dumfreife, vpoun the xv day of March 1609 yeiris, and at the marcat croce of Edinbur^t, be Johne Moncur, meffinger, vpoun the xxiii day of Marche, the yeir of God abonewrittin: As at mair lenth is contenit in the saidis lettres of Relaxatioun, fufcryuit be James Primrofe, clerk to the Secrete Counsaill, of the date the fext day of Marche laftbipaft, and regiftrat in the clerk of Registeris buikis, the xxij day of Marche, 1609 yeiris: And vpoun the productioun of the saidis Lettres of Relaxatioun, the said Aduocat lykwayes askit Instrumentis, and defyrit the said proces of Foirfaltour to be advyfit be the saidis hail Eftaittis.²

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

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

¹ See May 13, 1609, in the preceding Trial, Vol. III, 1, &c.

² See *Acta Parl.* 1609, 414.

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

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

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

futurum ; quibus adductus persuasione et promissis, dictus quondam D. Jacobus, sexto die mensis Aprilis vltime elapsi, accito secum *Gulielmo Johnestoun* vocato *de Lockerbie*, gladio, sine vllis alijs armis, accinctus, dictum D. Robertum Maxwell secutus ad moram inter Arthurstane et Trailflat pervenit, vbi duos equites adventum suum operientes percepit, dictique D. Roberti hortatu paulatim in eo loco substitit, donec D. Robertus progrediens dictosque duos equites Joannem Dominum Maxwell et Carolum Maxwell vocat. de Kirkhous esse perspicuens, adduxisse se dictum D. Jacobum Johnestoun ad destinatum colloquium declaravit, a dicto Domino Maxwell jurisjurandi privs dati, pro dicti D. Jacobi et Gulielmi Johnestounes incolumitate, saluoque et tuto accessu et recessu a dicto colloquio, renouationem exegit ; et Dei nomine et Numine interposito, a dicto Domino Maxwell pro seipso et dicto Carolo Maxwell obtinuit : Sicque dictum quondam D. Jacobum Johnestoun, tot promissis et juramentis fidentem, ad locum colloquio destinatum ad dictum Dominum Maxwell aduxit, et mutua data et accepta, vt inter amicos fieri solet, salute, detectis capitibus congressi, dicto Carolo Maxwell et Gulielmo Johnestoun imperarunt vt seorsum subsisterent, ipsique ad colloquium ita progressi sunt, vt, D. Roberto Maxwell medio, vnus ei ad dextram, alter ad sinistram obequitaret : Dumque de rebus ob quas convenerant pacifice et vti videbatur amanter colloquerentur, dictus Carolus Maxwell, ita vti prius inter eum et dictum Joannem Dominum Maxwell convenerat, ad dictum Willelmum Johnestoun, contra quem constitutum erat, accessit ; et vt discordie et rixe ansam nacisceretur, adeo ingratum sibi illum congressum esse affirmavit, vt si illius causam prius intellexisset, ei se haud affuturum profiteretur. Respondenti vero Gulielmo, sperare se colloqui illius finem dictis nobilibus viris amicisque et clientibus eorum gratum et vtilem futurum : Id fieri non posse Carolus asseruit, dictumque D. Jacobum, omnesque alios Johnstones, latrones et proditores vocavit. Gulielmus autem, ne sua culpa discordie initium preberetur, dixit se quamlibet iniuriam passurum, potius quam duorum colloquium disturbaturum ; et quamvis, tanta dicti Gulielmi patientia frustratus, Carolus nullam pugne occasionem inveniret : Illud tamen quod prius intenderat omnino peracturus, dictum Gulielmum, nec verbo nec facto prouocatus, crudeliter et proditorie parato sclopo invasit, et pallium et vestes eius duobus globalis transmisit ; cujus fragore, et Gulielmi voce proditorie vim vite sue inferri clamantis, turbatus quondam D. Jacobus Johnestoun, ab eo se convertens, et que tam fedi facinoris causa esse rogans, dictus Joannes Dominus Maxwell, a tergo, dicto quondam D. Jacobo Johnestoun, nil tale metuenti, imminens sclopo, quem sub palio clam paratum habebat, in dictum D. Jacobum, proditorie directo, per humerum duabus glandibus plumbeis venenatis¹ in corpus et

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

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

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

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

THE quhilk summondis, with the executiounes and indorsatiounes thairof,

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

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

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

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

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

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

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

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

ARCHIBALD CUNYNGHAME, Maister porter of the Castell, sworne and demandit what he knawis of the mater foirfaid of the breking of Warde? Deponis, that he, being sittand in his chalmer in the yett,² he send his boy to haue fetchet him a drink: In the meantyme, Williame Maxuell of Kirkhous come to the deponer and defyrit him to oppin the yett; and that immediatlie *the Lord Maxwell* him felf come and cryed, 'ffals knave, oppin the yett!' And the deponer refuseing, and begynnand to haue spokin to the Lord, he cryed agane, 'ffals knaif, oppin the yett!' And with a drawin sward gaif the deponer ane greit straik vpoun the arme; and mynting³ again to haif struckin the deponer, he wes stayed be Williame Maxwell of Kirkhous, who threw the keys frome the deponer, efter that he wes hurte, and oppynit the yett. And deponis, that the Lord Maxwell wald haif flane the deponer, wer nocht he wes stayed be Williame of Kirkhous.

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

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

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

AT the Castell of Edinburgh, the xv day of Januare, 1608, &c.⁶

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

APUD ED⁸, xx Junij, 1609. WITNESSES *producit be the Advocat, for preving of the Third*
Reffoune of Tressoun anent the Breking of Ward furth of the Castell of Edinburgh.

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

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

the key being in the wicket of the said mid-zett, Williame Maxwell of Kirkhous cummis furthe of the Castell, and desyris this deponar to oppin the wicket; and as the deponar was villing to haif oppinnit the said wicket, the Lord Maxwell come vpoun this deponar with ane drauin fuerd, saying, ' Fals knaif! oppin þe zett, or ellis I fall hew the all in bladdis!' The deponar anfuert, ' Schamit theif! quhat ar 3e doand heir?' And then the Lord Maxwell incontinent fraik at this deponar with his drawin fuord, and mwtilat him of his left arme; and gif the said Williame Maxwell had nocht favit the deponar from the said Lord Maxwellis furie, he had flane the deponar. Then the Lord Maxwell oppinnit the wicket, and he and Sir James Makconeill paste furthe thairof, and past to the vest Castell vall that gois to the West-port of Edinburgh, and haveing clwme that wall, the said Lord Maxwell eschapit with fuitht¹ flycht; and the Constable of the Castell, with vtheris keparis thairof, apprehendit Sir James Makconeill, and brocht him bak agane and pat him in the irnis; and Williame Maxwell left the Lord Maxwell at the vtter zett, quhair he was lykvyis tane by the Constable; and hard nocht quhen Alexander Strutheris, kepar of the Inner-port, was forcit and hurt be the Lord Maxwell; and nevir hard any tumult quhill the Lord Maxwell come vpoun him self.

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

ALEXANDER STRUTHERIS, kepar of the Inner-zett of the Castell of Edinburgh, of the aige of 1³ 3eiris, or thairby, mareit, deponis, That vpoun the ferd day of December, 1607 yeiris, this deponar, about fyve horis at night, sittand in the Inner-porter-hous of the Castell of Edinburgh, and haveing the keys of the Inner-zett hyndand² vpoun his arme, Williame Maxwell of Kirkhous, seruand to the Lord Maxwell, come to this deponar and desyrit him to oppin the zett, and the deponar haveing oppinnit the inner weiket, and the said William haveing past furth thairof, the said William stayit the deponar to cloife and loik the weiket of the Inner-zet, and in the mentyme of the stryiff, Johne Lord Maxwell, Sir James Makconeill, and Robert Maxwell of the Tour, all thrie with drawin fuordes in thair handis, come to this deponar, and the Lord Maxwell with his fuord first fraik at the deponar, and cuttit his left hand: Thairefter Sir James M^cconeill and Robert Maxwell, ilkane of thame, gaif him bluidie fraikis in his heid, and the deponar cryand ' Fy! Treffoun!' Margaret Philp, his vyiff, come furthe to help the deponar, (quha was lykvyis voundit be the foirfaidis perfonis,) and gat four bluidie fraikis in his bodie: And in the mentyme, quhill Robert Maxwell and this deponar war in gryppis and stryiff, the said Lord Maxwell and Sir James M^cconeill past furthe of the said Inner-zet, the quhill Inner-zet this deponar than lokit and held in the said Robert Maxwell, quha incontinent thairefter lap the said Castell vall, and eshapit furthe thairof; and within ane hour thairefter this deponar saw Sir James M^cconeill brocht within the said Castell be the Constable, quhair he zit remanis, lyand in irnis.

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

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

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

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

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

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

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

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

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

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

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

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

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

anſwer within tua or thrie nichtis. AND deponis, that he promeiſt to my lord, yf his lordſchip wer in theſe fieldes, that he ſould gett his lordſchipsis ane (*own*) anſuer, and bring it to him; bot yf his lordſchip wes not in theſe fieldis, the deponer ſould be in Terriglis vpoun Monunday thairefter, quhair my lord ſould find him. According to the quhilk, my lord appointit his man, Johne Mcbrair, to attend the deponer at Terriglis; and efter the deponer lichtit (*alighted*), Johne Mcbrair deſyrit him to go and ſpeik with my lord, who attendit him beſyd Haliewode. And deponis that thay mett in the wod, quhair the deponer lute my lord ſee the Lairdis anſwer in wryte; quhilk he red, and (was) weill content thairwith. And thairefter, the deponer takand my lordis faithfull promeis, with my lordis hand ſtrekit in the deponeris handis, that he, nor the man he ſould bring with him, ſould do no wrang, bot keepe honneſtlye, quhidder thay aggreit or not, my lord, with the deponer, ſett down the tryift to be vpoun Wodniſday thairefter, beyond the Houſe of the Beal, betuix thrie and four efter none; quhair ather pairty ſould come accompanyed with one onlie, and na vtheris to be preſent bot the deponer: And my lord promeiſt to bring Robert Maxwell of the Tour with him, or ane vther quhom the deponer ſould lyk als weill of, for quhom my lord ſould be anſuerabill. And, pairting with his lordſchip, the deponer, vpoun the morne, raid down to the Laird of Johnnſtoun, and tauld him of the appointing of the tryift; who being verie willing to it, and his faithfull promeis to keepe honneſtlye, for his pairte, he, with the deponer and Willie Johnnſtoun of Locurbie, come, vpoun the morne thairefter, agaitward to the tryift, within a myle or thairaboute to the place appointit; and in the way, the Laird ſay¹ to the deponer, that quhatevir courſe he tooke with the Lord Maxwell, he wald ever reſerve his dewitie and allegiance to the Kingis Ma^{tie}, and that he wald counfell my lord to begyn with Sir Williame Cranſtoun, to be at ane point with him, that by his meanis and procurement the Erl of Dunbar nicht be intreatit to interceid for his lordſchip, at the Kingis handis; and ſua, comeing within a myle to the place appointit, the deponer lute the Laird ſie quhair my lord wes; and the deponer cauſit the Laird ſtay thair, and he raid fordward to my lord, who wes attending at the place appointit, as ſaid is, and tauld my lord that the Laird was come, according to the appointment; and that he reposit ſo grite traift and confidence in my lord, that he wes onlie ryding vpoun ane amling naig; and that Willie of Lockarbie wes with him and na mae, as his lordſchip himſelf ſaw. And than the deponer of new took my lordeis promeis for keeping of his former promeis and credite, and quhilk my lord frielie gaf: And my lord deſirit the deponer to tak Charlis Maxwellis promeis lykwiſe, who wes with him; quhilk the deponer reſuift to do; and wes verie miſcontent (*miſcontent?*) that Charlie wes thair. And than my lord promeiſt to be anſwerable for him. Sua the deponer raid bak to the Laird, and broght him fordward, and took the lyk promeis of the Laird that he ſould be anſwerabill for his man Willie Johnnſtoun: And afoir the deponer come from my lord, baith my lord and the Laird commandit Charlie Maxwell to ryd af theme, and not to go towardis Willie Johnnſtoun. And the deponer and the Laird gaf the lyk command and directioun to Willie Johnnſtoun to ryd af them, and not to go toward Charlie Maxwell. AND ſua, my lord, the Laird, and the deponer mett; and mutuall ſalutationnis paſt betwix thame, and they raid togidder, the deponer in the midis, my lord on his left hand, and the Laird on his richt hand; and efter ſome ſpeiches, my lord directit his langwage to the deponer, and the Laird and the deponer directit thair langwage to my lord; and ryding thus way, and thair bakis to the vther tua, the deponer lookis about and ſaw Charlie Maxwell go fra the place quhair he wes appointit to ſtay, directlie towardis Willie Johnnſtoun, and efter ſome few ſpeiches betwix thame, quhilk the deponer hard not, the deponer ſaw Charlie Maxwell ſchoote a piſtolett at Willie Johnnſtoun; quhairvpoun Willie gaf a ſchoute and cryed. And thairefter the deponer clappit to my lord, and preift to haif tane him be the brydle-renceis, and, miſſing his renzeis, gat ane grip of his clok, quhilk he pullit to him—and cryed to my lord, ‘Fy! my lord! Mak not your ſelf a Tratour and me both!’ To quhom my lord anſuerit, ‘I am wytes!’² With this, the Laird of Johnnſtoun ſlip-pit af³ the deponer, and wes ryding for relief of his awne man; and my lord followit him, and behind

¹ For ſaid.² Free of wyte or blame.³ Slipt or ſtole away unperceiued.

his bak, shot him—and raid his way: And the Lairdis horfe making some sturr,¹ his girdis² brack, and the Laird fell; and efter his fall gat vp agane on his feitt: And Charlie come agane, and offerit findrie fraikis; bott gat not leave to do any harme.

ROBERT MAXWALL OF SPOTTIS.

Tenet cum principali, J. PRYMOIS.³

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

APUD EDⁿ, *decimo nono Junij*, 1609. WITNESSES *producit for preveing of the Secund Reffoun of Treffoun anent the Slaughter of the Lard of Johnestoune.*

WILLIAME JOHNESTOUN, callit of Lockerbie, of the aige of xl yeiris, or thairby, mareit; deponis, that vpoun the fext day of Aprile, the yeir of God 1608, this deponar cumming to the place of Lochwod, about ane efter none, THE LARD OF JOHNESTOUN tuik this deponar to the clois, and said to him, 'Ze ar velcum, for I haif ane gritar turne ado with zou nor ewir I had befor this day; I am to meit with the Lord Maxwell, and ze fall go with me, and loip on vpoun zou horfe, and raik fordwart to Lytill Lochwod, quhill I owirtak zou, and let nane ken quhair ze ar rydand to.' Immediatlie thair-efter the Lard of Johnestoun and *Sir Robert Maxwell of Spottis* owirtuik this deponar within ane myle from the Lochwod; and thei raid altogidder towartis the place appoyntit, quhill thai come to the Cowart-croce, quhilk was within a myle quhair THE LORD MAXWELL and *Charlis Maxwell* was huifand⁴ on horfbak togidder. Then *Sir Robert Maxwell* directit the Lard of Johnestoun and this deponar to stay thair, quhill his returne to thame, or ellis that he gif thame ane fing to cum fordwart, quhilk was be haldin vp of his nepkyn vpoun his wand end.⁵ Schortlie thaireftir *Sir Robert Maxwell* cumming from the Lord Maxwell, about the mydway betwix the saidis parteis, the said *Sir Robert* held vp his nepkyn vpoun his wand end; and vpoun that finge the Lard of Johnestoun and this deponar raid fordwart to the said *Sir Robert*. At thair meting the said *Sir Robert* shew to the Lard of Johnestoun, that the Lord Maxwell, accompaneit with *Charlie Maxwell* allane, war awayting vpoun thair cumming, and that the Lord Maxwell inquyrit of *Sir Robert* quho vas with the Lard of Johnestoun? The quhilk *Sir Robert* anfuert, that he had tauld to the said Lord Maxwell, that this deponar was onlie in companie with the Lard of Johnestoun; and that the Lard of Johnestoun, for secrecie of the tryft, was rydand vpoun ane naig, and had left his best hors behind him. Then the Lard of Johnestoun anfuert, that he was weill content that *Charlis Maxwell* vas rather thair nor ony vther, be reffoun he was *Johne Murray* of Cokpullis fister-son; and at that samyn tyme, *Sir Robert* tauld to the said Lard of Johnestoun, that he had tane the Lord Maxwellis ayth and promeis, vpoun his fayth and honour, that he suld meit fairlie, and depairt fairlie. And that the Lord Maxwell desyrit the said *Sir Robert* to tak *Charlis* ayth thairvpoun; the quhilk *Sir Robert* refusit to do, faying, that 'he wald haif na promeis bot the Lord Maxwellis awin promeis for his man.' Lyk as, at that samyn tyme, *Sir Robert* tuik the Lard of Johnestonis ayth and promeis, be his hand laid in his, that he suld meit fairlie and depairt fairlie with the Lord Maxwell, quhidder thai aggreit or nocht. Immediatlie thairefter *Sir Robert* raid to the Lord Maxwell, the Lard of Johnestoun and this deponar followand adreiche;⁶ and thaireftir, *Sir Robert* haveing an short space spokin with the Lord Maxwell, they turnit towartis the Lard of Johnestoune, and the Lard of Johnestoune towartis thame; and eftir salutatioun, the Lord Maxwell, the Lard of Johnestoune, and *Sir Robert*, raid togidder to and fro, the said *Sir Robert* being in the myddis; bot quhat thai spak togidder kennis nocht, be reffoun the said *Charlis* and this deponar stayit about ane pair of but-landis, or thairby, from thame, as *Sir Robert Maxwell* had directit tham of before: And schortlie eftir that the said *Charlis* and this deponar had stayit pairt and findrie,⁷ the said *Charlis Maxwell* cummis first to this deponar, and said to this deponar, 'Gif I had knawin of this tryft, the Lord Maxwell nather culd nor suld haif brocht me heir.' The deponar anfuert, 'I hoip in

¹ Growing restive.

² Girths.

³ Clerk to the Privy Council.

⁴ Riding; literally, *hoofing*.

⁵ The end or point of his riding switch.

⁶ Leisurly, loiteringly.

⁷ Apart and separate, or asunder.

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

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

Now, my Lord Maxwell being put in ward, in the Castell of Edinbrughe, and nocht feing how he was to be releiffit, dewyffis with Schir James M^cConeill and Robert Maxwell of Dinwiddie, quhat way he and thay mycht efcheap. And on the fourt of December, he callis ane gritt number of the Keiparis of the Castell into his chalmer, quhair he drinkis theme all fow;² and desyring quhilk of thame voir the best fuord, he gais ane fuord to Schir James M^cConeill, and heaffand ane him selff, drawis to the Chalmer dur and lokis them all in. And thay thrie passis fordwartt to the zett, quhilk he had cauffit ane seruand of his to keip the zett fra nocht cuming to;³ bot the porterris, nocht being willing to lett thame go, maid resistance: Bot my Lord Maxwell, being resolut to depairtt, strak the Maister porter, and wondis him in his airme; and also findrie of the rest; and ane woman, that maid sum resistance, thay hurtt also: And vinnand out at the inner-zett, he lopus the wall. Schir James, heaffand the irnis⁴ on him, he, lowpand the toun wall, hurttis his leg; quhairby he was nocht abill to steir; and so was tane and brocht bak in the Castell. Bot the Lord Maxwell, heaffand horfe prepairitt, raid his wayis, and Robert Maxwell of Dunwody with him. Quhairat the King was werray far offenditt; and maid Proclamatioune, that nane fould refett him, wnder the payne of deathe. Bot Maxwell remaynand in the cuntry, thocht thatt the Laird of Johnstoun had the wyt of all his trubill: And feing that thair was (na) meanis to gett the Kingis gude will, bot be the Laird of Johnstoune moyane, quha had flayne his fader, as 3e have hard, and had cauffit the King compell him to tak him be the hand, he was in ane grit reade aganis the Lard of Johnstoune, bot buir the same within him selff. And on the wther pairt, the Laird of Johnstoune, thinking that this wes the best tyme to

¹ Advocates' Library, A. 4. 35.² Drunk, intoxicated.³ From closing or shutting.⁴ Fetters.

winne the hairt of my Lord Maxwell, giff (be) his meanis and trawell he mycht purches his Maieftieis gude will to his lordschip: Quhairwpone, he fendis to Schir Robert Maxwell of Orchortt-toune, kny^t, quaha had mareyit the Laird of Johnestonis sifter, as, also, Johnestoun had mareyit his sifter, to trawell with Maxwell, to fie gif he wald speik with him: And quhat he wald direct him, in that turne, he wald do to the wtirrest of his power. The quhilk the said Schir Robert did, and brocht thame to ane meitting, the sext day of Apryll, the zeir of God 1608; and Chairlly Maxwell with my Lord, and Williame Johnestoun of Lochirbie with the Laird of Johnestoun. Thay mett on the hill beyde the pleace of Ellisheillis, the said Schir Robert being with thame; quhair thay, being mett, the tua ferwandis rydis a pairt off thame, leaffand my Lord and the Laird and Schir Robert; bot, or euer thay had conferrit ony speace, the tua ferwandis fallis in wordis, and also in schottis of pistollattis, the same cuming be this Chairlly Maxwellis motioun: The quhilk, quhen the nobill menne feis, Johnestoun cryis, 'Fy! Red l'¹ and spurris to thame. And my Lord, being ryding with pistollattis, cumis behind Johnestoun and schattis him throw the hartt, quhairof he fallis: And yit his curradge maid him to draw his fuord; bot being schott neir to the hairt, he fallis deid. The Lord Maxwell, feing him fallyn deid, giffis him na ma straikis, bot rydis his wayis. Bot albeit he had gottin his lyff, zit he gat the fame with schame, it being gottin wnder tryfling. Quhairfor the King estemeit the fame as Treffoun, being done vnder tryft.

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

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

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

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

¹ Agree; separate; make up your quarrel.

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

(13.) LETTER from Sir Thomas Hamilton to the King.¹

Pleafe your moft sacred Maieftie,

KNOWING that your Maieftie will expect and requyre of me ane difcharge of my dewtie, in performing your Maiefties commandement, geuin for perfewing the LORD MAXUELL and SIR JAMES MAKONEILL, for thair treafonabill breaking wairde furth of your hienes Castell of Edinburgh, becaus I have hard that fum, whois opinion may have place in fum of the circumftances of thair tryell, inclynes to juge, that, vnles the crymes for the whilk thay wer imprifoned have bene treafonabill, that thair break of wairde can not import Treafoun, I have bene the more folift to inquire of thair vther offenfis, which may be found treafonabill of the law: And albeit the Examination and re-examination of Sir James Makoneill I have had fmall aduantage, in refpect of his refolution to deny all the poyntis of his crymes, at the Slauchter of his vncler, and taking of his parentis, whilkis might infer Treafoun; yet I hope that fufficient information fall verie fchortlie cum, of the trewth of his moft heynous and vnnaturall factis, from thofe to whom my Lord Chanceler hes writtin, to that effect. As to the Lord Maxwell, I have hard of his raifing of fyre at Dalffbill, whan he flew Willie Johnftoun, callit of Efchiefchiellis and ane vther Johnftoun; bot becaus he hes fenfyne had the honour to be admitted to your Royall prefence, I wald not prefume to fummond him for that fact, whill firft I fould knaw your Maiefties mynde thairanent; the knaulege whair of fall lead me to proceid or defist. The progres of the Commiffionars at the mynes² I hope your Maieftie hes hard from thamefelfis, and what I know I have writtin to my Lord of Dumbar; becaus I fand him moft defyrous to vnderftand the fucces of that whilk concernit your Maiefties feruice and contentment. Swa, attending moft humblie your Maiefties farder pleafour for your directioun, I pray God long to bleffe ws with the continuance of your moft gracious regne, and your Maieftie with all honour and wiffed contentment. ED^R, this 28 Januar, 1608.

Your moft sacred Maiefties moft humbill and bundin feruand,

S. TH. HAMILTON.

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

RIGHT trustie and veilbeloveit counfines and Counfallouris, We great 3ow weell. We ar informed that, notwithstanding of the treffonable fact committit be the Lord Maxwell in efchaiping fourth of our Castell of Edinburgh, and in forceing and hurting of the keipares and poirtaris of the fame, and of our fpeciall commandis and Proclamatiounes fend doune for his taking and apprehending, that, nevertheless, in plane contempt of our authoritie, that he oppinley travellis throuche the countrie, accompaneid with no fewar than twentie horfe, and hes mead his repaire, at fyndrie tymes, to our burgh of Drumfreis; quhiche infolence is no way tollerabill, and skairfe excuffabill one 3our pairtis, that ony of our declarit tratouris fould affume to theme felffis fo mutche libertie, without controlment. And thairfoir, our pleafour and will is, that vpoun refait heirof, 3ow direct that our Gaird, wnder the command of the Lord of Scoone, to repair to the burgh of Drumfreis, and thare, with that Gaird, wnder Sir W^a Cranftounes chairge, to make a present diligent fearcher for the faid Lord Maxwell, and either to apprehend him or put him out of thofe boundis. Thairwith alfo the Baillies of Drumfreis wald be chairgit to compeir befor 3ow, and if 3ow can try any thing of thair knowlege of the faid Lord Maxwellis being in thair toune, We ar to will 3ow to inflict ane exemplare pwneifhment vpon thame, baith by fynning and wairding. And als, 3ow ar to proceid in rigoure, according to the warrant of our lawis aganes all refseattares and accompaniaris of the faid Lord, that fo wtheris may be affrayed from coming within the compas of the lyk contempe. And, remitting thofe matteris to 3our fpeciall cair, We bid 3ow fairweill. AT our Palice of QUHYTHALL, the 2 of Feb^r, 1608. [JAMES R.]

¹ From the original, preserved among the *Denmylne MSS.* Adv. Library.

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

³ From *Haddington MS.* General Register House.

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

MOIST SACREID SOVERAGNE,

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

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

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

The buriall of the Lord Maxwell wes a calumnie quhairwith many mo (than) your Ma. is importuned; for he lvis still wnburiid quhair he wes. And lykwayis the slauchter of Johneftoune of Howgill ves alyk false.²

AL. CANCELL. LOTHEANE. VCHILTRIE. BALMERINOCHE. SCONE. HALLIUDHOUS.
S. T. HAMILTOUNE. BEULIE. COMPTROLLER. JO. PRESTOUN.

(16.) LETTER, *the Privy Council to the King, for Instructions*.³

MOST GRACIOUS SOUERANE,

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

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

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

ED^R, 28 Aprile, 1613.

Your Maiefteis maift obedant fubiectis and feruitouris,

AL. CANCELL^R. HAMILTON. MAR. GLENCAIRNE. ALEX^R HAY. LINLY^TG^W. GLASGOW. KINGORNE.

TO THE KING his moft facred and excellent Maieftie.

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

THIS OFFERRIS following ar maid be me, Johnne, sumtyme Lord Maxwell, for my felff, and in name of my kyn and freindis, to _____, now Laird Johnftoun, and his Tutouris and Curatouris, Dame Sara Maxwell Ladie Johnftoun, 3ounger for the tyme, his mother, Dame Margaret Scott Ladie Johnftoun, elder, his guddame, and to thair kyn and freindes, for the vnhappie Slauchter of vmq^{le} Schir James Johnftoun of that Ilk, kny^t, committit be me.

IN THE FIRST, I humble confes my offens to God, the Kingis Maieftie, and to the foirfaidis perfones, for the faid vnhappie slauchtir, and declairis my felff to be maift penitent thairfoir; craveing firft, mercie at the Almichty God for the fame, nixt, favour and grace of the Kingis Ma^{tie}, my fouerane lord, and forgifnes of the great offens done to the foirfaidis perfones; testifeing be my soleme aith, vpon my faluatioun and condempnatioun, that the foirfaid vnhappie slauchter was nawayis committit be me vpon foirthocht felonie or fett purpois, bot vpon meir accident: Lyk as, for cleiring thairof, I am content to purge my felff be my greit aith in publict, quhair it pleifis the parteis to appoint, and do quhat farder homage falbe thocht expedient.

SECUNDLIE, I am content, not onlie for my felff, bot for my hail kyn and freindis, to forgiff the slauchter of vmq^{le} Johnne Lord Maxwell, my fathir, committit be the faid vmq^{le} Laird of Johnneftoun and his complices, and to mak all perfones quha wes ather gyltie, culpabill, or airt and pairt of the faid slauchter, in securitie thairfoir, fua that thai nor nane of thame fall nevir be trublit for the fame be me, nor be nane of my kyn and freindis, directly nor indirectly, in tyme cuming; and, for that effect, fall mak sik forme of securitie as fall agrie with reafoun.

THRIDLIE, becaus Johnneftoun, dochter to the faid vmq^{le} Sir James, wes, by the fuddant and vnhappie Slauchter of hir faid vmq^{le} father, left vnprovydit of ane fufficient tocher, and for the better avoyding of all inimitie that may arryfe betuix the houffis of Maxwell and Johnftoun, and for mair fuir etablifching of freindfchip amangis thame in tyme cuming, I am content to marie and tak to my wyffe the faid, without ony tochir.

FOURLIE, I defyre that the Laird of Johnftoun may be mareit to Dame Maxwell, eldest dochtir to Johne Lord Hereis, and fifter dochtir to me, quha is a perfon of lyke aige with the Laird of Johnstone. Lyk as, I falbe obleift to pay to the faid Laird of Johnftoun, in name of tochir with my faid fifter dochtir, tuentie thowfand merk Scottis; and quhat farder falbe thocht expedient, be the ficht of freindis.

FYFTLIE and laft, I am content, for the farder fatisfacioun of the houfe of Johnftoun, to be Banifchit his Maiefteis dominions, for the fpace of fevin 3eiris, and farder at the will and plefour of the Laird of Johnftoun.

Thir Offeris to be augmentit, at the ficht and difcretioun of newtrall freindis, to be chofyn to that effect. Vnder proteftatioun alwayis, that thir Offeris befor wryttin, maid vnto the pairtie, be nawayis offenfue to the Kingis Maieftie, nor to his hienes Counfall.

¹ From *Sir James Balfour's MS. Collections*, Advocates' Library.

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

MY LORDS OF COUNSAILL, vnto your l. humblie menis and schawis your l. seruitour, Robert Maxwell, brothir to Johnne, sumtyme Lord Maxwell: That quhair, it is not vnknawin to your l. the miserabill estait of my said brothir, be the offences committit be him, to his God, the Kingis Maieftie, to the Marques of Hammiltoun and that name, and to the Laird of Johnnestoun and his freindis, besyde manifold vperis misbehaviouris; for pe quhillkis (being now, throw his miserabill estait, brocht to pe knowlege pairrof) he moift humblie cravis mercie of God, favour and grace of his Maieftie his Prince, and forgifnes of his offence done to the Marques of Hammiltoun and his freindis, and to the Laird of Johnnestoun and his freindis: Lyk as, for cleiring of his penitencie for pe offence committit be him in Slauchter of pe Laird of Johnnestoun, he, with all humbilnes of mynd, is maift willing to mak satisfacioune to the partie; vnder protestatioun, that the offer of satisfacioun to pe partie fuld nawayis be offensive to his Ma^{tie} nor your l. And his hail freindis haifing, for pat effect, causet pen certane Offeris in his name, to haif bene presentit to the Laird of Johnnestoun, his mopir, and guddame, and for presenting thairrof, haifing desyrit and eirnifflie entreitit certane of pe Ministrie of Ed^r, and sum of the Bifchopis to haif presentit the same; thai and all vper men of qualitie hes alluterlie refusit pe same, without pai had your l. Warrand for pat effect: Sa pat now pair restis na menis quhairby pe Offeris may cum to pe pairteis handis, except your l. will athir appoint sum perfones to present the same, or vperwayis that your l. wald conuene pe partie befor your l., that pe same, in your l. audiens, may (be) red and delyuerit to pame. HEIRFOIR, I maift humblie besaik your l. to haif consideratioun of pe premiffes, and pat your l. wald gif directioun to sum of pe Ministrie of pis burgh to present pe said Offeris, or vperwayes, that your l. wald call pe partie in your presens, to pe effect foirfaid. And siclyk, that it nicht pleis your l. to acquent pe Kingis Maieftie, our souerane, of pe willingnes of my broper, boih to satisfie pe pairteis offendit, and maift humblie, and with all dewtifull obediens, to submit him selff in his Maiefteis handis:—And your l. ansuer.

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

(19.) ACCOUNT taken from the Denmylne MSS.²

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

¹ From the Denmylne MSS., Advocates' Library.

² Advocates' Library.

accept his lyf and blood as ane different¹ punishment of his offences ; and to relent, and remoue his wrathe from his brother and hous, being pleifed to restore his brother to the rank and place of his predeceffoure, where he nicht, and, as he hoped, wald, do his Maieftie guid and faithfull feruice, as his foirbearis had done to his Maiefties Royall progenitouris. Nixt, he alkit forgiuenes of the Laird of Johnestoun, his mother, grandmother and freindis, acknawelegeing the wrong and harme done to theme, with protestatioun that it wes without dishonour or infamie (for the worldlie part of it—for so wer these his wordis reported to me.) He lykwayis crawed pardoun of Polloke, Calderwode, and his wther freindis, being present, acknaweleging, that whare as he was borne to haue bene authour of thair honour and faiftie, he had procured to thame hairme and discredit. And then he retired him selff neir the block, and maid his prayeris to God ; which being ended, he tuike his live of his freindis, and of the balzies of the toun ; and, suffering his eyes to be covered with ane handcourchef, offered his head to the axe, and suffered deathe, the xxj of Maij, at four a cloke in the efternone.

(20.) NOTICE from *Minutes of the Privy Council*.²

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

(21.) NOTICE preserved by *Calderwood*.³

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

(22.) NOTICE by *Sir James Balfour*.⁴

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

Slaughter.

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

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Donald Grote, (of Wairis,) Walter Grote, and James Stewin, all in Duncanisbey.

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

Williame Sinclair of Etha, oftymes callit, as cautioner for repoirting the Letteris duelic execute and indorfate and perfewing thair of, purchest be Margaret Grote, the relict of vmq^{le} Donald, Malcolme, his sone, Johnne Grote, brother to vmq^{le} Walter, and Allaster Stewin, as brother-sone to vmq^{le} James Stewin.

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

JUSTICE, Justice clerk and 5our deputis. Forfamekill as the xxvij day of Junij instant is appointit to Henrie Blak, Malcolme Mowat, Williame Kirknes, and certane vperis pair complices, tennentis and servandis to pe ERLE OF ORKNAY, for pair compeirance befor 5ow, to vnderly the law for pe Murthour of vmq^{le} Donald Grote of Wairis, and sum vtheris, tennentis and servandis to pe ERLE OF CAITHNES: And feing, all differences and questiones standing betuix the saidis Erles of Orknay and Caithnes ar reconciliat and agreit, except pe said Murthour, the perfute quhair of, be baith the saidis Erles consentis, is continewit to ane vper dyet, to be perfewit, aper befor pe Justice or his deputis in the bur^t of Ed^r, or in Caithnes. Thairfoir, theas ar to command 5ow to desert pe said dyet, and desist fra all proceeding pairin; dispensing with the personall compeirance of pe pairtie. Quhairanent thir presentis salbe 5our Warrant. Subscryuit with our handis, ATT ED^R, pe xxvij day of Junij, 1609.

AL. CANCELL^RIUS. DUMBAR.

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

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

Aug. 9.—THOMAS JARDANE of Birnok, and Vmphra Jardane his sone.¹

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Tuedie of Southwoid, . . . Broun of Coulter, Williame Campbell of Walwoid: And certain other crymes of Thift, &c.

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

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

DITTAY against Thomas Jardane.

FOR airt and pairt with the said Vmphra, his sone, of the tressonabill Raifeing of ffyre, burning and distroying of the Place of Littilgill, with the baill offices, houffes, barnes, insicht and pleniffing, being thairintill, worth the sowme of ffyve thowseand pundis; committit vpon the faxy day of July, I^m.V^c.

¹ See Jul. 30, Aug. 9, and Nov. 5, 1605.

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

DITTAY against Vmphra Jardane.

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

For the quhilkis crymes *respectiue* aboue writtin, the saidis Thomas and Vmphra Jardanes tuik thamefelfis to our fouerane lordis Remiffioun, productet be thame, vnder his hienes Grit feill, of the dait the nynt day of May, the yeir of God I^m. fax hundreth and fyve yeiris. Quhilk Remiffioun the Justice admittit.

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

FOR putting handis in vmq^{le} James Thomefoun, his man, binding of him hand and fute; and at his awin hand, bot² ordour of Law or ony Commiffioun gevin to him, drownet and execute to daith the

¹ The articles stolen are not detailed in the Record.

² Without.

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

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

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

The pannell allegis, that na proces can be led aganis thame, for ony cryme committit be thame, preceding the moneth of Majj Vj^c. and fyve; becaus his Maieftie hes grantit thame ane Remiffioun, for all crymes committit be thame before the faid moneth. Quhilk Remiffioun thay produceit; and tuik instrumentis thairvpoun; and this but² preiudice of thair defence aganis ony vther cryme.—Allegis the Aduocat, this Remiffioun can nocht fatisfie for the Slauchter of vmq^{le} Johnne Tuedie; becaus it is gewin only to Alexander Jarden; nixt, becaus it is grantit vpoun ane fals cause, viz. vpoun satisfioun of partie, quhilk is nocht; for the mother, or brother, and the sifteris of Johnne Tuedie ar nocht fatisfeit. —The Aduocat askis instrumentis, that the pannell vvis the Remiffioun for the hail crymes contenit in the Dittay, preceding the dait of the Remiffioun.

It is alleget, that the Remiffioun is null, be Act of Parliament, quhair the partie is nocht fatisfeit; and na cryme contenit in the Remiffioun is fatisfeit.—

¹ Young sheep of a year old, or unshorn.

² Without.

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

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

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

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

QUHILKIS feuerall crymes, aboue writtin, being nawayis comprehendit vnder the faid Remiffioun, and haillilie² denyit be the faid Thomas and Vmphra to be of verritie, the Justice referrit to the knowlege of ane Affyfe of the perfones following.

ASSISA.³

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

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

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

¹ Since the year 1598.² Wholly.³ This Assise, *nineteen* in number, is one of the largest which the Editor recollects to have observed as being sworn and officiating on any Criminal Trial, in Scotland.⁴ ' Strankla,' in another place.

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

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

Hamesucken—Demembrance.

Sep. 14.—ANDRO HENDERSONE, fone of vmq^{le} Johnne Henderfoun, merchand burges of Edinburghe.

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

FORSAMEKILL, as ye, haifing confaet ane deidlie feid, rancour and malice aganis Williame and Adame Montgomeris, tua honest men, merchandis burgeffis of Edinburghe, for concuring, affifting, mantening and fortifeing of David Johnneftoun, ane of the Bailleis of the faid bur^t, in the executioun of his office, in the taking and apprehending of yow at your motheris hous, about ten oulkis¹ fyne or thairby, for the crewall and fchamefull hurting and wounding of . . . Harper, than your motheris fervand, in the heid, to the grit effufioun of hir bluid ; ye, in revenge of the Law, haveing ferchet and focht the faid Williame Montgomerie dyuerfe tymes at the yet² of his duelling hous, be way of Hamesuckin for his flauncher, leitlie, vpoun the fecund day of September instant, being bodin in feir of weir,³ with ane grit battoun and ane fuord, awaittit the faidis Williame and Adame Montgomeris in Libertones-wynd-heid, at the yet of the faid Williames duelling hous thair, as thay war, in fober and quyet maner for the tyme, cumand frome thair mercheand-buthes, a littell afoir aucht houres at evin, hame, towardis the faid Williames duelling hous, dreidand na evill, harme, iniurie, or perfute of ony perfones, within sic ane reformet toun, bot to haif levit vnder Godis peax and our fouerane lordis : And thair ye, vnder nycht, fet vpone thame, and crewallie invaidit thame for thair Slauchter, ftrak at the faid Adame with the faid battoun, preiffing to haif ftrukin him thairwith in the heid, and to haif fellit him : Quhilk ye had nocht failzeit to haif done, war nocht, be the Prouidence of God, he drew his dager, for defence of his lyfe ; vpone the quhilk⁴ ye brak the faid battoun. And finding yow difapoyntit of your firft intentioun, quhilk was to haif ftrukin the faid Adame in the heid with ane battoun, ye thaireftir drew your fuord, and of new fett vpone him, and crewallie invaidit him for his flauncher, hurt and woundit him thairwith in the left hand, to the effufioun of his bluid in grit quantitie ; and

¹ Weeks.

² Gate.

³ Arrayed or provided in warlike manner.

⁴ Upon which dagger.

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

PERSEWARIS, Adame Montgomerie, Williame and Alex^r, his brothers, Sir Thomas Hammiltoun, &c.

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

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

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

THE Justice findis proces; and repellis the allegeance.

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

Adame Montgomerie, present, vpone his grit ayth, declairit, that Andro Henderfoun was the first setter vpone him, in his brotheris close, at his ganging hame to his hous; quhair, with ane battoun, he inuaidit the deponer, of purpois to haif fellit him thairwiith; quhilk the deponer foirseing,³ drew his dager and kepit⁴ the straik of his battoun thairupoun: And thairupoun and thaireftir, Andro Henderfoun steppit bak and drew his suord; at quhilk tyme, the deponer tuik vp Henderfones cloik, quhilk he cuist about his left airme and left hand, of purpoise to gaird himself thairwith: And that the said Andro thaireftir, with his

¹ In proof or testimony.

² Up the High Street to the Over or Upper Bow, now called the West Bow.

³ Perceiving, *foreseeing*.

⁴ Caught the blow; *keppit* the stroke.

fuord, gaif him ane fraik vpon his left hand, and throw the cloik, tua ply,¹ cuttit the deponer, and strak fra him his thre fingeris.

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

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

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

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

¹ Two folds thick. Lat. *plica*.

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

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

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

'SANDIE,

'QUHILL³ youre goode happe furneis me with fum better occasion to recompence youre honeft and faithfull seruice, utterid be your diligence, and cairfull attendance upon me, specialie at this tyme, lett this assure, in the inuiolabill worde of your awin Prince and maister, that quhen God randeris me in Skotlande, I fall irreuocablie, and with consent of Parliament,⁴ erect you the temporalitie of Murraye in a temporall Lordshipp, with all honouris thairto appartaining: and lett this serue for cure of youre present diseafe. FROM the Castell of Croneburg, quhaire we ar drinking and dryuing our, in the alde maner. J. R.'

He also obtained another Charter, creating him a Peer of Parliament, Apr. 17, 1593.⁵ This distinguished Nobleman married Jean, *eldest* daughter of John, *tenth* Lord Glamis, she being also the relict of Robert, Master of Morton, and of Archibald, Earl of Angus. It is probable that this marriage took place on the suggestion, or through the influence, of the King, who thus notices the Countess in one of his Letters;—'Mind *Jean Lyon*, for her auld tout will make you a new horn!'

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

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

¹ *Reg. Mag. Sig. Lib.* xxxvii, No. 415. ² It has been published before. See *Dalyell's Fragments*, App. 83. *Wood's Peerage*, II. 517. And a *fac-simile* of the Letter has been given by Mr J. T. Gibson Craig, in his Contribution to the Bannatyne Club, being 'Papers relative to the Marriage of King James the Sixth.'

³ Until. ⁴ *Acta Parl.* III. 650. ⁵ *Reg. Mag. Sig. Lib.* cxxxix, No. 140. *Robertson's Proceedings*, p. 426. ⁶ *Birrel's Diary*. ⁷ *Balfour's Annales*, II. 7. ⁸ *Lord Hadington's MSS.* Adv. Library, A. 4. 22.

light on the matter. 'EFTIR the Combat in Ed^r betuix *Young Pittarro* and *Mr Alex^r Lindsay*,¹ vpone the xvij day of Junij, vpone the morne thairefter, *Auld Pittarro* and his sone, and *my lord Chancellaris* message, be his servand, is send to thame to keip pair houffis, and certane pair bairnes thairin; and that thair not obeying and doing pairof gif occasiōne of the skaithe and slauchter that followed: Thairfoir thay wer commandit to enter in the Castell of Ed^r; and furthe pairof, *Pittarro elder* and *younger* to the Blakness, and *Edzell* to Dunbartane. That same day, or the nixt day thairefter, vpoun *the Laird of Edzellis* Supplicatiōne, be arand, that he wes informed, that the Lordis, haveing respect to the Slauchter of *William Guthrie*, seruitour to *Pittarro*, had commandit him to waird, albeit he vnderstude pe said *Guthrie* to have reffaued na woundis, bot to have been smored² in the throng; at his desyre, thay send for *David Pringall*, pat had handlit him, and examined him vpone his woundis, and quhidder thay war deidlie or not? And also directed *David Bailzie* and twa vther chyrurgiens to vesie the corps, and hand pair report; quhilk monie thocht ane strange and extraordinar forme.'

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

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

This unhappy Feud was kept alive for many years, and was productive of mutual misery to every member of these families. The diet was not finally deserted against the Earl (formerly the Master) of Crawford, until Jun. 9, 1613.⁶

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

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

ment of that distinguished person to the office of Secretary of State, Feb. 23, 1597.¹ He was the eldest son and heir of David, *eighth* Earl of Crawford; to which title Lord Edzell would have succeeded, had not his father generously conveyed back the title to David *ninth* Earl of Crawford, the grandson of David the *seventh* Earl, who had disinherited his sons for their 'unnatural barbarity' to him.² In order to cement that transaction, and to preserve the most intimate terms with the House of Crawford, Sir David married Lady Helen Lindsay, the daughter of the person who had thus obtained the Earldom on his father's voluntary resignation, viz. David *ninth* Earl of Crawford, who had been a steady adherent to the interests of Mary Queen of Scots; and who married Margaret, daughter of Cardinal Beaton, in April 1546. However piously this respectable man was inclined to preserve the most friendly terms, the deadliest passions seem to have rankled in the bosoms of his son, the Young Laird, and of David, Master of Crawford, the only son of David the *tenth* Earl,³ who had succeeded his father previous to Dec. 11, 1581,⁴ and died, Nov. 22, 1607. At the date of this Trial, therefore, THE EARL OF CRAWFORD, alluded to in these proceedings, and in the Letters, &c., is the *eleventh* Earl, who, at the time of the skirmish on the streets of Edinburgh, was *Master of Crawford*. 'THE YOUNG LAIRD OF EDZELL' was Sir David Lindsay, younger of Edzell, and of Glenesk, and as has already been remarked, married Margaret Wishart, one of the family of Pittarrow. His father having been interdicted from giving him harbour, in any of his houses, 'he built for himself a small Castle called Auchmull, in the parish of Edzell, and another, called Innermusk, in Lochlie, as lurking holes, while he was forced to skulk several years, for the murder of Lord Spynie.'⁵

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

Sep. 19.—SIR DAVID LYNDZAY of Edzell, kny^t, (LORD EDZELL,) ane of the Senatouris of our souerane lordis Colledge of Justice, and Mr Alexander Lyndfay of Canterland, his sone.

Dilaitit for the Slauchter of vmq^{le} Alexander Lord Spynie.⁶

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

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

² *Peerage*, *ibid.* and I. 379.

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

⁴ Wood's Peerage, I. 380. *Reg. Mag. Sig.* xxxv. 467-769, &c.

⁵ *Statistical Account of Scotland*, X. 102, which asserts that 'THE CASTLE OF EDZELL' is one of the most magnificent ruins any where to be met with. It consists of two stately Towers, evidently in different styles, and built at different periods. These are connected by an extensive wall; and large wings went backwards from the Towers. Tradition says that the square Tower, the most ancient, was built and possessed by the Family of *Stirling*, from whom it descended to Lindsay of Glenesk.

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

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

APPENDIX OF DOCUMENTS illustrative of the preceding Case.

I. LETTER, *the Laird of Edzell to the King.*¹

MAIST SACRED SOUERANE,

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

ED^r, 1608. 16. Aug.

Yo^r Sacred M^{ties} maist humill and obedient subiect and seruitour,

TO HIS MAIST SACRED M^{tie}.

EDZELL.

II. EXTRACT *from* LETTER, *the Privy Council of Scotland* ' TO THE KING *his most sacred and excellent Ma^{tie}, Mar. 28, 1609.*'⁵

THAIR wes a Petitioun presentit vnto ws, in name of THE LAIRD OF EDYELL, complaining that THE ERL OF CRAUFURDE, vnder the pretext and cullour of a Commissioun granted be your Maieftie to some of his domestiquis and seruandis, for perfute of the Criminallis for THE LORD OF SPYNEIS SLAUCHTER, intended to persew and assedge his HOUSE OF EDYELL, wherein his mouablis and euidentis⁶ ar, and his ludgeing in this burgh whair he presentlie duellis ; and sua, vnder the pretense of Law, and of your Maieftieis auctoritie, to execute his privat revenge aganis him ; and thairfoir, he craved, that this Commissioun, and the executioun thairof, aganis him and his Houffis, myght be suspendit and dischargit. We could not judge vpoun the tennour and natour of this Commissioun, becaus it wes never shawne nor presentit in Counsaill, and, as we ar informed, it is nouthir registrat nor signett ; and we wold not presome nor tak vpoun ws to discharge your Maieftieis Commissioun, without your heynes awne allowance ; alwayes,⁷ becaus Edyell hes found caution not to resset thir hornaris in his saidis Houffis, vnder the pane of ten thousand merkis, we haif suspendit the executioun of the said Commissioun aganis the saidis tua Houffis, allanarlie,⁸ vntill the tent day of Aprile nixtocome, that in the meantyme we may know your Maieftieis will and pleasour thairanent, and in all vtheris Commissionis of the lyk nature, not presentit nor showne in Counsaill.

¹ *Denmylne MSS.* Adv. Library.

² David eleventh Earl of Crawford, who, at the date of the rencontre at which Lord Spynie was killed, was *the Master of Crawford.*

³ Honourable.

⁴ Moves.

⁵ *Denmylne MSS.* Adv. Library.

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

⁶ Title-deeds of his property.

⁷ Nevertheless.

⁸ Only.

III. LETTER, *the Laird of Edzell to the King.*¹

MAIST SACRED SOVERANE,

IT MAY pleise your Maieſte, Being advertesit that THE ERLLLE OF CRAWFWRD hes sent exprefs to your hienes of that certane Lettres as written be me to my ſone, and recoverit be him within the Howſe of Auchinwll, quhair my ſone was wont to dwell; quhilkis informis, it was my will and command to ſlaye the wmq¹ *Lard of Spynie*, and ſa, plotter and contriver of that vnhappye and wyilld ſlauchter; thinkand thairbye to awert your Maieſtes woontit fawor from me, and to diſgrace me at the hands of all honeſt men; I have choſine and preſumit to tak the hardiment humblye to pray your hienes nocht to giwe credit to anye cople of anye Lettre cwming from the handis of my enemyis, wnto the tyme the principall be tryit² to be wrettin, ſubſcriwit, or directit be my ſelf; for I proteſt, in preſence (of) God, I newer had anye ſick innaturall and ongodlie interpryſe in my hart, mekle leſs directit the doing thairof. And to mak this mair manifet to all the world, I have inventit³ Improbatioune, that all liwing may know howe injuſtlye I am vſit be *the Erllle of Crawford*, and howe he quba was the beginner of all thir trowblis, be the Murder of my wmq¹ brother *Sir Walter*⁴ onder traift, wald nowe eik⁵ craft to his cruelteis; and in place of repentance, be fals calumnyes, wald alſo bereawe me of my fame and lyiff, albeit I have ewer beine, and yit am maift willing to abyed all ordinar tryell of Lawe. Farther, I moſt alſo regrait that the ſaid Erllle, being laitlye at Cowrt, hes privelye obtinit ane Commiſſione wnto ane numer of hes rioteris and defenderis, for ſerching of my ſone; and onder colour thairof, hes intentit nocht onlye to ſurpryſe my howſe of Edzell, quhair my hail ewidentis, and of vther freindis yit remanis, bot alſo to berawe me of my lyiff within my awin lwdging in Ed^r. And to the effect foirſaid, wearis daylye piſtollettis and hagbyttis, prohibitit be your Maieſteis Actis, alledging ewer they ar ſeiking Rebellis. For remeid quhairof, and my awin ſecuritie, in reſpect of the reaſonis foirſaidis, ſpecialye, becauſe your Maieſties honourabill Priwe Counſell hes alreadye grantit ane verie ample Commiſſioun, excepting onlye my Howſe of Edzell, within the quhilk I have fwnd Cautione nocht to recept⁶ my ſone, nor anye of theiſe Rebellis, onder the paine of ten thouſand merkis, *toties quoties*, I will maift humilye praye your Maieſtie to direct ane Warrant to your hienefs Priwe Counſell of this countrie, to ſuſpend the laſt priwatlye obtinit Commiſſione, as your Maieſtie will have me free of that ſchaddowe,⁷ be the quhilk my ondeſerwit enemye crawis⁸ my lyiff and land; for vtherwayis, the Counſell, for the reverence they carye to that Commiſſione ſeygned be your hienefs, will nocht mell⁹ thairwith. Hoping for your Maieſteis woontit protectione, nowe, ſa mekle the rather that I am ſo onkyndlye, onnaturalye, and without deſerwing, trwblit be that Howſe,¹⁰ of the quhilk ewer of ald, nocht onknowin to your Maieſtie, in thair trowblis, I have ſa weill meritit vtherwayis. Yf I find nocht ſecurite hier, I wilbe forcit, altho' be ſea, in reſpect of my aige and inhabilyte, vpon my kneife to beg the ſaming¹¹ at your hiechneſs ſelf. Thws, maift humblye kiſſing your hienefs handis, and praying the Eternall lang to preferwe your Maieſtie and Royell prongenie, I reſt ewer,

Your Sacred Maieſteis maift humble and obedient ſubiect and ſerviteur,

ED^r, 1609. Penult. Marth.

EDZELL.

Slaughter of James Lord Corthorwald.

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

¹ *Dennylyne MSS.* Adv. Library.² Judicially proved.³ Should be *intentit*; raised.⁴ Sir

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

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

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

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

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

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

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

Dilaitit of the Slauchter of vmq^{1e} James Lord Torthorell. Compeirit and productet ane Act of Secreit Counsaill, extractit furth of the buikis thair of, vnder

¹ *Spotswood’s Church Hist.*, 433.
Adv. Library. 28.

⁴ *Balf. Ann.*, II.

² *Wood’s Peerage*, I. 123.

⁵ *Ibid.* 42.

³ *Anon. Hist. Scot. MS.*,

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

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

LETTER, *the Privy Council to the King, anent the Slauchter of the Lord Torthorwall.*¹

MOST SACREID SOUERAYNE,

THAIR hes ane wnhappie accident fallin out heir, this morning, betuix sex and sevin of the klok, by the slauchter of *James Douglas of Torthorwell*, committit be *W^a Stewart*, sone to wmq^{ll} *Sr W^a Stewart*, quho, althocht the principall partie had agreied with the said wmq^{ll} *James*, and ressaveit Assythment and satisfacioune to his awin contentment, the said *W^a* misknew this agreement, past to the horne for not geving assurance, and awaittit the occasioun of this morning; quha, finding the said *James* simple accompaneid vpon the Hie Streit, a littill beneth Croce, he disparatlie sett upone him, and, with ane straick, slew him; and the gaitt² being quyett, he escheapid. We have cauffit chairge the partie compeire and ansuer, and fall prosequut and follow out all wther ordinarie courfe of law and justice quhilk is vsuall and accustomed in the lyk caissis. And, in cais of his not compeirance, fall caus denunce him, and pairvpon fall direct Commissiounes to the ordinarie Magiftratis of the country for the persute of him, with Proclamatiounes, containing a promes of rewaird to ony persones quho will tak him. Quhairof we haif thocht meitt to mak 3our sacred Ma^{tie} acquainted, and in all reverence fall conforme our selffis to quhatfumevir forder directioun it fall pleis 3our hienes to give in this mater.

¹ From the *Earl of Hadington's MSS.*, General Register House.

² Street.

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

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

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

Child-Murder.

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

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

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

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

JO. PRESTOUN. S^r. R. COKBURNE. L. CRAIG, Cl^r Reg^{ri}.

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

Witchcraft — Administering Enchanted Drink.

Nov. 9.—JAMES MURE in Mynniehagen.²

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

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

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

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

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

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

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

Hurting and Wounding — Shooting of Pistolets.

NOV. 17.—ALEXANDER FRENCH, brother to Johnne French, Tutour of Thornydikis.²

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

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

¹ Having been summoned to appear before the Justice this day.

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

finden to Reidpeth, for doing of certane his necessar effairis and buffines; thay, vpon the xxv day of September lastbypast, being bodin in feir of weir, with secrettis, plait-slevis, lances, hagbuttis and pistolettis, lay at await in the said Andro his hie way, besyde Fawnes-furd, and thair set vpon him, and crewallie invaidit him for his Slauchter, schot and dilaschet¹ thair hagbutis and pistolettis at him, hurt his horse, and chaist him self to the Place of Carolesyde; contravening thairby the tennour of the said Actis of Parliament. Be occasioun of the quhilk persute, thay being raifit in the cuntrie, and the bruit passand, that the said Andro was flane and tane in to Carrolesyde, and the samyn haifing cum to the said George knowlege, he, to try the certantie thairof, lap on vpon horsebak, and cam ryding to the Place of Carolesyde, in sober maner, him self allane, lipuing for na harme, iniurie or persute to haif bene done to him,—the said Alexander French, accompaneit with his said brother, and vtheris thair complices, nochtwithstanding of the former iniurie done as said is, being bodin in feir of weir, with hagbuttis, pistolettis and vtheris wappones, *invafive*, convenit thame selfis at the Chapel-wallis besyde Corrbie and dykis² thairof, quhair thai lay darnit³ in secreit maner, awaiting, gif ony wald cum and revenge the former deid; and thair, at the Chapell-dykis, in the said George cuming to the said Place of Carolesyde, vmbiefet his hie-way, and maist crewallie invaidit him for his Slauchter, schot and discharget thair pistolettis and hagbuttis at him, quhairwith thay schot sewin bullettis in his left thie, hurt and woundit him thairwith, to the effusioun of his bluid in grit quantitie: And the said Alexander is airt and pairt of the saidis crymes; and hes thairthrow incurrit the panes and punischment prescryuit be the said Act of Parliament.

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

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

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

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

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

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

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

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

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

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

Hurting and Wounding — Shooting of Pistolets.

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

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

Resetting and Maintaining Alexander Ruthven — Gowrie's Conspiracy.

Nov. 17.—DAVID SPALDING of Effintullie

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

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

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

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

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

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

FORSAMEKILL as, be Act of our fouerane lordis threttene Parliament, his Maieftie and estaittis ordanit, that quho euir fould strek or hurt in any tyme thaireftir, any perfone within the Vtter-Tolbuth of Ed^r, the tyme that the Lordis of Seffion fittis for administratioun of Justice, fal incur the pane of daith ; and fall be accused criminallie thairfor : Without regaird quhairof, and of that respect and reuerance quhilk it became the saidis Mr Johnne and George, or ather of thame, to haif borne to the Lordis of Seffion, being conuenit in the Inner Tolbuthe of this burcht, for administratioun of Justice to his Maiefties legis, and thairby representing his Maiefties perfone and autoritie ; the said Mr JOHNNE, vpon the auchtene day of November instant, cam to the Vtter-hous of the said Tolbuth, callit the Mid-hous, and feing the said George Lokhart, seruitour to the Laird of Corstorphin, Younger, following his maister, in companie with my Lord of Kilfith,¹ desyrous to enter within the said hous ; and he beiring grudge and malice aganis the said George, vpon sum former discoirdis betuix the said Mr Johnne father, him self, and his vmq^{le} brother Andro Ker and the said George Lokhart, the said Mr Johnne stuid in the said dur, and wald nocht suffer him peceable to pas by, bot forceable rusched the said George, in the bygoing, and had almost frukin him to the grund ; and immediatlie thairefter, drawing his dager, inuidit him thairwith, and strak at him for his slauchter ; and strak the said George throw the cloik, within the said hous, and had nocht faillit to haif flane him, gif the said Mr Johnne had nocht bene stayit and red be sum gentilmen being present for the tyme, quho wer commandit be my Lord of Kilfith to red² thame ; and tuik the said Mr Johnne to waird, for his said offence : Quhairby he hes transgressed the said Act of Parliament, and incurrit the panes contenit thairin. LYK AS, the said GEORGE LOKHART, vpon the said auchtene day of November instant, about nyne houris, or thairby, befoir none, haifing of lang tyme of befoir confaut ane deidlie feid, haitrent, and malice, aganis the said Mr Johnne Ker, sone to the said Andro Ker of Mylnerig, for certane iniurious langage past betuix thame, and for the said George hurting of Andro Ker, brother to the said Mr Johnne, in the hand ; and this day, finding the said Mr Johnne standing in the dur of the Mid-hous of the said Tolbuth, quhilk cumis in frome the bak-turnepeck thairof, the said George violentlie rusching the said Mr Johnne forward within the said dur, immediatlie thaireftir drew his dager, and strak at the said Mr Johnne thairwith, for his slauchter, vpon the heid, with the said dager ; and had nocht faillit to haif flane him, gif the said George had nocht been stayed be sum gentilmen, being present for the tyme, quha entred betuix thame, and be commandiment of my Lord of Kilfith, in quhois presence the said cryme was committit ; quha causit apprehend the said George, and put him in waird : Quhairby he hes lykways transgressit the said Act of Parliament, and incurrit the panes thairin contenit.—To

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

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

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

Eftir reiding of the quhilkis tua Dittayis, and accusatioun of the said Mr Johnne Ker and George Lokhart, be vertew thairof, our souerane lordis Aduocat, for verifeing thairof, producet the said Mr Johnne and George awin Confessioun, togidder with certane Depositiones of dyuerse famous¹ Witnesses, suorne and examinat in presens of the Lordis of Sessioun, in the said matter.

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

Hamesucken—Murder under trust.

Nov. 22.—JOHNNE STEWART, sone to vmq^{le} James Lord of Doun, (brother-german to Harie Lord St Colme.)²

Dilaitit of airt and pairt of the murthour of vmq^{le} Johnne Gib in Over Lessodie; committit in the moneth of Junij 1608 yeiris.

PERSEWARIS, Bessie Dik, the relict of vmq^{le} Johnne Gib. Sir Thomas Hammiltoun.

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

The Aduocat producet the DITTAY, following.

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

¹ Persons of good fame and credit.

² So described in the second diet. See Note to Nov. 17, 1609.

your self of pat impechment,¹ faythfullie promittit and gaif your hand² to the said James Craufurd, that ze fould nocht pat nycht go towardis the said Johnne Gibis hous, bot pat ze wald ryd towardis the brig of Gairny: Nochtwithstanding quhairof, sa sone as ze gat your horfe, ze raid in all haift to ze said vmq^{le} Johnne Gibis hous, in Over Lessfodie, about pe glomyng of the nycht,³ and chopping⁴ at pe dur, and calling vpone him be his name, he being than lyand in his naikit bed, takand the nychtis rest, and feiring na iniurie, invafoun, nor harme to haif bene done to him, be any perfones, and specialle by you, quha in all tyme preceiding had bene in professit freindschip with him, and had ressaute dyuerse plesouris and gratitudis of him, sa sone as he hard your voce, instantlie raise in his fark,⁵ and oppint his dur to you; quhair ze, without ony caus, vpeveing of freindschip, or adverteifing him of his fkaith or danger, straik him with your dager in the breift, neir the heart, and gaif him pairwith ane deidlie wound, vnder trest, freindschip and credeit: Of the quhilk wound he departit this lyfe within les nor fourtie aucht houris pairefter. AND sua, ze maist crewallie and vnmerciefullie slew the said vmq^{le} Johnne Gib, vnder clud and filence of nycht, within his awin hous, be way of Hame-suckin and vnder trest; to pe grit contempt of our souerane lord, his hienes auctoritie and lawis, &c.

TO THE TAIKIN,⁶ that, incontinent paireftir, ze returnet bak to the said Johnne Grevis hous in Keltieheuch, and calling furth vpone Nicoll Rowane, inqyret of him, 'quhais man⁷ Johnne Gib was?' Quha anfuert, that 'he was my Lord Chancelloris man;'⁸ ze said, 'and⁹ he war the Devillis man, ze had gevin to him the thing that wald flaik⁹ him!' To the taikin also, pat vpone pe morne paireftir, ze, cuming in, in the morning, to ane house in Aberdour, quhair James Baveredge, in Keltieheuch, and Alex^r Kellok war drinking, ze demandit at James Baveredge, 'Quhat newis?' Quha anfuering, that 'He hard na newis that was guid!' and, 'That ze mycht haif bene in your bed that nycht, quhan ze gaif that hurt to Johnne Gib, quhairof he wald die!' Ze, taking out your bludie dager, said, 'he could nocht be the war,¹⁰ becaus ze had gevin him bot ane po^r!'¹¹ To the taikin lykwayis, ze, being charget to find caution, to compeir befor the Justice, at ane certane day bygane, to haif vnderlyne the law for the said cryme, past to pe horne; quhairat ze haif lyne continuallie fenfyne.

THE JUSTICE continewis this matter, anent Johnne Stewartis tryell, to Fryday nixt, quhill¹² he be advyset with the Counsell.

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

ASSISA.

William Trumbill of Airdrie; Johnne Dunbar of Mynnieweik; William Cuming of Ernesyde; The Laird of Partoone, younger; Johnne Johnnestoun of Raiecleuch, tutour of Johnnestoun.¹³

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

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

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

ffand, pronuncet, and declairit the said Johnne Stewart, accoirding to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the crewall Murthour and slauchter of the said vmq¹⁰ Johnne Gib: committit in maner, and at the tyme specifeit in his Dittay.

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

Clearing of Hagbutts and Pistolets—Perjury.

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

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

PERSEWAR, Sir Thomas Hammiltoun of Bynnie, kny^t, Aduocat to our souerane lord.

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

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

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

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

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

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

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

Slaughter.

Dec. 29.—WILLIAME GUTHRIE of Ravinfbie.

Dilaitit of airt and pairt of the Slaughter of vmq^{le} Patrik Gairdin of that Ilk ; committit in Maij I^m.V^c. lxxviiij.

PERSEWERIS, Robert Gairdin, oy¹ to the defunct, Mr Tho² Henderfon, substitute to the Lord Aduocat.
PRELOCUTOUR for the pannell, Mr Thomas Hoip.

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

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

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

ASSESSORES JUSTICIARIO.

Mr Johnne Prestoun, President,² Walter Lord Blantyre, My Lord Previe Seill,⁵ My Lord Kilfyth.⁴

Barbarous Murder—Shooting with Hagbutts, &c.

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

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Abircrumbie of Pitmedden.

PERSEWERIS.

Hectour Abircrumbie of Westhall, Adame, M^cWalter, and Robert Abercrumbie, all fones; Williame Abercrumbie, as oy; Sir Thomas Hammiltoun of Bynnie, kny^t.

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

DITTAY against the Pannels.

FORSAMEKILL as the saidis JAMES GORDOUN and ALEXANDER GORDOUN, with thair complices, with convocatioun of our souerane lordis legis, to the number of fystene perfones, or thairby, all bodin in feir of weir, with jakis, secreittis, steil-bonnettis, lance-stalfis, fuordis, lang culveringis, dagis, and pistolettis, expresse prohibeit to be borne, worne, vsset, or schote with, be the Actis of Parliament, vnder the panes mentionat thairintill; vpon the tuelff day of Marche, the yeir of God I^m.Vc. lxxxxiij yeiris, haifing confaueit ane deidlie feid, rancour, and malice aganis the said vmq^{le} Alexander Abercrumbie of Pitmedden, set vpon the said vmq^{le} Alexander, at the Mofs of Cokstoun, lyand within the scherefdom of Elgyn and Forres, quhair he was passand his tyme at the halking, but⁶ ony company, except his falconeris, in sober and quyet maner, dreidand na evill, harme, iniurie, or perfute of ony persone, bot to haif levit vnder Godis peax and our souerane lordis; and thair, expres contrair the tennour of the Actis of Parliament, schot and dilafchet⁷ tuentie schote of hagbuttis and pistolettis at the said vmq^{le} Alexander; quhairby thay schote dyuerse and findrie bulletis in dyuerse pairtis of his body: And haifing circuit him round about, that he was nocht abill to escaip, thay thairefter pat violent handis in his persone, tuik frome him his awin horse, and cuist him vpon ane bachillane naig,⁸

¹ *Oe* or *Oye*, grandson.

² Of Fentonbarns, President of the College of Justice.

³ Sir Richard Cock-

burn of Clerkington.

⁴ Sir William Levingston of Kilsyth, one of the Ordinary Lords of Session.

⁵ The

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

⁶ Without.

⁷ Old Fr. *delascher*, to discharge, &c.

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

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

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

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

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

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

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

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

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

Slaughter.

Jul. 25.—WILLIAME GUTHRIE of Ravinfbie, lauchfull fone to vmq^{le} Alexander Guthrie of that Ilk.

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

PERSEWARIS, Robert Gairdin, as only fone to vmq^{le} Robert Gairdin of Tullois; Mr Robert Gairdin, appeirand of Blairtoun; Commiffar Clerk of Aberdene, as neir kinfman; Mr Robert ffoullis, fufstitute to our fouerane lordis Aduocat.

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

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

the space of nyntene yeiris eftir the dait thairof; quhilk is of dait, at Halyrud-hous, the xxiiij day of Januar, I^m.Vj^c. yeiris; and in respect thairof, allegit, that the said Dittay could nawayes be put to the knowledge of ane Affyse, for the said Slauchter.—To the quhilk it was anfuert be the Aduocat, that the Respett is null, becaus, conforme to the Act of Parliament, na Respett nor Remiffioun can be grantit without satisfioun of partie; and this persewar nocht being satisfieit, the Justice aucht to put the pannell to the knowledge of ane Affyse.

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

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

[As the subsequent Trials of PATRICK, *second* EARL OF ORKNEY,¹ and of ROBERT STEWART² and others, contain the most ample information relative to the infamous and almost unparalleled cruelties and oppressions committed by this tyrannical individual, against the unoffending Inhabitants of Orkney and Zetland, it is unnecessary, in this place, to anticipate the extraordinary circumstances which are there detailed. The Editor has been at much pains to procure the most authentic Documents, in illustration of these very remarkable Trials; to which the reader is referred. They contain the fullest and most minute accounts of the shocking atrocities committed by this savage and relentless Noble, whose life, estates, and honours, were at length forfeited, in atonement, so far, for his frightful crimes. He was beheaded at the market-cross of Edinburgh, Feb. 6, 1614.]

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

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

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

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

¹ See Feb. 1, 1615.

² The Trial of Robert Stewart, 'base sone to vmq^{le} Patrik, lait Erle of Orknay,' and others, will be found under Jan. 5, 1615, of the present Collection.

dois Treafone aganis the Kingis perfone, or his Maieftie; or vſurpes vpone thame his ſouerane authoritie, in poyntis of royall ſoueranitie, falbe pwnfeiched as Tratouris. AND trew it is, and of veritie, that the ſaid Patrik, Erle of Orknay, altogidder vnmyndfull of that dewtie, quhilk, be the bandis of nature, ſubiection, and allegance, he aucht¹ to ws, and infinite fauouris and benifeitis reffaut be him frome ws, hes, be him ſelff, and vtheris in his name, of his cauſeing, command, reſſet, aſſiſtance, and ratihabitoune, in contempt of ws and our auctoritie royall, committed and perpetrat the moſt (cruel) and trefoneable crymes following, at the tymes and in maner vnderwritin: And was and is airt and pairt of the ſamyn. IN the firſt, the ſaid Patrick, Erle of Orknay, be him ſelff, his deputis, Magiſtrattis, and Judges, appointed and depute be him, in the offices of Schereſchip, Stewartrie, and Bailzerie of our ſchereſdome and biſchoprik of Orknay, and lordſchip of Zeitland, *reſpectiue*, of his cauſing, command, aſſiſtance, and ratihabitoune, monethlie and ilk moneth, in the yearis of God I^m.V^c. fourſcoir nyne, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, and ane thouſeand ſax hundreth and ten yeiris, at the leiſt in ane or vther of the ſaidis monethis and yeiris, perſewed, accused, proceidit, and pronunced dyuerſe decreittis and ſentences aganis vmq^{le} Sir Patrik Bellenden of Evie, kny^t, Balfoure of Montquhanie, Robert Menteithe of, Williame Bannatyne of Gairſay, Sinclair 3ounger of Etha, Bruce of Cwltmalundie, Henrie Wardlaw his ſervand, Adame Mudie,² with mony vtheris our faithfull and obedient ſubiectis of the countreyis of Orknay and Zeitland, accoirding to lawis treſſonabillie maid and practized be him ſelff, direct contrair and repugnant to the lawis of our realme, and Actis of our Parliament, maid be ws and our maiſt noble progenitouris, Kingis of this our realme, to quhome only the power to mak lawis belongis, as ane peculiar poynt of our and thair regall ſoueranitie; and thairby decernit thame to haif committit capitall and treſſonable crymes; and of his awin preſumptioun and vſurpatioun of our authoritie royall, without ony warrand of ws, hes treſſonabillie diſpenſit with the poyntes of death, and ordanit the ſaidis perſones quaha war convict and condemned, in maner foirſaid, only to be banifched furth of the ſaidis boundis of Orknay and Zeitland; and hes treſſonabillie adiudget thair landis, guidis and geir to be ſforfaltit and eſcheit to him ſelff. AS ALSO, the ſaid Patrik, Erle of Orknay, be him ſelff and his foirſaidis, in the monethis and yeiris of God foirſaidis, att the leiſt, in ane or vther of the ſaidis monethis and yeiris, treſſonabillie perſuadit, induced, counſallit, and commandit Williame Sinclair of Etha, Henrie Sinclair of Tenquhie, Mr Robert Henderſoun, Williame Irwing of Saba, and mony vthir gentilmen of the ſaidis countreis of Orkney and Zeitland, to

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

subſcryve and delyuer to him ane Band callit Band-mutus,¹ and thairby obleife thame ſelffis and thair airis, that thai ſould ſerue and mantene him aganis quhat-fumeuir perſones, without ony reſeruatioun of ws;² and that thay ſould nevir heir nor know his hurt or ſkaith, bot ſould reveil it within tuentie foure houres, without ony exceptioun of impoſſibilitie or diſtance of place, contrarietie of wind, wedder, or vther impediment; vnder the pane of tynfell³ of lyfe, landis, and guidis; contening alſo this claufe, ‘ that gif it happin that þe contravening of this Band, be ony of the ſaidis ſubſcryveris, ſould (fall) nocht cum to þe ſaid Erles knowlege, quhill⁴ eftir the committeris deceiſe, it ſould (fall) be leiſum to him to try the ſamyn eftir þair daithis aganis þair airis, and pwneiſe þair ſaidis aris as he mycht haif done the principall offendour: And that the ſaid probatioun of þair contravening of the ſaid Band ſould (fall) be ſufficient be tua witneſſis: Bindand lykwayis the ſaidis Gentilmen and vtheris of the cuntrie to be judged be the ſaid Erle; and nevir to ſeik to King, Counſell, nor Seſſioun!’ Quhilk Band the ſaid Erle hes debaited to be lauchfull, and hes confeſt the reſſaueing and haveing thairof; althocht it be maiſt vnnaturall, uniuſt, tyrannicall, impoſſible, and treſſonable; bindand men to impoſſibilities, and inioyneing to thame, in caice of contraventioun, the paynes of Treafone, ffor naiked conceilling and nocht reveilling his ſkaith, generallie, in ony matter; it being of verritie, that no man hes power to preſcryve or exact ſuch paynes, bot only ſouerane poyntes, and that in matteris treafonable allanerlie. Quhairby, the ſaid Erle hes manifeſtlie and treafonable uſurped vpone him our royall authoritie and princelie power, in poyntis of our abſolute ſoueranitie. LYK AS, the ſaid Patrik Erle of Orknay hes treſſonable tane vpone him, in the ſaidis yeiris and monethis, at the leiſt in ane or vther of thame, to call and perſew befor him and his pretendit deputtis and Judges, in his pretendit Jurifdictiones of Orknay and Zeitland, Adame Mudie, and many vtheris our frie and obedient ſubiectis; and eftir his pretendit maner, haifing accused and convicted thame of dyverſe crymes, hes nocht only pronounced aganis thame the Sentence of Banifchement, and fforſaltour to him ſelff of thair landis and guidis; bot thaireftir componed, tranſacted, and agreid with thame, and treafonable vſurped our royall authoritie and ſouerane power, be Remitting to thame the ſaidis capitall crymes; quhilk no man hes power to do, within this our realme, bot the King and ſouerane of the ſame. AS LYKWAYIS, the ſaid Erle, bereifing our faithfull ſubiectis of the benifeit of

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

our peafe and generall protectioun, and the fredome of thair travelling and traffique be fea and land, hes, in the yeiris and monethis foirfaidis, att the leift in ane or vther of thame, difcharged the paffageis and ferreis of Orknay and Zeitland, that nane fould haif entreis or outgoing furth thairof, without his Pafport and Licence; and did incarcerat, in ftokis and irnes, the fervandis of James Stewart of Gramesay, for tranfpoirting of Robert Mentithe his guidbrother,¹ without his licence; and caufed incarcerat the fervandis of Frances Mudie, for tranfpoirting thair faid maifter;—the men of Sowna, for tranfpoirting Williame Bannatyne;—and the men of Flottay, for tranfpoirting of, thair maifter; held and detenet thame captiues and priffoneris, in irnes, ftokis, cloifs-priffone and firmance, dyuerfe dayis and oulkis;² vſurpeing thairby, moſt treſſonable, our authoritie royall, and bereifing our lauchfull ſubjectis of the vſe and benifite of thair natiue libertie, dew to thame, in thair frie paſſage and traffique, vnder our peace and protectioun, throw all the pairtis of this our kingdome, be fea or land. AND nocht content thairwith, the faid Erle, leiſing na foirt of extraordiner Oppreſſioun and treſſoneable violence vnpractized aganis the faidis Inhabitanes of Orknay and Zeitland, at the tymes perticulerlie aboue reherſet, at the leift in dyuerſe of the monethis and yeiris foirfaidis, hes compellit the maift pairt of the gentilmenis tennentis of the faidis contreyis of Orknay and Zeitland to work to him all maner of work and laubour be fea and land, in rolling³ and ſailling his ſchepis and boittis, working in the ſlane-querrel,⁴ wynning and beiring furth thairof ſtanes and red furth thairof, laidning his boittis and ſchellopes⁵ with ſtane and lyme, and loifeing the ſame, biging his park dykes, and all vther foirtis of ſerveill and paynefull laubour, without ather meit, drink, or hyre.⁶ AND, to conclude the vtter rwyne of the poſſeſſouris of the faidis landis and Yles, hes, in the faidis yeiris and monethis, att the leift in dyuerſe of the ſame, impoſed, exacted, and treſſonabillie vplifted frome thame, dyuerſe grit and exorbitant taxationes and impoſitiones, quhilkis na man may lauchfullie do, within this our realme, bot We, of our ſouerane power allanerlie; vſurpeand thairby, maift treſſonabillie, vpon him, our authoritie royall. FINALLIE, the faid Erle, in the faidis monethis and yeiris, at the leift in ane or vther of thame, hes treſſonabillie diſcharget the faidis Inhabitanis of Orknay or Zeitland, to by or fell meill, malt, meit, drink, fiſche, fleſche, butter, nolt, ſcheip, or ony vther commoditeis, without his Licence, vnder grit penalteis; lykas, he

¹ Brother-in-law. ² Weeks. ³ Rowing with oars. ⁴ Stone quarry. ⁵ Shallops; small vessels. ⁶ This inhumanity of the Earl of Orkney appears, by existing documents, to have been carried to the most frightful excess—and the lives of the unfortunate natives rendered utterly wretched, worse than the condition of galley-slaves, or that of the Christian captives in Barbary—being only paralleled by the ‘ Egyptian bondage and oppression of the children of Israel, under King Pharaoh!’ Reference may be made to the Trials and Documents before quoted.

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

Ex deliberatione Dominorum Conſilij.

*J. BANNATYNE.*¹

¹ Writer to the ſignet, and nearly related to the now celebrated George Bannatyne.

FOLLOWIS the tennour of the EXECUTIOUNE¹ of the saidis Letteris.

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

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

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

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

AL. CANCELL^r. DUMBAR.

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

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

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

evir allegit cryme is fett down in his Dittay, he had fufficient power and authoritie grantit to him to do the fame; nocht granting thame to be crymes: As fall be juftifeit be him, in the awin¹ tyme and place.

(Aug. 9.)—MY Lord Aduocat producet ane Warrant of the Lordis of his Maieftis Secret Counfell, anent the continuatioun of this dyet appointit for my Lord Orknayis tryell, to the faxtene day of Auguft instant.² The Erle of Orknay askit instrumentis of his entrie; and offerit him felff to the Tryell of the law, for the allegit crymes contenit in the Letteris, nochtwithftanding of the faid continuatioun.

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

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

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

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

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

THE JUSTICE Ordanit the faid Erle of Orknay to be returnit back agane to his waird.⁵

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

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

Aug. 29.—MR ANDRO CREICHTOUN, brother to the Laird of Innernytie.⁶

Dilaitit of the Declyning of his Maieftie and Lordis of Secret Counfal Judgement; and thairby committing Treasoun, contrair the Actis of Parliament.

¹ In its *own*, or in its proper time and place.

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

³ The Letters and Execution are repeated. ⁴ In same terms as the others. Dated Nov. 20, 1610, and figned by 'E. Glencairne. Sanctandrois. Blantyre. Jo. Prestoun. R. Cokburne.'

⁵ An at-

tested copy of the above proceedings, by Sir John Cokburn of Ormestoun, knight, Clerk of Justiciary, is preserved in the General Register House, with various other papers relative to Orkney.

⁶ See

Arnot's Crim. Trials, p. 37, 67, and 328. The Case of Ogilvie the Jesuite, 1615, in this Collection, &c.

DITTAY against the Pannell.

MR ROBERT CREICHTOUN, broper to the Laird of Innernytie; 3e ar Indytit and accufet: ffor-famekill as, 3e, being takin, be directioun of the Lordis of his Maieftie's moft honourabill Previe Counfall, and broght befor pame, vpon the faxtene day of Auguft instant, to be examinat vpon fum materis concerning his Maieftie and the eftait of this his Kingdome, and requyred be thair Lordschipis to geve 3our aith to thame, that 3e fould faithfullie and treulie anfuer to thame, and declair the veritie of fuche thingis as fuld be demanded of 3ow, 3e treafoneabillie refufied to acknowlege his Maieftie and the faidis Lordis of his moft honourabill Previe Counfall to be 3our Judges, bot maift treafoneabillie declyned pair judgement: And efter pat pai had put 3ow in remembrance of pat dentie and fubiectioun quhilk 3e aucht¹ be our faid fouerane lord, both in refpect 3e was his naturall borne fubject within pis realme, and pat 3e war now actualle refident within pe famyn: And that, be Act of Parliament, maid in pe moneth of May, the 3eir of God I^m.Vc. four fcoir four 3eiris, our faid fouerane lord was declairit, be him felff and his Counfall, to be Judge competent to all perfones his hienes fubjectis, of quhatfumeuir degre, functioun or conditioun thay be of, fpiritual or temporall, in all matteris quhairin thay or ony of thame fould be fummond or charget to anfuer to; and that nane fould tak vpon hand to declyne the Judgement of his hienes and his fuffessouris, or pair Counfallis, in the premisses, vnder pe pane of Treafone. Lyk as, for 3our better information and refolutioun, pe faid Act of Parliament was than fchawin and red to 3ow: 3e neuerpeles, vnnaturalle, rebelliouslie, and treafonable perfifting in 3our mifchevous purpois, ftill refused to acknowlege pe Jurifdictioun of his Maieftie and his Secreit Counfall. Lyk as, vpon the xxiiij day of Auguft instant, 3e being of new broght befor pe faidis Lordis of Secreit Counfall, and admonifched and exhorted to acknowlege and amend 3our treafoneabill offence, and to acknowlege his Maieftie to be 3our fuperiour, and his hienes and pe Lordis of Secreit Counfall to be 3our lauchfull Judges, and to haif jurifdictioun over 3ow, 3e anfuered, as ofbefoir, that 3e was nawayis better refolued, bot that 3e ftill abaid be 3our former Depofitioun and anfueir, that his Maieftie and the Lordis of Secreit Counfall was nocht 3our fuperiouris or Judges. And fua, 3e haif treafonabillie contemned and declyned the authoritie of our faid fouerane lord and pe Jurifdictioun of his hienes and Lordis of his Secreit Counfall; and pairby haif incurret and fould fuffer the paynes of Treafone, to be executed aganis 3ow, in 3our body, lyfe, landis, guidis, fame, and memorie; in example of vtheris: Quhilkis 3e can nocht deny; in refpect of your Depofitiones, extant, and heir producet in Judgement, fubferyuit with your hand, moft cleirle verifeing all pe premisses.

Eftir reiding quhairrof, and accufatioun of the faid Mr Andro, be vertew of the fame, and Confeffioun maid be the faid Mr Andro, in judgement, to the Justice, granting the treuth of the faid Dittay, and abyding ftill at his former Depofitiones; quhairupone instrumentis was tane be our faid fouerane lordis Aduocat, the Justice ferrit the faid Dittay to the knowlege and tryell of ane Affyfe of the perfones following: Thay ar to fay;

ASSISA.

James Stewart of Grameslaw, Robert Menteith of Eglifchaw, Thomas Lyell of Murchill, Vthreid McDowell of Mondork,² Mr Robert Henderfoun of Holland, Mr Gilbert Gordoun of Chirnes.³

Quhilkis perfones of Affyfe being chofin, fworne, and admittit, eftir accufatioun of new agane of the faid Mr Andro Creichtoune, be Dittay, of the faid treafonable cryme, quhilk in the faid Justice and perfonis of Affyfe awin pre-

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

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

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

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

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

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

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

¹ ' Mb. The Dittay, with the pannellis Depositiones, gevin vp to my Lord Aduocat the day foirsaid.'

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

JAMES R.

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

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

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

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

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

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

¹ The words of the warrant repeated.

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

³ A short sword or hanger; a kind of cutlass.

⁴ In token, proof, or testimony whereof.

or pairby, the zeir of God 1608 zeiris foirfaid, he depairtit this lyfe; and fua, was crewallie flane be 3ou and 3our saidis complices, of 3our caufing, command, reffet, affiftance, and ratihabitoun: And 3e ar airt and pairt pairof; ffor þe quhilk, 3e haif lyne at þe horne thir tuo zeiris bygane. 3e ar alfo Indytit, fforfamekill as þe faid Johnne Greir, being tane with the bludie hand, and immediatlie efter þe committing of þe faid crewall Slauchter of þe faid vmq^{1e} Eduard Maxwall, being committit to Waird for þe fame, in our fouerane lordis ordiner Priffone and Pledge-chalmer of Dumfreis, and pair keipit priffoner in the irnes, be the fpace of foure dayis, the faid Johnne Schitlingtoun, 3our fervand, at 3our command, and be 3our fpeciall convoy and affiftance, haveing provydit him felf of gavellokis,¹ craw-irnes,² fyles, and vperis work-lowmes,³ furneift and prepairit to him be 3ou and 3owr meanis, come vpon the . . . day of þe faid moneth of September, or pairby, and zeir of God foirfaid, and in the nyght feafoun brak þe vout and pend⁴ of þe faid prifone, and fchure⁵ af þe irnes, quhairin the faid Johnne Greir was loked, and violentlie and forceable relevit him furth of our fouerane lordis Prifone foirfaid, and cayreid him to 3our duelling hous in Lyncluden, wher 3e reffet, keiped, and interteneid him dyuerfe dayis, nychtis, and oulkis⁶ paireftir: And fua, 3e ar airt and pairt of the contemptuous, infolent, and violent breking of our fouerane lordis prifone, and taking furth pairof, violentlie and perforce, of the faid Johnne Greir, giltie and captiue for þe faid crewall Slauchter of þe faid vmq^{1e} Eduard Maxwall of Corstoun, and of þe wilfull reffet, fupplie, and intertenement of þe faid Johnnie Grier, giltie and fugitiue for þe faid crewal Slauchter; and aucht and fould be pwneifched with the lyk and felf fame paynes quhilk þe law hes preferyved aganis þe faid principall malefactour, for his crymes foirfaidis. To the taikin,⁷ that þe faid Johnne Grier and 3e war bothe fugitives, and at þe horne, for þe cryme foirfaid.—ITEM, 3e ar indytit of 3our treaffounabill Intercowmoning with JOHNNE fumtyme LORD MAXWALL,⁸ in the toun of Dumfreis, and in the Caftell-3aird pairof, and dyuerfe vtheris places within the fcherefdomes of Nyddifdail, Annandaill, Kirculdbrycht, and Galloway; and for Reffeting and fuppleing him in 3our hous of Lyncluden, and vperis 3our duelling places, in þe moneth of December, the 3ear of God I^m.Vj^c. and fevin zeiris, and in þe monethis of Januar, ffebruar, and remanent monethis of þe zeir of God 1608 zeiris, at þe leift dyuerfe dayis and nychtis of þe faid zeir, eftir that he had committed nottour and manifft Treafone, be his violent and forceable breking Waird furth of þe Caftell of Edinburgh, vpon the fourt day of December, or pairby, þe zeir of God I^m.Vj^c. and fevin zeiris, and perfewing the Porteris and Keiperis pairof for pair Slauchter, hurting and wounding dyuerfe of þame in findrie partis of pair bodeis, to þe grit effufioun of pair bluidis, and perrell of pair lyves; and preiffing, fo far as in him lay, treafoneabillie to relief SIR JAMES M^cONEILL, detenit in irnes and ftrait prifoun within þe faid Caftell, for dyuerfe odious and treafoneabill crymes;⁹ ffor þe quhilkis manifft Treafones, the faid Johnne Lord Maxwall was nocht only denuncet rebell and tratour, and all our fouerane lordis legis difcharget, be Proclamatoun, to intercowmone with, reffet, or fuplie him, vnder þe panes of law; bot alfo, he fforfaltit, be Decreit of Parliament, for þe famyn. To the taikin, that 3e, being dyuerfe tymes charget to compeir befor þe Counfell, to anfuer for þe saidis crymes of Reffett, fupplie, and intercowmoning with þe faid Johnne, fumtyme Lord Maxwall, 3e, knowing 3our awin giltines, difobeyit the charge, and pait to þe horne; at the quhilk 3e haif lyne continuallie fenfyne vnrelaxit.—ITEM, 3e ar indytit and accufet, fforfamekill as Johnne Lord Hereis, being directed be þe Lordis of his Maieftis Secreit Counfall to tak and apprehend 3ow and Eduard Maxwall of Craigtoun, ane nottour rebell and fugitiue, for Thift, Stouth-reif, ffyre-raifing, fuppleing and affifting my Lord Maxwall, and dyuerfe vtheris treafonable crymes, quhilk þe faid Eduard him felf declared vnto 3ow; the faid Lord Hereis, vpon the fyftene day of Auguft lafthypait, cuming, for executioun

¹ A lever used by quarriers of stone, a *pinch* or *prize*.

² Crowbar.

³ Tools.

⁴ Vault and arch.

⁵ Literally *sheared*, as with a reaping-hook.

⁶ Weeks.

⁷ In testimony or proof whereof.

⁸ See May 13 and Jun. 24, 1609, &c. That nobleman was beheaded, at the Cross of Edinburgh, May 21, 1613. See also Appendix.

⁹ See his Trial, III. 1, &c. Jun. 24, 1609.

of the said directione, to the hous of Johnne Couthird, in Reid-Castell, whear 3e, with pe said Eduard, and dyuerse 3our complices, war then assemblit, and he him selff, and his servendis, commanding 3ow and pe said Eduard, in our souerane lordis name, to be tane with him, and to randir 3our selfis and 3our wappones, 3e treafounabillie difobeyit pe said charge, and with 3our fuordis, pistolettis, and vperis vnlauchfull wapponis, inuidit and persewed the said Lord Hereis and his servendis for pair Slauchter, hurt and woundit Johnne Geddes, Johnne Couthird, and dyuerse vtheris of thame, in sindrie partis of pair bodeyis, to the grit effusioun of pair bloudis, violentlie and forceable hinderit thame to tak the said Eduard Maxwell, rebell, releisit him fra pame, and gaif him meanis and occasioun to escaip furth of the said hous; and sua, violentlie and treafounabillie withstuid the said Lord Hereis, haifing the Counfallis command and direction to tak 3ow and pe said Eduard Maxwell, standing rebell for Treafone, as said is; and assistit and tuik pairt with him, in his treafoneable withstanding of the said Lord Hereis, and in his treafoneable persewing of pe said Lord and his companie, for pair Slauchter, and had ane pistolet vpone 3ow at pat tyme: And 3e ar airt and pairt pairf; as 3our awin Deposition, subscryuit with 3our handis, and pe Deposition of sum of thais that war present at 3our apprehensioun, cleirly verifeis. ITEM, 3e pe said Williame Douglas of Grenelaw and Lyncluden, eldest sone and appearand air of James Douglas of Baitfurd, 3e ar indytit and accused, fforfamekill as 3e, being ane landit Gentilman, and heritable proprietor of the saidis Landis of Grenelaw and Lyncluden, and dyuerse vperis landis and heritages, haif committed the treafoneable crymes of Thift and Stouthe-reif vnderwritin, be 3our self and 3our complices, and vperis in 3our name, of 3our causing, command, reffett, assistance and ratihabitoun, quhairf 3e war and ar airt and pairt, that is to say, ffor 3our coming to Dauid Welfches chalmer, in the place of Grenelaw, and tresfonabill breking vp, perforce, of his letrone¹ pair, and steilling furth pairf xxxv li. money, or pairby, quhairf pair was tuo half ducattis, pertening to the vmq¹⁰ Proveist of Lyncluden, his maister, quhairf 3e sone pairrestir wiffillit² ane half ducat with Alexander Gordoun, violor in Wigtoun, for fyve merkis; quhilk being tryt and maid noutour to all pe Proveistis servendis and hailt nychtbouris in the countrie, and cuming at last to the Proveistis awin knowlege, he was so heichlie offendit with 3ow for pe same, that he boifit³ aper to droun⁴ 3ow, or at leist to put 3ow af pe cuntrey, and nevir to do 3ow any benefeit or guid; quhilk 3e heiring pairf, be pe counsell of the said Dauid Welfche, past in to pe Proveist chalmer in Grenelaw, quhair he was lyand in his bed, and pulling 3our breikis and schankis⁵ af 3our kneysis, 3e sat down befor him vpone 3our bair kneysis, cravet God and him pardoun and forgevenes, for pat 3our offence, and swoir and promiseit to him nevir to do pe lyk thairestir. Quhilk treafoneable Thift was committed be 3ow, about nyne 3eir syne, or pairby; quhilk 3e can nocht deny; lyk as the samyn is cleirly verifeit be pe Depositiones productet. ITEM, 3e ar indytit and accused for pe tresfonable Steilling, conceilling and away-taking frome Thomas Fergusoun, seruitour to pe said vmq¹⁰ Proveist of Lyncluden of an Angell of gold, and sum siluer, furth of his purse, in the 3eir of God Im.Vj^c. and tua 3eiris, or pairby. ITEM, 3e ar indytit and accuset for the treafoneable Steilling, conceilling and away-taking, vnder silence and cloud of nycht, of tuentie-aucht pecis of gold fra Johnne, sumtyme Lord Maxwell, committed be 3ow in the place of Langholme, quhair 3e war lyand in the chalmer with the said Lord Maxwell, in the 3eir of God 1605 3eiris, or pairby. To pe taikin, 3e wiffillit ane of pe saidis peces of gold, being ane double-doubill pistolet, in an oisler-hous beyde the Langholme; and 3e was pairrestir apprehendit, and challanget wiffelling sum vper of pe saidis peces, in Dumfreis: ffor pe quhilkis crymes, 3e war indytit and arreistit to pe Justice Court haldin be my Lord Erle of Dumbar, his Maiesteis Heich Commissioner, in the Middile schyres, in July, 1609 3eiris; and was

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

² Exchanged; 'changed'; sometimes spelt *quhissellit*.

³ Threatened, as Lord of the Regality, and entitled to sit as Criminal Judge on his trial.

⁴ A common punishment, in the inferior Judicatories, for Theft, &c.

⁵ A kind of long hose.

fugitive pairfoir. ITEM, 3e ar indytit and accuset for 3our treasonabill breking of Johnne Grahame, in the Gait, his kift,¹ vnder clud and silence of nycht, and maisterfull and thiftious Steilling and reveing, furth of pe said kift, of ffourtie-foure pundis, being all foure-merk-peces, pertening to pe said Johnne, committed be 3ow in pe 3eir of God 1601 3eiris. ITEM, 3e ar indytit and accused for 3our tressonabill airt and pairt of pe steilling, reifing, and away-taking and conceilling of ane kow, pertening to Meg Miller in Croftis, with pe haill insight of hir hous; committed be 3ow in Julij lastbypast: To the taikin, 3e brocht ane kift full of meill to (and?) ane lynning wob of hiris,² and fauld (thame?) in Johnne Grahames of the Gait. ITEM, 3e ar indytit and accuset for 3our treasonable Stouth-reif of ane naig, pertening to Robert Symontoun at pe Mylne of Corsemichell; committed in July 1610, lastbypast: To pe taikin, 3e wald nocht restoir pe naig eftir he was tryit vpon 3ow, quhill³ 3e gat fyve pundis money frome pe said Robert for pe samyn. ITEM, 3e ar indytit and accuset for 3our Maisterfull and treasonable Stouth-reiff of ane naig from Johnne M^egill in Grenelaw, in August, 1610: To pe taikin, 3e was rydand on him, immediatelie befor 3e was tane. ITEM, 3e ar indytit and accuset for 3our treasonable Stouth-reif of ane kow, frome Robert Welsche in Dillovodie; committed three 3eir fyne, or pair-by; quhilk was than instantlie flane and disponit vpon 3our hous. ITEM, 3e ar indytit and accused for 3our tressonabill Stouth-reif from Johnne Johnnestoun in Lyncluden, of ane kow, tua 3eir fyne, or pairby; and caufit flae and dispone vpon hir, in 3our hous, at 3our plesour. ITEM, 3e ar indytit lykwayis, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring hagbuttis and pistolettis vpon 3our persone, and in 3our companie, oppinlie, outwith bouffis, within pe scherefdome of Drumfreis and stewarrie of Kirkeuldrie; and pat monethlie and daylie; at the leift, in ane or vper of pe monethis, in pe 3eiris of God I^m.Vj^c. sevin, 1608, 1609, 1610 3eiris: To the taikin, 3e was tane with ane pistolet vpon 3ow, quhilk 3e presentit to Johnne Geddes at 3our talking. ITEM, 3e ar indytit for Cowmone Thift, Cowmone Reffett of thift, outputing and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new, notourlie knowin. BE the quhilkis Treasonable crymes aboue writtin, and ilk ane of them *respectiue*, committed be 3ow, and vperis in 3our name, of 3our caufing, command, assistance and ratihabitoun, as said is, and quhairof 3e war and ar airt and pairt, 3e haue deseruet and incurrit the paines of Treafone, quhilkis sould be execute vpon 3our body, lyfe, landis and guidis: And 3e haif sforfaltit to the Kingis Maiestie, 3our haill landis, steidingis, rowmes, possessiones, takis, contractis, bandis, reuerfiones, richtis, securiteis, hoip and appeirance of successioun, and all vperis landis, rychtis, guidis and geir quhatsumeuir, moveabill or vnmoveabill, quhilk 3e had, or quhilk 3e mycht haif appertenit, or ony wayis haif befallin to 3ow, and pe samyn sould be adiudget to haif befallin to our said fouerane lord, and to appertene to his hienes, and to remane with him, his croun and successoris, now and in all tyme cuming.

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

ASSISA.

Williame Creichtoun of Ryhill,	Thomas Hunter in Burne,	George M ^e ne in Lyncluden,
Alexander Maxwell of Logane,	Williame Douglafs of Lache,	Thomas Welsche thair,
Johnne Broun of Mullennis,	James M ^e Rerik of the Kerne,	Niniane Myller in Ryhill,
James Mairtene in Airdis,	Johnne Greirfoun of Inglistoun,	Hew Douglas of Belliebocht,
Jo ⁿ Fairies in Carfe of Kynneill,	Johnne Carmichell elder in Spothe,	Rodger Padzeane of Newtowne,

My lord Aduocat askit instrumentis of the sweiring of the Affyse. (1.) My lord Aduocat producet the tua Letteris of Hoirning for the Slauchter of vmq^{le} Thomas Softlaw, togidder with ane Dittay aganis the pannell, and publicatioun

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

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

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

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

Greir, principall committer of the Slauchter of vmq^{le} Eduard Maxwall of Trof-toun, immediatlie eftir the committing thair of: And ficlyk, to be ffylet, culpable and convict of the hail crymes of Treafone, and vtheris crymes at lenth specificit and fett down in his Dittay, aboue mentionet.

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

Sorcery — Witchcraft — Murder.

Sep. 7.—GRISSELL GAIRDNER, relict of vmq^{le} Johnne Baird, burges of Newburgh.

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

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

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

IN þE FIRST, for on-laying, be Witchcraft and Inchantment, of ane grevous difeas and feiknes vpon the faid Alexander Wentoun; quhairin he lay in a feirful madnes and ffurie, þe fpace of ten oulkis¹ togidder; and in end, for af-taking of þe faid difeas and grevous feiknes af him, be certain directiones gevin, and vperis devillifche practizes vset be hir, for his recoverie; committit be hir in the moneth of Februare laftbypaft. ITEM, for hir devillifch Sorcerie and Witchcraft, practizet be hir, in laying on the lyk feirfull difeas and vnknawin feiknes vpon Williame Anderfoune, wricht in Newburcht, for certane allegit injuries done be him to Andro Baird, hir fone; in the quhilk grevous feiknes he continewit the fpace of ten dayis togidder, tormentit in maift feirfull maner; and af-taking of þe fame feiknes, be hir, be repeiting thryfe of certain woirdis, quhilk fcho termet prayeris. AND ficlyk, for Bewitching of ane kow, pertening to þe faid Williame, quhairthrow þe hail milk that fcho paireftir gaif was bluid and worfam;² committed be hir devillrie and Inchantment, in the monethe of Maij laftbypaft. ITEM, for þe Bewitching, be hir devillrie and Inchantment, of James Anderfone, fone to Margaret Balfour in Newburcht, in on-laying of ane grevous feiknes and difeas vpon him; quhair of, in ane grit ffurie and madnes, within foure dayis eftir on-laying pairof, he deceiffit; and pairthrow, for airt and pairt of his Mur-

¹ Weeks.

² Blood and corrupted or purulent matter.

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

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

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

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

The Aduocat askit instrumentis of the chesing and fwering of the Assyse; And protestis for Wilfull Errour, in caice thay acquit hir; in respect of the notorie of the Dittay, and takinnis³ gewin to ilk poynt of the Dittay, and of the fwering of Alexander Wentoune.

It is allegit that *Stevin Philp* can nocht be ressaunt vpon this Assyse, becaus Philpis wyfes guidame⁴ and the persewar Alexander Wentounes mother war sifteris.—The said Stevin Philpis ayth being tane thairupone, declairit thai war sib,⁵ bot knawis nocht how neir of kyn thai war.—*James Durie* repellit be the Justice, af this Assyse, in respect of his declaratioun and ayth gevin thairupoun, that he buir the pannell at na guid will.—It is allegit aganis *Robert Allane*, that he can nocht be admittit Assyfour, becaus Anderfones wyfe, quha is pairtie offendit in the Dittay, and Allane are thridis of kyn,⁶ as was reknit.

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

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

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

It is allegit that *George Henderfone* can nocht be admittit vpoun this Affyse, becaufe the pannell hes Letteris of Lauborris againft him, quhairupoun fcho hes gevin hir ayth of hir bodelie harme.—Anfueris, nocht relevant, becaus the Letteris ar raiffit fen² the pannellis apprehenfion for the fact lybellit, and fen the Counfallis ordinance, appointing hir to be tryit.

The pannell, befor the outpaffing of the Affyse, takis instrumentis, that na poynt of the Dittay is fuorne to the Affyse, bot³ the firft Article, anent Alexander Wentoun, allanerlie.

The Aduocat defyres, for forder informatioun to the Affyse of the pannellis Giltines of the haill crymes lybellit, that the Ministeris⁴ Declaratioun, anent hir lyfe, tred⁵, and converfatioun; as also, David Orme, Bailzie of Newburcht, ayth and declaratioun of that pairt of the Dittay, concerning Anderfones wyfe and bairnis, be reffaut.—It is anfuerit be Mr Johnne Ruffell, that thair Declarationis can nocht be reffaut, except thai war infert as perfewaris in the Summondis.

The pannell proteftis that the Declaratioun to be maid be Mr Johnne Caldcleuche, Minister, in this matter, quhairupoune fcho is dilaitit, be nawayis respectit or advertit vnto be the Affyse.—*Mr Johnne Caldcleuch, Minister,*⁶ being fuorne maift folemmelie, be the Justice, Deponis, that a fourtene yeir fyne this Griffell Gairdner was than fufpect to be ane wicket woman, and ane Sorcerer; and be the Depositiones of the Witches execute for Sorcerie and Witchcraft, at Abernethie, Falkland, and Newburcht, fcho was reput to be ane manifest Witch; bot becaus thair was na precedent fact qualifeit aganis hir, the Presbiterie thairfoir delayit hir Tryell and accusatioun. And as concerning hir lyfe and converfatioun fen fyne, fcho hes bene fufpect to be ane verrie evill woman; and for hir privat revenge aganis fic as fcho buir ony malice vnto, hes vset devillifche and vngodlie meanis, be Sorcerie and Incantatioun, to lay on dyuerfe grevous difeaffis on thame; and fpeciallie, on the perfones fet down in hir Indytement; quhairthrow the cuntrie and parochin⁷ quhairin fcho duellis hes bene gritlie fclanderit, in fuffering fic ane perfone vnpwneift: For the quhilk caus, the Presbiterie, efter tryell of the former offences done be hir, alfweill to the perfones contenit in hir Dittay as vpone dyuerfe vtheris that ar nocht nominat thairin, direct the Deponer, as thair Moderatour, to notifie the treuth of the premisses to the Counfall, that fum ordour might be tane anent hir Tryell and pwnifchment.—Quhairupoun my lord Aduocat askit instrumentis.

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

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

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

SENTENCE. The Justice Decernit and ordanit hir to be tane to the Castell hill of Edin', and thair to be wirreit¹ at ane staik quhill scho be deid; and thair-efter hir body to be brunt in asches; and all hir moveabill guidis and geir to be efcheit and inbrocht to our foueran lordis vfe.

Horse and Cattle-stealing.

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

Dilaitit, accusset, and persewit be Dittay, at the instance of Robert Erle of Louthiane, and Mr Thomas Henderfone, Aduocat, substitute to our fouerane lordis Aduocate, of airt and pairt of the steilling of ane waith naig² a tua yeir syne, or thairby. **ITEM**, of steiling of ane naig³ furth of the Park of Newbottill, pertening to Mr Alexander Ambroise, Minister; and of ane staig⁴, pertening to Thomas Stewinfoun, foster⁵ of the said Park; committit ane yeir and ane half syne, or thairby. **ITEM**, for the steilling of ane blak meir⁶, pertening to Johnne Fyndlafone, furth of the croftis of Leslie; togidder with ane blak staig, pertening to James Clerk; and ane little soirdy⁷ staig; committed vpon the xxviij and xxix dayis of September last. **ITEM**, for the steiling of thre oxin, pertening to my Lord of Louthiane, furth of Newtoun-maynes; committit the xxviij day of September lastbypast.

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

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

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

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

Theft, &c.—Following the Gipsies, &c.

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

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

VERDICT. Fylet, culpable and convict of the faidis crymes.²

(Dec. 8.)—SENTENCE. The Justice Ordanit hir, togidder with GEORGE RAMSAY, sone to Nicoll Ramsay in Lefuaid, (quha become in will, for certane 30wis³ ftowin be him furth of the landis of Libertoun, pertening to the tennentis thairof, quhilkis war restorit bak agane to the awneris, &c.) to be SCURGET throw the Burgh of Edinburgh: And to be BANISCHET the haill liberteis thair-of, and nevir to be fund within ffoure myles thairto; vnder the pane of deid, viz. The said George Ramsay, vnder the pane of Hanging, but⁴ forder Dome; and the said Elspeth, vnder the pane of Drowning,⁵ but forder Dome or Law, to be haldin or pronuncet aganis thame.

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

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

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

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

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

FORSAMEKILL as from 3owr verrie 3outh, as pernicious and wicket Impes of the Devill, being gevin ower to all foirtis of villaneis, robereis, and oppreffiones, nawayis to be allowed within any Christiane cowmone-welth, schaiking af all lauchfull tredis and callingis, but¹ feir of God, reuerence to the Kingis Maieftie or his hienes lawis, 3e betuik 3our felfis to þat damnable tred of Pirracie, as rooges, thevis, and fea-robberis, pillieing² and oppreffing all maner of people, of quhatfumeuir natioun or cuntrie, cuming within þe compas of 3our mercieles power : And namelie, be committing of the perticuler Pirraceis, heirfchipsis,³ and barbarus Oppreffiones vnderwrittin, quhair of 3e and ilk ane of 3ow ar airt and pairt, in manner as followis. In þe first, 3e and ilk ane of 3ow, being in companie with Capitane Cowart, Capitane Barret, and dyuerse vtheris 3our complices, notorious Pirattis, Revearis,⁴ and Sea-robberis, in the monethis of Maij and Junij laftbypaft, lowfed af Ireland,⁵ in þis fchip callit þe Pream,⁶ quhairin 3e was takin and apprehendit, be Neill M'Cloud of Lewis and his clan, &c. ; 3e faillit towardis þe French coift, quhair 3e, be way of Pirracie, faucht, affailzeit, buirdit, and be plane force tuik, þe number of fax fchipsis and tua boittis ; the first þairof, beingane Ingliſch fchip of þetoun of Baſtable ;⁷ the nixt, ane French fchip ; the thrid, ane French fchip ; the fourt, ane Ingliſch fchip ; the fyft, ane pink⁸ of Dunkirk ; the faxt, ane Dutch fchip ; and þaireftir, tua fiſcher boittis ; ffurth of þe quhilkis fchipsis, and ſpeciallie furth of þe French fchipsis, 3e pilleit, maifterfullie ſtaw,⁹ reft and robbed ſeviñ hundreth Indiane hydis, with tua hundreth pundis Sterling of gold and money ; and ſicylk, tuik þe ſaid Dutche fchip, quhilk 3e brocht with 3ow as ane pryſe to Ireland, laidnit with ane hundreth kiftis¹⁰ of ſuccour,¹¹ tua kiftis of ſilver-plait, ane kift full of ryellis of aucht ;¹² togidder with ane box of Jewallis, the box being of filuer and moþer-of-perle, of tua fute lang, and coverit with reid cram-maſie veluet, in þe quhilk was four baiſer-ſtanes,¹³ with certane bloode-ſtanes and dyuerſe dyamontis and precious ſtanes of grit valew. LYK AS, 3e pilleit and robbed furth of Thomas Snellingis bark, in South-Hampton, tua kiftis of quhyte ſuccour, tua pakis of cannell,¹⁴ ane hundreth littill barrellis of conſerves, tua grit barrellis of pepper, fourtene bagis of ginger, ane barrell of cuſcheneill¹⁵ of ane hundreth wecht ; quhilk box with þe filuer plait, with þe cannell, gynger, pepper, cuſcheneill and hydis aboue writtin, 3e turnet out of þe ſaidis fchipsis vnto þe Pream, and cayreit þe ſamyn to þe Lewis,¹⁶ quhair þe ſamyn was tane, within this preſent fchip, be þe Hieland men. LYK AS, 3e, in þe monethis

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

foirfaidis, pilleit and robbed furth of þe said Dutche schip, and Inglis schipis, þair victuallis, faillis and men, quhome 3e compellit to serue 3ow, as slaves, in all ferueill and flauisch exerceiffes; and brocht the said Pink to the Blak-rok, in Ireland,¹ quhair þe said Capitane Barrett and Capitane Cowart, with nyntene of þair company, past on schoir, and was þair suppryfet; þe said Pink tane and apprehended be certane boittis with men that come af þe schoir: And 3e, for feir of apprehensioun, eftir ane combat fell out betwix 3ow, þe said Capitane Love, and þe skipper of the schip callit þe Pream, loufet out of þat raid,² and come with ane futherlie wynd to the Lewis, quhair 3e tuik and apprehendit Thomas Flemyng (Richiefone) in Anstruþer, and his schip, and ane Flemische busche,³ out of þe quhilk busche 3e tuik fyve Flemyngis, and pat in hir fyve of 3our awin companie; quhilk þaireftir, be storme of wedder, was seperat frome 3ow and drevin to Schyteland, quhair þai landit, and detenit þe said Thomas Richiefone and his schip with 3ow, to be 3our gaird in the Lewis; ay and quhill 3e and thay, with the saidis tua schipis, war tane and apprehendit be the Hieland men. AND 3e and ilk ane of 3ow ar airt and pairt of the Robereis and Pirraeis aboue writtin: To þe taikin, 3e and ilk ane of 3ow, at þe leift sum of 3ow, hes Confessit þe haill premisses to be of veritie, be 3our Depositiones. ITEM, for cowmone and notorious Pirattis, Sie-Revaris and Robberis, Spuilzearis⁴ and revaris of leill⁵ menis guidis, alfweill on fie as land, quhaireuir 3e mycht apprehend þe samyn.

ASSISA.

James Lokhart of Ley,

Mathow Baillie of Littilgill,⁶ &c.

The Aduocat askis instrumentis of the fwering of the Assyse: And for veri-feing of the Dittay, repeittis thair Depositiones productet.

VERDICT. The Assyse, for the maist pairt,⁷ be the mouth of the said James Lokhart of Ley, chancellor, ffand, pronuncet and declairit the saidis aucht per-fones on pannell, to be ffylet, culpable and convict of the haill perticular Pirraeis and Robberies perticulerlie fet down in the said Dittay.

DOME. To be tane to ane Gibbet vpon the Sandis of Leyth, within the flodes-mark, and thair to be hangit quhill thay be deid: And all thair moveabill guidis and geir pertening to thame, and being in thair possessioun the tyme of thair taking, alfweill schip as guidis, geir, jewellis and vtheris being within the samyn, to be efcheit and inbrocht to our fouerane lordis vfe; as culpable and convict of the saidis crymes.

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

² Road-stead.

³ A Dutch fishing-vessel, called a *buss*.

⁴ Spoilers.

⁵ Leal,

loyal.

⁶ The remainder of the Assise, merchants.

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

APPENDIX OF PAPERS ILLUSTRATIVE OF TRIALS FOR PIRACY.

I. LETTER *Neill M'cloud of Harris to the Privy Council.*¹

MY LORDIS of Counsell. My dewitie (and) seruice being rememberit, I ressaunt your l. Lettre frome this beirair, Patrik Greve, desiring me to delyuer him the Inglish Pirott, whiche wes tane be my men, with all hir equippage and apparrelling. Suirlye, my Lordis, I wes not at the takeing thair-of, for had I bene thair, I fould haif send the said Pirott, as sho wes tane, to his Ma. and Counsell; for suirlye I delyuerit hir to the said Patrik, with all her munition, as I ressaunt hir my selff, to witt, with all hir faillis, towis, and tua ankeris, with xiiij peeles of grite cairte peeles,² with hir Capitane and nyne of his. As for þe rest, thay war slayne at the taking of þe said Pirott, and foure Dutcheis³ that wer tane be the Capitane, aucht dayis befor the hulk past to the Meane-land; for I wald nocht hald thame as prisounairis, in respect thay war takin perforce be the Capitane, with twa that deceffit; and I did keepe ane Scottis man in my awin company, to⁴ forðer aduise. So I rest.

LEWIS, the 16 of October, 1610.

NEILL M'CLOUD.

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

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

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

THE quhilk day, in presens of the said Judges, sittand in judgment, Compeirit perfonallie Maister Robert Cokburne, Advocat, Procuratour Fiscall of the said Admirallie, speciallie constitute, and producet ane Dittay aganes certane Pirates, Sie-thives, and Rivers,⁵ to the number efter mentionat; indytting thame and ilk ane of thame vpoune the committing of certane manifest barberous robereis and maisterfull stealthes vpoune the Sie, thir dyvers yeires bygane; togidder with ane Precept of the said Great Admirall of Scotland, fummondng ane number of famous perfonas to pas vpoune the saidis Pirates thair Affyse; and to determine thairin *affirmativé* or *negativé*, conforme to the said Dittay, as they knew or suld be speirit⁶ at thame, vnder the panes thairin contenit; and desyrit justice to be ministrat

¹ From Orig. in *Denmylne Coll. of MSS.* Adv. Library. This Letter is superscribed 'JESUS.' 'pieces' mounted on carriages, similar to the heavy ship guns long in use on board of Pirate-vessels. Dutchmen.

⁴ Until.

⁵ Reivers; robbers.

⁶ Asked; enquired.

² Perhaps Flemings;

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

Followis the tennour of THE DITTAY.

INTRANTES.

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

ze a ar indyttit and accufit of 3our lyffes, That ze and ilk ane of 3ow, in maner, and at pe tymes *reſpectiué* efter ſpecificit, haveing ſchaiken aff all feir of God, and dew obedience to our ſoverane lord the Kinges Maieſtie, within quhais dominions ze a and everie ane of 3ow war borne, miſregairding his Maieſteis auctoritie royal, and loveabill lawis of his hienes realmes and kingdomes, and contempnand all humane ſocietie and honeſt forme of traid and liveing, as becom Criſtiane men borne within ſua civill kingdomes, quhairin the trew feir of God is profellit and pe Holie Evangill preichit; takand 3our ſelffes to ane maiſt wyld, barbarous, ſavage, inhumane, and crowell form of lyff, hes amaſſit¹ 3our ſelffes in crewis and vnhappie companeis, in maiſt hoſteill and cruell maner, with all ingyneis of ffyre-wark and vapons invaſive, of ſet purpoſ and intentione to live as commoun roberis, thives, murthereris, and opin Pirates be Sie. LYKAS, ze a and everie ane of 3ow, in maner and at pe tymes efter mentionat, hes committit the wyld, filthie, and abhominable Reiffes, Thiftes, Robereis, and Piraceis efter reberſit, als weil in forren Seis as within his Maieſteis awin Seis and watteris, not onlie aganes his Maieſteis freindis, confiderates, and allayas, bot alſo aganes his Maieſteis frie leiges, being in thair lauchfull traidis of navigatioun, by lying in thair wayes, and thair, maiſt cruellie and barberoullie, by way of Thift, opin Reiff, Roberie, commoun and avowit Piracie, perſewing of thame in all hoſteill maner, as ſaid is, taking of pair perſones captives, puting of thame in feir and dredour of pair lyves, robeing and reiveing of thame of pair ſchipes and gudis, drowning, ſlaying, and tortering of pair perſones, maiſt vnmercifullie, ranſomyng, and be ſetting of vthers vpoune ſchoir in barberous and vncouth² pairtes, leiſt 3our cruell practeiffis and Piraceis ſould have bene be thame detectit; and be practeiffing of all vther Sie-Thifts, Robereis and Piraceis, as is particularlie efter deduct. Quhairof ze a and ilk ane of 3ow ar ſpeciall actoris, doeris, airt, pairt, red, and counſell; quhilk ze a can not deny. Quhairby, ze a and ilk ane of 3ow hes demereit and worthilie incurrit the panes of death, to the terror and exempill of vtheris to attempt pe lyk crymes in tyme cuming; according to the preſcript of his Maieſteis lawis, and the maiſt loveabill cuſtome of this kingdome. AND NAMELIE, 3ow *Capitane William Randell*, than Captane of pe Schip callit *THE GRYPHOUND*,³ vpoune the firſt day of Julij, or pairby, 1609 zeiris, being at pe Long Iland, in Ireland, ane plaice of reſort of all Pirates and opin Roberis, accompaneit with 3ow the ſaidis *Jacob Janfone, Thomas Thomlene, Roger Codgen, Richard Robifone* alias *Dik Couper, Alexander Wiſche, Johnne Friman, George Nicolfoun, Edward Brux, Aschtoun Courtney*, and *Robert Croudis*,

¹ Joined; gathered; confederated.

² Strange; unfrequented.

³ Griffin; or, as it is here emphatically ſtyled, Grip-hound.

with dyveris vtheris 3our complices, haveing amaffit 3our selffes togidder, with all hoſteill maner, within the ſaid ſchip, as ſaid is ; AND 3ow the ſaid *Captane Johne Parkins*, being than Captane of the Schip callit þe IRON PRYSE, being lyand in the ſame Rod¹ of Long Yland, with 3our fellow Pirates and complices, in the ſaid Schip, bodin and furniſchit lykwayes in hoſteill maner, as ſaid is, accompaniet with *Captane Harvie*, *Captane Cowvard* and dyvers vther Pirates, Sie-Roberis, and Reifferis, conſultand, lurkand, and waittand vponne þe practeiſſing of all kynd of Robereis and Piraceis, vpoun all maner of perſones without exceptioun; 3ea firſt devydit 3our ſelffis, in maner eſter following, viz- 3ea the ſaid *Jacob Janſone*, *Thomas Thomlene*, *Richard Robiſone*, *Roger Codgen*, *Alexander Wiſche*, *Johne Friman*, *George Nicolſone*, *Edward Bruz*, *Aſchtoun Courtney*, and *Robert Croudís*, the ſaid *Captane Williame Randill* being than abuird in the ſaid *Captane Williame Parkins* Schip ſoirſaid, in the ſaid month of Julij or þairby, at the leiſt vpoun dyvers dayes of the ſamyn moneth, haveing conſultit and plattit with the ſaid *Captane Harvie* maiſt thiſteouſlie and piraticallie reſt and away-tuik þe ſaid *Captane Randellis* Schip, and tuk ſaill and coms toward the Weſt-waird, vnder the conduct of þe ſaid *Captane Harvie*, quhom 3ea all, of commoun conſent, than choyiſt for 3our Captane ; and cum- and forward, in the latter end of þe ſaid moneth of Julij or Auguſt, in the ſaid 3eir 1609, at þe leiſt vpoun ſum dayes of 3e ſamyn monethis, *reſpectiué*, 3ea onbeſet,² perſewit, and burdit,³ at þe leiſt ane great number of 3ow, at command and be advyſe of the reſt, ane þair fiſchar-man and his bot,⁴ and robit him of his wictuallis and all that he had. AND thaireſter, in the ſaid moneth of Auguſt, at þe leiſt vpoun ſum dayes þairof, 3ea the ſaidis Pirates affoirſaidis onbeſet and perſewit, in all hoſteill maner, ane French Bark, cumand from þe New-found-land, quhair 3e forceable enterit abuird of þe ſame, robit and reſt þe haill victuallis being pairintill. AND thaireſter, in the ſaid moneth of Auguſt, October, November, December, or vpoun ſum dayis of þe ſaidis monethis, *reſpectiué*, 3ea, haueing returnit bak agane to Ballendràe, vpounne the Weſt pairt of Ireland, and haueing trymit⁵ 3our ſaid Schip, and taiking ſaill and cours to þe Seis for catching of 3our prayes,⁶ vpounne dyvers dayes of þe ſaidis monethis immediatlie aboue writtin, or ſum of thame, 3ea then forgadderit with *Captane Peirſie*, ane comoune and deiteiſtabill Pirat and Sie-river, and joyning 3our ſelf in vnhappie ſocietie with him, vpounne þe thrid day of þe ſaid moneth of November or þairby, or ſum dayes of þe ſamyn, being aff and on with the North Cap,⁷ or neir thairby ; and thair, all togidder of on mynd and wickit reſolutione, awaiting and lurking for catching of 3our pray, 3ea the ſaidis Pirates immediatlie affoirſaidis, forgadderit with ane Schip of Midilburgh callit THE SANCT JOHNE, quhair of Daniell Abeg was maiſter, being than boun to Lighorne⁸ in Italie, and thair 3ea altogidder being actoris and deid-doeris, airt, pairt, red, and counſell with vtheris, in all hoſteill and forceabill maner, invadit and perſewit þe ſaid Schip, buirdit, reſt, and variet⁹ hir away to the Coſt of Barbarie to Sancticruce, quhair 3ea and everie ane of 3ow forceable extrudit and pat out þe ſaid *Captane Harvie* ; and haveing electit *Captane Barrett* to be 3our Captane, enterit into þe ſaid Dutch pryſe, and gave þe ſaid ſchip callit the Gryphound to þe ſaid *Captane Peirſie* and his company ; and þair violentlie tuik *William Sanderis* and *Michaell Paterſone* his boy, with ſex mo captiues and priſoneris ; and ſua deteinit thame in the ſaid Schip, quhair the ſaid *Captane William Randell* and *Captane Johne Parkins* being arryvit at Sophie in Barbarie, with 3our haill crew, and vicket companie ſoirſaid, enterit 3our ſelffes in ſocietie with þe ſaid *Captane Barrett*, and thair 3ea all, accompaniet and aſſiſtit with the ſaid *Captane Peirſie*, being tua Schipes togidder, in the monethis of December, Januar, Februar, Marche, Apryll, Maij, Junij, at the leiſt vpounne dyvers and ſundrie dayes of the ſaidis monethis, or ſum of thame, paſt to the Weſt Yles,¹⁰ quhair 3ea haveing rancounterit at þe Yle Sanct Michaellis with tuo Engliſch Schipes, and þair 3ea, with all kynd of hoſteill maner, invadit and perſewit the ſaidis tua Schipes, buirdit thame, and reſt and robit thame of þair haill victuallis, and vther furnitur being pairintill. LYKAS, alſo 3e þe ſaidis Pirates immediatlie aboue namet, in the ſaidis monethis of December, Januar, Februar, March, Apryll, Maij,

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

Junij lastbypast, at þe leift vpoune sum or dyveris dayes þairof *respectiué*, 3ea, being boune altogidder to þe North Cap, and haveing forgadderit and met with ane French Schip, 3ea all and everie ane of 3ow, actoris, airt and pairt with vtheris, maist cruellie invadit and perfewit an French Schip, callit,¹ quhilk 3e violentlie manit and buirdit, rest and cariet hir away, and maid þe haill cumpanie and trew men being þairintill 3our prifoneris and captives. AND siclyk, vpoune þe nixt day þairefter, being vpoune sum dayes of þe faidis monethis *respectiué*, at that same plaice, or neir by to þe North Cap, 3ea haveing forgadderit with ane Dutch Prem, 3ea altogidder being actoris, airt and pairt with vtheris, in all hosteill maner, invadit and perfewit þe said Schip, manit and buirdit hir, tuik all her men and companie captives and prifoneris, and brocht þe said Schip, with hir haill laidnyng, gudis and geir, to þe Coft of Ireland, at þe said Long Yland; in the quhilk journey, 3ea the said *Robert Em* was present, and voluntarie enterit in thair companie, and remanit with thame senfyne, in all þair roberis. AT the quhilk Long Yland, in the faidis monethis of December, Januar, Februar, March, Apryll, Maij, Junij, or sum dayes of þe faidis monethis *respectiué*, haveing strukin fail and cassin anchor, and thair 3ow the faidis *William Peirse, Thomas Peirse, Johne Williames* and *Nicoll Dartnoll*, being thair present, vpoune þe schoir, as maisterles men and vagaboundis, cuming of set purpos from Londonne to Ireland to þe said Long Yland, being ane comoune plaice of refort of all Pirates and Roberis to enter in the wickit fellowship of Roberie, 3ea all, of 3our awin voluntar accord, and of devyce and plat foirfaid, com to þe said schip, quhairin the said *Captane Parkins, Captane Randell*, and þair wickit companie wer, and enterit in the said schip callit þe Dutch Pryse, as assisteris with þe foirfaidis vther Pirates; AND haveing, in þe faidis monethis *respectiué* aboue writtin, or sum dayes þairof, louffit and maid faill thairfra, vpoune þe same Coft of Ireland, 3ea alltogidder forgadderit with tua French schipes, and þair, in all hosteill maner, as said is, maist cruellie invadit and perfewit þe faidis tua French Schipis and þair companie, and violentlie buirdit thame, rest, and robit, and pillied² thame, and away-tuik þe faidis Schipes, with þe haill gudis and geir being þairintill; and pat þe haill men and companie on schoir, in findrie vncouth and barberous pairtes, to þe mercie of þe Seis; AND thairefter, 3ea all, the foirfaidis Pirates and 3our complices, in the faidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, vpoune sum or mae days of þe faidis monethis *respectiué*, be storme of wedder being driven to þe said Long Yland, and thair haveing cassin anchor, and haveing met and forgadderit, consultit, plattit and devysit with *Captane Esson, Captane Bisshop*, and vther Pirates and Sie-Roberis; In this mene tyme, 3ow the said *Robert Wasl, Walter Cornysche, William Tailzour, Francis Wallace, Francis Richtop, Cornelius Jacobfone, Johne Schipherd, Richard Robifone*, callit Dik þe Hoyser, *Johne Gryse, Andrew Rawling, Johne Web, Benedict Ferres*, and *Johne Dawfoune*, enterit in focietie and assistance with þe faidis *Captane Parkins* and *Captane Randell*, and þe rest of þair wicket crew, of 3our awin voluntar accord, 3ea being all maisterles men and vagaboundis, as said is. LYKEAS, vpoune sum of þe dayes of þe faidis monethis *respectiué* abovewrittin, 3ea louffit all togidder, and tuk faill fra the said Long Yland, and cam in 3our cours to þe Coft of Norroway; and thair, haueing foirgadderit with ane Flemis schip, being laidnit than with cornes, and thair 3ea, in all hosteill forme and maner, as said is, enterit abuird of þe said schip, tuik hir and hir haill laydnyng, gudis and geir, and robit hir of hir curceabill³ gudis being þairintill, and detenit þe said schip in 3our companie captive and prifoner be þe space of four dayes or þairby. AND SICLYK, in the faidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, and vpoune sum or vther dayes of þe faidis monethis *respectiué*, 3ea all, persisting in 3our vngodlie and deteifabill traid of lyff, haveing foirgadderit vpoune þe same Coft of Norroway, with ane Dutch Schip, callit,⁴ 3ea, being actouris, doeris, airt, pairt, red and counsell with vtheris, in all hosteill maner, as said is, violentlie perfewit and enterit abuird, manit and tuik þe said schip and her haill company, as prifoneris and captives, and made ane pryse of þe samyn. AND ALS, 3ow, þe foirfaidis Pirates, in the monethis

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

immediatly affairfaidis, at þe leift vpoune ſum or findrie dayes of þe ſamyn, continewallie lurkand and awaiting for 3our pray, haveing foirgadderit vpoune þe Coſt of Norroway with tua Dutch ſchipes, quhairof þe ane was ane Schip of Danſkene, quhilk Schip 3ea all as actoris, doeris, airt, pairt, red and counſell with vtheris, in all hoſtell forme invadit and perſewit, as ſaid is, buirdit þe ſame, robit and ſtrypit þe haill companie being pairintill off thair gudis and geir, reſt and tuk out of þe ſaid Schip of Danſkene tua peice of ordinance. AND LYKWAYES, in the ſaidis monethis of December, Januar, Februar, Marche, Appryll, Maij, Junij and Julij inſtant, or vpoun ſum or vther dayes of þe ſaidis monethis *reſpectiué*, 3ea, the foirfaidis Pirates and Sie-Thives and Rivers, being actores, doeris, airt, pairt, red and counſell with vtheris, haveing foirgadderit vpoune þe Coſt of Zetland, within this Kingdome, with ane Carvall of Zermouth, quhairof Mr Muriall was maifter, and in all hoſteill forme, as ſaid is, perſewit and invadit þe ſaid ſchip, as ſaid is, robit and away-tuik furth þairof, fra the ſaid Mr Muriall tuentie-fyve pund ſtriviling; and from tua Falconeris, being paſſingeris boune to Norroway for bying of halkis,¹ four pund ſtriviling; and thairwithall tuik Johne Colman and Peter Inkiping furth þairof, as captives and priſſoneris with 3ow; and cariet thame quhair 3e pleaſſit. AND ALSO, in the ſaidis monethis *reſpectiué* immediatlie above writtin, and vpoune ſum dayes thairof, lurking and awaiting continewallie for the compaſſing and catching of 3our pray, vpoune trew ſubiectes, 3ea haveing ſene and foirgadderit with ane Bark of Cathnes, vpoune þe Coſt of Zetland, quhairof was maifter, 3ea the foirfaidis Pirates, at þe leift þe maift pairt of 3ow, and 3e all as actoris, doeris, airt, pairt, red and counſell with vtheris, vnder cloud and ſilence of nycht, invadit and perſewit þe ſaid Bark, buirdit þe ſamyn, ſtrak and brak vp þe kiſtes and vther lokfaſt lumes² being pairintill, robit and tuk furth þairof ane hundreth merk ſterling; and tuk furth ane certane number of ſteikis³ of braid-claith pertening to þe ſaid maifter, and cariet þe ſamyn to 3our ſchipes. AND 3ea and ilk ane of 3ow gat 3our ſkair⁴ of þe ſaidis robit gudis, and ſua, at this ſelff ſame tyme. AND vpoune þe dayes of þe monethis *reſpectiué* foirfaidis, haveing 3our cours direct towardis Orknay, thair to have lurkit, landit at þe Caſtell of Kirkwall, and com to þe toune þairof, quhair 3ea and ilk ane of 3ow, as opin and avowit Pirates and Sie-Roberis, behavit 3our ſelffis maift barberoullie and baſtlie, being eveir and at all tymes drukin, and fechtand amanges 3our ſelffis, and ſubiecting and giuing of 3our ſelffis ovir to all kynd of wyce and villanie. LYKAS, 3e, þe ſaidis *Robert Croudſis*, *Richard Robiſone*, callit þe Hoyfier, and *Andro Rawling*, in 3our madd and drukin humoris, perſiſting than in 3our accuſtomit traid of Piracie, violentlie and perforce enterit and buirdit ane bark pertening to my Lord Erll of Orknay, lyand vpoune þe ſchoir, off plane plat and intentionie to have robit, ſpolziet, and reſt hir; quhair 3e was, in that attempt, tane and apprehendit. LYKAS, 3e, þe foirfaidis Pirates preſent on pannell, and ilk ane of 3ow, war thair lykwayes tane and aprehendit with the ſaid Dutch Schip, being laidin with hydys, leid, canon, arteilzerie and vther furnitur; and 3ea and ilk ane of 3ow ar actouris, doeris, airt, pairt, red and counſell of þe ſamyn cryme, and of all and findrie þe premiſſes; As 3e and ilk ane of 3ow can nocht deny, and ar all comoune Roberis, Thives, and Rivers, auld and new.

Followis the tenor of the PRECEPT.

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

QUHILK Dittay and Precept affairnamet being productit, in preſens of the ſaidis Judges, and the foirfaidis haill Pirates and Criminallis indyttit, compeirand and enterand vpoune pannell, as ſaid is, the ſaid Procuratour Fiſcall aſkit instrumentis and Act of Court thairvpoune: And than deſyrit the ſaidis Criminallis to be put to the knowlege of ane Aſſyſe; and for that effect deſyrit the ſaid Aſſyſe to be callit, and the foirfaid Dittay red, as is aboue-ceauit,⁵ in preſens of the pannell and perſones of Aſſyſe;

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

quihk defyre the faidis Judges thocht reffonabill, and thairfoir Ordanit the officeris of Court to call the names of the faid Affyfe, efter the Clerkis publict nominatioun, conforme to the Precept aboue writtin, direct thairanent ; quhairof the names compeirand followis.

NOMINA ASSISÆ.

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

Quihlkis perfones of Affyfe being reffaut, be consent of the haill Criminallis being vpoune the pannell, quha declairit they had na obiectioun nor imputatioun againes thame, nor na caus quhy to repell and fet thame or ony of thame: In the quhilk respect, the foirfaidis Judges tuik the faidis perfones of Affyfe and ilk ane of thame deiple and solemplic fuorne, vpon thair greit aithes,¹ that they and ilk ane of thame fuld leill fuith fay and na fuith conceill, for na thing that be mycht, bot to determine verilie vpoune the faid Indytment, be thair pairt of Hevin, and as they fould anfuer to God at the dreadfull day of Judgement: Quha instantlie paffit vpoune the faid Affyfe. And thairefter caufit reid the foirfaid Dittay to the pannell, in prefence of the faid Affyfe, in maner and conforme to the particular tenour and contentes aboue mentionat. Quhilk Dittay being judiciale red, with findrie talkins² and informatiounis of everie ane of thair giltines; compeirit the haill perfones of the pannell, and heirand the famyn, being accusit thairvpoune, could fchaw na lauchfull nor reffounabill caus of thair innocencie of the faidis crymes layd to thair charge; ilk ane of thame for thair awin pairtes, conforme to the faid Dittay, and according to thair awin Depofitiounis red to thame, and in prefens of the faid Affyfe, quhilk they Confessit; and referrit thame to the Tryell of the faid Affyfe. Quhairvpoune the faid Procuratour Fiscall askit instrumentis and Act of Court; and defyrit the faid Affyfe mycht be removet out of Judgement, and to be incloifit, to the effect they mycht give thair Verdict and determinatioun thairintill, according to thair aithes alredie solemplic gevin in maner foirfaid.

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

Followis THE DOME,

At command of the faidis Judges, be the mouth of Patrick Leveraunce thair Dempfier of Court.

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

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

Schip callit the Pryfe,¹ haill arteilziric, ornamentis and apperrelling thair of, hydys, leid, and vther furnitur being thairintill, apprehendit with thame, and all vtheris moveabill gudis and geir, to be escheat and inbrocht to our souerane lordis use (but preiudeice to my Lord Admerall of the escheates of Pirates and Sie-Roberis in tyme cuming). And this I give for Dome.

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

III. LETTER, *the Privy Council of Scotland to THE KING, 'anent the Inglishche Pyratis,'*³ (*Captains Randall and Parkins, &c.*)

MOST GRATIOUS AND SACRED SOUERANE,

VPOUNE advertitment gevin to ws that some Pirott schippis had bene seene in the mouthe of the Firth,⁴ and the same secundeit by the complaintes of a grite many of your Ma^{ties} subiectis, bothe on the West Coaft and heir on the Eist, of the vnquietnes and hafaird of passage, by reassoun of the frequencie of Englische Pirottis on the sea; and speciallie, of one of Caithnes, who, in his passing home, wes robd of all that he had: And both by him, and the repourt of otheris who mett some of these Pirottis on the sea, being certifyed, that they wer gone toward the Orkney Ylandis, We, being moved and grevit with the complaints of your Ma^{ties} poore people, and being loathe to impesche⁵ your Ma^{ties} vtheris weyghtie affairis, with the aduertisment thair of, whill⁶ we had done some thing thairin oure selfis; and wisheing that, in a mater of this qualite, (admitting hardlie ony delay, wherin the omitting of the present occasioun might do much harme,) your Ma^{tie} fould rather find ws cairfull of our dewytie, then vtherwayes remisse or negligent, we did heirupoun presentialie direct thrie of the best schippis at that tyme within the harbour of Leithe, weill mannit and furneisit with all weirlyke prouisioun (your Ma^{ties} awne schip at that tyme not being arryved heir.) And hauing gevin vnto thame expres directioun and charge to make searche, and to follow quibidderfoeur they could apprehend those Pirottis; and our Schippis having mett with thame vpoun the coaft of the Mayne-land of Orkney, thay having tua faillis, the one a Schip about 200, the vther a Choise-pinnace⁷ of 100 (twn of birth,⁸) efter a bloodie conflict, in whiche tua of oure men wer killed and findrie hurte; the Pinnace, being excellent in sailling, maid choise rather by slicht to faise hir self, then, by ony langer stay, to abyde the hafard of taking: and albeit sho wes followed for a space, yitt did sho still gayne ground. Wherupoun, the persuite being left of, the vther gritt Schip in the meane quhyle being boordit, wes broght away be oure schippis; and in hir wer takin to the number of threttie able men, befydes some few prisounaris, whom these Pirottis did keepe aboorde. Who, after thay had bene dewlie and seuerall tymes examined, at last all these threttie wer putt to thair tryell and found guiltye: Of whiche number xxvij ar execute and putt to deathe; of whome thair were tua Capitaines, by name Capitaine Perkynis and Capitaine Randell. The other thrie are repryvit and continewit vntill suche tyme as your Ma^{ties} pleasour be knowne, in regairde that thair is hoip, by thair forder examinatioun, to learne oute some thingis tuitcheing the estait. We haif alreddy discouerit some mater of abuse, hoiping to

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

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

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

⁴ Of Forth.

⁵ Fr.; hindrance.

⁶ Until.

⁷ Called a 'Chase-pinnace' in *Had. MS.*

⁸ Added in *Had. MS.*

find more oute, wherby this grite increffe of Piracye hathe bene by some, far aganis thair deuyteis to your Ma^{tie}, too muche fosterit and mantenit; bot of the particularis of the same, as vnwilling to comit thame to wryte, your Ma^{tie} falbe certified at lenth by your Maiesteis Secretarye of this Kingdome, who is schortlie to mak his repair thither. In the mean quhyle, the personis of those men whose lyves ar spaired falbe faiflie kept and maid furthcomeand, ather for forder examinatioun heir, or, vpoun knowlege of your Maiesteis pleafour, falbe broght thither to be tryed. Thair wer also mony pregnant presumptionis that howeur these men now spairit wer deprehendit in the societie of the rest, that the same wes more by enforcement then by consent, which wes¹ affirmed by the most parte of thame who war executed. This company of Pirottis did interteyne one whome they did call thair Perfoune, for saying of Prayeris to thame twyse a day, who belyke ather wearyed of his cure, or fearing² the enfering (dainger and³) destructioun of his flock, had foirsaikin thame in Orknay, and priuelie convoying him selff over land, wes at lenthe deseryed and deprehendit in the burgh of Dundie; and being broght hither, did so cleirly confes and gif evidence aganis the rest; and, being confronted, broght mony of thame to confessioun. Thair being heirwith some likliehoode that his stay with thame had bene by constraint, we haif heirvpoun, in lyke soirt, continewit him frome being putt to tryall vntill your Ma^{ties} pleafour be knowne.

We do vnderstand, by aduertisement from Orknay, that thair be some fyve or sex Pirottis mo deprehendit; bot quhidder thay be of this company or not, it is vncertane; alwayes, we do expect thame by the first occasioun of any schipping that dothe come from thense. And since none of ws ar ignorant, that by reafoune of aduertisements, not onlie frome all the corneris of your Ma^{ties} awin dominionis, bot alsua frome foreyne pairtis, your Ma^{tie} hes newer almost any intermissioun or respitt, (your Maiestie, by Godis Prouidence and to your subiectis vnspeakable happynes, being the great Oceane vnto whiche all revaris and brookis do rinne,) as in dewytie we could not omitt to acquent your Maiestie hierwith, so the feir of troubling your Maiestie with too long a Letter hathe moved ws to refer the particular⁴ relatioun of all the incidentis in this busynes to a more proper occasioun. And concerning all fuche other directionis as it pleifit your Ma^{tie}, ather by Commiffioun sent be the Lord Burley, or by Letteris wryttin vnto any of ws, concerning the Marques of Huntley, the Erl of Errole, or any vther mater worthie of the advertising, your Maiestie falbe certified⁵ of all these oure procedingis by the Secretarie, at his repair be your Maiestie. And so, praying God to blisse your Maiestie with a long, happy, and prosperous reignne, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

EDINBURGH, 27 July, 1610.

DUNFERMELINE. DUMBAR.

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

IV. EXTRACT from *Minutes of Privy Council Proceedings*,⁶ Jul. 4, 1615.

THERE is one CAPTANE MAISONNE of *Lyne*, with fyve or sex others of his companye, in warde within the Tolbuith of Edinburgh, upon verie probable suspitiounes of Piracye. The estate of the cause is this. *Captane Mason*, some foure yeeres sence, or therby, having purchasid a yeere Tak⁷ of the Assyise-hering⁸ of the Northe Ylles; and vpoun occasion of his haunting of the Ylles that yeere, having enterred in some acquentance with the Bishope of the Ylles, and haveing transported him to and from Yreland,⁹ he procures of the Bishop, in the moneth of Apryll, 1612, a Lease of a lytle Ylle called Rona; bot neuer com to tak possession of the Ylle, nor to try the worth thairof, whill¹⁰ this yeere.

¹ The *Had. MS.* reads, 'And the same also.' in the *Had. MS.*

⁴ 'Plaine,' in *Had. MS.*

² 'Foirseing,' in the *Had. MS.*

³ These words added

⁵ 'Aduertiset,' in *Had. MS.*

⁶ *Denmylne MSS.*

Advocates' Library, A. 4. 15.

⁷ One year's lease.

⁸ A tax paid to the Crown upon the quantity of herrings

caught at the fishery; which, owing to the expense of collection, was usually farmed out annually.

⁹ Andrew Knox, Bishop of the Isles, and Abbot of Icolmkill, had livings in Ireland. He was translated to the see of Raphoe, in Ireland, anno 1622.

¹⁰ Until.

Hes a pretty bark, wherewith this last yeere bygone he made sundrye voyages betweene Amsterdame and Lyne, haveing none in equyppage¹ but sex perfoncs. This yeere, when he resolues to come to our Ylles, he takes in at Yairmouth one CAPTAN WILMAN, who had beene a notable Pirott, and had obtenead his Maicsteis Remission, with two of his brether: And pretending, as he affermes, to come to Rona to have taken possiession of the Ylle, and to have tryed the fisheing there, (althoght he was nouthcr prouided with salt, trees, victualles, nor no kynd of outredd for the fisheing,) he comes first to Orknay, where he takes in other two perfoncs, the one to be a cook and the other to be a pyllot, and makes his adreafts for Rona; but the winds being contrarious, and not darring tak land there, he comes about the Ylles to Mull, where he stayed foure dayes. In which tyme, there comes to M^cCLEANE a derectioun and Commission from the Counfall, for the perfute of Coll M^cGillespik and the others Rebelles of Ila.² Captane Masone being acquented heerwith, he ingyres him self in that seruice, geveand M^cclaine to vnderstand that he would hafard his perfon and ship in perfute of the Rebelles, vpon hope of his Ma^{ties} consideratioune and rewarde for his seruice. M^cclaine geveand trust to his discourffis, encourages him to follow that enterpryse; and furnishes him with some victuales, for he had lytle or non of his owne: And so, leaving M^cclaine his country, he comes bak againe that same way he went, towards Rona; and haveing stayed there some half a day, and getting information that the Rebelles wer in the Lews, he derectis his course from that towards Orknay, to tak in mo men, as he pretended, for the bettar strentkening of him against the Rebelles. In Orknay he taks in sex men, which made his number to be seavintenth perfoncs. And whereas he should have gone to the Lews, he directes his course for Zetland, and from that to the coast of Norroway, where, going into a bay under a craig,³ and lying there at ankar couertlie vnder the craig, there comes by a ship of Copmanhouen.⁴ Vpon the sight wherof, Masones ship immediatlie louses, follows the Copmanhouen ship, takes her, and bringes her in to the bay, takes the wholl equyppage⁵ oute of her, which wer four or fyve perfoncs, and stowes thame in Masones ship.

Captane Masone, to excuise him selue of this deide, makes this discourse, that when he came to Zetland, Captane Wilman persaveing ther voyage lyk to proof fruitles, there was no appearance of the Rebelles, he layed to his charge, and earnestlie delt with him to go seek some adventur by sea; and becaus he refused to yeeld to such a vnbonest and vnlawfull motion, Captane Wilman stirred vp the wholl companye of his ship againest him, vsurped vpon him the charge and commandement of the ship, depryved him of all charge, and took him aganest his will to Norroway; and when the pryise was persewed, stowed him beneth—and at last patt him in the pryise, whiche wes a ould lek⁶ ship, with three of his companye that would not yeeld to follow Wilman, spoiled him of his owne ship, which wes a tight and good ship, and fett him to the sea, to the hafard and perrell of his lyf.

For discouerie and tryeing of the troth of this discourses, the Counfall hes been verie carefull in the examinatioun of such of Captane Masones companye as ar broght heere, and by there examination it is funden that (there) wes neuer any mater of contestation betweene Masone and Wilman, that Willman stirred vp the companye againest Masone; and that there was neuer once such motion in the ship, concerning that mater; that Masone diswaded none of his companye to joyne with Wilman, nor neuer told any of thame that Wilman had a purpose for Pirracye; but that thay aggreid verie well in all thingis. And the Maister of the Copmanhouene ship sayd panielie, that Masone wes aboue,⁷ in his ship, when he wes persewed and taken; and when his ship wes broght in to the bay and fastened to the other ship, that Masone enterred in his ship, and that Wilman and he suped togidder and made mirrye vpon the prouision that wes in his ship, and drank out his wyne and his beir; and that Masone lay all night in the pryise, and vpon the morn called for the Maister of the pryise, and tould him that he behoofed to tak his ship, seeing Wilman had taken his ship; and sayes, that vpon the morne,

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

both shippes louse and come togidder the space of foure myles, to witt, Maifon in the pryife, and Wilman with the wholl companyee, except three men and a boy, in Mafones ship; and when they finder-ed, there wes gryte mirth amonges thame, with drinking mouy good nightis; and the Maister of the pryife sayes forder, that his ship is iij^c dollouris bettar nor¹ Mafones ship.

The two companyees being findered, Captane Mafone come bak againe till Orknay in the Copmanhouen pryife, of purpose, as appeires, to have taken in some ma² men; but beeing guyltie, in his owne confcience, of Pirracye, he durst not tak land, but took him to the sea, and by storme of wedder wes dryven upoun the coast of Caithnes; and being lyand there, in a harborry, he wes boarded by a sone of the *Larde of Markles*, and he and his foure men were taken and fend heere.

Captan Wilman in Mafones ship past bak againe to that same bay from which they loused, and the nixt morning took a ship of Rustok, loadned with fishes, and set the wholl companyee of the ship, being nyne in number, vpon a rock in the sea, and kept onlie one with thame; and Wilman come with the pryife and Mafones ship till Orkney vpon a Sunday, and he past to land and wes enterteined by the country people, and some come aboorde and wer mirrie with him. Vpon the morn, being Mononday, two of the *Lairde of Grymmiffayes* sones, and one *Robert Elphinstoun*, comes aboorde of the pryife, wherin Wilman and his skippar war both for the tyme; and haveing some conference and speatch with thame, and espying there strength, they commanded Wilman to rander; and he refuiseing, the youngest of *Grymmiffayes* sones immediatlie gave him a deadlie stroak, wherwith he dyed presentlie; and at that same instant killed the skippar by an other stroak. And so, the Captane and skippar being both killed, the rest of the companyee and both shippes randered. In this meantyme there is a Waughtar lyand in Zetland, attending the Fledes Fleitt³ at the fischeing, and being enformed by *Mr Williame Levingstoun* schiref-depute, that a Pirote with a pryife wes gone by towards Orknay, this Waughtar, refaueing a pylote from the Schiref-depute, follows the Pirote to Orknay, and comes directlie to this same harborry where the Pirote and the pryife lay, takes thame both and bringes thame to Leyth, saying, that he had a command and directioun from his Maisteris, the Estates, that what euer Pirrottes he fand in the Scottishe Seas, he should tak thame and present thame with there shippes and goodes to the Kinges Maiesties Counfall here. The Orknay men who killed the Pirrott and his skippar followed the Waughtar, and greeveouflic complained of the wrong alledged done to thame in taking of the shippes af there handes, which thay had recouered with the hafard of there lyues; and they alledged that they wanted findrie of there goodes which they had put in the shippes, they being of purpose to have broght thame aboute to Leyth. The Captane of the Waughtar excused him selue, that he knew nothing that they had recouered the shippes; but believing the shippes wer still in the possession of the Pirrottes, he tooke thame and broght thame heere to the Counfall—and tuitching the goodes which they alleged they wanted, the Captane constantlie affermed, and so did the Orknay Pylote, that the Shiref-depute delyuered him, that they wanted not a pennie worth of that which he gott in the shippes. The Counfall accepted verie well of the Waughtars doings, hes returned him bak, with thankes, and hes propnyed⁴ him with a coup of lx vnce⁵ weight.

Directioun is geven for delyuerie of the Copmanhouene ship to the ownar, he geveand some reasonable satisfacioun to the gentlemen who recovered the same from Captane Mafone.

Bycaus the owners of the ship of Rustok are not heer to refaue there ship and goodes, and becaus the goodes will not keepe in the ship, therefor drectioun is geven to roup and sell the wholl goodes beeing within the ship, and to mak pennie of the same; to be furth-cumand to the ownaris, whan they shall come heere; they geveand reasonable satisfacioun to the gentlemen who recovered the ship and goodes from the Pirrottes.

¹ More valuable than.² More.³ Flemish Fleet.⁴ Gifted; presented.⁵ Sixty ounces.

Mutilation and Demembrement.

Dec. 19.—JAMES FORRESTER, sone to vmq¹⁶ James Forrester, ffather-brother to Sir Robert Forrester of Strahenrie, kny¹.

Dilaitit, accuset, and perfewit be Mr Daudid Anderfoun at Ballingarrie, off airt and pairt of the Mutilatioun of the said Mr Daudid of his richt airme; committit vpoun the tuentie day of October I^m.Vj^c. and nyne yeiris, foiranent¹ the said Mr Daudidis duelling-hous dur, at the Kirk of Ballinzerie; vpone sett purpos, prouifioun, and foirthocht fellonie.

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

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

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

[*Mr Alexander Colvill Justice-Depute.*]

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

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

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

¹ Directly before or opposite.

² An extremely interesting Family Chronicle, containing valuable notices of Highland History, and illustrating the genealogy of many families in those districts. The Original is in possession of the Noble family of Breadalbane, and, as the Editor has been informed, is likely to be privately printed for the use of the BANNATYNE CLUB.

³ This curious work might with much propriety have been styled a *History of Scotland*.

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

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

Mar. 2, 1611.—Johnne M^ckewin, in Kilbryde ; Archibald M^cilvoyll M^clowrin, Donald M^cinowie, in Glencho ; Duncane Caird M^cgregour, Patrik M^cean Dow M^cgregour, Allafter Bowie M^cgregour Clerache, Dougall M^cgregour Clerache M^cgregour, Duncane M^cneill M^cgregour, [Donald M^ceandich M^cgregour,'] Johnne M^candro.

Dilaitit, accuset and perfewit be Mr Robert Foullis, substitute to Sir Thomas Hammiltoun of Bynnie, kny^t, Aduocat to our fouerane lord, for his hienes intereis, of the crymes *respectiue* following, viz.—THE said *Johnne M^cewin*, ffor airt and pairt of the thiftious Steilling of tuelf schein fra the Barrone M^ccaflan, furth of his landis of Innerthonoling ; committit in the moneth of August lastbypast 1610 yeiris. ITEM, ffor airt and pairt of the thiftious Steilling of tua gait² and ane schein fra Adame Colquhoun in Poirt, furth of the landis of Banrie, in the moneth of December I^m.Vj^c. and fax yeiris. ITEM, ffor airt and pairt of the steilling of ane pair of pleuch-irnes fra Williame Myller in Schennekillis, furth of the landis of Schennekillis, in the moneth of Apryle I^m.Vj^c. and aucht yeiris. ITEM, ffor cowmoun Thift and cowmone Refset of thift, inputing and outputing of thift, &c. AND for daylie Intercowmoning and keeping cumpanie with the M^cGREGOURIS, affisting and taking pairt with thame, in all thair thiftious deidis, heirschipis, robreis and oppreffiones, this thre or four yeir bygane.—THE saidis *Archibald M^cilvoyll M^cLowren*, and *Donald M^cInnowie*, fervandis to Allafter and Allane M^cIndowie in Glencho, ffor airt and pairt of the treffonabill Raifeing of ffyre about Johnne Stewartis hous in the Camrone, in the Lennox, in the moneth of December lastbypast ; affageing of Duncane, James, and vmq^{le} Johnne Stewartis thairintill ; AND ffor airt and pairt of the slaucher of the said vmq^{le} Johnne Stewart, at the tyme foirsaid.—THE said *Duncane Caird M^cGregour*, ffor cowmone Thift and Refset of thift, outputing and inputing of thift, &c. AND ffor daylie Intercowmoning and keeping of tryftis and consul-tationes, with *the M^cGregouris*, affisting and taking pairt with thame in all and findrie thair thiftis, reiffis, and oppreffiones, committit be thame this thre yeir bygane.—THE said *Patrik M^cean Dowie M^cGregour*, ffor being in company with *the M^cGregouris*, at the fecht or skirmisch of Bintoiche, in the moneth of Apryle I^m.Vj^c. and four yeiris. AND ffor airt and pairt of the treffonable

¹ 'Tane bak agane to waird, and nocht put to ane Assyfe.'

² Goats.

Raifeing of ffyre, burning of the Castell of Achallader, and of tuentie houffis in Glenlochie; and for the crewall Slauchter of ffourfcoir ky¹ at the faid fecht. AND sicklyk, ffor airt and pairt of the Slauchter of vmq^{le} Patrik Dow M^cnab, and ane feruand of the Laird of Glenvrcheis, namet M^cLayne, baith flane in the faid fecht of Bintoich. AND, ffor cowmone Thift, cowmone Reffet of thift, outputing and inputing of thift, &c. AND, ffor Intercowmoning and keiping cumpanie with the *M^cGregouris*, in all thair wiket deidis, &c.—THE faid *Allafter Bowie M^cGregour*, ffor Cowmone Thift and cowmone Reffet of thift, outputing and inputing of thift, fra land to land, fra cuntrie to cuntrie: AND ffor Intercowmoning and keiping daylie tryftis and conventiones with *the M^cGregouris*, and taking plaine pairt with thame in all thair violent and thiftious deidis, thir dyuerfe yeiris bygane.—THE faid *Dougall M^cGregour Clerach M^cGregour*, ffor the crewall Slauchter of vmq^{le} Gregour M^cGregour, fone to vmq^{le} Duncane Abroche M^cGregour, be fchuteing of him with ane arrow behind his bak; committit in Auguft I^m.Vj^c. and four yeiris. ITEM, for Intercowmoning with *the M^cGregouris*, contrair the tennour of his Maiefteis Acts and Proclamationes, at dyuerfe tymes, fen the publicatione of the faidis Proclamations.—THE faid *Duncane M^cNeill M^cGregour*, ffor cowmone Thift, cowmone Reffet of thift, &c. AND als, ffor Intercowmoning with *the M^cGregouris*, affifting and plane pairt-taking with thame, in all thair thiftious deidis, thir dyuerfe yeiris bygane.—THE faid *Johnne M^cAndro*, ffor airt and pairt of the Burning of Johnne Stewartis hous, and Slauchter of the faid vmq^{le} Johnne Stewart; committit in the faid moneth of December, I^m.Vj^c. and ten yeiris; at the leift, for keiping cumpanie with the faidis Archibald M^cilvoil M^cLauren and Duncane M^cInnowie, and the remanent perfones thair complices, quha come furth of Glenco, to the doing of the faidis crymes.

ASSISA.

Johnne Buntene of Ardoche,	Johnne Buchannane,	Williame Colquhoun,
Parlane M ^c Walter of Auchin-	Andro Cuninghame,	Mr Malcolme Colquhoun,
vannell,	Johnne Logane, fear of Drum-	Malcolme Crawford, feruitour
Mungo Buchannane in Tillie-	chappell,	to the Laird of Blair,
chewin,	James Colquhoun, feruitour to	Robert Blair,
Tho ^s Fallafdaill of Ardoch-beg,	the Laird of Kilbirnie,	David Drummond,
Johnne Stewart in Camrone,	Robert Bradie, feruitour to the	Duncane Menzies.
Jo ⁿ Smyth in Auchindownnarie,	faid James Colquhoun,	

VERDICT. The Affyfe, be the mouth of the faid Thomas Fallafdaill, chancellor, ffland, pronuncet and declairet the faidis Johnne M^cewin in Kilbryde, Archibald M^cilvoill, Donald M^cInnowie, Duncane Caird M^cGregour, Patrik M^ceandow M^cGregour, Allafter Bowie M^cGregour, and Duncane M^cNeill M^cGregour, to be ffylet, culpable and convict of the feuerall crymes *respectiué* aboue writtin, con-

¹ Cattle; *kine*.

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

SENTENCE. The Justice, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the saidis *Johnne M^cEwin, Duncane Caird M^cGregour, Patrik M^cIndow M^cGregour, Allaster Bowie M^cGregour, and Duncan M^cNeill M^cGregour*, to be tane to the Burrow-mure of Edinburgh, and thair, in the ordiner place of Executioun, to be hangit quhill thay be deid ; and all thair landis, heritages, guidis, geir, moveable and vnmoveabill, &c., to be fforfaltit and escheit to our fouerane lordis vs^e, as convict of the saidis crymes. —AND superceidis the pronunceing of Dome vpone the vther thre, quhill he be advyfet with the Lordis of Secreit Counfall thairanent : And ordanit thame to be tane bak agane to their priffone, &c.

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

Slaughte — Shooting with Pistolets, &c.

Mar. 8.—JOHNNE CARUTHERIS in Netholme, fumtyme feruitour to Robert Lord Sanquhair.

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

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

PRELOCUTOURIS for the pannell, Mr Thomas Hoip, Aduocat, Mr Johnne Dauling, The Tutour of Bombie (William M^cClellan), The Laird of Enterkyn.

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

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

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

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

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

crumbie of Pitmedden contrair Gordones, quhair the lyk Remiffioun was fustenit, vpone finding of cautioun.

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

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

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

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

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

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

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

Abiding from the Raid of the Isles.

Mar. 15.—GILBERT M^cADAME of Watterheid; Donald M^cmillane of Knokingarroche; Robert M^cadame of Smeiftoune; George M^cadame, thair; Johnne M^cnacht of Doungucht; Gilbert Achannane of Murdochat; Robert Ferguffone of M^ckillieftoune; Johnne M^ckill, elder; Johnne M^ckill, younger; Williame Makadame of Craigullane; Thomas Gordoun of Crago; Johnne Neilson of Corfok.

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

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

¹ See Notice prefixed to the Trial of *Sir James Makcneill*, May 13, 1609, Vol. III. p. 1, &c.

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

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

Slaughter.

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

Dilaitit of the Slauchter of vmq^{le} Johnne Findlay in Eglischem; quha was slane at the Kirktoon of Eglischem, vpone the xvij of ffebruare, 1611.

PERSEWAR, Archibald fyndlaw, as brother to vmq^{le} Johnne Fyndlaw.

The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of the scheref dome quhair the persone abouewrittin duellis¹ (Lanerk.)

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

Slaughter of Provost of Wigtoun—Shooting Hagbutts, &c.

Maj 22.—JOHNNE KENNYDIE of Blairquhan, and Johnne Bairdis, brother germane to the Laird of Kilquhinzie.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq^{le} Patrik Ahannay of Kirkdail, Proveist of Wigtoun; committit be thame and thair complices, with schottis of hagbuttis and pistolettis, at the Cruves of the Watter of Crie, in the moneth of December, I^m.Vj^c. yeiris, vpone set purpos, prouiffoun, and foirthocht felonie: And for beiring, weiring, and schoitting of hagbutts and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Patrik Ahannay of Kirkdail, as sone to vmq^{le} Patrik A.; Sir Thomas Hammiltoun of Byris, kny^t, Aduocat to our souerane lord, for his Maiesteis intereis.

PRELOCUTOURIS for the pannell, My Lord of Cassillis, My Lord Vchiltrie, Gilbert Roifs; Mr Johnne Ruffell, Mr Thomas Hoip, and Mr Laurence M^cgill, Aduocatis.

The pannell acceptis the summondis, and speciallie that pairt thair of quhair

¹ ‘Plegijs, Hugone Montgomerie de Auchinhuid, et Joanne Hammiltoun de Hairschaw, pro omnibus; et ipsi ad relevand.’

the defunct was schot with peiftis¹ or dropis, with ane charget hagbut. It is allegit, that this matter can nocht pas to ane Assyse; becaus his Maieftie, of his speciall grace, hes gevin to the perfonen on pannell ane Remiffioun, quhilk thai producet to the Justice, of the dait at Edinburgh, the xvij day of Maij instant: And offeris Cautioun to fatisfie the pairtie.—It is anfuert that this Remiffioun can nocht stay the matter to pas to ane Assyse; becaus, be Act of Parliament, in anno 1593, it is provydit, that all Remiffiones ar null that ar purchest eftir ane pairtie passis to the horne for the tyme; quhilk allegeance is reffaut be way of exceptioun, the pairtie nocht being fatisfeit.—It is anfuert,² that this Act of Parliament is nocht *in viridi obseruantia*, nor hes nocht tane effect in this Judgement ofbefoir: Quhilk allegeance he offeris to verifie, be my Lord Caffillis, and vtheris heir present.

THE Justice continewis Interloquitour vponne this allegeance to ffryday nixt.

(Maij 24.)—My Lord Aduocat, befoir Interlocutour, passis fra his lordschipis former allegeance: Quhairupoun the pannell takis instrumentis.

THE Justice, be Interloquitour, Admittis the Remiffioun producet be the perfonen on pannell and thair prelocutouris; and Ordanit thame to find sufficient and responfall Cautioun and fouertie to fatisfie the pairtie grevit; conforme to the lawis and daylie practik of this realme.

Quhairupoun the said Johnne Kennydie of Blairquhan and Johnne Bairdis askit instrumentis: And ffor obedience of the said Justice Ordinance, nominat my Lord of Caffillis, my Lord Vchiltrie, Sir Robert M^cclellane of Bombie, kny^t, Williame Cunninghame of Capringtoun, and Sir James Kennydie of Culzeane, as cautioneris, coniunctlie and feuerallie for thame; lyk as, being all personallie present, in presence of the Justice, Band and obleift thame, coniunctlie and feuerallie, thair airis, executouris and assignais, to fatisfie the pairtie, viz. the kyn and freindis of the said vmq^{le} Patrik Ahannay of Kirkdail, ffor the slauchter aboue writtin; conforme to the Lawis of this realme.³

¹ Pellets, small shot; but, most probably, what is now termed *slugs*. ² Replied. ³ The arguments are thus expressed in an after part of the Record. As the point started is interesting, and the Counsel engaged were the most eminent of their day, it has been deemed proper to preserve the arguments at length.—‘It being peremptourlie allegit for the pairt of the saidis perfonen on pannell, be Mr Johnne Russell, with concurrence of Mr Thomas Hoip and Mr Laurence M^cgill, Aduocattis, thair preloquitouris, that the said summondis and Dittay could nawayis be put to the knowlege of ane Assyse, becaus our fouerane lord, of his speciall grace and mercie, had gevin and grantit to thame ane Remiffioun for the saidis crymes, and producet the said Remiffioun, past the Grit Seill, of the dait at Edinburgh, the xvij day of Maij instant; quhairvnto thai tuik thame selfis, and offerit responfall cautioneris and fouerteis, at the bar, to fatisfie the pairtie for the crymes contenit in the said Remiffioun, accoirding to the modificatioun of the Lordis of Sessioun, lawis and practik of this realme. To the quhilk it was anfuert be our fouerane lordis Aduocat, that the foirsaid allegeance aucht to be repellit, and the pannell, nochtwithstanding thair of, fould be put to the knowlege of ane Assyse; becaus, be Act of Parliament maid in anno 1593, it is statute and ordanit, that na Respekt nor Remiffioun be grantit at any tyme thaireftir to ony persone or perfonen passand to the horne for Thift, Reif, Slauchter,

The pannels bound themselves to relieve their cautioners; and the cautioners also obliged themselves to free each other, *pro rata*, &c.

Slaughter—Shooting with Hagbutts and Pistolets, &c.

Jun. 7.—ROGER GORDOUN in Glasniche, and Johnne Glendoning of Drumrafche.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} George Stewart, brother to vmq^{le} Mathow Stewart of Dunduff; committit the xxj¹ of September, 1601 yeiris, vpone sett purpois, prouifioun and foirthocht fellonie: And als, for beiring, weiring, and schuitting of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Williame Stewart of Dunduff, Johnne Stewart, brether fones.

The perfewaris producet the Letteris deulie execute and indorfate vpone the said Roger Gordoun and Johnne Glendoning; and als, vpone Alexander Gordoun of Hillis, Williame and Robert Gordones, his tua brether, Robert Gordoun of Bannernie, Alexander Creichtoune in Garrick, and Thomas Creichtoun in Balcaffie, quha ar past to the horne for the crymes contenit in the Letteris: And vpone the production thairof, askit instrumentis; and protestit for the cautioneris relief for repoirting thairof.

Continewit to the morne. Plegio, Wilelmo M^cculloche de Mertoun.

PRELOCOUTOURIS for the pannell, Mr Johnne Ruffell, Aduocat, The Laird of Lochinvar.

(Jun. 8.)—The perfewaris declairit, in respect that this Roger Gordoun is only airt and pairt of the Slauchter, and nocht principall actor of the fact, and thairfore, vnto the tyme the principall maliefactouris be apprehendit, quhairby the pannell his giltines or innocencie of that crewall slauchter may be tryit, de-fyres that he may be continewit to the thrid day of the air [Wigtoun], or foner, vpone xv dayis wairning; and that caution be fund be him to that effect, vn-

Burning, or Heirschip, &c. quhill the pairtie skaithed [viz. until the party shall previously have received pecuniary satisfaction or damages for the loss sustained] be first satisfie: And gif ony sic Respet or Remiffioun fould happin to be grantit, befor the pairtie grevit be first satisfieit, the samyn fall be null, and of nane avall, be way of exceptioun or reply, without ony forder declaratour. Bot trew it is, that the perfonen on pannel, lang befor the purchessing of the said Remiffioun, war denounced rebellis and at the horne, and war declairit fugitiues fra his hienes Lawis for the saidis crymes contenit in thair Dittay; the pairtie nawayis being satisfieit as zit: And thairfor, the said Remiffioun vsset and producet is null, be way of reply. And for verifeing thairof, producet the Extract of the Hoiring aganis the pannell.—To the quhilk it was duplyit be the pannell, that thay offerit thame to preve, be my Lord of Cassilis, and tua Ministeris, at the bar, that satisfioun was offerit be thame to the pairtie grevit, lang befor thair passing to the horne, or purchessing of Remiffioun; quhilk was refusset: *Secundo*, it wes nevir *in viridi observantia* that the foirsaid Act of Parliament was authorisset in this Judgement; nather yit could euir his Maiestis fauour and pardoun, being anes grantit, be callit thair-estir in questioun. And thairfor, takis thame, as ofbefore, to his Maiestis Remiffioun; and offerit caution to satisfie the pairtie.

¹ In the act of caution the slaughter is stated to have been committed on the 'ellevint.'

der the panes contenit in the Actis of Parliament. [*Plegio, Wilelmo M^cculloche de Mertoun.*]

The Laird of Mertoune americiated 'in the pane of ffyve hundreth merkis, for nocht entrie of the said Johnne Glendoning' on June 8, and Glendoning ordained to be denounced rebel, and all his 'moveabill guidis to be escheit,' &c.

Slaughter.

Jun. 28.—PATRIK MAXWALL of Newark.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Montgomerie of Skelmourlie, and vmq^{le} Williame Montgomerie apperand of Skelmourlie; committit in the moneth of I^m.V^c.lxxxij yeiris.

PERSEWAR, George Montgomerie.

The Laird of Newark productet ane Warrant of the Lordis of Secreit Counsell, direct to the Justice, anent the deserting of this dyet, for the reffonis contenit in the Supplicatioun gevin in to thair Lorfchipsis thairanent; with ane Command on the bak of the said Supplicatioun and Warrant aboue writtin, commanding the Justice to tak caution of ather of the pairteis, befor thair cuming out of Judgement, that thai fall remane and keip waird within this burgh, quhill Tyfday nixt; and that thai fall compeir befor his Maiesteis Counsell the said day, vnder the panes following, viz. of Newwerk, vnder the pane of tua thousand merkis, and George Montgomarie, vnder the pane of ane thousand merkis. Quhilk Warrant is daitit at Edinburgh, the xxvij day of Junij 1611 instant.—For obedience of the quhilk Warrant, and ordinance thairin contenit, the Justice Desertit the said dyet; and Ordanit the saidis tua pairteis, *hinc inde*, to find caution for thair compeirance befor the Lordis of Secreit Counsell the said day, viz. the secund day of Julij, vnder the panes aboue specifcit: Lyk as, for obedience of the said Justice ordinance, compeirit Williame Lord Kilmaweris, and became plege and fouertie for the said Patrik Maxwell; and siclyk, compeirit James Dunlope of that ilk, and become fouertie for the said George, &c.

Slaughter.

[THE Records of the Court of Justiciary do not afford sufficient information regarding the facts connected with the following Case; and, as it relates to individuals of considerable rank, the Editor thought it proper to select even such meagre notices as those which do occur. The Young Laird of Closeburn seems to have been one of the active spirits of these times, and to have been engaged in a laudable share of affairs of honour, and in quarrels *quantum sufficit*, and 'befitting his degree!']

In *Lord Hadington's* MS. Collections, the following remarkable entry occurs, under date Feb. 27, 1610. 'The Lady Hemptseild, haveing desyred Andro Quhyt, keiper of the Tolbuith, to bring to hir Young Cloisburne, who wes in the Tolbuith wairdit, to speak with hir in his house; he doing it at her desyre, Young Cloisburne schifitit him self away. ffor the quhilk caus, scho being put in the Tolbuith, and thairafter transported to the Castell, socht Licens of the Counsell to be transported to the

toune; quhilk the Lordis refuiffed, vnles fcho wald either enter 3oung Cloisburne, or find cautione to fatisfie all pairteis be quhome he wes wairdit or arreifted.'¹

Closeburn's escape had been effected by his exchanging clothes with the Lady Hemptisfield, a method which has often proved successful in similar emergencies. It may be remarked, that the jailor's house was commonly attached to, or rather consisted of one or more apartments of, the prison.]

Jun. 28.—ALEXANDER KIRKPATRIK, fone to Sir Thomas Kirkpatrick of Cloisburne, kny^t.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Carmichell, fone to Johnne Carmichell of Spothe.

PERSEWARIS, Johnne and William Carmichell.

THE Justice, of consent of pairtie, continewis this dyet to the xxiiij of Julij nixt. [Plegio, D. Tho. Kirkpatrick de Cloisburne, milite.]

(Jul. 24.²)—THE Justice, of consent of pairtie, continewis this mater to the thrid day of the nixt Justice-air of the scherefdome of Dumfreis, or foner vpone fyftene dayis wairning: And ordanis caution to be ffund for that effect. [Plegio, D. Thoma Kirkpatrick de Cloisburne.]

Treason—Murder under Trust.

Jun. 29.—PETER WEIR, sumtyme in Goittnow in Rig.

Dilaitit of airt and pairt of the crewall Slauchter and Murthour of vmq^{le} Johnne Hammiltoun, merchand burges of Edinburgh; committit, vnder trest, vpone the fevint day of November 1608 yeiris, befyde Monharig burne-fute.

PERSEWARIS, Jonet Small, the relic; Patrik Hammiltoun, as brother; Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our fouerane lord, for his hienes intres.

PRELOCOUTOUR for the pannell, Robert Bannatyne, wryter.³

DITTAY *against Peter Weir, the pannell.*

FORSAMEKILL as vmq^{le} Johnne Hammiltoun, merchand burges of Edinburgh, haifing conqueift⁴ and acyuret to him self the richt of certane landis, occupyit and posselt be Johnne Weir in Over Quhytecleuch, the said Peter Weir, and Margaret Weir in Bagra; and haifing thairupoun obtenit Decreitit of Removing, aganis thame and remanent tennentis and occupyeris of the saidis Landis; and for diffobedience of the charges of Hoirning, haifing denuncet the said Peter owr fouerane lordis rebell, and put him to the horne, the said Johnne Weir, Mungo Weir, his brother, the said Peter Weir, and Margaret Weir, consultit and devyset amangis thame selffis, how to bereiff the said Johnne Hammiltoun of his lyfe: And for effectuating thair of, caufit certane freindis travell with him, and to cum in tryfting,⁵ and to meit at Monharig, to cowmone⁶ thairupone; and affixt the

¹ Minutes of the Proceedings of the Privy Council, *Had. MSS.* A. 4. 22. Advocates' Library.

² The pursuers marked at this diet, are designed 'Johnne C. of Spothe, Williame C. his fone.'

³ One of the brothers of the celebrated George Bannatyne, in honour of whose valuable compilation of early Scottish Poetry, the Club of that name was formed.

⁴ Purchased, in contra-distinction

to having inherited.

⁵ By special agreement or appointment.

⁶ Commune.

sevint day of November I^m.Vj^c. and aucht yeiris to that effect : Lyk as, the said vmq^{le} Johnne Hammiltoun, for keiping of the said tryft, accompaneit with James Creichtoun in Bar, being cuming rydand furth the hie way, in sober and quyete maner for the tyme, vpon the said sevint day of November, to the appointit place aboue writtin, the saidis Johnne Weir, Peter Weir, Mungo Weir, and Margaret Weir, accompaneit with dyuerse perfones thair complices, being bodin with fuordis, quhingeris, kent-stalfis and otheris wappones *invafue*, darnit¹ thame felfis in the hie way, besyde Monharig, quhair thai lay at await for the said vmq^{le} Johnne Hammiltounes by-cuming ; and thair, vnder trest and friendship, maist crewallie invaidet him for his slauchter, drew him af his hors, and with quhingeris, gaif him threfcoir² bludie woundis, in dyuerse pairtis of his body, to the effusioun of his bluid in grit quantitie ; and crewallie slew and murtherit him out of hand : And the said Peter was and is airt and pairt of the said Murthour. To the taikin, he and the said Margaret Weir, being in cumpanie with the said Johnne Weir, com to the said James Creichtoun, and drew him doun af his hors, and held him be force doun, quhill the said vmq^{le} Johnne was murthourit out of hand ; quhairthrow the said James mycht nocht releif him.

James Creichtoun, being suorne, Declairit, that he, being in company with the defunct, the tyme lybellit, vpon the grund of the Land quhair the fact was committit ; and thair, this Peter Weir, with Margaret Weir, drew him af the hors and held him doun ; quhairthrow he was nocht able to defend the defunct. — Quhairupoun my Lord Aduocat askit instruments ; and Protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse,³ being ryplie and weill advyset thairwith, togidder with the said Peteris Depositiones, producet be our fouerane lordis Aduocat ; togidder with the Letteris of Hoirning, quhairby the said Peter was fugitiue fra his hienes lawis, for the said cryme, lykwayis producet, for instructing of the Dittay ; thai, be the mouth of Robert Phillope, burges of Sanquhair, ffind, pronuncet, and declairit the said Peter Weir to be ffylet, (be pluralitie of voitis,) of airt and pairt of the Murthour of the said vmq^{le} Johnne Hammiltoun.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin from his body : And his haill guidis and geir to be efcheit to our fouerane lordis vsé, &c.

Treason—Slaughter—Murder under Trust, &c.

[THE TRIAL of the MURES OF AUCHINDRAYNE may, without hesitation, be pronounced to be one of the most remarkable, in the whole range of the Criminal annals of this, or perhaps of any other country. In it are unfolded their most hidden transactions, and the secret springs of their most private and crafty

¹ Concealed. ² Three score ; sixty.

³ Among their number were George Maxwell of Drumcowtrane,

and James M'Morrane younger of Glaspen.

tily contrived plots, all of them leading to the perpetration of crimes so singular in atrocity, and of so deep a die, that one can hardly expect to meet with their parallel, even in the pages of Romantic fiction. By the clew, now afforded, may be traced almost the secret thoughts of two of the most accomplished and finished adepts in crime—individuals who murdered by rule, and who carried forward their deadly schemes of ambition, by means of a regularly connected chain of plots and stratagems, so artfully contrived, as to afford them every reasonable prospect of success—and even in the event of the entire failure of their plans, almost to ensure their escape from suspicion; at the least, in their estimation, to warrant their security against ultimate detection, and consequently exempt them from the penalty of capital punishment.

Ambition and the lust of power appear to have been the immediate procuring causes of all the crimes in which these infatuated men were involved. There was not the sudden burst of uncontrolled passions, which might have hurried them on to the commission of a solitary deed of frightful but unpremeditated violence—nor were their crimes the consequence of ancient Feuds, inherited from their restless and vindictive ancestors—nor yet had they the too common apology that they originated in impetuous assaults made upon them, and that their hasty quarrels sprung from a fiery and unbridled temper, which had unfortunately terminated in fatal results. On the contrary, the whole of their numerous attempts and crimes may be characterised as cool, calculating, and deliberate acts, anxiously studied, and by slow and patient, but sure degrees, matured and prosecuted, for a long series of years, until at length ‘the measure of their iniquities overflowed,’—and the unlooked-for concurrence of an extraordinary train of circumstances, the most unlikely to have happened, eventually led to a triumphant discovery of their enormous crimes.

It is quite unnecessary here to enter into any detailed account of the facts connected with the crimes of these individuals. Their leading features are already familiar to all, ever since the publication of ‘AUCHINDRANE, OR THE AYRSHIRE TRAGEDY,’ from the pen of Sir Walter Scott; in the preface to which dramatic sketch, the origin and progress of these dark transactions are so fully discussed, that the Editor begs simply to refer the reader to a perusal of that work.

In addition to the information contained in the ‘Dittay,’ and in the pleadings in this Trial, the Editor has been anxious to collect and lay before the reader the most remarkable circumstances connected with the history of the elder and younger Mures. For this purpose he has for some years past used all exertions to extend his researches in every direction, where authentic illustrative Documents and Records could be procured—and he has now the satisfaction of appending to this highly interesting Case a variety of Papers, which may almost be said to throw all the light that can now be reasonably expected, on proceedings which occurred now above two hundred and twenty years ago.

For the sake of saving too copious quotations in this work, the Editor has, through the liberal permission of the Curators of the Library of the Faculty of Advocates, Edinburgh, published in a separate volume ‘THE HISTORIE OF THE KENNEDYIS,’¹ from the Original MS. in their valuable collection. That History, besides the numerous interesting notices of the Mures of Auchindrayne, Sir Thomas Kennedy of Colzean, who ultimately fell their victim, the Earls of Cassilis, &c., enters most minutely into the Feuds and Conflicts of the Kennedys, Mures, Crawfords, &c., and satisfactorily develops the causes out of which the various crimes of Auchindrayne and his son sprung. The state of society, and the habits and manners of the people of Carrick, are very graphically delineated by the author, who was evidently an eye-witness of the many interesting transactions he has recorded.

For the purposes of the present Introductory Notice, it is enough to state, as in reference to the persons who principally figure in this dark tragedy, that so far as respected birth, the MURES OF AUCHINDRAYNE were of most respectable and ancient extraction, and were connected with many of the most opulent and influential families in Ayrshire. They also for a considerable period held a con-

¹ A limited impression of the ‘HISTORIE OF THE KENNEDYIS’ has been printed, uniformly with the works of THE BANNATYNE and MAITLAND CLUBS, and may be had of the Publishers of this Collection.

spicuous station in all the transactions and feuds of the district of Carrick. There is no reason to doubt that the Mures of MONYHAGEN and Auchindrayne (which last title was only latterly assumed by them) were cadets of the very ancient and honourable Family of Mure of Rowallan, now represented by the present Marchioness of Hastings, as Countess of Loudoun, &c. In confirmation of this fact, Sir William Mure of Rowallan, knight, in his History of that House,¹ states, that *Andrew Mure of Monyhagen*, the first of the family, was either a son or a grandson of Sir Gilchrist Mure, who died *circa ann.* 1280. It does not appear how or when they became possessors of the Lands of Auchindrayne; but it is certain, that previous to the Wars of Bruce and Baliol, Auchindrayne (i. e. *the Field of Thorns*) belonged in property to Robert Brown; and was, upon his forfeiture, granted by King Robert the Bruce to Henry Annan. By a Charter, dated March 16, 1498, *James Mure of Monyhagen* granted certain lands, in Wigtonshire, in favour of James Mure, his son, and Margaret Wallace, his spouse. One of the witnesses to this deed, is *John Mure*, 'grandson and heir apparent of the said James;' which shews him to have been a very old man at that period, and that he was born *circa* 1430. This *John Mure* must have been the grandfather of the old Laird of Auchindrayne, who figures in the present Trial.

It is pretty evident, as appears from a Charter of *Novodamus* of the Lands of Leffenhill, dated Sept. 29, 1671, by Chalmers of Gadgirth, in favour of *John Mure of Auchindrayne*,² that the elder Mure must have been *nearly eighty years of age* at the period of his execution! The grantee is described as heir of *John Mure of Monyhagen*, 'proavi;' who had in like manner had a Charter of same Lands from Campbell of Loudoun, Sep. 2, 1550.³—This *John Mure*, who obtained the above mentioned Charter 1671, married Bethia Hamilton, daughter of Hamilton of Dalzell, by whom he had at least one son *James*, who probably predeceased him—for he conveyed Auchindrayne to his brother *Hugh Mure*, whose son or grandson sold it early in the last century; and the Family, it is believed, is now extinct in the male line.

To return to *John Mure Elder*, and *James Mure Younger of Auchindrayne*, the subjects of the following Trial, it is worthy of notice, as proving their rank and consequence in the most convincing manner, that *John Mure* the elder married Margaret Kennedy, second daughter of Sir Thomas Kennedy of Bargeny, (*obit*, Nov. 7, 1597,) by Lady Agnes Montgomery, sister to Hugh, *third* Earl of Eglinton,—and that *James Mure* the younger married Helen, second daughter of Sir Thomas Kennedy of Colzean, Tutor of Cassilis, by Dame Elizabeth MacGill, daughter of David MacGill of Cranstoun-Riddell, King's Advocate, and relict of the celebrated Robert Logan of Restalrig.

On occasion of John, fifth Earl of Cassilis, going on his travels to France, he conferred THE BAILLIARY OF CARRICK upon the elder Auchindrayne, for all the period of his life, an office of high trust and respectability, having the Civil and Criminal Jurisdiction of the whole of that extensive and populous district. It had previously been enjoyed by Kennedy of Blairquhan, one of the most powerful Chiefs of the name of Kennedy. The Earl had previously given Auchindrayne grants of a five-merk-land and a two-merk-land, in return for his fealty and service; and besides, 'the said Johne to be one his chargis euer quhan he ves out of Carrik.'⁴ Through the influence, as was asserted, of Sir Thomas Kennedy of Colzean, the Tutor of Cassilis, this office was recalled on the Earl's return, which probably gave rise to the deadly grudge of Auchindrayne, and, after the lapse of many years, eventually terminated in his murder. After the period of this recall, Auchindrayne returned to the allegiance of the Laird of Bargeny, and took a most active lead in all the feuds of that disturbed country.

As the most copious materials occur in the Illustrations appended to the present Trial, and in the 'Historie of the Kennedyis,' relative to all the transactions of Auchindrayne, the Editor will not en-

¹ Written in or prior to 1657, and printed from the original MS. Crown 8vo, Glasgow, 1825.

² He was eldest son of *Sir John Mure of Auchindrayne*, who was eldest son of *James Mure younger of Auchindrayne*, executed along with his father for the Murder of Dalrymple.

³ See Particular Register of Sasines for Ayrshire, II., 613, where numerous entries occur; but it would be foreign to the purposes of the present work to enter into lengthened genealogical detail and proofs.

⁴ See *Historie of the Kennedyis*, 4to, Edin. 1830, pp. 18, 19.

croach on the prescribed limits of this work, by entering into farther detail. It is hoped that enough is there given to gratify the most anxious enquirer.

Among other curious matters which are mentioned in the present Trial, there occurs the ancient and almost universal superstition, that *the body of a murdered person bleeds at the approach, or at least on the touch, of the Murderer!* This test of guilt, or ordeal, is so remarkable, that the Editor has made every investigation which his opportunities admit; and lays the result before the reader, in the Appendix.]

Jul. 17.—JOHNNE MURE OF AUCHINDRANE, elder; JAMES MURE, younger of Auchindrane; and JAMES BANNATYNE of Chapeldonall.

Dilaitit of airt and pairt of the tressonabill Murthour of vmq^{le} SIR THOMAS KENNYDIE of Culzeane, knycht, Tutour of Caffilis, vnder trust, &c.; committit be the said Johnne Mure of Auchindrane elder, in forme and maner, and at the speciall tyme sett down in his Dittay. AND als, for the tressonabill Murthour of vmq^{le} WILLIAME DALRUMPILL, in Air; committit be the saidis Johnne Mure, elder of Auchindrane, (James Mure, younger of Auchindrane,) and James Bannatyne, in forme and maner also contenit in the Dittay, produceit be our fouerane lordis Aduocat aganis thame.

PERSEWARIS, James Kennydie of Culzeane, as sone to vmq^{le} Sir Thomas Kennydie of Culzeane, knyht, Tutour of Caffillis; Bessie Dalrumpill, as mother to vmq^{le} Williame Dalrumpill; Sir Thomas Hammiltoun of Byres, knycht, Aduocat to our fouerane lord, for his hienes interes.

PRELOCUTOURIS for the perfonen on pannell.

Mr Johnne Ruffell, Aduocat; Mr Thomas Nicolfone, Aduocat; Josefhe Myller, Aduocat.

My lord Aduocat producet the Dittay aboue (under) writtin.

DITTAY *against* JOHN MURE, *elder of Auchindrane*; JAMES MURE, *younger of Auchindrane*; and JAMES BANNATYNE, *sometime in Chapeldonane*.

JOHNE MURE, elder of Auchindrane, James Mure, younger of Auchindrane, and James Bannatyne, sumtyme in Chapeldonane, Ye and everie ane of yow, for your owne pairtes, *respectiue*, ar Indyted and accused of the haynous, crewall, and treasonabill crymes vnderwrittin: FORSAMEKILL AS, be Act of Parlement, maid be oure fouerane lord and Estaittis of this kingdome, in the moneth of July, 1587 yeiris, cap. 51, it is statute and ordaned, that the Mourthour or Slauchter of whatsumever our fouerane lordis liegis, whair the pairtie slayne is vnder the traift, credit, assurance, and power of the slayer, all sik Mourthour and Slauchter to be committit efter the dait of the said Act, the samin being lauffullie tryed, and the perfoun dilaited, ffund guiltie be ane Affyse thairof, fall be Treafoun; and the perfonen ffund culpabill, fall forefault lyfe, landis and guddis. AND TREW IT IS, that ye, the said *Johnne Mure, elder of Auchindrane*, haiving, without any iuste cause, conspyred the Mourthour of vmq^{le} SIR THOMAS KENNEDIE of *Cullayne, knicht*, in the moneth of Januar, or thairby, 1597 yeiris, accompanied with sevin or aucht of your complices in the said interpryse, came

to the Towne of Maybole, and being furelie informed that the faid Sir Thomas wes than foupping, vpon the day of the faid moneth of Januar, in the howfe of Sir Thomas Nisbett in Maybole, and wes to pafs, efter supper, from that pairt to his owne howfe ; ye and your faid complices, bodin in feir of weir,¹ with hagbuttis and pistolettis, and vtheris forbiddin and vnlauffull wapinis, dairnit² your self, vnder filence of night, about nyne or ten houres at evin, in ane obscure place, by the whilk³ the faid Sir Thomas Kennedies passage laye ; and, fo sone as ye perfaued him, ye fercelie fet vpon him, perfewed him with all violence and crueltie for his slauchter, schot and delaschit⁴ at him ane great number of schottis of hagbuttis and pistolettis, and still chaiffit and perfewed him ; whill,⁵ be the Providence of God, and releif of honest nightouris, he wes delyuered from your crueltie. For the whilk vylde and barbarous offence, ye being summond to vnderly the law, (wes) forced be your owne notour guiltines to go to the horne. THAT feid and inimitie wes schortlie thairefter removed, not onlie be publict and fborne reconciliation maid betuix the faid vmq^{le} Sir Thomas Kennedie and yow, the faid Johne Mure of Auchindrane, bot also confirmed and strenthened, be allyance and mairiage of your eldest sone vpon the faid Sir Thomas his dochter ; whairby the faid vmq^{le} Sir Thomas wes drawin vnder sik traift, affurance and freindschip with yow, that he, lipning⁶ altogidder to the same, vpon the tent day of May, the yeir of God 1602 yeiris, being of intentione to ryde to Ed^r for his lauffull buffines, and having no lesf cair of your turnis⁷ nor of his owne,⁸ he fend his seruand, Lancelot Kennedie, to wryte aduerteifment to yow, that he wes to tak his journay touardis Ed^r vpon the nixt day, whilk wes the elleuint day of May, 1602 yeiris, or thairby ; to the effect ye might meit him vpon the way, at the Duppil, a littill be-west the burgh of Aire, and informe him of sik buffines as ye wald defyre him to do for yow in Ed^r. Whilk aduerteifment, being writtin at defyre of the faid Lancelot Kennedie, be Mr Robert Mure, than schole-maister of Aire, your kinsman, he sent that his Letter to yow, with ane scollar boy, being in his schole for the tyme, called *Williame Dalrumpill* ; whilk letter cumming to your handis that efternone that it wes writtin, vmq^{le} Walter Mure in Cloncaird being than in cumpanie with yow, in your place of Auchindrane, ye dispatchit bak the faid William Dalrumpill, in haift, directing him to returne to Maybole with diligence, and to deny that he had met with yow, or delyuered the Letter to yow : And incontinent thairefter, consulted and resolued with the faid vmq^{le} Walter Mure of Cloncaird, to aduerteis Thomas Kennedie of Drumvrquhie, your gude-brother,⁹ of the certaintie of the

¹ Arrayed in warlike manner. ² Hid, concealed. ³ Past which. ⁴ Let off, fired.
Fr. *delascher*. ⁵ Until. ⁶ Trusting, confiding. ⁷ Affairs or matters. ⁸ Than of his own.
⁹ Brother-in-law.

faid vmq^{le} Sir Thomas Kennedie of Cullayne's journay, and of the way whilk he intended to ryde, advyng the faid Thomas Kennedie of Drumvrquhie to vfe that occasion to Mourthour the faid Laird of Cullayne, in reuenge of the Slauchter of the vmq^{le} Laird of Barganie; whairof the Laird of Cullayne wes altogidder innocent: And conforme to your faid develifh resolution, ye, having aduerteifed, and perfuaded, and inftigat the faid Thomas Kennedie of Drumvrquhie to interpryfe the faid treasonabill Murthour, alsweill be your meffage fend to him be the faid vmq^{le} Walter Mure of Cloncaird, as be ane vther Letter fend be yow to him with Makadam, your eldeft fones feruant for the tyme; the faidis Thomas Kennedie of Drumvrchie and the faid vmq^{le} Walter Mure of Cloncaird, accompanied with fyve or fax of thair complices, vmbefet the faid vmq^{le} Sir Thomas his hie-way, neir the pairt whair he had tryfted to meit yow, and vpon the faid elleuint day of May, 1602 yeiris, be your aduerteifment, counfall, and inftigatioun foirfaid, cruellie and trefsonablie Mourthoured and flew him, vnder traift, credit, and affurance; of your caufing, command, counfall, and ratihabit^{ion};¹ ffor the whilk treasonabill cryme, the faid Thomas Kennedie of Drumvrquhie ftandis forfeitit be Parlement. Notwithftanding whairof, ye, at all tymes fen the faid treasonabill Murthour, affifted and fupported the faid Thomas Kennedie, bothe within this cuntrie and fen his going furth thairof; and hes keiped ordinar intelligence and correffpondence with him. AND ye, the faid Johne Mure of Auchindrane, ar airt and pairt of the faid cruell and treasonabill Murthour, and aucht and fould be forfeitit, and vnderly the pvneifment of treason for the fame. LYKE AS, ye, feiring the difcouerie of your guiltines of the faid Treasonabill Mourthour, be the taking, tryall, and examinatioun of the faid Williame Dalrumpill, for efchewing thairof, ye caufed quyetlie convoy him to your place of Auchindrane, immediatlie efter the faid Murthour; and caufed your wyfe keip him quyet within the fam, fumtymes within the barne and fumtymes in the turnepyke-heid;² appoynting James Cuninghame, your feruand, to cairie his meit to him for the maift pairt, and to ly in bed with him; keeping him verie quyet and fetret from all vtheris. And nevertheles, finding that, pairtlie be his weireing to be keiped as ane clofe prifoner, and pairtlie be the difcouerie of fum of your feruandis, who got knouledge of his being in your howfe, that he might be more publict^{lie} difcouered, and ye thairby tryed³ guiltie of the faid Mourthour, ye fend him to Loch-Ranfay, in Arrane, to the Laird of Skelmurlie,⁴ your freind,⁵ convoyed be your feruandis, Johne Mure called *the Barroun*, and James Gordoun, now ftabler in Ed^r, and at that tyme your houfhald feruand; whare he, being deteaned for

¹ Confirmation. Law Lat. *ratihabere*. ² The top of the *turnpike* or circular staircase, common to the towers and residences of the principal families in Scotland, at this period. In the course of the Trial, it is specified that he was kept 'in *pe chalmers* in *pe turnepyke-heid*.' ³ Found on trial to be guilty. ⁴ Sir Robert Montgomery. ⁵ Blood-relation; one related by the ties of consanguinity.

your cause, ane lang space, and he lykwayes weiring to remayne in ane barbarous cuntrie, amang rude peopill, who nothing reguairdit him, being ane strenger to thame, leivand vnder ane counterfute name of *Williame Mure*, as ye had directed him ; efter sum discord betuix him and ane of the Laird of Skelmurlies seruandis, he came bak to yow to Auchindrane, whair ye caused keip him darned¹ in the barne and turnepyke-heid *respectiue*, till ye learned that your freind James Mure of Fleit wes going to the Warres in the Low Cuntries ; and than ye, be your self and your Lady, perswaded the said James to tak the said Williame to Flanders with him ; whilk he consenting to do, your wyfe gaued to the said James ane naig, to help to mak the said Williames expensis ; and ye recommended to him the cairefull and faif transport of the said Williame Dalrumpill, and send the said James Gordoun, your seruand, to convoy thame and await vpon thame, to the Place of Cauldwell, in thair way to Leith. Lyke as, the said James Mure of Fleit send the said Williame to Flanderis to the Warris ; whair he serued dyueris yeires, and reffaued dyueris woundis, and sustained many vther miseries in the same : Whairthrow, he, becumming desyrous to returne to his natiue cuntrie, ye no soner hard of his hame-cumming, bot incontinent thairefter ye send for him to the duelling howse of Walter Mure in Glenheid of Auchindrane ; and thairefter, vpon the day of September, or thairby, the yeir of God 1607 yeiris, ye directed the said James Cuninghame, your seruand, to convoy him from the said Howse of Glenheid to *James Bannatyne*s house of Chapel-Donald ; and casting yow, to forgadder with him be the way,² ye, the said Johne Mure, elder of Auchindrane, and ye the said *James Mure, eldest sone and apperand aire* of the said Johne Mure, elder of Auchindrane, meitting with the said Williame Dalrumpill, in the hieway, betuix Auchindrane and Chapel-Donald, ye keiped cumpanie with him be the space of aucht myles, and held dyuers pourposes, speeches, and conferences with him ; tryed of him the estait of the Low Cuntries, and findrie vther materis ; till ye, cumming altogether to the house of Chapel-Donald, ye, the saidis Lairdis of Auchindrane, desyred the said *James Bannatyne* to keip the said *Williame Dalrumpill*, whom ye than named ' Williame Montgomerie,' whill he fould vnderstand farther of your pourpose : And sending vpon the morne thairefter, being Setterday the day of September, 1607 yeiris, for the said James Bannatyne, ye, the said Johne Mure, elder of Auchindrane, desyred him to bring to yow, to the Sandis of Girvan, the said Williame, about ten houris at evin ; whairin he³ obeying yow, at his cumming with the said Williame, he fand yow, the said Johnne Mure of

¹ Secreted, concealed.

² Contriving that you should, as if by accident, meet with him on the

road. ³ On the margin there is written, ' he simplie lipning (trusting) to traift and freindschip, cam simplie to yow,' but without a mark where it is meant to be taken in. The Dittay in Hadington's MS. Collections seems the original scroll, and bears numerous corrections, in his own hand.

Auchindrane, and James Mure, your eldest laifull fone, attending thame :¹ And at your meitting, ye, the faid James Mure, demanding whair the boy wes? And the faid James Bannatyne, fchawing to yow whair he had lichtet fra behind him,² he pafte fordward to yow, the faid Johne Mure elder of Auchindrane; wha, fchawing to him that boy wes he wha broght to yow the Letter of aduerteifment of Cullaynes dyet before his Mourthour, and that ye hauing vfed diuers meanes to put him by the way, for efchewing the difcouerie of your pairt and guiltines of the faid Mourthour, he ftill returned within the cuntrie; whairby ye, feiring that he fould be the meanes of your wraik, ye wes forced to refolue to mak quyte of him: And the faid James Bannatyne, perfuading yow rather to giue him fumwhat and fend him away of new, when, as he had almoft perfuaded yow, and that he and ye wer returning towardis your fone, to move him to allow of the faid refolutioun, fo fone as ye approached neir vnto him, he crewallie invaied the faid Williame Dalrumpill for his flachter, rufched him to the ground, and, fetting his kneis vpon his airmes, he pat his handis in the faid Williames throt, and thairwith worried and flew him: In the whilk fact, ye, the faid Johne Mure, elder of Auchindrane, helped, with your owne handis, to hald him downe and fmore³ him. AND incontinent thairefter, ye, the faidis Johne Mure, elder of Auchindrane, and James Mure, your fone, and ye, the faid James Bannatyne, taking ane fpaid and fchule, reddie prepared be the faid James Mure for the pourpoife, caift⁴ hollis in the fand to have buried him; whilk ftill fchutting and filling with fand and water, fwa that ye wes not abill to get his corps covered, ye, the faidis James Mure, younger of Auchindrane, and James Bannatyne, cairied his deid corps in the Sea, fa far as ye could waid, and left his corps thair, to be cairied to the mayne Sea,⁵ be ane vtterlie wind;⁶ notwithstanding whairof, within fyve or fax dayes thairefter, the wind and tyde broght bak the dead corps of the faid vmq^{le} Williame, neir to the pairt where ye had mourthoured him: WHILK being tryed,⁷ and the authoris of his Mourthour refferched, be all laifull meanes, the constant and vniuerfall bruit⁸ and opinion of the hail peopill of the cuntrie, blamed yow and evrie ane of you of the fam: Lykeas, in treuth and veritie, ye thrie are the verie and onlie Murthouraris and flayeris of the faid vmq^{le} Williame Dalrumpill, vnder your traift, credit, affurance, and power; in refpect that he wes knowne to you, the faid Johne Mure, elder of Auchindrane, at the tymes and in maner before fpecified; and wes not onlie knowne to yow, the faid James Mure, younger of Auchindrane, whan he wes ane fcoller in Maybole, and whan he wes keiped in the place of Auchindrane,

¹ Waiting for them. Fr. *attendre*.
² Alighted from horseback, on which Bannatyne and Dalrumpill had 'rode double.'

³ Smother, suffocate. This horrid manner of death is in all respects the same as that lately pursued by the infamous *Burke* and his associates!

⁴ Cast, dug.

⁵ The Ocean.

⁶ An off-shore wind.

⁷ Examined or investigated by the proper legal authorities.

⁸ Report. Fr. *bruit*.

in anno 1602 yeiris, befoir his going to Arrane, and efter his bak-cumming thairfra to Auchindrane; bot also at his going fra Glenheid to Chapel-donald, whan ye, the saidis Johne Mure of Auchindrane, and James Mure, your eldest sone, convoyed him to the howse of Chapel-Donald, recommended him to the said James Bannatyne, and left him in the keiping of the said James Bannatyne; and, thairefter, fend for him to cum to yow to the Sandis of Girvan; whilk message he obeyed, and most willinglie and reddelie cam to yow; whan he, being vnder your traift, credit, assurance, and power, ye treasonable flew and murdered him, in maner aboue-writin: AND yow, and evrie ane of yow, ar airt and pairt thairof, and aucht thairfoir be Decerned to forfeit lyfe, landis, and gudes, and to amit all landis, heretageis, takkis, steidingis, rowmes, possessionis, teyndis, cornis, cattel, gudes and geir, titillis, proffitis, commodities, and rightis whatsumever, directlie or indirectlie perteaning to yow, or ather of yow, at the committing of the saidis Murthouris, or senfyne, or to the whilk ye, or any of yow, had richt, clame, or actioun.

IT IS ALLEGET be the pannell, that na proces can be led aganis thame, becaus thai ar nocht summond to this dyett.—My lord Aduocat anfuers, that thai war summond for thir same crymes of befoir, and being presentit and enterand, wer wairdit,¹ sum of thame in the Castell of Edinburgh, and vtheris in the Tolbuith of Edinburgh; and being accuset for Treasone, may be brocht furth of thair wairdis, and put to ane Affyse. And for verification of the premiffes, product the Letteris of Horning, quhair thay being summond, past to the horne, for nocht finding of caution to compeir and vnderly the law.

The pannell desyres xxiiij houris to be advyset with the Dittay, becaus the matter, substance, persones, and subiect of the first Dittay is alterit.—The Aduocat in the contrair, becaus the Dittay and the first Letteris agreis in substance, tuiching the Murthour of Sir Thomas Kennydie and Willyame Dalrumpill.—The pannell anfuers, thay differ in circumstances.

The Aduocat thairefter producit the first Summondis, and desyret the samin to be red; and the Justice to advyse, quhidder thay differ fra the Dittay, in substance, or nocht.—THE JUSTICE Ordanis proces, without delay.

The Lairdis of Auchindrane, elder and younger, askit instrumentis, that James Bannatyne is accuset and pannellit with thame, in this proces.—My Lord Aduocat declairis, that he insiftis vpon the Summondis, as it is tressonabill.

It is allegit, that this Act of Parliament, quhairvpon the Summondis is foundit, was nevir *in viridi obseruantia*, in this Judgement, quhill this perfute.²

¹ Imprisoned, kept in ward.

² That the act in question was never observed in the practice of this Court; and that this is the first instance of its having been founded on.

—It is anfuerit, that this Act of Parliament hes tane effect aganis Thomas Kennydie of Drummorchie.

It is allegeit, that the affumption of the first pairt of the Dittay, aggreis nocht (with the) woirdis of the Act of Parliament, in thir woirdis, ‘vnder power, trust, credeit, and affurance;’ becaus the Laird of Auchindrane had na power over the Tutour of Caffilis: And as to the woird of ‘assurance,’ it is repointit in the Summondis, that the feid was taikin away, and thairfoir, na affurance.—To the quhilk it was anfuerit, be the Aduocat, that the allegeances aucht to he Repellit, in respect of the Dittay. For, it is sufficientlie knawin, that foure persones may haif ‘power’ over ane; and the pannell, haifing gevin aduerteifment and direction to sax to stay the Tutour, thair was mair nor sufficient power: And as to the rest of the allegeance, ‘credeit, trust, and affurance,’ the Dittay standis relevant, feing thair was na feid standing, and thairfoir, behouet to be flane under trust.

It is allegit, that the Dittay can nocht be relevant; vnles the famyn beir that the pannell was actuall committer of the cryme; becaus the Act of Parliament beiris, quhair the fact is committit and done be ane man, haifing power and authoritie of the persone flane; bot sa it is, that the pannell was nocht present at the committing of the fact; and sa the persone flane was nocht vnder his power.—It is anfuerit, that the Dittay standis relevant, in respect that the Pannell was airt and pairt of the fact; and thairfoir the allegeance aucht to be repellit, in respect of the Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the famyn to be put to the knowlege of ane Affyse, except the pannell fay forder.

It is forder allegeit, that the naikit affertioun of power, authoritie, and affurance, except the pannell had bene present at the committing of the fact, is nocht relevant. *Item*, thair can na proces be led vpone this Dittay, feing the famyn is foundit vpoun ane writ quhilk is nocht producet. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegit, that the Dittay is nocht relevant to infer Treasoun, becaus it is never subfumeit in the Dittay, that the Laird of Cullane was vnder the power of Auchindrane. Anfueris, *vt supra*, that the famyn aucht to be repellit, in respect of the Dittay.—It is allegit, that the wryting of ane Letter be Auchindrane to Thomas Kennydie is nocht relevant to infer, that the pannell was airt and pairt of Cullanes slauchter. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegeit, that thair is na thing qualifeit in the Dittay, that the cryme was committit be the pannellis causing, counfall, or command; becaus counsell can nocht infer airt or pairt. Anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE Repellis the hail former allegeances; and findis proces.

It is allegeit, gif the principall slayeris fallis nocht vnder the danger of the Act of Parliament, the perfones nocht present, and yit accufet of airt and pairt, can nocht fall vnder the danger of the said Act: Bot fa it is, that the Tutour of Caffillis was nocht vnder the power or affurance of Thomas Kennydie of Drum-murchie, principall slayer; and na affurance betuix thame, bot feid standing betuix thame. It is anfuerit, that thair was na feid standing betuix Drummvrchie and the Tutour of Caffillis; and thairfoir the said allegiance aucht to be repellit, in respect of the Dittay, as it is fett down.

THE JUSTICE Repellis the allegiance, in respect of the Dittay.

Forder, allegis that the principall actouris is nocht discuffit. Anfuerit, aucht to be repellit, in respect of the Dittay beiring airt and pairt; and that the principall committeris ar fugitiue, and thairby hes tane the cryme vpon thame.

It is allegit, concerning *the Slauchter of Dalrumpill*, that the auld Laird re-peitis the haill allegiances maid aganis the Act of Parliament, vnder trest, cre-deit, power, affurance, &c. And for Young Auchindrane, sayis, that Dalrumpill was nawayis vnder his power, credeit or affurance; becaus it is nocht qualifeit, that he was vnder the young Lairdis power; and thairfoir, can nocht infer Treafone aganis him. The Aduocat anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE, be Interloquoutour, Suftenis the Dittay, as it is confauet, alfweill aganis the young Laird as his father.—Quhairvpoun the Aduocat askit instrumentis.

ASSISA.

Sir James Scrymgeour of Dudope,	Duncane Bayne of Tulliche,	Williame Sinclair of Blaufe,
kny ^t , elder, Constable of Dundie,	Dauid Weir of Auchtiefardill,	George Seatone of North-Rig,
Sir George Elphinstoun of	Patrik Stewart of Baithie,	Johne Corbett of Arboill,
Blithifwod, kny ^t ,	Vithreid McDowell of Mondork,	Patrik Carkettill of Markill,
James Scrymgeour, younger of	Robert Merfer of Salene,	Johne Kneiland of Fofkane,
Dudope,	Mathow Brisbane of Raslene,	Sir Dauid Woid of Craig, knycht.

My lord Aduocat tuik instrumentis of the fweiring of the Assyse. My lord Aduocat askit instrumentis of the fweiring of the Dittay, be Bessie Dalrumpill, moder to vmq^l Williame Dalrumpill, in that article thairof, concerning the Murthouring her sone.

THAIREFTIR, my lord Aduocat, ffor verificatioun of THE DITTAY to the perfones of Assyse, repeatit to thame the notorietie of the fforfaltour in Parliament of Thomas Kennydie of Drummvrchie, for the tressonabill Murthour of the Laird of Culzeane; repeatit the Hoirning vset aganis the said Thomas, Cloncaird, Thomas McAlexander, and remanent thair complices; and the citatioun of the Laird of Auchindrane elder, for the said crymes, in anno 1602; producis the Hoirning vset be the Laird of Culzeane aganis Auchindrane, ffor the intendit

Murthour of the said Laird of Culzeane, in anno 1597; and repeittis the Laird of Auchindranes Confessioun thairof, in Judgment. And for verificatioun of the said Laird of Auchindrane elder his giltines of the Laird of Culzeanis Murthour, and of the giltines of his sone and James Bannatyne, of the Murthour of William Dalrumpill, producet the Hoirning execute aganis thame for the said cryme, in ffebruar 1608; quhairby, thay ganging to the horne, and fleing frome the Law, thay haif tane vpoune thame the giltines of the saidis crymes.

To prove that *Auchindrane elder ressaivit the Letter* sent to him be Mr Robert Mure, contening aduerteifment of Culleanis dyet, and broght to him be Williame Dalrumpile, Walter Mure of Cloncaird being present, producet the Deposition of James Mure of Fleit, markit with the Letter O. *pagina tertia*; the Deposition of James Gordoun, O. p. 5; the Young Laird of Auchindranes awin Declaratioun, O. p. 6. And that M^cAdame carreit aduerteifment from Auchindrane to Thomas of Barganie thairof, produceit James Gordones Deposition, markit with the said Letter O. p. 10.

For Auchindranes *knowlege of Cullanes Murthour*, vses the Deposition of the Laird of Cauldwell, markit with the Letter G. p. 1, beirand, that Auchindrane schew to them, that he knew of Cullanes Murthour, befor it wes done, and wald nocht stay it. And vses lykwayis the Deposition of James Mure younger of Auchindrane, his sone, O. p. 6, beirand, that he knew that his father was hevelie suspectit of the Slauchter of the Tutour of Cassillis.

To verifie Auchindrane's *keiping of Williame Dalrumpile in his hous of Auchindrane*, in the chalmer in the turnepyk-heid, and in the barne of Auchindrane, schortlie eftir the Slauchter of the Laird of Cullane; vses the Deposition of Young Auchindrane, E. p. 6, and D. p. 5; the Deposition of Johnne Mure of Woidland, L. p. 6; the Deposition of Johnne Mure, callit Blak-byres, O. p. 1; and of James Gordoun, O. p. 5 et 10.

To verifie Auchindranes *sending of Dalrumpile to Arrane*, quhilk Auchindrane denyes; vses the Deposition of Patrik Dalrumpile, H. p. 5; of Johnne Mure, in Blak-byres, O. p. 1; of James Mure of Fleit, O. p. 4.; off James Gordoun, O. p. 5 et p. 10.

To verifie *Dalrumpillis sending to Flanderis*, be Auchindrane, quhilk Auchindrane denyis; vses the Deposition of Walter Mure in Glenheid, A. p. 2; off Johnne Mure, in Blakbyres, O. p. 1; of James Mure of Fleit, O. p. 2 et 3; of James Gordoun, O. p. 5.—And that the Lady Auchindrane *causit Williame Dalrumpile change his name*, and call him self *Williame Mure*; vses the Deposition of James Mure of Fleit, O. p. 9; and of James Gordoun, O. p. 10.

To preve Williame Dalrumpellis being in Walter Mure of Glenheidis hous, *after his returning frome Flanderis*, to wit, vpone the Thurisday befor his Mur-

thour, quhilk Auchindrane denyis ; vfes the Depofitioun of James Dalrumpill, G. p. 1 et 2 ; and of Walter Mure, in Glenheid, A. p. 2.

To preve *the bringing of Williame Dalrumpile from Glenheid*, be James Cunnynghame, at directioun of the Laird of Auchindrane, quhilk he denyis ; vfes the Depofitioun of Walter Mure, in Glenheid, A. p. 2 ; and of James Gordoun, O. p. 5.

To preve the Lairdis of Auchindrane, elder and younger, thair *meitting with Williame Dalrumpile*, in the way betuix Auchindrane and Chapel-Donane, and keiping cumpanie and conference with him the fpace of fevin or aucht myles, quhill thay thre and James Cunnynghame come to Chapel-Donane, quhilk Auchindrane preffis to deny ; vfes Auld Auchindrane's Depofitioun, E. p. 2 ; and Young Auchindrane's Depofitioun, E. p. 7 ; the Depofitioun of Andro M^cAlexander, B. ; Johnne Mure of Woidland, C. ; Patrik Bannatynes Depofitioun, D. p. 1 ; Young Auchindrane's Confeffioun, D. p. 5 ; James Dalrumples Depofitioun, G. p. 1 et 2 ; Williame Roife, L. p. 5 ; Johnne Mure in Carvell, L. p. 1 ; James Bannatyne, M. p. 1.

To verifie *the bringing of Williame Dalrumpile*, be James Bannatyne, *to the SANDIS OF GIRVEN*, to the Lairdis of Auchindrane, elder and younger, and MUR-
THERING HIM VNDER nycht, in that place ; making ane hole for his burrall, and cafting of him in the fea ; vfes the Depofitioun of Johnne Mure of Woidland, C. ; Patrik Bannatynes, D. p. 1. ; James Dalrumpillis, G. p. 1 et 2 ; Dauid Merferis Depofitioun, L. p. 4 ; Williame Roife, L. p. 5 ; Johnne Mure in Cairve, L. p. 7 ; James Bannatyne, M. p. 1 et 2 ; Johnne Mure in Blak-byres, O. p. 2 et 11 ; James Gordoun, O. p. 5 ; James Pennycuiks Depofitioun, maid 27 of Maij ; the Young Laird of Auchindrane's Depofitioun, F. p. 2, beirand, that he hard be the bruit of the cuntrie, that his father knew of Dalrumples Murthour, becaus he was fugitiue.

To verifie that *Auchindrane's denyall that he knew Williame Dalrumpile*, or that he brocht him M^r Robert Mures Lettir, is vntrew ; and that he knew him, and reffaut the faid Letter from him ; vfes the Depofitioun of James Dalrumpile, G. p. 1 et 2 ; James Mure of Fleit, O. p. 3 ; James Gordoun, O. p. 5 ; the Depofitioun of James Mure, younger of Auchindrane, D. p. 5.

To verifie *James Mure*, younger of Auchindrane, *his knowlege of Williame Dalrumpill*, and of his keiping quyet in Auchindrane ; and of his being at hame, immediatlie befor his Murthour ; and his father and the deponneris meiting and conference with him in the way betuix Auchindrane and Chapel-Donane, the day befor his Murthour, and thair cuming altogidder to Chapel-Donane that nycht ; produceit the Depofitioun of the faid James Mure, younger of Auchindrane, D. p. 5. *Item*, the Depofitioun of the faid Laird of Auchindrane younger, D. p. 7.

To verifie the dilligence, craft, and subtilitie vsfet be the Lairdis of Auchindrane, to suppres and eschew the tryell of Williame Dalrumpillis Murthour, and of thair awin giltines thair of; firft, my Lord Aduocat vses the verificatioun of thair intentioun to Murthour Hew Kennydie of Garriehorne, onlie devyset and attemptit be thame, to cullour thair going to the horne, and to eschew the haynoufnes of thair fleing fra the law and tryell of thair giltines, of sic ane horrible and abhominable Murthour as Dalrumpillis; the Depositioun of James Dalruple, K. p. 1 et 2; and the Depositioun of James Bannatyne.

Desyres lykwayis the Assyse to haif confideratioun of thair continuall refoirt and friendship with James Bannatyne, eftir the said Murthour; and thair being at the horne for the samyn; thair suffering the reproches and iniuries, be woird and deid, offerit be him to thame, quhilk thay wald nevir haif induret, gif thair had nocht bene affrayit, that, thair discoirding with him, he fould haif discoverit thair giltines of the said Murthour; vses the Depositioun of Patrik Bannatyne, D. p. 3; the Depositioun of Auld Auchindrane, M. p. 3; and of James Mure of Fleit, O. p. 3.

The geving be the young Laird of Auchindrane to James Bannatyne, ane Lyfrent Tak of his rowme of Chapel-Donane, all writtin with Young Auchindrane awin hand, contening fourtie penneis be yeir of deutie, denyit and menfuorne be Young Auchindrane; and thairefter confessit, quhan the Tak was recoverit and producet, E. p. 8.

The deilling of Young Auchindrane, be him selff and his freindis, with James Bannatyne to go to Ireland, and furneffing of him, to that effect, ane boit, meit and drink, quhilk Young Auchindrane denyit; vses for verificatioun thair of, the Depositioun of Allane Pyper, L. p. 3; Daud Marshellis Depositioun, N. p. 1, et O. p. 4 et 8; Daud Mure, in Girven, his Depositioun, O. p. 4; and James Bannatynes, O. p. 8.

That Young Auchindrane wrait ane Letter with the said James Bannatyne, and in his fauour, to Thomas Kennydie of Drummurchie, the Kingis forfalt Tratour; vses for verificatioun thair of, the Confessioun of the said Young Laird of Auchindrain, O. p. 7; and the Depositioun of Williame Kennydie of Garfar, O. p. 8.

To preve that the fermes (*rents*) of Chapel-Donane, was continuallie payit to James Bannatyne, sen his banishment; vses the Depositioun of James Roife, tenant thair, L. p. 5.

To preve the furneifing of pleniffing, money and necessaris be the Auld Lady Auchindrane to James Bannatyne, continuallie, since his going to Ireland; vses the Depositioun of Williame Pyper, L. p. 1; Daud Marshell, L. p. 4; Williame Roife, L. p. 5; James Roife, L. p. 5; James Gordoun, O. p. 10; and be Auchindrane awin Letter sent to James Bannatyne; Moyfes Lokhartis Letter to James

Bannatyne ; Young Auchindranes Letter sent to James Bannatyne ; the Lady Auchindranes thre Letteris to James Bannatyne ; and hir Letter to James Bannatynes wyfe.

The perfewar desyres the Assyse to haif consideratioun, as of ane verrie materiall circumstance, that James Cuninghame, being the man imployit be Auchindrane to keip Williame Dalrump quyet in the place of Auchindrane, and to convoy him fra Glenheid to Chapel-Donane, the nycht befor his Murthour, quhairby he, being for the tyme, his actuall fervand, and in his hous of Ballachtoule the nycht of Dalrumpillis Murthour, and thairby mair abill to haif discoverit the circumstances of the Murthour nor (*than*) ony vther ; the Laird of Auchindrane hes absentit him, for eschewing of the said tryell : And how the said James Cuninghame, being in the Laird of Caldwellis hous, and the Erle of Abercorne geting knowlege thair of, haifing, as ane Counsalour, commandit Caldwell (*Mure*) to exhibeit Cuninghame befor the Counsell ; he, contrair to his promeis, sufferit him to escaip : He being challengeit for it befor the Counsell, grantit the promeis, and declairit that Cuninghame was sent to his hous be the Lady Auchindrane ; and that, contrair to his promeis, he sufferit him to escaip ; ffeiring, gif he had enterit him befor the Counsell, he fould haif done harme to his freind. For the quhilk, he become in the Counsellis will ; as his Depositioun beiris, H. p. 1.

As lykwayis, how Auchindrane elder directit the said James Cuninghame, by the way to the Laird of Vaynes hous, in Angus, causing him change his name, and to call him self *Williame Broun*, and geving him that name, quhan he recommendit him to the Laird of Vayne, albeit the man was the said James Cuninghame ; Quhilk Auchindrane denyis ; bot the contrair is provin be James Gordoun, O. p. 5 et 10 ; be the Laird of Vayne, O. p. 11 ; Andro Lokhart, O. p. 12, and George Blakis Depositioun, maid at Lundoun, 28 Maij.

Forder, it is desyrit that the Assyis will consider the grit substance contenit in the Letter writtin be Auchindrane to his sone, with his awin hand, impudentlie denyit be him ; and nevertheles cleirly verifeit be the Depositionis of Daudid Drummond, seruitour in the Castell, E. p. 15 ; and be Thomas Home, Constable, *ibid.* ; and be the Declaratioun maid be my Lord of Mar, in Counsell ; quhilk the Lordis of Secreit Counsell, present in this Judgment, hes verifeit.

They haif to confidder the Lady Auchindranes advertteiffing of James Bannatyne, be Letters, of all the Dyettis of proces led betuix the Laird of Auchindrane and her sone ; and hir recommending of him to Thomas Kennydie of Drumurchie, hir brother ; provin be Williame Pyper, L. p. 1 ; James Gordoun, O. p. 10 ; and be hir awin Miffaue Letter to James Bannatyne.

The Lady Auchindranes absenting hir self, and nocht compeirance befor the Counfall, quhan scho wes charget thairto, vnder the pane of Hoirning, to compeir and Depone hir knowlege of the crymes quhair of hir husband and sone ar

accused ; Thomas Mure, sone to Auchindrane, and Andro Sinclair, half brother to Auchindrane, thair going to the horne, for nocht compeirance to depone in the saidis crymes, quhilk of necessitie man be presumeit to proceid of the stay maid to thame be Auchindrane, elder and younger, for feir that thair Depositiones fould discouer the giltines of the saidis Lairdis. The lyk man be presumet of Thomas Wallace, Johne M^ccaig, and dyuerse vtheris of the Lairdis servandis, going to the horne, for the lyk cause.

Thay haif also to confidder verrie cairfullie, the Laird of Auchindrane's hyring James Pennycuik to go to Ireland to Murthour James Bannatyne ; denyit be Auchindrane, and verifeit be the Deposition of the said James Pennycuik, and George Small his servand. And the lyk directioun sent be Auld Auchindrane with George Blak to Ireland, to Williame Carmichell younger of Rowntrie-croce ; verifeit be the Depositiones of George Small, O. p. 11, and be the Examinations of the said James Pennycuik and George Blak, in Lundoun, in May last.¹

Last, thay haif to confidder the Letter sent be Auld Auchindrane to the Laird of Stair,² and the forme of Band send thairwith, to haif bene obtenit, subscryuit be the Laird of Stair, and his freindis, of the name of Dalruple.

IN respect of the quhilkis premisses, verifeing the crymes lybellit, and hail materiall circumstances thair of, with so cleir evidences and manifest probatioun, as na man could haif expected, in so covered and craftie Murthouris ; quhairby all dout of obscuritie and scruple is cleirly removet ; in caice the said Affyse or ony pairt of thame fall happin so unhappellie to forget thame selfis, as to clange³ the saidis Lairdis of Auchindrane, elder and younger, or the said James Bannatyne, quaha hes Confessit his awin giltines, in Judgement ; my lord Aduocat protestis for Wilfull and manifest Error ; and for all payne that of the Law can follow thairupone.

IT IS ANSWERIT be the pannell to the perticularis aboue writtin, that the samyn, nather in hail nor in pairt, aucht to be respectit ; and speciallie, in sa far as the samyn is foundit vpon Deposition of Witnessis ; because, it is speciallie provydit be the Act of Parliament, maid in the yeir of God I^m. V^c. fourscor sevin,⁴ cap. 90, that in all causses Criminall, the hail proces and probatioun, and vther instructiounes quhatsoever, ather be Writ or Witnessis, shall be alleget, reffonet and deducet in presens of pairtie accusit, in face of judgment, and na vther wayes ; quhilk is accoirding to the Cowmoun Law ; seing na witnesses can be reffaut *contra non*

¹ It may be stated here, once for all, that unluckily the DEPOSITIONS, LETTERS, and other productions, which are here so regularly quoted by their proper numbers and pages, are lost ; at least, if among the Records of the Justiciary Court, are in a room filled with loose and unarranged papers, tied up in bundles in such a manner, as to render any ordinary search entirely hopeless—as it would occupy many months' constant investigation. ² John Dalrymple, chief of that name. ³ *Cleanse* ; find innocent, acquit. ⁴ Anno 1587.

citatum; to the effect that the pairtie may be hard to oppone aganis thame. And trew it is, that all thir Depositiones and writtis, vset be my Lord Aduocat, and speciallie the saidis Depositiones of Witnesses, hes bene reffaut out of prefens of pairtie; the pairtie nevir being summonit to obiect aganis thame, done extrajudicial, and nocht in Judgement: And thairfoir, quhatsoeur the Lordis of Counfall, *per medium inquisitionis*, hes done of befoir, out of prefens of pairtie, aucht nawyis now to be respectit be the Assyse; accoirding to the decifioun of the Act of Parliament: for, as in Ciuile causses, na fayth will be gevin to ony Witnesses out of prefens of partie, *multo minus in Criminalibus*.

And now, anfuering perticulerlie, firft, as to the Forfaltour of Thomas (Kennedy) of Barganie, (Drummurchie,) thair is na thing producet. Nixt, he wes nocht forfalt for the factis lybellit, bot only for the burning of the house of Auchinsoule. *Tertio*, it tuiches nocht our cause. As to the Hoirningis, the pannell vses fyve feuerall Relaxatiounes of Auchindrane, elder and younger, *respectiue*; quhilk thay producet. And albeit the Lairdis of Auchindrane, elder and younger, war put to the horne, for thair nocht compeirance, the first dyet, yet that importis na taking of the cryme upone thame; becaus, thay being giltie for vther crymes, and speciallie, schuiting of pistolettis, for the quhilk thing mycht haif bene pwneift be the lawis, thay durft nocht compeir, quhill first thay had obtenit ane Remiffioun of the saidis crymes, quhilk thay mycht lauchfullie do; becaus, thay knew certanlie, that thair going to the horne wald be purget be thair compeirance and offer to Tryell. As lykwayis, Young Auchindrane compeirit at the first Dyet; and also Auchindrane elder wald haif enterit willinglie, and to that effect offerit to comper¹ and tak his Remiffioun for the pistolettis, but culd nocht obtene the samyn; as is notour to my Lord Chancellor and Thesaurer.²—As to the repetitioun of the Deposition of *James Mure of Fleit*, and *James Gordoun*, it is anfuert, *ut supra*. And forder, in caice the pairtie had bene wairnit, as he was nocht, he wald haif repellit the said James Muir, he being ane vagabund, without ony residence, nocht worth the Kingis vnlaw;³ and richt sua, that he was denunceit rebell and put to the horne, for steilling of tua horse and thre oxin fra the Tutour of Nuntoun; and also, for steilling of ane quhyte naig out of the landis of Skeltoun. Lyk as, the Tutour of Bombie, to move him to be ennemie to Auchindrane elder and younger, and to depone aganis thame, he aggreit⁴ the Tutour of Nuntoun and the said James Mure, anent the steilling of the said guidis. And forder, the Laird of Blairquhand hes promiseit him geir and guid deid, to depone aganis thame;⁵ and (Mure) hes now becum his seruant.

¹ Compromise; make a composition, or purchase his Remission from the Crown. ² Both of whom, it will be remembered, were then sitting as Assessors. ³ Not being worth, *i. e.* unable to pay the fine or *amerceiment* to the king, for his own appearance, &c. ⁴ Reconciled them, and made up their quarrel. ⁵ For the reason of Blairquhand's feud with Auchindrayne, see Hist. of the Kennedyis, p. 19, &c.

And as to Gordoun, can nawayis be respectit, becaus he was nocht aucht 3eiris,¹ the tyme of the committing of the factis quhairvpon he was examinat. Lyk as, the pannell defyres that Gordoun may be presentit in presens of the Assyse, and confrontit with the pannell.—Forder, it is allegit be the pannell, that the Depositiones for (of?) the said James Mure and James Gordoun, and all vtheris of the lyk nature, aucht nawayis be respectit; becaus, it is of veritie, that the lybell and Dittay consists of tua pairtis; the ane substantiall, to infer the pwneifchment lybellit, viz. the committing of the factis lybellit; and the advyse, consent, persuasioun, instigatioun, causing, command, counfall, and ratihabitoun, quhilkis ar the only substantiall poyntis contenit in the lybell and Dittay: And the rest of the poyntis of the said Dittay are only presumptiones, coniecturis, and liklienes.² And feing, the speciall cause quhy the Justice Sustenit the lybell, was the advyse, presumptioun, instigatioun, counsell, command, assistance, and ratihabitoun gevin, be the Auld Laird of Auchindrane, to the saidis Thomas Kennydie, for Murthouring of the said Laird of Culzean; and that thair is na thing of the said substantiall poyntis provin be nane of the Depositiones; quhatsoeuer Depositiones is maid be the saidis tua persones, or ony vther remanent Witnesse, in materis of the lyk nature, anent ony probabilities or presumptiones, albeit thai war maist violent presumptiones, and indoutit, thay can produce na sentence condampnatour³ in Criminall cauffis, bot only ar adminicles to the tortour and questioune. And forder, the Depositiones of the saidis tua persones, being only anent the ressaite of ane Letter, nocht contening the contentis and qualitie thair of, can nawayis induce ony presumptioun, far less probatioun. *Item*, it is to be rememberit, that thir Depositiones tuiches nocht Young Auchindrane. *Item*, tuiching that pairt of Young Auchindrane, and Caldwellis Deposition, thay prove nathing, nather of the fact, nor yit of the knowlege. As also Young Auchindrane's Depositiones previs far les; becaus he mycht haif lauchfullie deponit that his father was suspect befor he was pannellit.

And forder, as to the Depositiones of *Young Auchindrane*, and *Johnne Mure of Woidland*, thay can work nathing, feing thai preve na pairt of the Dittay, or factis thairin contenit; ffor as to Young Auchindrane's Depositiones, anent his knowlege of Dalruple to haif bene in his fatheris hous, that previs na pairt of the Dittay. And, quhair it might appeir, be the said Deposition, and vtheris Depositiones conforme thairto, that the said Laird of Auchindrane is improvin, as quha deponit that he never knew the said Dalrumpill,—it is ansuerit, that the same can impoirt na probation of ony pairt of the Dittay; becaus, gifand⁴ and

¹ Eight years old.

² Probabilities, *likelihoods*.

³ Condemnatory.

⁴ Giving or allowing for the sake of argument, but not granting; a common form of expression used in ancient legal proceedings, when Counsel was illustrating a point by arguments, &c.

nocht grantand that the pairtie pannellit had maid ane leising,¹ or vareit and bene inconstant, and sa waverit in his Deposition, the same can impoirt na probatioun; speciallie, quhair the said vntreuth, &c. is nocht in the substantiall pairtis of the Dittay, bot in vther accidentis and externall circumstances. And as to Johnne Mure of Woidlandis Depositiones, it can nawayis be respectit, for thir particular cauffis:—first, he is tennent removeable² to the Erle of Cassillis, and his household servand; nixt, he is Chalmerlane and factour to ane grit pairt of his lordschipis landis; bot in speciall, is Bailzie of the Barronie of Dalrumples. *Secundlie*, he was vpone the ground, in companie with the Erle of Cassillis, at the slauchter of Barganie, at quhilk time Auchindrane was deidlie hurt. *Thridlie*, he was also in companie with the Erle of Cassillis, at the persute of Auchindrane, in his awin hous. *Fourtli*, he was in companie with Hew (Kennedy) of Garriehorne, and his convoy throw the landis of Auchindrane, quhair he come in bragging maner, and socht Auchindrane at his awin hous. *Fyftlie*, befoir he was examinat befoir the Counsell, the Erle of Cassillis causit him sett down sic woirdis as his lordschip thocht expedient, and to be subscryuit with his hand; quhilk he nawayis durft alter, befoir the Counsell; *et sic prodiit testimonium*. The quhilk writ was producet to him in Counsell, befoir he wald depone; quhairby he nicht keip my lordis injunctiones.

ITEM, as to the Deposition of *Johnne Mure of Blakbyres*, it previs na pairt of the Dittay, becaus he deponis nathing of knowledg that he hes of Auchindrane, bot a repoir that he had of vther servandis. And forder, the said Johnne could nevir haif bene witnes fra the beginning, ffor thir cauffis:—Becaus, he slew the Laird of Auchindrane's seruand callit Williame Geddies, for the quhilk he was banefschet the countrie; nixt, he come in vpone fair promiseis and conditiones maid to him be the Erle of Cassillis, to purches to him ane Remission for that Slauchter, and for the quhilk caus, he promiseit to the said Erle to depone quhat he defyret: And last, the said Johnne Mure hes intrufet³ him self in ane grit pairt of Auchindrane's lands, and thereby⁴ thinkis to bruike⁵ the samyn.

As to *Patrik Dalrumples* Depositiones, na fayth can be gevin thairto, becaus he is uncle to the murtherit man.

It is ansuerit, to the Deposition of *Walter Mure*, and to the rest of the Depositiones befoir the allegit Presbiterie, that the saidis Depositiones can mak na fayth; becaus thai ar extra-judiciall, na proces depending aganis ony pairtie, na pairtie haifing intres being callit, bot only ane naikit conventioun of tua or thre Ministeris, nocht Presbiteriallie convenit, quha had na power to tak sic Depositiones: And as the saidis Depositiones, gif thai had bene tane to the saidis Mi-

¹ An untruth or falsehood; *leasing*.

² Tenant at will.

³ Intruded; thrust himself into.

⁴ By perjury, or giving false evidence, &c.

⁵ Enjoy; possess as his property.

nifteris in ane Ciuile caus, wald haif maid na faith, far les in ane Criminale. *Secundlie*, the said Walteris Deposition preuis na pairt of the Dittay: And albeit the Depositiones war trew and valid, yit thay ar ineffectuall; becaus, albeit it war grantit that Dalrump was fend to Flanderis, that impoirtis nocht the probatioun of ony Dittay.

ITEM, it is anfuert to *James Dalrumples* Deposition, that the same can nawayis work aganis thir perfonnes pannellit: Becaus, in the first pairt of the said Deposition, he deponis nothing aganis thame: And as for the last pairt, beirng ane plott to mak ane onfett vpon Garriehorne, the samyn can nawayis work aganis the perfonnes pannellit; nather can his Deposition be regairdit, in respect he deponis his awin turpitude, viz. the forgeing and contryveing of the slauchter of Garriehorne devyfit be him self, as is confessit; and quhilk devyfe of his, he counsellit the perfonnes pannellit to put in executioun; and sua, he being devyser and contryver of the fact, he can nevir be hard to depone in preiudice of the perfonnes pannellit. And to purge the onfett maid vpon Garriehorne be Young Auchindrane, the verritie is, that the caus of that onfett was accidentlie, they meitting togidder at the end of the Toun of Air, and Young Auchindrane meiting him in the way, had just caus to mak the onfett vpon him: first, becaus he had tane his fatheris bluid, and nixt, he was at the Slauchter of his mother-brother.¹ And forder, the said James Dalrumpillis Deposition can nawayis be respectit, becaus he is ferdis of kyn² to Williame Dalrumpill, quha is flane, and is secund and thridis to the Laird of Culzeane. And forder, befor he was present in Counsell to depone, he was movet to depone the samyn, vncitet,³ be my Lord of Abercorne, quhair of he maid adverteisment thairefter to the Laird of Auchindrane and desyret him to sett him; becaus he had put all that he had, be submissioun, in Sir Claud Hammiltones handis.

ITEM, as to the Deposition of *M^cAlexander*, it preves na pairt of the Dittay nor factis lybellit, bot rather purges the samyn; and forder, can mak na faith, becaus it declairis, that the Lairdis of Auchindrane war content to cum and tuich the corps,⁴ sua that⁵ thay mycht do the samyn in Air, my lord of Cassillis nocht being thair. And to verifie the samyn, produces ane Instrument.⁶ And forder, at that tyme Young Auchindrane was deidlie hurt; and sa could nocht cum. And forder, the said Deposition can nawayis be respectit, becaus it is extra-judiciall, and one in prefens of the partie adversar, viz. the Erle of Cassillis.

¹ Uncle; mother's brother. ² Within the fourth degree of relationship. ³ Without having received lawful citation. ⁴ Alluding to the well-known popular test, or ordeal, of *calling upon the accused or suspected person to come forward and touch the corpse of the murdered party!* The superstitious notion then held was, that THE CORPSE WOULD BLEED, *immediately on the approach or touch of the Murderer!* Powerful use of this circumstance has been made by Dramatists and writers of Romance. See a variety of interesting notices in the APPENDIX to this Trial, with an enquiry into the origin and practice of our ancestors in such cases. ⁵ On condition; provided that, &c. ⁶ A Notarial attestation.

ITEM, as to *Patrik Bannatyne's* Deposition, it aught nawayis to be respectit, for thir cauffis:—*First*, becaus he is secund and thridis of kyn with Culzeane, quha is ane pairtie accuser; as also to the Erle of Cassillis: *Nixt*, becaus he is brother to James Bannatyne, quha is *socius criminis*, and is callit and accuset for the samyn cryme: And *last*, his Deposition can mak na fayth, becaus the samyn proceidis onlie *ex auditu*, be relatioun of his brother James Bannatyne; in the quhilk Deposition, he confesses the said James Bannatyne to be thryfe contrair¹ in his relatioun. And sua, his Deposition, depending vpon ane contrair relatioun, makis na fayth.—Aganis the hail Depositiones depending vpon *James Bannatynes* relatioun, it is allegit,—gif James Bannatynes fall, all his relationes man fall.

And forder, as to *Williame Roifes* Depositione, it is allegit, that the samyn can nocht be respectit, becaus Williame Roifes wyfe and the Laird of Culzeane ar thrydis and ferdis of kyn. As also, his wyfe is father-sister to James Bannatyne, quha is accuset of the same crymes.—It is allegit aganis the Deposition of *Johnne Mure in Curver*, that the samyn can nawayis be respectit: Becaus the samyn is only ane relatioun made be James Bannatyne: *Secundo*, becaus the samyn is contrair to the Dittay; in sa far as the Dittay beiris, that James Bannatyne, haifing brocht Dalrump to the Sandis of Girven, left him behind him, and raid forwardis to the tua Lairdis of Auchindrane, quhair the Auld Laird conferring with him, the Young Laird past to the said Dalrump; and eftir ane space, Auld Auchindrane and Bannatyne cuming neir thame, he slew him: And in this Deposition it is confessit, that James Bannatyne sould haif said to the Deponer, that Young Auchindrane drew this Dalrump after him, and slew him; quhairby it is euident, that James Bannatyne is contrair, insafar as the Deposition beiris, conforme to the Dittay.

As to the Deposition of *James Bannatyne*, it aucht nawayis to be respectit, for thir argumentis.—*First*, becaus he hes tane the cryme vpon him, and for the samyn hes maid offeris baith to the Kirk and pairtie: *Secundlie*, he standis yit at the horne vnrelaxit: As also, is vnder the censure of excommunicatioun; and so is nather Godis man nor the Kingis: *Thridlie*, he is secund and thridis of kyn to the Laird of Cullane and the Erle of Cassillis: *Ferdlie*, he is cum in vpon promeis and conditioun of his lyfe, quhilk was fet down to him be Josias Stewart, bruther to my Lord Vchiltrie, James Stewart, and the Laird of Girvenmaynes; and his Band gevin to that effect, that he fall cum baith saif to Scotland and returne saif to Ireland. Eftir meiting and conference in Ireland, and quhat he had sett down the conditiones, he come over to Buit to his coufing the Laird of Cames,² to quhome he schew the conditiones, and brocht Cames brother,

¹ Contradictory.

² From Ireland to the Island of Bute, to his cousin, . . . Bannatyne of Kames.

callit Rannald Bannatyne, with him to the Largis, quhair he mett with James Stewart, quha brocht him to Kilwinning; and than Jofias and James Stewartis mett with him befyde Irwing, to haif fett down the conditiones perfytlie, for his fure returning to Ireland, quhilk fould haif bene put in Rannald Bannatynes handis; bot, vpon fair promeffis, he was movet to leve Rannald behind him: And thairefter, he wes brocht to my Lord of Abercorne, with quhome he was tuentie dayis, or thairby: And thairefter, he was fend to Cliddifdail, to the Laird of Corhous;¹ and fua, be this progres, it is evident, quhat hes bene the indirect deilling of James Bannatyne, fra the beginning. Speciallie, quhan foveir ane partie is accuset for ane cryme, and is fugitiue for the fame, as in this caife, he can nevir be hard, be his Confessioun and Depositioun, to work ony preiudice to ony vther partie; nather can his Depositioun work, fa mekill as the tortour, to the parties, vnles he first be fubiect to the tortour him self; as is obseruit in the Justice Courtis of all Christiandome: Nather can his Depositioun be regairdit aganis Young Auchindrane, becaus the samyn proceidis vpon malice aganis him; infafar as he was informet that Young Auchindrane had offerit to the Thesaurer, for cleiring of his awin innocencie, to set caution, vnder the pane of Fourtie thousand pundis, to exhibeit the said James Bannatyne befor the Justice:² And it is nocht to be presumet, that ane man giltie of ane haynous cryme, being at his awin libertie, wald willinglie cum in to his awin deid,³ bot vpon promeiffes and conditionis. And forder, this argument is infallable; na gritter fayth can be gevin in this matter to James Bannatyne, nor gif⁴ Dalrumple, vpon his deid-bed, had maid his Declaratioun that he was flane be Auchindrane, elder and younger: Bot trew it is, that na fayth wald haif bene gevin thairto, without vther probatioun. This was cleirly decydit, quhan as Robert Ramsay, notter in Stirling, was execute to the death, confessing that the Instrument of Denunceatioun maid be him self, quhairto he was notter aganis the Tennentis of Halbarnes and Auldlistoune, was fals, and past constantlie to the deid with it; yit, quhan as the caus of Improbatioun was advyset be the Lordis of Counsell,⁵ thay respectit nather his first, secund, nor thrid Depositioun, in preiudice of the producer, accoirding to the Cowmoun Law; becaus the Confessioun of ane malefactor may weill preiudge him self, bot na vther.

It is Anfuerit to the remanent Depositiones, depending vpon James Bannatyne's relatioun—aucht nocht to be respectit, *vt supra*.

As to the Depositiones of *James Pennycuik*, thay aucht to mak na fayth, be-

¹ Bannatyne of Corhous, in the county of Lanark.

² They omit a material part of the offer, viz. to present him 'dead or alive!' It being their purpose to have him murdered in Ireland, *by authority*, and thus for ever to have suppressed evidence of their nefarious wickedness!

³ Death.

⁴ Than if Dalrymple upon his death-bed.

⁵ When the process of Reduction, for the purpose of annulling and setting aside the Instrument, was advised before the Civil Court.

caus he is ane personage infamous and notoriouſſie knawin to be infame ; he is denuncet rebell and put to the horne at the instance of Capitane Williame Rig, for ſteilling of his cloick and his fuord, accompaneit with ſevin vtheris, betuix Leyth and Ed^r, vnder clud of nycht : And this Hoirning, ſtanding for ane ma-niſt Ryote and Oppreſſioun, is ſufficient to mak him infame : And produceit the Hoirning for veryfeing thairof : *Secundlie*, the Depoſitioun of James Pen-nycuik can nocht be regairdit, in reſpect the ſamyn is improvin, in the ſpeciall poynt thairof, befor the Lordis of Secreit Counſell ; in ſa far as he, haifing de-ponit the Obligatioun reſſaut be him from Auchindrane for the ſowme of Four-ſcoir pund, to haif bene gevin for Murthering of the ſaid James Bannatyne—the contrair thairof was veriſeit befor the ſaidis Lordis, and the ſaid Obligatioun (proven) to haif bene gevin for borrowit money : Lyk as, the Witneſſes quha war examinat thairupoun, deponit, that thai ſaw the numeratioun¹ of the ſaid money. And ſua the ſaid deponer being improvin, in the maiſt ſubſtantiall poynt of his Depoſitioun, thair aucht no credeit to be gevin to the reſt. Forder, the ſaid Depoſitioun concernis na pairt of the Dittay, nather ſubſtantiall nor circum-ſtances thairin contenit. Laſt, he is *teſtis ſingularis*, deponeing vpon his awin turpitude, viz. that he was hyret to the Slauchter of ane man ; and thairfoir, his Depoſitioun can nocht be regairdit ; ſpeciallie, haifing conſideratioun to the circumſtances thairof, viz. that vncoactit or compellit, he paſt furth of Scotland to London, to mak his Depoſitioun to his awin guid-brother,² Sir James Ham-miltoun, in the quhilk he confeſſis him ſelf to be reſtranit fra his allegit pre-tences, and to mak the ſaid Depoſitioun for the love and reverence he bure to my Lord of Abercorne, quhome the perſones pannellit acknowleges³ as pairtie. Quhilkis haill circumſtances, concurrand with the notorietie of his bypaſt lyfe, vereſeit be the Decreit of Secreit Counfall, his Depoſitioun can mak na fayth.

As for the Depoſitiones of *George Blak*, the ſamyn can mak na fayth : becaus he depones that the Laird of Auchindrane ſould haif hyret ane Williame Car-michell, being ane diſcreit Gentilman, *integre fame*, is nevir examinat thair-upoun ; and ſua the ſaid Georges aſſertioun, being *teſtis ſingularis* in that Depo-ſitioun, can nocht worke.

To the preſumptioun obiectit aganis *Young Auchindrane*, beiring, that gif he had nocht bene giltie of the Murthour of Dalruple, he wald nocht haif ſufferit the iniurious woirdis and langage of James Bannatyne ; it is anſuerit, that gifand the preſumptioun war trew, yit it is nawayis pregnant to infer Treafone aganis Young Auchindrane, ſeing na ſubſtantiall fact is provin. And forder, the caus of his forbeiring of him, at that tyme, was, in reſpect the ſaid James Bannatyne vtterit his iniurious woirdis and boiſting, in his drukinnes,

¹ Telling, or counting out of the money.

² Brother-in-law.

³ Recognise.

quhairvnto he is always subiect. As lykwayis, it was na honour¹ to Young Auchindrane to put handis in his awin man, being in that estait : Lykas, he was reconfeillit with him, at the requeist of Williame Kennydie of Garfar, quha was examinat befor the Counsell.—It is anfuert, to the presumptioun concerning the Tak² maid be Young Auchindrane to James Bannatyne, quhilk Young Auchindrane denyit that he nevir gaif any to the said James, quhill³ the samyn was provin and producet, &c. ; that the samyn presumptioun is nawayis sufficient to infer the cryme of Treasoun ; becaus the same is nocht ane presumptioun concerning the committing of the cryme lybellit, bot only ane illatioun⁴ vpoun ane vnnecessar consequence ; ffor it nawayis followis that, albeit ony Gentilman gaif ane Tak, for nocht, to ony of his servandis or dependeris, that thairfoir he was airt and pairt with him in committing of ane tressonabill act ; vnles it war sufficientlie verifeit to haif bene done for that caus ; nor yit dois the production of the Tak mak Young Auchindranes Depositioun to be vntrew ; becaus it is neur provin that the Tak was gevin to James Bannatyne ; bot, be the contrair, the samyn was tane out of Thomas M^cAllexanderis kift, in quhais handis it was confignit, quhill the conditiones betuix thame war endit ; viz. that the said James sould haif maid richt to Young Auchindrane of the sowe of I^m (1000) merkis, quhilk he had vpone Langschawis land, quhilk he could nocht than presentlie do, in respect the said James had maid his awin wyffe assignay thairto ; quhilk Assignatioun is producet in judgement : Nather is it probable that gif the Tak had bene maid to the said James, conforme to the presumptioun, bot the samyn wald haif bene put in his awin hand, and nocht confignit in ane thrid perfonis hand.

[My Lord Aduocat takis instrumentis of James Bannatynes Declaratioun maid judicillie be him ; quha being demandit, ‘ Gif the Tak grantit to him be Young Auchindrane was delyuerit to him self ?’ Declarit, it was first delyuerit to him, and thairefter, be consent of him self and Young Auchindrane, it was put in the handis of Thomas M^cAllexander, vpone Auchindranes feir that the deponent had allegit the production of that Tak sould haif done him grit harme.]

As to the Depositioun of *Allane Pyper*, it aucht nocht to be respectit, becaus he is tennant to my Lord of Caffillis of the foure merk land of Sallachan ; and forder, the said Depositioun proves nathing, nather of the substance nor circumstances of the Dittay. As to the Depositioun of *Williame Roise*, can mak na fayth ; becaus his wyfe and the Laird of Cullane are thridis and ferdis of kyn : And forder, the payment of the maill and deutie inferris na presumptioun. As to the Depositioun of *Williame Pyper*, anent the Lady Auchindranes furneiffing of James Bannatyne, aucht nocht to be respectit, becaus he is man, tennent, and

¹ It would have been dishonourable.

² Lease, or *tack*.

³ Until.

⁴ Inference. Lat. *illatio*.

fervand to the Erle of Caffillis ; as also, is tennent removeable to the Erle of the foure merk land of Sallachan ; nixt, he fauld his maister Ardmillane and Thomas of Bargany to my Lord of Caffillis ; for the quhilk he promiseit him V^c merkis. It is anfuert to the presumptioun anent *the Laird of Cauldwallis* Depofitioun, of the fuffering James Cunninghame to pas away, contrair to his promes, that the famyn is nawayis pregnant aganis the perfonnes pannellit, feing thair is na fact or deid contenit in the fame, allegit to be done be thame. It is anfuert, to the presumptioun refulting vpone the Letter producet—Firft, the fame wirkis nathing aganis Young Auchindrane, becaus it is ane Lettir allegit writtin fra his father to him, never reffaut be him ; and fa can infer na preiudice aganis him : *Item*, it can work nathing aganis the father, becaus the famyn is nocht fufcryuit be him ; lyk as, he denyis the famin being re-sent ; and thairfoir, he nocht confeffing the famyn, nor being fufcryuit be him, can work nathing aganis him : And quhair as, it wald appeir the fame to haif bene delyuerit to the Counfell be my Lord of Mar, quha is allegit to haif reffaut the famyn fra the Conftable,¹ quhilk Conftable is allegit to haif reffaut the fame fra Dormond, ane of the ordineris of the Caftell ; and the faid Dormond is allegit to haif reffaut the famyn fra Auchindrane elder, to haif bene delyuerit to his fone : The famyn can mak na fayth, ffor albeit my Lord of Mar and the Conftable thair Depofitiouns may be trew, as the perfonnes on pannell will nocht impunge the famyn, yit it followis nocht bot, that Dormond hes bene fubornet be the vnfreindis of the faidis perfonnes to mak the faid narratioune to the Conftable : to the effect that thairby he mycht caus ane falfeit Letter cum in the Counfallis handis :—And to mak the faid mater mair cleir, the faid Laird of Auchindrane elder offeris to preve and verifie instantlie, be dyuerfe famous witneffis fufcryveand, and, in fpeciall, be James Pennycuik, ane of the perfonnes producet aganis him, and vtheris, &c., that Eduard Mekiljohnne, fumtyme feruitour to James Prymrois,² come to the Laird of Auchindrane, thay being baith wairdit in the Tolbuthe, and faid to him, ‘ Sir, I haif fene 3our writ ofbefoir ;’ and being demandit, ‘ Quhair?’ anfuert, ‘ I was imployit to counterfute ane Letter of 3ouris, allegit directit be 3ow to be Caftell of Ed^r to 3our fone,³ the quhilk contenit ane half-throche of paper⁴ on bayth be fydis, and was nocht fufcryued ; the quhilk I counterfute as neir 3our hand writt as I think was poffible.’ Being demandit, ‘ How was it be pis writt quhilk I am now wryting?’ Anfuert, ‘ It was fumthing fmaller.’ Being demandit, ‘ Quhat was be caus be Letter was nocht fufcryuit?’ Anfuert, ‘ It was to mak the matter mair fufpitiouſ! ffor, fayis he, ‘ it wes gevin me vpone

¹ The Conftable of Edinburgh Caſtle, viz. Thomas Hume.

² Clerk to the Privy Council.

³ Directed from Old Auchindrane, then in the Tolbooth of Edinburgh, to his ſon, then in ward in the Caſtle.

⁴ A half *through*, or half a ſheet of writing-paper, then uſually of the ſize which is now termed ‘ foolſcap.’

ane grit secreit in the Tolbuthe, and I nevir reveillit nor opnit þe matter quhill now ! James Pennycuik ſpeiris at him, ‘ Quha gaif 3ow this ? ’ Anfuerit, ‘ I will keip þat to my ſelf ! ’

As for the doingis of *the Lady Auchindrane*, the ſamin can nawayis preiudge hir huſband or hir ſone, ſcho being ane woman ; and hir abſenting of hir ſelff was for ane lauchfull cauſe, viz. ſeiknes, authorizet be ane lauchfull Teſtimoniall.

As for *Thomas Mure* and the reſt going to the horne, for non compeirance, it can be no pregnant preſumptioun to infer Treafone vpon the perſones pannellit.

Eduard Mekill-Johnne, being ſend for, and preſenting him ſelff, ſuorne and examinat, deponis, that he reſſaut the Letter direct be Auld Auchindrane to his ſone, being wairdit in the Caſtell of Ed^r, fra my Lord of Mar, in preſens of Archibald Prymrois, writter, to be coppeit be the Deponer. Eftir the coppieing quhairof, the deponer, ane grit ſpace thaireſtir, cuming to the Tolbuith of Ed^r, and finding the Laird of Auchindrane wryting at ane buird, he come to him and ſaid as followis : ‘ Laird of Auchindrane, I think I haif ſene 3our writ of befoir.’ Quhairvnto Auchindrane anfuerit, ‘ Quhair ſaw 3e it ? ’ The Deponer replyt, ‘ I remember I coppeit ane Letter verrie lyk 3our writ, quhilk I reſſaut to coppie fra ane Noble man ! ’ Bot wald nocht declair to him the Noble man his name that gaif the directioun : And as to the alleget declaratioun than maid be the deponer, that he counterfute the ſaid hand writt, denyis the ſamyn ; bot that the ſamyn was coppeit be him, be directioun, as ſaid is. Quhairvpon my lord Aduocat aſkit inſtrumentis.

Archibald Prymrois, alſo preſent, being ſworne, Declairis, that he was preſent quhan my Lord of Mar delyuerit the Letter to Eduard Mekil-Johnne to be coppeit ; quhilk my Lord than declarit, was interceptit betuix Auld Auchindrane and his ſone ; and the ſamyn Letter being than preſentit be my lord to the Deponer, he verrie hardlie could get the ſamyn red, being ſa evill writtin and evill ſpellit ; Bot to put Auchindrane in remembrance anent that matter, the ſamyn Letter being producet to the Lordis of Secret Counſell, eftir intercepting thair-of, and ſchawn to the Laird of Auchindrane, and he than inquyrit, ‘ Gif he knew that Letter or the hand writ thair-of ? ’ Auchindrane anfuerit, ‘ It was nocht his hand-writ, bot was verrie lyk it.’ And being deſyret to reid the Letter, he red the ſamyn in thair Lordſchipis preſens, verrie diſtinctlie, without ony ſtope : At quhilk tyme, the Lordis of Secret Counſell, my Lord of Dumbar being preſent, cauſit Auchindrane wryte with his awin hand ane particuler anſuer of all that was demandit him in that matter, to the end thai mycht the better recognoſce and try quhidder the ſamin was writtin be him or nocht : And forder, the deponer knawis nocht.—Quhairvpoun my Lord Aduocat alſe aſkit Inſtrumentis.

IN fortificatioun of THE VERIFICATIONIS producet be the Aduocat, and vſet

to the Assyse, my lord Advocat affirmes, that it is lauchfull and vsuale to the Lordis of his Maiesteis Secrett Counsell to examine Witnesfes, out of presens of pairtie, in all crymes treffonable ; quhais Depositiones being productet to the Assyse, makis full faith, vnles thai be impugnet be sum lauchfull particular exceptioun proponit aganis the samyn ; and can nocht be impugnet, for want of power in the examinaturis ; or the Depositiones was ressaunt, the pannell nocht being callit thairto.—The Depositiones of *James Pennycuik* and *George Blak*, tane at Court, ar lauchfull, as tane by expres command of the Kingis Maiestie, and in presens of ane of the Lordis of his Counsell of this Kingdome.—It is absurd to excusè the pannellis going to the horne, for the treffonabill cryme lybellit, for feir, gif he had compeirit, to haif bene challanged for pistolettis ; seing, his being fugitiue for this cryme, inferris aganis him presumptioun of Treasoun : And in caice he had compeirit, his schuitting of pistolettis without ony harme done with thame, wald haif inferrit na forder danger, nor (*than*) the panes of ane fyne.—The persewar neidis nocht to produce *Thomas Kennydeis fforfaltour* for this cryme, becaus the samyn being deducet in Parliament, is judget nottour to all the subiectis, and na man can pretend ignorance thairof.—The Relaxationes productet, purges nocht the presumptioun of thair giltines of the crymes contenit in the Hoirningis ; becaus, Auchindrane elder was nocht relaxit fra the hoirning, for lying (in wait) for Collayne in Mayboill, quhill efter his reconciliatioun with the pairtie ; at the quhilk tyme, na man was to persew him : Nather was he relaxt fra the horne for the treffonable crymes lybellit, quhill he was tane and imprisonet in the Tolbuith of Edinburgh, and sa could nocht eschew his tryall.—To the obiectioun aganis *James Mure of Fleit*, it is vntrew and malicious : And he being confrontit with the Deponer, Auchindrane proponit na objectioun aganis him, that tuichet ather his fame or welth.—Attour, the persewar takis instrumentis, that *the Erle of Cassillis*, being suorne, in presens of the Assyse, vpon the obiectioun offerit to be verifeit be his aith, hes declairit the samyn to be vntrew. And lykwayis, that *Sir Williame McClellane of Auchleane, kny'*, being suorne vpon the poynt of Thift, and reconciliatioun thairof, offerit to be provin be his aithe, he declairit the samyn to be vntrew : And forder, he declairit, befoir the Assyse, that gif ony imputatioun could be laid to James Mure for the fuspitioun of that Thift, the samyn was cheslie to be imput to Auld Auchindrane, quha houndit him out to the doing thairof.—To the obiectioun aganis *James Gordoun*, for his youthe, the tyme of the factis quhairvpon he hes deponit, anueris that he was past ten yeir auld, befoir the committing of the first of the saidis factis ; And being now ane man of perfyte age, may lauchfullie depone of thingis done quhan he was young, the samyn being recent in his memorie.—Attour, the said James, being confrontit with the Laird of Auchindrane, he than deponit

nathing aganis his persone, age, nor lauchfulnes of his Depositione.—To the generall objection, that the Depositiones in Criminall cauffis makis na probatioun, bot ar presumptionis and cauffis of tortour, it is manifestlie vntrew, and contrair to the Law and practiques of this cuntrie.—To the objection, that the Depositiones concerning *Mr Robert Mures* Letter ar generall, and preves nathing, it is vntrew; becaus the Depositiones contenis, that the Letter buir aduerteifment to Auchindrane of the Laird of Culaynes dyet to Edinburgh.—For the Depositiones maid be *Caldwell* and *Young Auchindrane*, referris the confideratioun of thame to the Assyse, it being out of dout, that nather Young Auchindrane wald hurt his father, nor Caldwell his freind, be thair Deposition.—The objectiones aganis *Woodland* ar proponit in jeast; becaus at all tymes quhan he cumis to the toun, he viffetit the Defenderis, his freindis,¹ in ane freindlie maner.—For *Johnne Mure*, callit of *Blakbyres*, he was Auld Auchindrane's houfhold fervand, sa lang as he had ane hous, and sensyne hes duelt in Blakbyres, vpone Auchindrane's land, familiar with his Lady and him self, frie of all perfute, conviction, hoirning, or suspitioun of cryme. And the persfear takis instrumentis of the *Erle of Cassillis* Declairatioun to the Assyse, that his lordschip nevir maid promeis to Blakbyres, to purches² to him Respett, Remiffioun, or vther fauour, for his compeirance.—The *Depositionis* maid to the *Presbiterie*, ar verrie lauchfull and formell; haifing the force of ane Inquifitioun, for tryell of ane murthourit man and the authoris thairof.³—*Walter Mure* was tenent and fervand to the pannell, and convoyit by the way⁴ by his meanis, becaus he mycht haif controllit his denyall of his sending James Cuninghame to the said Walter Mures hous for Williame Dalrump.—*James Dalrump* his Deposition is lauchfull, albeit thair allege it to be maid to his awin turpitude, and that, be his awin confessioun, he is *socius criminis*; becaus in abhominable and extraordiner crymes, sic as Murthour vpone set purpois, complices ar lauchfull Witneffis, and thair Depositionis makis full faith; becaus it is confiderit be the Law-makeris, that sic secrete and denyable crymes, can nocht possiblie be provin, bot be complices. James Dalrumpillis kynreid with Cullayne and the Erle of Cassillis, can nocht mak him suspect, becaus he is sifter-son⁵ to the Lady Auchindrane, and sifter-bairnis⁶ with Young Auchindrane, and sa presfemet of the Law to beir gritter affectioun to thame.

The persfear desyres the Assyse to remember Auld Auchindrane's Declariatioun, in thair presfens, that James Dalrumpill maid him adverteifment to set

¹ In this instance, and indeed generally throughout this Trial, the term '*freind*' signifies relative or blood-relation, as in the preceding reference to Caldwell, &c. ² Procure. ³ An inquest or precognition held for the purpose of discovering the perpetrators of a murder; and for bringing them to justice for their crimes, if guilty. ⁴ Put out of the way. ⁵ Nephew. ⁶ Cousin-german.

him,¹ quhilk detectis his fauour to the defenderis, and his vnwillingnes to depone to thair prejudice.

Patrik Bannatynes Depofitioun man mak fayth, becaus it was maid quhan he was the Kingis lauchfull fubiect, frie of all cryme; and his kindreid with the Erle of Caffillis, can nocht mak him fufpect; becaus, fen the feid,² he hes bene in fpeciall freindschip and familiaritie with the Defenderis; quhilk thai can nocht deny: Nather can the faid Patrikes Depofitioun, nor the Depofitioun of ony of the remanent Witneffis, be impungeit, as foundit only *super auditu*, and be relatioun of James Bannatyne; becaus that relatioun was maid be James, quhan he was in verrie grit freindschip with the Lairdis of Auchindrane, elder and younger, and reffaut many fauoris and fuppoirtis fra thame.—The Defenderis impungis *Johnne Mure in Curveris* Depofitioun anent the pulleing of Williame Dalrumpill af James Bannatynes hors; bot never anfueris to the materiall poyntis thairof, anent thair fending of Cuninghame for Dalrumpill to Glenheid; convoying of him to Chapeldonan; fending for him to Girven Sandis; and Murthouring of him thair.—*James Bannatynes* Depofitioun man mak full fayth, albeit he be at the horne, and excommunicat for this cryme; but hoirning and excommunicatioun can nocht work famekill aganis him as his awin Confessioun; quhilk Confessioun can nocht ftay him to be Witnes, feing he is fo neceffar a Witnes, as without him na probatioun can be had in this cauf, bot be his Depofitioun; except, be the Confessioun of the remanent defenderis, quhair of thair is no hoip, in refpect of thair effronterie, obftinacie, and induratioun. His kinreid with the Erle of Caffillis and Cullzeane is proponit in fcorne; becaus the Lairdis of Auchindrane can nocht deny, bot that the faid James was profellit pairt-taker with thame, in all feidis and querrellis aganis the Erle of Caffillis, and affistit thame in the Invasioun of Garriehorne for his Slauchter. Thair allegiance, that he comes in vpoun promeis and conditioun of his lyfe, is abfurdlie qualifeit, as grantit be thame quhois protectioun and faif conduct can (nocht) faif ane hair of his heid. Thair allegiance of his malice aganis Young Auchindrane is impertinent, in refpect of Young Auchindrane furneiffing and fending of him out of the countrie, and recommending of him, be his Lettres, to his uncle; and of the fauour and help maid to the faid James Bannatyne fenfyne, be the Lady and the pannellis remanent freindis. Quhair thay propone, that he wald nocht haif willinglie cum in to his awin deid; it is faiffer for him to cum in and depend vpone Godis fauour and the Kingis mercie, or failzeing thairof to die, weill prepairit in ane Chrifiane refolutioun, vpone the fcaffold, nor³ to haif bene in hourlie danger to haif bene murthourit, be procurement of the Defenderis, as he mycht haif bene in danger—nocht haifing lafour to haif callit for Godis mercie.

¹ To cite him as a witness.

² Feud.

³ Rather than.

Robert Ramsay's practise is impertinentlie citet in this caice; becaus he deit for his manifest periurie, and false and contrair Depositiones, justlie working aganis him selff; quhilk maid nocht the evident¹ to fall, and sa verifeit na punisheable falsset aganis ony vther. Bot heir, thair is ane actuall Murthour, quhair of the Lairdis of Auchindrane ar provin als giltie as James Bannatyne.—The perfewar takis instrumentis that *James Pennycuik*, being folempnelie fuorne befor the Assyse, hes ratifeit, in thair presens, his hail Depositiones maid in Ingland. His Hoirning makis him nocht infamous, becaus it procedis vpon ane Decreit of Secret Counsell, quhilk can nocht be gevin in ane mater impoirting infamie; besyde, that sen² the said Hoirning, he remanit prissoner dyuerse oulkis in the Tolbuith of Edinburgh, quhair ony man that lyket to haif accuset him mycht haif drawin him to pannell, in despyte of his heart.—The Deposition of *Mr Johnne Edmestoun* aganis him can nocht be respectit; becaus Mr Johnne is infamous, being deprehendit and tryit authour of ane infamous lybill aganis the Lordis of Secret Counsell, Seffioun, Prelattis of this Kingdome, and Magistrates of this Burgh.—Quhair thay allege that James Pennycuikis Deposition concernis nocht this Dittay, the perfewar declairis, that he vses his Deposition as ane probatioun of ane consequent fact, quhilk cleiris exceidinglie the preceiding Murthour of Dalruple: ffor Auld Auchindrane wald nevir haif hyret ane man to haif murthoret James Bannatyne, gif James Bannatyne had nocht bene able to haif verifeit aganis Auchindrane ane mair dangerous cryme. He is nocht meirlie *testis singularis*, becaus his Deposition is strentened by the Deposition of his fervand *George Small*; and his Deposition vpon his allegit turpitude can nocht repell him in this caice; becaus he is, in effect, ane complice with thame aganis quhome he deponis, and hes purget his giltines thair of, be his tymous repentance, and desisting frome the profecutioun of the said purpos. His Deposition can nocht be elydit³ be ony thing writtin to him be Sir James Hamiltoun; becaus that Deposition is maid judiciaill, alsweill be his Declaratioun, befor the Lordis of his hienes Secret Counsell, in Ingland, and be his approbatioun of his hail Depositiones, this nycht, in presens of the Assyse. *George Blakis* Deposition is verrie famous,⁴ and can nocht be drawin in suspicioun, vpoun the allegeance of ony malice consauet for want of fourtie merkis of fie.—*Young Auchindrane's* suffering of the iniureis offerit to him be James Bannatyne, standis cleirlie verifeit be the reiterat Depositiones of *William Kennydie of Garfar*, he being confrontit with Young Auchindrane.—*Auld Auchindrane's* denyall of his Letter to his sone, can nocht be respectit, seing it is so cleirlie verifeit to the Counsell, be Daud Dormond, and Thomas Home, Constable of the

¹ The writing or Title-deed referred to in his case.
elidere.

⁴ Worthy of credit.

² Since.

³ Evaded; got quit of. Lat.

Castle, and the Erle of Mar, quho ar Witnessees about all exceptioun, that the samyn was send be Auld Auchindrane to his sone.—The perswar repeatit the Depositiones maid be *Archibald Prymrois* and *Eduard Mekill-Johnne*, in judgement; and namelie, that pairt, quhairby Archibald Prymrois callit my Lordis of Counsell treulie to memorie, that Auld Auchindrane, at the verrie first sicht of his Letter, red the samyn so ryplie and perfytlie, as gif he had it perquier,¹ quhilk no vther man, nor² the wryter of the Letter, was able to haif done. Repeatit lykwayis the said Eduard Mekill-Johnnes Deposition, quhairby the treuth of his copying of Auchindrane's Letter to his sone, at the desyre of ane most honourabill and famous Noble-man, detectit the knaverie and complete of ane socieatie of malefactoris and dyverse.³

Finallie, the perswar repeatit the just suspitioun consauet vpon the pannellis absenting of his wyfe, sone, and brother.

THE DEFENDERIS allegis, that the Young Laird of Auchindrane is frie of the presumptioun of the Hoirning, becaus he compeirit at the day.—Auld Auchindrane is nocht pannellit for lying at wait aganis the Tutour of Cassillis, at Maybole; and sua, na presumptioun can arryse vpon that Hoirning. As for the rest, thay ar purget be compeirance.—As for that pairt anent *James Gordoun*, he being confrontit with Auchindrane, he opponit nothing at that tyme, ather concerning his youthe or vtherwayis; answaris, that was nocht the place convenient; bot now, *debito tempore*, in this Judgment, he proponit the samyn, conforme to the Act of Parliament; and all vtheris of the lyk nature.—It is answerit to that article, 'that Depositiones ar manifest probationes,' that the Depositiones vpon conjectouris and presumptiounis of na Law nor pratique, ar manifest probatione, bot only sufficient to induce tortour: And trew it is, that all the Depositiones lybellit ar vpon conjectouris.—*Walter Mure*, eftir that Auchindrane younger was twyse enterit, and Auld Auchindrane lang in the Tolbuthe, was duelling actuallie in his awin hous, tanè and apprehendit be the Erle of Cassillis, and demittit be his lordschip; and sa, his absenting him self can nocht be presumet for this cause.—The malice of *James Bannatyne* towardis Young Auchindrane is cleir, becaus he will preve, be James Gordoun, ane of the witnesses producet aganis him, that James avowit to haif Young Auchindrane's lyfe, becaus he offerit to the Counsell to inbring him vnder the pane of Fourtie thousand pundis.—The Depositione of *Mr Johnne Edmestoun* is nocht vset as ane sufficient probatioun; but his Deposition, with the vther Deponer with him, aganis quhome thair is na suspitioun, is mair pregnant to tak away James Pennycuik's Deposition, than James Pennycuik's Depositione is to infer Treason:

¹ By heart; by rote. Fr. *par cœur*. ² Excepting; but. ³ Detects the knavery and plot (conspiracy) of a society, or association, of malefactors and bankrupts (*dyvouris*)

As *James Pennycook* is at the horne, sa *George Small*, his seruand, is at the horne, for the same fact; and *George Small* deponis nathing in speciall.—Last, the perones on pannell defyres your honouris of the Assyse to haif consideratioun of the lybell and Dittay; as the samyn was admittit be my Lord Justice, viz. that the speciall poynt making the samyn relevant, was, that *Thomas Kennydie* of *Culzeane* was flane be the advyse, instigatioun, causeing, command, counsell, and ratihabitoun of *Auchindrane elder*, quhilk is the first pairt of the Dittay; quhairin, thair is nathing provin aganes *Auchindrane elder*, of those substanciall poyntis; nather can the samyn be ony wayes imputtit to *Auchindrane younger*. And as for the secund pairt, quhilk is lybellit conjunctlie aganis *Auchindrane elder* and *younger*, and *James Bannatyne*; the substanciall pairt quhairof is the allegit committing of the Slauchter of *vmq^{le}* (*Williame*) *Dalrumpill*: And the rest of the hail lybell, ar only accidentis, coniectouris, and presumptiones; and feing na pairt of the substanciall poyntis is provin, albeit the hail actiones, presumptiones, and coniectouris war provin, quhilk is nocht grantit; off all law and equitie, obseruit in all cuntreyis, the maist that can be inferrit thairupoune, is the tortour of the perones aganis quhome the presumptiones ar militant; quhilk specialle man haif place in the persone of *Young Auchindrane*, aganis quhome few or nane of the presumptiones ather contenit in the Dittay, or proponit by¹ the samyn, dois militat.

VERDICT OF THE ASSISE. Quhilkis perones of Assyse, eftir accusatioun of the saidis perones on pannell, be Dittay, of the Treffonabill and crewall Slauchteris and Murthouris *respectiue*, aboue specifeit, and fuering that article thairof, anent the Murthour of the said *Williame Dalrumpile*, be the said *Bessie Dalrumpile*, his mother; and eftir productioun of the hail Depositiones aboue writtin, and vther writtis and probatioun for cleiring of the Pannellis giltines of the saidis crymes, be our said souerane lordis Aduocat; the saidis perones of Assyse remouet altogidder furth of Courte, to the Counsal-hous of the said *Tolbuthe*; quhair thai, be pluralitie of voitis, electit and choiset the said *Sir James Scrymgeour* of *Dudope*, kny^t, chancellor; *Reffonet* and voitit vpone the crymes contenit in the said Dittay, and hail circumstances thairof; and being ryplie and at lenth advyset thairwith, togidder with the hail writtis and probatioun vset and producet be our souerane lordis Aduocat, for instructing thairof; togidder with the Pannellis objectiones proponit be thame, and thair preloquitours aganis the samyn, with my Lord Aduocattis answaris maid thairto; thay reenterit agane in Court, quhair the saidis perones of Assyse, be the mouth of the said *Sir James Scrymgeour* of *Dudope*, kyn^t, thair chancellor, Pronuncet and gaif furth thair determinatioun vnder writtin, subscriuit be the said chancelloris hand, quhairof the tennour followis.

¹ Independent of; besides; *forby*.

“ The Assyse, for the maist pairt, efter reffoning and voiting vpon the first article of the said Dittay, find **JOHNE MURE ELDER OF AUCHINDRANE** to be Giltie, culpable, and convict of airt and pairt of the tressonable and crewal Murthour of vmq¹⁰ Sir Thomas Kennydie of Culzeane, kny^t, committit in forme and maner contenit in the first pairt of the Dittay. AND siclyk, the saidis perfones of Assyse, for the maist pairt, findis and declairis the said Johnne Mure elder of Auchindrane, and **JAMES MURE OF AUCHINDRANE YOUNGER**, and ather of thame, to be Giltie, culpable and convict of airt and pairt of the tressonable and crewal Murthour of vmq¹⁰ Williame Dalrump, in maner specifit in the Dittay.—AND last, thai all, in ane voce, findis and declairis the said **JAMES BANNATYNE**, callit of Chapel-Donane, to be Giltie, culpable, and convict of airt and pairt of the said tressonabill Murthour of the said vmq¹⁰ Williame Dalrump, committit be the saidis perfones, in maner contenit in the Dittay.”

SENTENCE. Efter the pronunceing and declairing of the quhilk determination and delyuerance of the saidis perfones of Assyse, “ **THE JUSTICE**, in respect thair of, be the mouth of Alexander Kennydie, dempster of Court, decernit and adiudget the saidis Johnne Mure of Auchindrane elder, James Mure of Auchindrane younger, his eldest sone and appeirand air, and James Bannatyne, callit of Chapel-Donane, and ilk ane of thame, to be tane to the mercat croce of the burcht of Edinburgh, and thair, vpon ane scaffold, thair heidis to be strukin frome thair bodeyis: And all thair landis, heritages, takis, steidingis, rowmes, possessiones, teyndis, coirnes, cattell, inficht pleniffing, guidis, geir, tytillis, proffeitis, commoditeis, and richtis quhatfumeuir, directlie or indirectlie pertening to thame or ony of thame, at the committing of the saidis tressonabill Murthouris, or senfyne; or to the quhilkis thay, or ony of thame, had richt, claim, or actioun, to be forfalt, escheit, and inbrocht to our souerane lordis vse; as culpable and convict of the saidis tressonabill crymes.”

Quhilk was pronuncet for **DOME**.

APPENDIX OF PAPERS AND DOCUMENTS ILLUSTRATIVE OF THE TRIAL OF THE MURES OF AUCHINDRAYNE.

I. LETTER *by Sir Thomas Hamilton of Byres, knight, to a Nobleman at Court, relative to the Trial of the Laird of Auchindrayne and his Son, &c.*¹

[THE following LETTER is a rough draught of a Letter transmitted by Sir Thomas Hamilton to some Nobleman high in power and favour at Court, (probably the corrupt Earl of Somerset); and is evidently intended for the King's perusal. This successful Lawyer and Statesman knew well how to

¹ Dec. 11, 1601.—Now, on the tent of December, ane wariance being betuix the Erll of Cassillis and the Laird of Bargany, thay mett in Carrik, quhair the Laird of Bargany and sindrie wtheris war slayne, and diuerse Gentilmenne hurtt. This was on 11 day of December, 1601. And on the 12 day of Maij, 1602, Thomas Kennedy, brother to the Laird of Bargany, slew Schir Thomas Kennedy of Colzeane, kny^t, quha had beine Tutour of Caisillis, in the rewendge of the slauchter off his brother. The quhilk Fead continewis as yitt onreconscellit.—*Anon. MS. Hist. of Scotland*, Adv. Library, A. 4. 35.

please his Majesty's taste for flattery—but, if this is to be taken as a specimen, King James must have been much more of a glutton than an epicure! In the same Collection from which this is taken (*Haddington's MSS.*, Adv. Library, Edinburgh), there is preserved another draught, which is evidently the original, and is extremely corrected and altered—but it is so characteristic, that it shall also be preserved here in the original state, though merely a fragment.

‘HONORABILL AND VERTUOUS LORD,

‘BEING informit be ane wourthie freind, that your lordschip wes very defyrous to have ane trew and ample relation of the proces deduced aganis the Lairdis of Auchindrane elder and younger, for the Mourthouris of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrimple, I wes exceeding glaid to have rencountred that occasion to offer to your lordschip this discours, as an earnest of my faithful dispositioun to expres my thankfulnes in matters of greater moment, when ever God fould grant me the abilitie to performe any seruice worthie of your honour, and correspondent to that great obligatioun whairin your singlar fauour and courteffis haue exceidinglie engaged to your lo. Bot when I had written at lenth, all that did concerne that pourpose, and had it reddie to be sent to your lo., report cumming to this cuntrie of his Maiesteis gracious pardoun granted to James Bannatyne, whairas I did confaue that all men wald acknowledge it as ane commendabill effort of his Maiesteis most iuste, gracious, and judicious clemencie; yet, finding that some deuclish peopill als venomoullie inclyned to find mater of calummie in his Maiesteis most vertuous actionis, as the wesf to suck poyson out of the sweitest and most holesome floures, I have delayed my first proiect, to send to your lo. the simpill discours of the proceeding aganis those malefactouris, quhill (*until*) efter Tryell of all that has bene murmured aganis his Maiestie in any circumstance of this action, I might mak the more full and perfyte report, alfwieill of the materiall circumstances of the proces, as of these incidentis, whairin his Maiestie, having expressed his rare and wouderfull iugement, his vnalterabill constancie and’]

[HONORABILL AND VERTUOUS LORD.]

KNAWING, by informatioun of ane wourthie freind, that efter your lordschip hard the vulgar report of the conuictioun and pynement of THE LAIRDIS OF AUCHINDRANE, ELDER and YOUNGER, for the *Mourthour of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrumpill*, yow did desyre to have a full and verie particular relation of the whole proceedingis of that mater, becaus my being ey witnes from the beginning to the last act of that proces, makis me abill to giue ane true accompt of euerie circumstance thairof; and the great fauoris and courteffis ressaue of your lo. have engaged me in stronger bandis of dewtie nor¹ want of abilitie will permit my seruice to discharge; I haue presumed to send to your lo. this discours, rude, informall, and voyde of all ornamentis except treuth, as ane earnest of my desyre to proue thankfull to your lo. and obedient to your commandementis; whilk fould haue soner cum to your lo. handis, had not this tyme of vaicance² impeded me to find, so speidelie as I did wish, the helpis of sum scrollis of the lawers and clerkis, to whom the deduction of that proces was speciallie committed; I did coniecture that your lo. cheif respect in this desyre wes to have *the justice of his Maiesteis directionis*, in that action, maid als manifest to the worlde as thay ar in the fight of God, and persuaion of his owne conscience (albeit his prouidence, wisdome, justice, and mercie have fund peopill als abill to suck venome owt of these Royall vertues as the wesf to extract poyfoun furth of the most beautifull and healthfull floures, whilk in thay owne place,³ I have remarked, naikedlie, as does best befeme treuth,) acknowledging how vnhabill I am to giue the dew luster to these eminent and abundant vertues; and thairfore, if your lo. fall ever think that proces wourthie of the fight of the worlde, I know your wourth and bontie has gevin your lo. power and ane great many rare and excellent spirits, who will be glad to bestow the best floures of thair ingyne and learning, to giue the right foyle to that whilk may concerne his Maiestie, in fame, or your lo.

¹ Than. ² Time of Vacation, when the Courts of Justice do not sit, and when the Lawyers are frequently in the country. ³ The *own* or proper place.

in contentment. And, to the effect the proces may the more caselie to vnderstand, before I cum to the Report thairof, I will premit (*premise*) ane trew Narration of the first motiues which invouled the Laird of Auchindrane's evill nature in the labyrinth of these mischevous interpryffes; which, be the justice of God, and his Maiesteis admirabill prouidence and inflexibill constancie, being brocht to light, have overthrowne his life and fortunes.

ANE TREW NARRATION *of the first Motiues which invouled the Laird of Auchindrane's evill Nature, &c.*

YOUR lo. hes heir the particular Discours of ane Proces, whilk, vpon dyeris respectis, many wyse men have judged to be verie memorabill. Sum, remarking the bad nature of malicious men, who, measuring be thair owne merciles disposition, the affection of vther menis hairtis, can never hope to ressaue frie pardon of those whom they have mightelie offendit; and thairfore, forgetting the courtiffie ressaue of those who have remitted to thame great iniuries, faillies nocht to requit thair gude with evill; and at their first aduantage, to bereave those of thair lyfe from whom they ressaue thair owne, as *Auld Auchindrane* did to *Sir Thomas Kennedie of Cullayne*.

Vtheris, did consider, with horrou, the craft and diligence of the Devill vfeis keip in his bondage those who he anis fetteris in his snaires; offering to thame allurementis to facilitat to thame the Interpryffes, whilk, in thair worldlie considerationis they judge most liklie to procur the wished endis of thair proiectis; as *Auld Auchindrane's* resolution to cut af all meanis of discouerie of his guiltines of *Cullayne's Mourthour* be the *Mourthouring of Dalrumpill*; whairin his sin apperis to have bene so odious in the sight of God, as, for his pvneishment, God permittit his sone to be invouled in the guiltines of that sam haynous cryme, as ane preparatiue of the vther ruyne of that house: Whilk succedding altogidder contrare to thair expectatione, and the verie elementis concurring to the discouerie of thair secreet sin, that did not oppin thair eyes and hairtis to sie that manis wit is fillie before God, and that thair strenth is bot dust; bot they fall be blinded with the presumptioun of thair owne judgement; and thairby thipking, that if *Bannatyne*, who wes ey witnesse and actour with thame of *Dalrumpilis* Murthour, wer killed, that thair rested no vther meanes to proue thame guiltie thairof; whilk being constantlie denyed be thame, wald lykwyse cleir *Auld Auchindrane* of *Cullaynes Murthour*. They intended to vfe *Penicuke* in the *Murthour of Bannatyne*; and feiring lest *Penicuke* might esteruardis discouer that he had bene moved be *Auld Auchindrane* to kill *Bannatyne*, being fugitiue, as pairtaker with *Auchindrane* and his sone in *Dalrumpilis* Murthour, it aucht (to) put all men in iuste suspicioun that it wes done, for cutting away the meane of the discouerie of *Dalrumpilis* Murthour; thairfore it wes thought expedient that *Quintene Mure* of *Auchneill* sould kill *Pennicuke*, in reuenge of his Mourthouring *Bannatyne*; and swa, *Auchneill*, knoweing no thing of *Dalrumpilis* Murthour, and being not onlie innocent of *Bannatyne's* Murthour, bot the avenger thairof, he sould be frie of all suspicioun of the fyrst Murthouris, and thay secured of all probatioun that could have bene led aganis thame thairanent; whilk being disappoynted, be *Pennicukis* remorse, and *James Bannatyne's* resolution to end his dangeris and miseries, ather be his Maiesteis mercie, or, be ane setled resolution, to accept his death, as the just pvneishment of his great finnis, in patience. It is evidentlie remarqued that the courfes, grounded vpon the presumptioun of ane manis owne wit, ar the verie instrumentis whilk God vfes to confound thame in the folie of their owne imaginationis.

Nather could wyse men neglect to admire, how loath the Devill is to quyte his possessioun of ane sinneris soule; having so contended to menteane *Auld Auchindrane* in his denyall and impenitence, that efter his convictioun, when his constancie could nothing availl him, thair wes no appearance that he sould aither confes or publictlye repent the crymes for which he was condemned; whill (*until*) efter ane notabill conflict betuix his sone (*Young Auchindrane*) and the Devill, who still perswaded him, that thair wes no hope of mercie to ane sinner, who had wilfullie and oft periured him self, with horribill execrationis; sum godlie Bischoppis and Ministeris, be lang conference, and many comfortabill af-

furanceis gevin to him of the reddines of Godis frie grace and mercie to all finneris, who, with vnfeyned repentance, ar displeasid for thair sinnes; and can dispose thair foules to hope for pardoun, and beg it at his handis;—he wes moved to mak plane and particular declaratioun of the vnbappie *Murthour of Dalrimpill*, committit be his father and him self, according to *Bannatynes* Confessioune and thair convictioun. Quhairby, finding his conscience wonderfullie disburdened, and his soule fullie repleineiffed with assured hope of Goddis abundant mercie; did cheirfullie dispose him self to death, as the only way to ane better and ever permanent lyfe; and vsing his best persuasions to his father, that as they wer joyned by bloude, and lykwayes conioyned in the equall guiltines of so hynous ane sin, so he wald consent that thay might joyne in repentance and trew conuerfion; he did so muche pervale with him, that being assisted be the godlie travels of the Bischopis and Ministeris, the father wes broght to so frie and sensibill contritioun, as, in the last houres of thair lyfe, and at the tyme of thair death, thair godlie resolutioun to mak haist to ressaue the eternall joyes, whilk thay expected assuredlie at Goddis mercifull handis, gave als great confort to the behalderis of thair Executioun, as thair wicked lyves had bene offensive, to thosé who knew the actionis thairof.

THE dependance of this Proces kept menis myndis in great suspens, dyuerflic distracted, in the expectatioun of the incertane event thairof; the vulgar multitude, alwayes piteing fuche as ar miserabil, without respect of the dangerous consequence of the impvritie of fuche crymes, wishing faitie and relief of the prisoneris: wyse and godlie men, longing for the plaine discouerie and exemplar pvnishment of the haynous transgressouris, whairof, in thair conscience, thay judged the defendaris culpabill; and vthers, disallowing the preparative of the long imprisonement and rigourous Tryall, ever glaid to see the appeirances of thair escaip; till God, in his owne appoynted tyme, be fuche meanes as ar before reherfed, did justlie determine this long dowtsum cause.

And albeit I have many tymes earnestlie considered, both the groundis of this cause, and meruellous incidentis and accidentis in the progres thairof, yet no thing hes ever appeired so strange and extraordiner to me, as the blindnes or rather malice of ane great number of oure peopill of all fortis; who, forgetfull of oure happines in the wyse, equitabill, clement, and moderat regime of oure most excellent King, became dowtfull of the justice of his directionis, in this cause, [For whan I call to memorie, the whole course of his lyfe, from his first conceptioun to this hour, and do compare the same with the regnes and lyves of vther Kingis, I think we have more reason, with thankfulness to God, to acknowledge his regne, to be the renouatioun of ane golden aige, nor be¹ malicious pryeing in his holie intentionis and juste doingis, to resemble thosé who, vewing most pure and precious jewellis, dois not so mutche delyte thair eyes with the presence thairof, as exercise thair curiositie to espy taches² in thame.] For God, having, as it dois weill appeir, decreed in his eternall wisdome, to appoynt oure King to be the instrument of more happines to this Ile, nor³ in oure wisches we durst haue requyred: knowing, that the wonders of his preferuatioun, and of the happines of his most rare, most excellent, and most difficill actionis, fould mak his Maiestie more august and venerabill, it fall be easie to any man, who fall with ane honest mynd and vnpartial ey, consider the course of his yeiris, manifestlie to remark, that it hes bene ane contineuall exercise of perfyte virtue, beautified with the ouercumming of all fuche difficulties as the wisdome and courage of man could foircast; and whan the dangeris did exceed that measour, than did God visiblie interpone the strenth of his owne hand, as the pledge of his loue, and prouf of his caire, not to suffer a King, so necessar for the Christian worlde, to be ouer suddenly translated thairfra, to thosé blissingis, whilk in end he hes prepared for him, amang his most deir Elect. Bot to deduce the abrege of his lyfe to the owne right ordour, we must acknowledge, that it pleased God, in his eternall wisdome, to assigne the meanis of his convoy vnto this worlde, to be the happie conjunction of two of the most nobill, beautifull, and hopefull Princes, who at that tyme wer to be fund vpon earth; the faces⁴ whairof, being forefene be the Devill, in his viperous wisdome, to

¹ Than by. ² Flaws, blemishes. Old Fr. *tasche*. ³ Than. ⁴ Henry Darnley and Mary Stewart, Queen of Scots. ⁵ Success.

be the overthrow of his kingdome, in this Ile,¹ he did stir vp vnfaithfull subiectis to be instrumentis of so terribill tempestis and deidlie stormes, that his Maiesteis lyfe wes, in his motheris wombe, reduced fo neir to the durris of the death, as the tender and most delicat stay of that faire excellent lady, be the accurfed poyntis of the crewall daguers of hir faithles treasonabill subiectis, Murthouring in hir owne presence ane of hir seruandis;² bot as hir courage, surpaffing the imbecillitie of hir sexe, and ouercumming her dangeris, did offer this ritche present to the worlde, in the yeir of God 1566; whairbye, his Royall parentis, hauing confaued so extraordinarie joy, as thay did accompt it to be the perfectioun of thair earthlie felicitie. God, who will not suffer those who he hes destinat³ to ane more happie habitatioun, to abuse thame selfis with the delytis of the vayne schaddowes of this lyfe, suffered the hellish complottis of damned subiectis, so far to preuaile aganis thame, as the vertuous actionis of the King his father, being interrupted be that most execrabil Tragedie, practifed and performed be that infamous and never-aneuch abhorred traitour, *Bothuell*, aganis his lyffe. The contagious exampill of that vnnaturall Treafoun, did so infect the mynd of ane great number of hir Maiesteis powerfull subiectis, that thay wer not afrayd to ryse in oppin rebellioun aganis hir, lay violent handis vpoun hir sacred perfoun, confyned hir libertie within the miserabill boundis of the wylde and vnwholsome *Craig of Lochlevin*, force hir to the abdicatioun of hir Royaltie; and whan, as the dexteritie of hir courageous devyfe, faithfullie assistid be sum of hir vn corrupted subiectis, had fred hir furth of that miserabill bondage, hir rebellis did suddanlie assëbill thair forceis, and in oppin Battell, ouerthrowing that number of dewtifull subiectis who did assist hir, did so maliciousslie pursue that victorie, as scho could nocht find in the whole boundis of that lairge Kingdome, which was hir natieue inheritance, ane place of saif retrait; wharby hir hard destinie, drying hir to seik refuge in England, sche found be effectis, that '*incidit in Scyllam cupiens vitare Caribdim*,' not enioyeing in it hir libertie one houre, during the whole space of eighteen yeiris of hir lyfe spent in that Kingdom. Bot these afflictionis of hir lyfe, did sa strengthen hir mynd aganis the terrouris of death, and prepare hir so happelie for the entrance to ane better lyfe, that whan the catastrophe of hir miseries brocht hir to ressaue death, efter ane manner so rare and vnaccustomabill to ane Princeffe of hir birth and estait, as the hardest harted beholders, touched with the strangenes of that rigourous exampill, were driven to extreme grief and compassioun; hir godlie resolution and invincibill courage wes so constant, that scho appeird nocht onlie content bot joyfull, that God, haveing vsed hir troubles in this lyfe for ane expiatioun of hir sinnes, had gevin hir so full assurance of his mercie and fauour, whairof scho promiseid to hir self, be the beginning of that dayes passage, ane most blissed and endles fruitioun.—Be thir meanes, his Maiestie being destitute of these helpes of Royall educatioun, whilk the caire and knoulege of so excellent parentis wald have procured to him, and standing subject to the danger of the cruell plottis of those who, having treasonable overthrowne his parentis, could never think thame self frie of impunity for so vn pardonabill Treafoun, so long as he, who, besyde the commoun interest of Princes in the pvneishment of vsurpeing Traitoures, wes bund, be dewtie of bloude and nature, to pvnes those who had vsed so butcherlie violence aganis the lyves, libertie, and estate of his parentis. Yit God, in his Providence, did so cairefullie watche over him, as haveing disperfed that tracheourous combination, and with progres of tyme turned thair wittis and vapines⁴ of these rebellis to wourk aganis vtheris; his Maiesteis lyfe wes not onlie thairby preserved, bot his quarrell wes be thame reuenged. During this tyme and thir dangerous passages, his Maiestie, growing in graces and yeiris, and finding his realme so miserablie disordered, as be the ciuill factionis and warris, not onlie the accustomed barbaritie of the Bordouraris and Hielandmen wes increaffed, bot, be infectioun, had so polluted the whole cuntrie with crueltie and dissensionis, that publict factionis, and privat deidlie feidis, did so disquyet everie manis estait, as thair jakkis, knapcaes, plait-sleves, and pistoles, wer als ordinar apparrell, to the most pairt, as thair doublettis and breachis; becaus, whatever wes the cause of thair conventionis or

¹ In allusion to the overthrow of the Papal power in Scotland, and the blessings to follow from the Reformation of Religion. ² Alluding to the murder of David Rizzio. ³ Predestinated. ⁴ *Wappinnis*; weapons.

meittingis, fightis or frayes wes the occasioun of thair departing, not onlie at Parlementis, conventionis, tryftis, and mercatis, bot lykwayis at Churche-yerdis and Churches, and places appoynted for exercises of Religioun. The purgatioun of so extraordinar and vniverfall corruptioun, being the task of his Maiesteis¹

Bot that which I have ever thought most strange and vnnaturall, in all this action, is, that efter so many, so lairge and sensibill praiffes of his Maiesteis pietie, justice, clemencie, extended to all the cornaris, and almost to all the particular² perfones of his Kingdome, so many subiectis sould haue bene fund, who, in fauour of two men of so wicked lyfe, sould so lightlie have regairded, and so malicioussie detracted his Maiesteis directionis, gevin for tortouring of *Young Auchindrane*, and refusing libertie to him self and his father, efter so many yeiris imprisonement: Never considering how his Maiestie, being evrie way iuste and equitabill, had, in thir menis particular, so small cause to vse thame with rigour, that if the aspired opinion of his cleir conscience had not certainlie perswaded him of thair guiltines, he wald never have either vexed thair perfones, or restrained thair liberties, aganis the courses of ordinar justice of his kingdome.

It is foulishe presumptioun in subiectis to think, that the Kingis whom God hes chofen as his lieutenantis, to regne ouer so great Nationis, sould haue hairtis of no greater excellence than the vulgar fort! If God had not prepared the hairt of Solomon, in his youth, to command the houris child³ to be devyded betuix hir and hir neighbour who claimed the leving bairne, what Judge in the world could certainlie have determined to which of the two the living childe did belong? Whilk nevertheless, Salomon, be ane sentence, seming at first most cruell and vniust, did in end most admirablie determine,⁴ to the manifestatioun of the singlar wisdome, whilk God had put in the Kingis hairt.

When oure King, the trew Salomon of oure aige, and the most Godlie, wyfe, and learned King that ever bure ane Regall crowne in any Christian kingdome, trowelie representing, having fra his owne infancie gevin fo extraordinar promiffis of his judgement⁵

THE just determinatioun of the Proces which did long depend aganis THE LAIRD OF AUCHINDRANE and his eldest sone, having greatlie contented the myndes of manie faithfull subiectis; not that thay did reioice in the calamitie of Gentilmen of that fort,⁶ bot becaus thairby, the justice of God, in the discoverie and pynishment of most subtil and dark crymes, was maid manifest to hard haired and vnbelieving peopill; hes also buffied many menis pens to send the report thairof to thair freindis abroad; whairin, albeit at first I did intend to keip silence, and remit the publicatioun of that memorabill action to those who wer more curious and skilful nor myself; yet, calling to my remembrance sum notabill circumstances, which, during the incertane event of that procedure, did giue bauldenes to peruerfed peopill, to calumniat the true justice of his Maiesteis directiones; which now, to his differued commendatioun, is approued to the whole worlde; I have since thought it my duetie, truelie to informe your lordship (whom I know to be so curious and cairefull of no thing as of his Maiesteis honour) of the whole substance of that perfute, craving your Lo. pardoun, if omitting sum parcellis, scairce necessarie to be recorded, I fall tak bouldenes, in place thairof, to remark, that in the course and progres of the most notabill actionis of his Maiesties lyfe and regne, whairof no Prince's aige and fortune hathe ever bene more fertile, his holiest, happiest, and most iuste intentionis have never bene frie of the bitter sting of calumnious detractaris.

In this Discours, I will not follow his methode, *qui in medias res non secus ac notas auditorem rapit*, bot studie to mak the mater so plane to your Lo. as possibill I can, be deduction of the occasionis whilk inuolued Auchindrane's evill nature, in the laberinth of these mischevous interpryses, which,

¹ This is left unfinished; a page is left blank to fill up the rest. ² Individual. ³ The well-known story of 'the Judgment of Solomon.' Sir Thomas had, in the course of the long digression which he made regarding the King's 'rise and progress,' touched on very dangerous ground, and travelled very far out of his way, for the purpose of lavishing the most fulsome praise; being certain that the Letter would be subjected to his Majesty's perusal. ⁴ Terminate; result.

⁵ Here the scroll again breaks off, and three blank pages are left, for farther digression and flattery. ⁶ Rank; condition in society.

be the justice of God and his Maiesteis inflexibill constancie, being broght to light, have ouerthrowne his lyfe and fortunes.

BE birth, he (JOHN MURE OF AUCHINDRANE) was a Gentilman of wourfchipfull discent, succeding to that inheritance, which his prediceffouris in bloude and name had possessed almost foure hundreth yeires. By marriage of the dochter of Sir Thomas Kennedie of Barganie, one of the mightiest subiectis in the cuntrie whair he dwelt,¹ having increffed the strenth of his freindschip and presumptioun of his hairt; and thinking, that no thing could impeid the absolute power of *Barganies* freindschip, in Carrick, bot *the Erle of Cassillis howse*, whilk, be ane long discent of vertuous Nobilmen, for wourthie seruices done to thair Princes and cuntrie, had disserued and ressaued so lairge recompensis in landis, honouris, and iurisdictionis, as extending thair branches in all the corneris of that cuntrie, and keiping faithfull dewtie and obedience to thair Prince, they had, be lawful meanes, obtaned aduantage of honour and commandement ouer all thair nightbouris; till of lait, the father of this Erle deceassed, and leiving his sones infantes, thair did not rest of that cheif howse, any man, abill to menteane the dignitie and rightes thair of, bot for *Sir Thomas Kennedie of Cullayne*, brother to the deceassed Erle, and vncler and *Tutour* to this Erle of Cassillis; whom, vpoune emulation and inuie, before mentioned, Auchindrane intended to Murthour: ffor which pourpose, having associat to him self nyne or ten weill chosen compliceis, thay, vpon the day of (January), or thairby, in the yeir of God 1597, come to the towne of Maybole, whair *the Laird of Cullayne* maid than his ordinar residence, and tryeing² that he wes at supper in the house of (*Sir*) *Thomas Nisbet*, and wes thairfra to go to bed to his owne ludgeing; Auchindrane and his complices darned³ thame felfis in (*Sir*) *Thomas Nisbetis* gairdine, throw which the Laird of Cullaynes way lay to his owne howse, and, in his passage, having delaished⁴ at him aucht or ten schot of hagbuttis and pistolettis, in the boundis of ane strait allay, yit he being faif of any hurt thairwith, and persaving thame with thair suourdis, most cruellie to persue his lyfe, he being alone, (becaus his seruandis, not thinking that any man had reason to offer him harme, did not attend him,) he was forced for his saiftie to fle; in which chaice thay did approche him so neir, as he had vndoutedlie bene ouertane and killed, if he had not aduentured to rin afyde and couer him self with the ruines of ane decayed house, whilk, in respect of the darknes of the night, they did not persave; bot still followed to his ludgeing, and searched all the corneris thair of, till the confluence of the peopill of the towne⁵ resorting, whair thay hard siche a fray, forced thame to retire. For which schamefull and barbarous attempt, the said *Sir Thomas Kennedie of Cullayne*, having focht redress be law, did thairby dryue Auchindrane in siche danger of ruyne, as necessarlie did constrayne him to couer his malice with schew of repentance: And for satisfioun of his bypast offence, and gadge⁶ of his future dewtie, to offer his eldest sone in marriage to *Sir Thomas Kennedie's* dochter: Whilk, be intercession of freindis, being accepted, and thairefter the marriage accomplisshed, the Laird of Cullayne did so affect the gude of the Laird of Auchindrane and his howse, as it was no les dere to him nor⁷ his owne; considering, that in thair hopes and wisches, it wes to be possessed be the posteritie of thair conioyned discentis.

In which termes, materis continowed, vpoune Cullayne's pairt, faithfullie and in hairt, and vpoune Auchindrane's, in tresonabill professionis; whilk,⁸ be the deceas of *Sir Thomas Kennedie of Barganie*, his sone, *Gilbert Kennedie of Barganie*, ane young Gentilman of great courage, succeding to him, his inexperienced youth wes seduced be Auchindrane to beleve, that the tyme wes proper to raise his house, from the secund place in the cuntrie to the first, be the ouerthrow of the *Erle of Cassillis* house; whilk he proponed not to be difficill, for many probabill reasonis: Which, finding approbation, in the ambitious mynd of the young Gentilman, all occasionis of haitrent wer so fostered be seditious instrumentis on ather syde, that in schort tyme the parties wer broght to siche profession of inimitie, as *the Laird of Barganie*, intending, in contempt of the Erle, to go by his set,⁹ in his passage from Aire to

¹ In the Bailliary of Carrick and shire of Ayr. ² Ascertaining after enquiry; discovering. ³ Concealed; hid; secreted. ⁴ Let off; fired. Old Fr. *delascher*. ⁵ Maybole. ⁶ Pledge. Fr. *gage*. ⁷ Than. ⁸ Until. ⁹ Contemptuously to go past the Earl's gate, without so much as enquiring after his health, he being his Chief, &c.

., and the Erle, resolving rather to die nor¹ digest that publick indignitie; having bothe frentened thame selfis with fuche forceis, as vpon so suddane occasioun thay could assembill;² thay rencountred vpon the ffieldis, neir the Erles howse of, whan floure or ffyve hundreth men entring in flight, it wes verie liklie that the eagernes of the Cheiffis fould have broght thair peopill to great butcherie, if *Barganies* courage had not carried him so headlong to the rasche invasioun of the *Erles* peopill, lying at cover, vnder the advantage of ditches, as him self rassaving ane deidlie musket schot, and *Auchindrane*, being also maid vnhabill to brak his horse, be ane verie dangerous schot in the theigh, thair trowp, wanting leaderis, fled, and left the feld to the Erles better fortune. -

Which, no thing abating *Auchindrane's* malice, he did not cease to stir vp *Thomas Kennedie*, brother to the lait slayne *Barganie*, to be assistand to him, in daylie ambusches, for the *Erles* death; whairin, not prevailling, in respect of the Erlis power and circumspectioun; at last, *Auchindrane*, determining rather to ouerthrow honour, promes, conscience, and all bandis of dewtie, nor³ to misf sum sort of reuenge; he concludit to Murthour the before named *Sir Thomas of Cullayne*, ane mater most easie to be atcheved; becaus the Gentilman wes, in his owne confait, fullie secured of all parrell fra thair factioun, for that he had absteaned from assisting his newew the *Erle* in his querrell aganis *Barganie*, alsweill becaus he wes godfather to *Gilbert Kennedie of Barganie*, as that his mother and the *Erles* grandmother be his father, wes ane dochter of the house of *Barganie*: Which respectis, making him exceidinglie to regrait thair vnnaturall inimitie, he thought it more agreabill to his dewtie to referue him self newtrall, in thir vnhappie dissentiounis of his kinsmen; thairby, to watche occasionis and referue equall credit and trust of bothe pairties, to be ane instrument of thair reconciliatioun, nor be his kyndnes to one of his kinsmen, be vnnaturall and vndewtifull to the vther.

In this estait, being onlie intentive to his owne adois,⁴ whilk in the moneth of, in the yeir of God,⁵ did requyre his resort to Edinburghe, thair to consult with his lavers in his wechtie buffines; he send his seruand to Maybole, to seik *Auchindrane*, and aduerteis him of his purpose; with direction, if he missed him thair, that he fould certifie him, be Letter, of his intended journey; to the effect *Auchindrane* might, vpon the nixt day, meit him vpon the way, at, and informe him of any thing he wald wish him to do for him in Edinburghe, seing it wes bot one travell for him to do his freindis buffines and his owne. This seruand of *Cullaynes*, missing *Auchindrane* in *Maybole*, desyred *Mr Robert Mure scholemaister at Maybole*, to wryte ane Letter of that substance to *Auchindrane*; who did so, and sent it be ane boy of his schole, called *William Dalrumpill*, who finding *Auchindrane* at his house of *Auchindrane*, with his cusing, *Walter Mure of Cloncaird*, ane deidlie ennemie to the *Erle of Cassillis*; so sone as he fand him self certified of *Cullaynes* pourpose and dyet, he dismissed the boy, commanding him to returne bak in haist, caireing the Letter with him; directing him farder to schaw to his maister and *Cullayne's* man, that he had not fund him at his howse: And immediatlie thairefter, resolved with his cusing *Cloncaird*, that this occasioun of reuenge of *Barganies* Slauchter, be *Cullaynes* Murthour, wes nocht to be oneflipped: And, efter sum deliberatioun, concluded vpon the choise of the actouris, and maner of the execution; making aduerteisment thairof, alsweill by Letter sent to *Thomas Kennedie of Drumvrquhie*, be *Makadam*, futeman to *Young Auchindrane*, as by message to *Cloncaird*; who, finding *Thomas* most reddie to embrace that opportunitie, the said *Thomas Kennedie*, *Walter Mure of Cloncaird*, and foure or fyve seruandis with thame, weill airmed and horsed, conuoyeing thame selfis neir the way appoynted be *Cullaynes* Letter, for his meiting with *Auchindrane*, did ly at await, till *Cullaynes* by-cumming; who, being in full securitie of his dangerles estait, ryding vpoun ane paissing naig,⁶ and having with him ane seruand onlie, thay suddentlie surprysed him, and with thair pistoles and fuordis gaue him ane number of deedlie woundis:

¹ Than. ² See a full account of these proceedings in 'THE HISTORIE OF THE KENNEDYIS' before referred to— and also ORIGINAL PAPERS in this Appendix. ³ Rather than be deprived of some sort of revenge against the name of Kennedy. ⁴ Affairs; concerns. ⁵ 11th May, 1602. ⁶ A pacing, ambling nag; a hackney, for his journey; not a swift and powerful horse, by which he might possibly have escaped. See 'The Historie of the Kennedyis.'

And, nocht content to haue so barbarousslie and traitronsslie bereft him of his lyfe, spoyled him of ane thousand merk of gold, being in his purse, ane number of golden buttonis vpon his coat, and sum ringis and vther jouallis: For the which villanous fact, the actual *Mourthouraris* being first outlawed and thairefter fforfalted, and *Auchindrane*, vpoun vehement presumptionis of his devyse and causing execute fo execrabil ane cryme, being summond vnderly the law, did bouldlie compeir: And feing that the persewaris, for want of sufficient evidences, wer not than to aduerture his Tryell, fearing that he might be cleged,¹ and so, perpetuallie fred of that cryme; whan he saw them adiourne thair persute, he seemed greived thairat, as bragging exceidinglie of his innocencie, whairfo he had gevin pruiß, be offering him self to tryell of law, if thair wer within the kingdome any man of *Cullaynes* kindred or freindschip, who wald advow² him any wayes participant of the devyse or executioun of that Murthour, he wald reddelie offer him self in that querrell *to the tryell of COMBAT* to the death: And so, wanting ane partie,³ wes dismissed; more frie, in the persuasioun of the most pairt of sache as wer present, nor in his owne conscience, whilk geiving him many alarmes, that so long as *Dalrumpill*, who wes carrier of the Letter, wes within the cuntrie, the mater might be discovered be him. Heiring that *Young Cullayne*, sone to Sir Thomas Kennedie, had begun to try him verie rudelie, Auchindrane drew Dalrumpill to his houße, and keiped him cloise, be the space of nyne or ten oulkis;⁴ whairwith the boy weireing exceidinglie, he sent him thairefter to *the Ile of Arrane*, to *the Laird of Skelmurlie*,⁵ his great freind, willing him to keip him as ane boy of *Thomas Kennedie of Drumvrquhies*: Whair he being reßaued and reteaned ane long space, the boy, finding him self neglected and vnprovyded of many necessaris, returned to *Munctown*, to the houße of ane vncler of his owne;⁶ which came no soner to Auchindrane's knowledge, bot incontinent he sent for him to his houße of Auchindrane, whair he of new kept him cloise, whill, be paction with ane of his coußingis, called *James Mure of Fleet*, he send him to Leith, to be transported to *the Low-cuntries*, to serue as ane sodgeour in *the Lord Balcleuchis Regiment*;⁷ hoping that he might either thair end his life, be sache accidentis as daylie befallis to fouldiouris, or at least be secure from discouerie or persute of sache as he did stand in feare off. But whan the senseles blindnes of his conscience had gevin sentence of perpetuall securitie to him from all discouerie of his abominabil transgressioun, in respect of *Dalrumpillis* absence, be the space of fyve or sax yeiris; the ey of Goddis justice, whilk never sleipis, convoyed him back to Aire, the place of his natiuetie, whar, having onlie stayed with his mother and sister ane night or two, he did address himself to *Auchindrane*, who, aduertised of his returning, and thairby stinged with fearfull tormentis of conscience, he take ordour for Dalrumpillis stay in the howße of his seruand, *Walter Mure of Glenheid*: And the next day, in the afternone, being the . . . day of September, in the yeir of God . . . ,⁸ he send his houßhold seruand, *James Cuninghame*, to bring him to him; and rencountering with thame, in his way from his howße of Auchindrane to ane vther howße of his, called *Ballachtowle*,⁹ him self and his sone, *Young Auchindrane*, had conference with *Dalrumpill* ane great part of the way, till they came neir the Houße of *Chapeldonan*,¹⁰ perteaning, by inheritance, to Auchindrane, and possessed be his tennent and allye,¹¹ *James Bannatyne*, with whom thay left that night *Williame Dalrumpill*, calling him be ane changed name, '*Williame Montgomerie*.' Whair he stayed all the next day, whill, be directioun of *Auld Auchindrane*, James Bannatyne did bring Dalrumpill, about ten a klok in the night, to *the Sands of Girvan*, whair Johne Mure, elder of Auchindrane, and James Mure, younger of Auchindrane, wer attending¹² thair cuming: At meitting, *Auld Auchindrane* begane to declaire to his man *Bannatyne* that he

¹ Literally *cleansed*; acquitted. ² Avow; openly challenge. ³ Pursuer or prosecutor. ⁴ Weeks. ⁵ Sir Robert Montgomery. He married Margaret, eldest daughter of the Laird of Drumlanrig, Sir William Douglas.
⁶ It cannot be traced who this individual was. ⁷ SIR WALTER SCOTT, who raised a regiment of his name, and served in the Wars of Maurice, Prince of Orange, against the Spaniards. For his singular merit and services, he was, Mar. 16, 1606, created Lord Scott of Buccleuch, being the first person of that celebrated Family who had been ennobled. His son, Walter, second Lord Scott of Buccleuch, also commanded a Regiment in the service of the States of Holland, and was created Earl of Buccleuch, Lord Whitechester, and Eskdale, Mar. 16, 1619. ⁸ 1607.
⁹ Situated near Girvan. ¹⁰ Situated about a mile and a half from Girvan, on the sea-shore. ¹¹ 'Kinnisman to his wyfe' is deleted, and 'allye' interlined. ¹² Waiting. Fr. *attendre*.

had bene in perpetuall feare, since *Cullaynes Slaughter*, to be discouered as guiltie thair of;—that for eschewing that danger, he had sent furth of the cuntrie this *Dalrumpill*, who broght to him the Letter of aduerteifment of *Cullaynes dyet*; and whan as he had materis at that poynt, as be his traelis,¹ *Young Cullayne* and *Thomas Kennedie* wer maid to allow of the conditionis whilk he had set downe for reconciliatioun of thair querrell, for the Murthour of *Cullaynes father*, this man wes vnbappellie returned, be whom his whole devyfe wald be difapoynted, and his danger renewed. That he saw no remeid bot to red *Dalrumpill* furth of this lyfe, since he could not vtherwayes be kept out of his way. Whairvnto *Bannatyne* making anfuer, that it wes ane cruel pourpose to Murthour the poure innocent youth, speciallie feing thay might send him to *Ireland*, to be saiflie keiped thair, till the agriance wes perfytted betuix *Cullayne* and *Drumvrquhie*: Auld *Auchindrane* semed to inclyne sumwhat to that expedient; and in the uncertaintie of his resolution, turning towardis the pairt whar his sone stuid, of pourpose, as appeired, to have consulted with him, *Young Auchindrane* peraved thame no soner (draw) neir, bot, thairby assuring himself of thair affiance, in executioun of that whilk his father and he had formerlie concluded, he did violentlie invade *Dalrumpill*, rufhed him to the ground, and never left him till, helped by his father, with his handis and kneis he had strangled him. And then, thinking to have buried him in *the Sandis*, whirby no mark fould remayne² whilk might raise any suspicioun of his Murthour, in that place, thay preafed to mak vse of ane spead and schoule whilk *Young Auchindrane* had broght with him for the pourpose; bot finding that no hole wes soner cassin be thame in the Sand, bot wes alfone filled agane with the water and sand that schot in it, thay wer forced, efter lang travell, to draw him in the sea, alsfar as they durst wade, hoping that ane vtterlie wind³ fould carie his deid corps to *the Coast of Ireland*: Whilk not succceeding according to thair expectatioun, the corps staving all the next day in the verie place whar they left it, they passed that day in meruelous anxietie, for feir of discouerie; till the nixt night, searcheing the corps to have buried it, they could not, be any searche, find it, becaus the winde had carried it to the Sea, whair it wes tossed continuallie be the space of fyve nychtis, till the Fryday following, that God, deineing (*deigning*) to vse that meane, for manifestatioun of thair hid iniquities, broght *Dalrumpilis corps* bak to the verie place whair, sex or seven dayis before, he had been Murthoured: Whilk being peraved be sum cuntrie peopill, the corps wes cairied be thame to the nixt Church yaird, and thair buried.

Bot the report of so strange ane accident, having raised suspicioun in *the Erle of Cassillis* and sum of his friendis, who had heard of *Dalrumpilis* returning in the cuntrie, that it might be he had pairt in that turne, it wes thought fit be the Erle and dyueris of the Ministrie⁴ of that boundis, that intimation fould publictly be maid in Aire, being the heid burgh of the schyre, and at the Paroche-Kirkis to landward, that fuche ane corps, being fund deid vpon the coast, wes to be sene at *the Church of Girvan*. Whilk being accordinglie publickly, the corps wes raised, and amongs vtheris, fighted be *Dalrumpilis mother* and his *sister*, who efter diligent consideration of the proportion and markis of his bodie, assured thamefelfis and vtheris, that he wes the mourthoured man! The opinion of *Auchindrane*s guiltines of that Murthour becam so vniuerfall, as it began to be talked of amongis his owne seruandis and in his owne house, and thairby himself, his sone, and thair man *Bannatyne*, so confused, as thay knew not how to cleir thaim self of that vylde imputation; till going to Aire, and meitting with *James Dalrumpill*,⁵ cusing germane to *Young Auchindrane*, by his mother, he did informe thame of the schamefull opinion wes had of thair guiltines of that foule Murthour; advysing thame, that feing it wes not saif for thame, to offer thame felfis to the Tryell of Law, for ane Murthour, whair of all men thocht thame so guiltie; and if thay, being challanged be *the Erle of Cassillis*, fould be fugitiue for so haynous a cryme, thair freindis could not with credit do for thame.⁶ It was fitter, that they fould kill *Hew Kennedie of Garriehorn*, servant to the Erle of Cassillis, for dyueris proba-

¹ Pains; trouble. ² By burying him within the flood-mark; so that, on the reflux of the tide, all marks of the struggle and foot-marks, &c. might be effaced. ³ An off-shore or outward wind. ⁴ Clergy; Ministers.

⁵ 'Sisteris sone to the Lady Auchindrane, and so cusing,' deleted.

⁶ Support or maintain them, while fugitive.

bill querrellis whilk they had against him : Whair of the occasion did presentlie offer, in respect of his being singill ¹ *in Aire* ; whilk being done, they might ever pretend, that the danger of that cryme, and feir of the rigour of the Erle, wes the onlie caus for the whilk they wer fugitiue ! In whilk caice, nevertheles, thair freindis might, without reproche, do for thame ; becaus, albeit the fact wes vnlaufull, it wes not dishonest, since it proceded vpon professed querrelis, and might be done publictie ; and so, they be fugitiue, without infamie ! They presentlie imbrased the expedient, and provyding thame selfis of pistoles and vther airmour, they invaided Gariehorne,² schott thair pistoles, and vsed all vther meanes to have killed him. Bot finding, that it wes ane mater more difficill, to ouirthrow ane gentilman, airmed with gude courage, in ane laufull defense, nor³ to Murthour innocent men, voyde of apprehension of danger and meanes of defence, all that thay reported of that inuasion, wes ane hurt of Young Auchindrane in his right hand, whairby he became almost lame of it.

Be this new iniurie, THE ERLE OF CASSILLIS persaving that thair lyves wald end, before thair malice aganis him fould diminifh, he resolued to strengthen him self be all suche aduantage as Law fould giue him ; and having chaledged thame bothe for the *Murthour of Dalrympill*, and for the Inuasioun of his seruand with prohibit vapis,⁴ thay go to the horne ;⁵ professing alwayes, that if thair vsing pistoles aganis *Gariehorne* might be remitted to thame, thay wald ever be reddie to enter and abyde Tryell of *Dalrumpillis Murthour*. Bot his Maiestie, being trewlie informed of thir proceedingis, efter serious consideratioun of the circumstances, than consaued so constant ane opinion of Auchindrane and his sones guiltines of Dalrumpillis Murthour, that he assured him selff, that if thay wer tane and dewlie examined, thay wald vndoutedlie be brocht to confes it. And thairbye, inspyred with his accustomed zeale to justice, gave secret Commissioun to the Erle of Abercorne, that he wald not omit ony occasion to apprehend those suspected perfonis ; whairin the Erles diligence had so gud succes, that within schort space, he did rencounter and tak *Auld Auchindrane*, and enter him prifoner in the Towbuith of Edinburgh ; whair of, hes sone had no soner knowledge, bot imagining with him self, that it wer easie for his father and him self to conceall thair crymes, be obstinat secrecie, if *Bannatyne* fould not be brocht,⁶ by examination and confrontation, to reueale the treuth and discredit thair denyall ; he instantly raid to *Ballintrae*, whair *Bannatyne* wes for the tyme, persued him, for all thair saifties, to retire to *Ireland* ; provyded and furneissed him with victuallis and necessaris, ane bot⁷ for his transport, recommended him, by his Letteris, to his vncle *Thomas Kennedie of Drumvrquhie*,⁸ gave him assurance that be his absence, he fould not tak any proffeit of the land quhilk he had of thame, nor no vther help, whil thay wer abill to mak to him. And be *Bannatynes* remove, becuming confident, did suspend his Horningis, be caution for his compeirance to vnderly law ; desyring no thing so muche as that he might be precipitatlie put to ane Assyse ; vpon hope, that the lak of verification, in ane mater so clandestine and obscure, and the assistance of his great and gude freindis, fould procure to him vndouted absolutour ;⁹ and thairby, being frie of all dangeris of law, wald be more abill to procure his ffatheris libertie and declaratioun of his innocencie. Bot, being anis entered, examined, and vpon great caution⁹ lett to libertie, and thairefter his cautioner charged to re-enter him, he, remitting no jote of his former confidence, compeired the day appoynted, and being than re-examinat, and be the commendabill indutrie of my *Lord Chancellor*, and vtheris of the Counfall, appoynted for his Tryall, drawne in sum materiall contrarietie ; vpon signification thair of to his Maiestie, directioun wes returned, that not onlie he fould be reteaned, bot if he wer obstinat, fould be coerced, be *Tortour*, to discover the trewth ! Whilk being accordingly performed, be those of his Maiesties Counfall, to whois secrecie and faith that charge wes committed ; the *Young Auchindrane*, pairtly confirmed be the strenth of his great courage, vnhappellie bestowed in

¹ Single ; unaccompanied. ² Hew Kennedie of Gariehorne, called in the Act of Secret Council, Feb. 5, 1602, 'The Guidman of the Ballot,' probably from being Lessee or tacksman of that farm. ³ Than. ⁴ Wappinnis, weapons, which were by Act of Parliament prohibited from being used by private gentlemen, excepting in his Majesty's service. ⁵ Permit themselves to be denounced rebels and put to the horn, by virtue of Letters of Horning passing under the Signet, rather than present themselves for trial, as was previously arrauged. ⁶ Boat.

⁷ One of the forfeited murderers of Sir Thomas Kennedy. ⁸ Acquittal. Lat. *absolvere*. ⁹ Bail ; security.

pruiffis of that kynd, and partlie be the craftie advyfes and aduerteifments of his ffather, convoyed to him be the counfile of fum thair welwillaris, who tuke the advantage of the cairelefines of thair keiparis; he did endure the extremitie of that infufferabill torment, with fuche conftancie, that whairas, it wes hoped that the veritie of the accusation and extremitie of payne fould have forced him to ane trew Confessioun, the event proved fo far contrarie, as he refolving, with filence, and fouffrance of ane fehort payne, to redeme his libertie, and to adde the hope of many yeiris to his lyfe.

The moft part of thofe who hard of the event of that Tryall, the forme whairof wes muche miflyked, did confane fo conftant opinion of his innocencie, as not onlie the vulgar fort did publeis the fame, and regrait the extraordinar rigour vfed aganis him, bot fum Nobilmen and Counfallouris did affist his Supplicationis for his libertie, alledgeing many reafonis, why, with reafon, it could not be refused him: That ane man of his birth and qualitie had reffaued hard aneuch meafour, being *put to Tortour* for ane cryme whilk nather did concerne his Maiefties perfone nor eftait, albeit, efter fo gude prouif of his innocencie, be his fingular conftancie in fuffering that tryell; whilk no thing could have refifted, bot the integritie of ane vnspotted confcience; he fould not be ouercharged with ane fecund oppreffion, in denying to him his natiue and lafull libertie; fince he did offer aither to vndergo preffent tryell, or, if his ennemies did rather chufe, to prorogat it to ane tyme more fit for thame, he wes content to find caution, not vnder the pane of ane thoufand merkis prefcryved be Act of Parlement to ane man of his eftait, bot, for removing of all fcruple of his not compeirance, he fould bind his freindis vnder the payne of *Twentie Thousand poundis* for his re-entrie, whanfoever he fould be charged to that effect: Which wes fo oft requyred and vehementlie preafed, that my Lord Chancellor, ouercum with the continouall importunitie of *Young Auchindranes* favouraris, did yeild, that aduerteifment fould go from the Counfall to *HIS MAIESTIE*, of *Auchindranes* fate, and of the inclination of ane great part of the Counfall to yeild to the fam. Whairwith, his Maieftie, no whit diverted from his former refolution, fignified his pleafour to be, that in no caice, nor vpoun no condicioun, he fould have ony libertie; being refolved in his confcience, that he wes moft guiltie of that Mourthour; and that God, in his iuftice and appoynted tyme, wald manifft the fam: Whairby, my Lord Chancellor, ftrenthened be the exprefs Warrant of his Maiefties directioun, proceeding of his Royall motiue and certain knowledge, did fo dewlie obey his Maiefties command, that many tymes thairefter, whan the moft part of the Counfall, abufed with vtrew probabilities, and inclining to muche prepofterous pitie, did preafs that *Young Auchindranes* Supplicatioun might be red and refaue anfueir from the Counfall, be the voices of the moft part of thofe who wer prefent, according to the inftitution thairof and cufume inuolablie obserued.

My Lord Chancelar, perfaving, be thair vttering of thais preconfaued opinions, that be pluralitie of voces it wald be ordaned that libertie fould be granted to *Auchindrane*, vpoun caution, vnder great fowmes for his re-entrie whan he fould be charged; did oppone to thair opinioun, grounded vpoun the vfuall forme of that judicatour, his Maiefties expres commandement, proceeding from his abfolute Royall power, whilk he wald never bring in queftioun, fince no man could deny that his Maieftie, vpoun caufes knowne to him felf, might commit and reteane in wairde any of his fubiectis, who in his confcience he knew to differue the fam; and that it wes prefumption to his fubiectis, speciallie Counfallouris, any wayes to conteft in that poynt, efter his Maiefties lafull pleafour fo oft and fo exprefflie declared.

My nobill Lord, it wer heir verie eafie for me to iuftifie the courfe of *HIS MAIESTIES* proceeding in this particular, and not onlie refute the popular error of the prefumptuous multitude, bot alfo, with infallibill reafonis, to condemn the vntymous pitie of fum of better fort, nather remembering the obligatioun of thair place, nor the pruiffis of fo many bypaff accidentis, whairin his Maieftie, voyde of all paffioun and particular,¹ and onlie moved by confcience, and loue of iuftice, had fumwhat diuerted from

¹ Partiality; bias, or leaning to the *quarrel* or cause of either of the parties.

the common pathe of ordinar Justice, without respect to popular murmour; so let the world to see, in end, be his most notabill conclusionis, how his purposes, tending to vnpartiall Justice, wer assisted be the fauour of God, and be heavenlie inspirationis, conducted to endis, confortabill, and almost miraculous! Bot, becaus I falbe more abill perfittlie to performe that pairt, whan in the end of this actioun I falbe strengthened be the credit of ane faithfull and conscionabill Affyse, and muche more be the Confessioun of the parties, extorted be the power and Prouidence of God, I will referue it that place; and following furth the course of this Narratiue, subioyne thairto the Judicial Procedure and Sentence, whilk was never thought to be in the way of any probabill expectatioun, till *the Erle of Abercorne*, by secret and instant dealling with sum of his freindis in *Ireland*, fand meanis to tak *James Bannatyne*, and bring him to Scotland, to his howse of Paislay; whair *Bannatyne*, efter the reherfall of all that Tragedie of *Dalrumpills Murthour*, having subioyned the maner of his owne taking, whairin he seimed to acclame sum promeis, maid for the saistie of his lyfe: The Erle did forthwith judge that dealling, so contrare to his honour and his Maiesties intention, as he instantlie assured *Bannatyne*, that he never did intend to have him vpon any futehe conditionis. Bot being vnwilling that whan he sould be presented to justice, he sould reproche to him the brek of condicion maid be any whom he had employed for his apprehensioun, whairby the heararis might tak libertie, either to beleve or not beleve *Bannatyne's* affirmatioun, and thairby bring his honour in question; he gaue to him libertie to go frie out of his house, with assurance, that for the space of ten dayes he sould be vnpursued be him or any of his, geving him space to provyde for his saistie, either within this realme, or be removing furth thairof; aduerteising him thairwithall, that that terme being expyred, he wald bestow his owne travels and the assistance of all the friendis he had in the world to apprehend him, whairever he might be had, either quick or dead! So *Bannatyne*, being left to ane bodelie libertie, whilk neuer fred him of terrour of conscience, and fear of death, als well in respect of the suorde of his Maiesteis Justice hanging aboue his head, as that endles perfute, whilk he knew *the Erle of Abercorne* did intend against him; bot most of all, in respect of his knouledge, that *Auchindrane* had, of lait, devysed and practeisid many meanes to cause *Murthour* him in *Ireland*, thairby to prevent the danger quhilk *Bannatynes* Confessioun might bring vpon him, if, be falling in *the Erle of Abercornes* handis, he sould have bene broght to Ed^r, examined and confronted with him and his sone: Being also informed, that whan *Young Auchindrane* caused deale with *the Erle of Dumbar* for his libertie, he had offered that his cautioneris sould bring *Bannatyne* in, *either quick or deid!* The Erle had verie judiciouslie answered, that he did well believe that *Young Auchindrane*, being frie, wald vnfaynedlie do his best to bring in *Bannatynes* head, whair of for his pairt he wald be sorie, as losing ane of the best meanis of the discouerie of thair guiltines, whair of he in his conscience wes resolued! Thir consideratiounis did force *Bannatyne* to prostrat him self at the Counsals seit, offering him self, without any condition, to reveill the whole treuth of that *Murthour*, and to verifie all that he sould say in *Auchindrane* and his sonis face; hoping, be the assistance of Gods gude Spirit, to bring thame to ane Confessioun of that vdenyabill treuth; onlie craiving, that if the Counfall fand him trew in all his speachis, and to be ane meanes to discouer the wickednes of these men, who, having drawn him vnhappellie in the participation of thair mischief, had fo ingratelie and wickedlie devysed to *Murthour* him self, thar Lordschips wald be pleased to recommend him to the Kingis mercie, whois pleasour he sould joyfullie fulfill, wer it in his lyfe or in his death!

He wes commanded to mak ane trew Narration of *the maner of Dalrumpills death*; whilk being writt be the Clerk of Counfall, and *Auld Auchindrane* broght in and examined and confronted with him, and being contrare to him in all the poyntis of his Deposition; afferming impudentlie, that *Bannatyne* wes seduced and conduced be his vnfreindis (*enemies*), for desyre of his lyfe and landis, to avow these vntreuthis vpon him. They wer so directlie opposite to vtheris, as *Auchindrane* appeired more craftie and *Bannatyne* more simple and trew in his Deposition; bot bothe of thame so confident, that not

onlie evrie ane of thame menteaned thair owne Declaratiōne; bot whare as Bannatyne had prostrat him self vpon his kneis, and directing his eyes and handis to Heaven, had, with tearis, exhorted Auchindrane 'to have remorse of his great wickednes, and to confes that Murthour, whilk God wald not suffer him any longer to conceale! Assuring him, that if he had bene innocent of that cryme, all the land of the Kindome, 3e¹ the saiftie of his owne lyfe, fould never haue persuaded them (him) to pre-judge his maister, who he had so deirly loved and followed in many dangeris, whairin he had ad-ventured his lyfe and estait, without feir or respect of the best subiectis in the cuntrie.'—AUCHINDRANE answered, that 'he hoped God wald nocht so reiect him, as to permit him to confes so infamous vn-trewth of him self, and douted not bot God wald move Bannatyne to beir witnes to his innocencie, and how, be what perones and meanes, he had been feduced fallie to accuse him!'

Whairby, the Counfall, being broght in admiration² of so great obstinacie, and hoping that the sone, being confronted with *Bannatyne*, might be fund perhappis lefs confident: When thay wer broght in thair presence, and examined, confronted, re-examined, and tryed, be all the best meanes that the experience or jugement of wyfe and well affected Counsalouris could affurd; nothing wes hard bot direct contrarieties, confidentlie confirmed be execrabil oathes! So dyueris whole dayes being spent in Examination of these pairties, and many Witneffes who wer thought ony wayes abill to furneis light to this obscure caice.

At last, whan no hope of any farder discouerie wes expected, THE LORDIS OF SECRET COUNSALL concluded, that vpoun the day of July instant, these perones fould be put to thair TRYALL: And for that pourpose caused Summond ane sufficient number of Gentilmen of gud report, to pas vpon thair ASSYSE; and did lykwayes appoynt my Lords President,³ Secretar,⁴ Justice Clark,⁵ Meidhop,⁶ Kilyth,⁷ and Wrightisland,⁸ to be ASSESSOURIS to the Justice in this singular cause, whairin the inclination of the peopell wes so fauorabil to *Auchindrane* and *his sone*, that verie many did allege, that it wes requisit that *Bannatyne* fould be first put to an Affyse; and being convict, as of necessitie he behoued to be, in respect of his owne Confessioun, and Execute to the death, as he had well deserved; his constant ratification vpon the scaffald of his former Depositionis, and seilling the same with his bloude, at his death, might than put thame in sum opinion of *Auchindrane's* guiltines, whairof vtherwayes thay had never sene any appeirance. Bot the Lordis of Counfall, thinking it more agreabil to reason, that⁹ [thofe?] who wer thought all guiltie of ane fact, fould go to ane com [mon Affise?] and that the gentilmen of Affyse, whois consciences [might?] susteane the chairge of the Judgement to be gevin in so we [ightie?] a cause, fould have all the thrie Defendaris at ones in thair presence, that so thairby thay might be resolued of whatsoeuer thay fould think fit to demand of thame. Thair Lordschipis followed thair first ordonnance, and vpon the said [17th] day of Julie, efter ellevin a klok, cumming to the ordinar place of Jugement, did cause bring the Defendaris from thair feueral prifonis to the bar, whair Sir Thomas Hamilton of Byres, Knight, his Maiesties Aduocat, compeiring as persewar, did exhibit ane DITTAY aganis the saidis Defendaris, desyring my LORD JUSTICE to put thame to the Tryall of ane Affyse; who, intending no wayes to preiudge the Defendaris of the benefite of Law, gave to thame libertie to name thofe whom thay desyred to be forespeakeris¹⁰ for thame in thair defence; who naming¹¹ ['Mr Johne Ruffell, Aduocat, Mr Thomas Nicolsone, Aduocat, and Joseph Myller, Aduocat,'] thay wer presentlie called be thair names; and having accepted vpon thame the Defenfe of the *Lairdis of Auchindrane*, elder and younger, the Dittay wes oppinlie red in jugement: Aganis which *James Bannatyne* did not oppone any thing; bot declaired, that as he wald not vse any defence why this mater fould nocht pas to the knowledge of an Affyse; so when the

¹ Yea.² Astonishment.³ Sir John Preston of Fenton-barns, President of the Court of Session.⁴ Sir

Alexander Hay.

⁵ Sir John Cockburn of Ormiston.⁶ Sir Alexander Drummond, an Extraordinary

Lord of Session.

⁷ Sir William Levingston, an Extraordinary Lord of Session.⁸ Sir Lewis Craig.⁹ The MS. torn at this and the following places, which the Editor has supplied from conjecture, within brackets.¹⁰ Counsel, or *Prelocutors*.¹¹ Left blank. The names within brackets are taken from the Record.

Affyse fould be chofen, he fuld mak thair burding light, granting in thair prefence fo muche of the Dittay as concerned him, albeit he tuke God to witnes, that he wes the maift innocent of the thrie.

Thairefter Mr^{is} Johne Ruffell and Thomas Nicolfoun, having exponed to my Lord Justice the groundis of the caufe, the qualitie of the Defenderis meriting fauour and respect, the rigour vfed aganis thame in thair lang captiuitie, and extraordinar Tortour of the young man, did craive, that thay might have the benefite of law, whilk allowed to the Defenderis citatioun vpon fiftene dayes wairning; whairby, reffaving the Copie of the Summondis, containing the Inditement to the whilk thay wer to anfuer, thay might, be that fpace, be advyfit of thair wyfe freindis and learned Counfall, to prepar thair juft Defenis. Whairvnto it wes anfuered, be his Maiefties Aduocat, that thair defyre could not be granted in this caufe, be reafoun, the crymes whairof thay wer to be accused wer treasonabill; in which caice, ane prifoner, being broght from his Maiefteis prifon to the bar, wes, be the ordour of this Judgement,¹ put to prefent Tryall, without any delay or continewation; whilk, with no reafons, could be granted to thame at this tyme; becaus, thrie yeiris ago, thay had bene fummoned for the fame crymes, vpon xv dayes wairning; at whilk tyme, they going to the horne, for thair contumacie, the Auld Laird wes takin be his Maiefties Commiffion, the Young Laird relaxing his [Summondis and entering] had bene deteaned be his Maiefties direction; fo that they had not onlie fyvetene dayes, bot full thrie yeires to prepaire thair defenis.

The Defenderis than alledged, that the fummonds, produced be the Lord Aduocat, could not juftlie feclude thame of thair defyre of delay, becaus the Dittay this day produced be him, wes fo different from the tenour of the ould Letteris, in many substantiall heidis, and did fo aggravat the cryme, be many circumftances, nowayes mentioned in the former Letteris, that it wes eafie to my Lord Justice and the Lord Affeffouris to difcerne, that no thing conteaned in the former Letteris, could have gotin thame information to prepaire thair Defenfes aganis the tenour of the Dittay now layd to thair charge. Which, being considered be the Lord Justice and Affeffouris, and the auld Letteris and prefent Dittay exactlie conferred;² be Interlocutour, thay ordained prefent proces, refufing to give the Defenderis any vther copie of the Dittay, or delay of proces, till the nixt day.³

II. PROCEEDINGS BEFORE THE PRIVY COUNCIL OF SCOTLAND, *in reference to the Feuds and Conflicts recorded in the preceding Trial, &c.*

(i.) WARRANT of Privy Council, (*Apud Edinburgh, Decimo tercio Decembris, 1601,*) commanding the Earl of Caffillis to fet Mure of Auchindrane and others at liberty.

FORSAMEKILL as it is vnderftand to the Lordis of Secrete Counfall, that at the lait CONFLICT and Combat, quhilk hapnit and fell out betuix JOHNNE ERLE OF CASSILLIS, and certane his freindis, on the ane pairt; and GILBERT KENNEDY OF BARGANY, and certane his freindis, on the vther pairt, vpon the ellevint day of December infant; the faid Erle tuik and apprehendit MURE OF AUCHINDRANE, DAVID KENNEDY of *Maxuelfoun*, and certane vthers of the faid Laird of Auchindrane and Barganyis feruandis; and prefentlie hes thame in his custodie and keiping: And in respect of the Slauchter and bluid quhilk hapnit and fell out at the faid Conflict, it is verie fufpicious that the faid perfonis fould be sufferit to remane in the powar and handis of the faid Erle. THAIRFOIR, the faid Lordis Ordanis Letteris to be direct, chairgeing the faid *Erle of Caffillis* to defist and ceis fra all proceeding aganis the perfonis foirfaidis, tane and apprehendit be him at the faid Conflict, be vertew of his office of Bailjerie, or of ony powar or commiffioun grantit to him for that effect; difchairgeing him

¹ The practice of this Tribunal. ² Collated; compared with each other. ³ Here the Narrative ends abruptly. As the Report of the Trial is so full, it is likely that the writer had abandoned his original intention of giving a report of the proceedings which took place at the Trial—but merely to resume his Narrative, and continue it down to the period of their execution. This, however, if ever completed, has unfortunately been kept out of the scrolls. An account of the subsequent conduct of these atrocious criminals between the period of their condemnation and execution, must have possessed great interest.

thairof and of his office in that pair: As alsua, chairgeing the said Erle to caus fett the said *Laird of Auchindrane* and *David Kennedy of Maxwellsfoun*, and all vtheris personis tane be him at the said Conflict, at frie libertie, within the toun of Air, without ony violence or harme to be maid to thame be the way, within tuentie four houris nixt efter the chairge; vnder the pane of rebellious, &c. And, gif he failzie, &c., to denunce him rebell, &c.

(ii.) WARRANT of *Privy Council*, (*Apud Halyruidhous, quarto Februarij, 1607.*) to denunce JOHN MURE of *Auchindrane* and others.

SEDERUNT.

Lennox,	Fyvie,	Lowdoun,	Kinlofs,	Previe feill,	Kilfyth,
Chancellor,	Vchiltrie,	Maister of El-	Haliruidhous,	Aduocat,	Tracquair,
Angus,	Newbottle,	phingfoun,	Thefaurar,	Collectour,	Brunt-Iland,
Mar,	Spynie,	Rofs,	Comptrollar,	Clericis Regiftri,	Sir Patrik Mur-
Wyntoun,	Roxburgh,	Dunkeld,	Justice-Clerk,	Elimofinar,	ray.

ANENT oure souerane lordis Letteris, raifed at the instance of Sir George Home of Spott, knycht, his Maiefties Thesaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maiefties Aduocat, for his hienes enterefe; makand mentioun: That quhair, vpoun the elleuint day of December instant, *JOHNE MURE of Auchindrane*, Thomas Kennedy of Drummurchy, Hew Kennedy of Bennan, Walter Mure of Cloncard, Hector Kennedy in Bargany, Johne M^calexander in Auchingregane, Thomas M^calexander his broder, James Bannatyne in Chapeldonane, Johne Cathcairt of Carloun, Johne Cathcart younger of Carloun, Johnne Eccles of Kildonane, Williame Irwing, Thomas Wallace feruitour to the Laird of Bargany, Johne M^calexander of Dalreoch, Thomas Dalrumpill brother to the Laird of Stair, Gilbert Kennedy in Pynmachir, Gilbert Ramsay feruitour to the Laird of Bargany, Moses Lokhart brother to the Laird of Bar, David Kennedy in Maxvelstone, Alexander Kennedy sone to Hew Kennedy in Craigneill, Robert Kennedy feruitour to Walter Mure of Cloncard, Mairtene Wilfoun in Newark, Robert Campbell in Carmychell, Williame Cauldwell of Lochirmofs, Williame Kennedy in Garfer, Johne Mure of Craigskeane, Johne Mure in Quhytleis, Robert Wallace of Holmifoun, George Angus notar in Air, Symone Gilmour thair, Peter Hammiltoun thair, Andro Kennedy thair, Henry Dalrumpill thair, Hew Kennedy thair, James Blair thair, Johne Blair thair, George Dumbar thair, George M^calmont thair, James Dumbar thair, and . . . Kennedy cowpar thair, with convocatioun of his hienes leigeis, to the nowmer of . . . personis; all bodin in feir of weir, with jakis, corslettis, secrettis, lancis, and vtheris waponis, *inuasive*, and with muscattis, hacquebuttis, and pistolettis, prohibit to be worne be the lawis of this realme, Actis of Parliament and Secrete Counfall, come furth of the burgh of Air, towardis the toun of Mayboill, resolut and disposit to haue attemptit some heich interpryse aganis *JOHNE ERLE OF CASSILLIS*, in cais thay had found him vpoun the feildis: *LYKES AS*, thay persaving the said Erle and some of his frendis and servandis to be vpoun the feildis, befyd the toun of Mayboll, thay immediatlie set vpoun thame, schot and difchairgit a nowmer of muscattis, hacquebuttis and pistolettis amang thame, quhairwith thay slew vmq^{le} . . . Spence, maister of houfhald to the said Erle, and hurt and woundit findrie vtheris of his servandis: Quhairthrow, as thay haue convocat his hienes leigis in armes, without powar or commissioun, sua haue thay violat his hienes lawis and Actis of Parliament, maid aganis the beiring and weiring of hacquebuttis and pistolettis; and with that, thay haue brokin his hienes peace, to the disturbance and schaikin lowfe of the hail estait of that cuntrey, without remeid be prouydit. AND anent the chairge gevin to the saidis *JOHNE MURE OF AUCHINDRANE*, &c. to haue compeirit personallie, befor the Kingis Maieftie and Lordis of Secrete Counfall, at ane certane day bigane, to haue ansuerit to the premiffes, and to haue vnderlyne sic ordour as fould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid reull and quyetnes in the cuntrey, vnder the paine of rebellious and putting of thame to the horne: With certificatioun to thame, and (*if*) thay failzeit, Letteris fould be direct *simpliciter* to put

thame thairto : Lyke as at mair lenth is contenit in the said Letteris, executionis and indorfationis thair-
of. Quhilkis being callit, and the saidis Perfewaris compeirand personallie, and the saidis Johne Mure
of Auchindrane, &c. being oftymes callit and not compeirand, The Lordis of Secrete Counfall thair-
foir Ordains Letteris to be direct, to denunce thame rebellis, and put thame to the horne, and to
escheit.

(iii.) DECRET OF ABSOLVITOR, (*Apud Haliruidhous, quinto Februarij, 1602,*) by the Privy
Council, in favor of JOHN EARL OF CASSILLIS and others, 'for convocatioun of his hienes
lieges, and beiring and weiring of hacquebuttis and pistolettis, breking of his hienes peace.'

SEDERUNT.

Chancellor,	Fyvie,	Blantyre,	Secretar,	Prevey feill,	Kilfyth,
Ergyll,	Lowdown,	Haliruidhous,	Comptrollar,	Aduocat,	Sir Patrik Murray,
Angus,	Roxburgh,	Thefaurar,	Collectour,	Tracquair,	Elimofinar.

ANENT oure fouerane lordis Letteris, raifed at the instance of Sir George Home of Spot, knycht,
hie hienes thefaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maieftis Aduocat, for his hie-
nes intereffe; makand mentioun: That quhair, vpoun the ellevint day of December instant, JOHNE
ERLE OF CASSILLIS, Johne Corrie of Kelwod, Hew Kennedy of Penquhirry, Johne Daidfoun
of Pennyglen, Oliver Baird of Culleinzie, Patrik Mcilveane elder of Gremmat, Johne Mcilveane zounger
of Gremmat, Hew Kennedy of Garryhorne, vtherwayis callit *the Guidman of the Ballot*, George
Fergufoun of Thraif, Alexander Schaw tutour of Gremmat, Johne Mure of Wodland, Johne Mure of
Kingmarloch, Johne Dik of Barbesburie,¹ Hew Kennedy of Dangar, Anthone Kennedy zounger of
Barfalloch, Johne Mure merchant in Mynyboill (Maybole), Quintene Crawford zounger of Silliholl,
Johne Kennedy of Smetoun, Williame Kennedy of Turneberry, Johne Campbell in Barnefurd, Johne
Smyth zounger in Caffillis, Johne Calderwode in Girmerftoune, Johne Fultoune in Giltryhill, Johne
Fultoune in Mofend, Alexander Baxter porter, Williame Harlaw hagbutter, Robert Fultoun in Gil-
tryhill, Johne Fultoune in Bargennoch, David Fultoun his brother, Thomas Fultoune in Giltrie, Tho-
mas Wode in Caffillis, Quintene Tod in Caffillis, James Daidfoun in Burnemoith, Johne Daidfoun
his fone, Johne Mcolme in Mcolmestoun, Johne Malcome in Blairbouy, Johne Bell in Mcolmestoune,
Thomas Mortoune in Caffillis, Johne Mortoun his broder thair, Johne Mcary thair, Johne Smyth in
Dalrumple-holme, Williame Hunter thair, James Corry in Bray of Dalrumple, David Mcquhorta in
Batlewand, William Campbell in Bra thair, Robert Cunynghame in Bateiftoun, Johne Smyth in Drum-
goblis, &c.² all men, tennentis, fervandis, and proper dependaris vpoun the said Erle, with convoca-
tioun of his Maieftis leigeis, to the nowmer of hundreth perfonis, all bodin in feir of weir,
with jakis, steil-bonnettis, corlettis, lancis, and vtheris waponis invafue, and with hacquebuttis and
pistolettis, prohibite to be worne be the lawis of this realme and Actis of Parliament; come in hostile
and weirlyk maner furth of the toun of Mayboill, and lay at await for vmq^{le} GILBERT KENNEDY of
Bargany, his freindis and fervandis, as thay wer comeing the hie way fra the burgh of Air towardis
the said Lairdis awne duelling hous, and invadit and perfewit thame of thair lyffis, fchot and dischair-
git a nowmer of hacquebuttis and pistolettis at thame, quhairwith findrie of the said Laird of Barga-
nyis company wer hurt and woundit; and at that same tyme, thay fchamefullie, cruellie, and vnmer-
cifullie *flew the said vmq^{le} Gilbert Kennedy of Bargany*: QUHAIRTHROW, as thay haue convocat his
hienes liegeis in airmes, without ony lauchfull Warrant or authoritie, fua haue thay violat his hienes
lawis and Actis of Parliament maid aganis the beiring and weiring of hacquebuttis and pistolettis, and
with that, thay haue brokin and diffoluit his hienes peace in that cuntrey; quhairby mony inconveni-
entis are lyke to fall out, to the trouble and difquyeting of the haill cuntrey, without remeid be pro-
vydit. AND anent the chairage gevin to the saidis Johne Erle of Caffillis, *Capitane Johne Forrefter*,

¹ Barbestoune.

² A List of one hundred and thirty more names follows. They are unnecessary to be inserted here, though they might no doubt be of some local interest. None of them are persons of rank.

Mr Cristopher Cokburne, Quintene Craufurd, Patrik Reidpeth, Williame Maitland, Williame Flemyng, Alexander Forbes, household-men to the said Erle, Anthon Kennedy zounger of Balfcheroch, Arthour Kennedy his brother, Mr Williame Boyd, Andro Cuninghame, Daid Girvan, Thomas Kennedy, Daid Cathcart, Alexander Baxter, Williame Harlaw, Daid Craufurd, Daid Gray, Johne Blair, alsua his householdmen and servandis, Johne Corrie of Kelwode, Hew Kennedy of Penquhirry,¹ &c. to haue compeirit personallie : As alsua anent the charge gevin to the said Erle of Caffillis, to haue enterit and presentit the personis particularlie aboue writtin befor the Kingis Maiestie and Lordis of Secreit Counfall at ane certane day bigane, to haue anfuertit to the premiffes, and to haue vnderlyne fic ordour as fould haue bene tane thairanent ; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid ruell and quyetnes in the cuntrey, heirefter, vnder the paine of rebelloun and putting of thame to the horne, with certificatioun to thame and² thay failzeit, Letteris fould be direct *simpliciter* to put thame thairto ; lyk as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairrof. QUHILKIS being callit, and the saidis persfowaris compeirand personallie, and the said *Johne Erle of Caffillis* being lykwayis personallie present, for him self, and in name of the remanent defendaris foirsaidis ; quha producit tua Commissionis, subscriuit be his Maiestie, and past his hienes Register and Signet : The ane aganis *Blaquhane younger*,³ Girvenmanis, Hew Kennedy of Bennan, Thomas his brother, and Walter Mure of Cloncard, quhais names ar insert in the said Commission with his Maiesteis awne hand, knowing thair misdeidis, geving powar to the said Erle of Caffillis to convocat his hienes liegeis, and to searche, feik, tak, apprehend and persfow, *with fyre and sword*, the personis aboue writtin, and to weir haquebuttis and pistolettis to that effect ; as the said Commission, of the dait the nynt day of Julij, the zeir of God Im.Vj^e. and ane zeiris, at lenth beiris : And the vther Commission, direct to the said Erle, for the persfute, taking, and apprehending of *Robert Gordoun of Barnerino*, Alexander Gordoun of the Hillis, Williame Mcneilie, Alexander M^ckie of Balseir, and Thomas Kennedy of Drummurchy, as suspect guilty of Murthour, Oppressioun, and Reffett of Thift ; as in the said Commission, geving powar to the said Erle to convocat his hienes liegeis, assiege houffis, raise fyre, and persfow the saidis personis with all extremitie, and beiring dait the tuentie-ane day of July Im.Vj^e. and ane, at lenth is contenit : Be vertew of the quhilkis Commissionis, the said Erle allegit, that he had lauchfullie proceidit in the hail actioun aboue writtin, quhairvpoun he wes accuset, seing the said *Thomas Kennedy of Drummurchy* and the said *Walter Mure of Cloncard*, and dyuerse vtheris his Maiesteis rebellis, vpone quhome the said Erle presentlie producit Horning deulie execute and registrat, and quha standis zit at the horne vnrelaxt, wer present and vpoun the grund with the said vmq^{le} *Gilbert Kennedy of Bargany*, the tyme foirsaid ; and the said Erle, being in executioun of his Maiesteis Commissionis, in searching and seiking of the said Thomas, and of the remanent personis thairin contenit, all that fell out in that mater wer lauchfull. QUHAIRUNTO it wes anfuertit be the said Mr Thomas Hammiltoun, that the said first Commission can be na Warrant nor authoritie to the said Erle ; becaus that lang befor the committing of the crymes aboue writtin, quhairvpoun he is now accusit, the same Commission wes dischairgit be his Maiestie, for the hail personis thairin contenit, except Young Blairquhane ; and lauchfull intimatioun and publication wes maid to the said Erle of the said discharge, lang befor the said tyme, viz. in the moneth of August lastbypast ; quhilk the said Aduocat referrit to the said Erles aith : And sua, in respect of that discharge, and that the said Laird of Blairquhane Younger wes not in cumpany with the said Laird of Bargany the tyme foirsaid, the same Commission can be na Warrant to the said Erle : And as to the last Commission, it was anfuertit be the said Aduocat, that the same can be na sufficient Warrant to the said Erle ; becaus the same Commission wes not deulie registrat aganis the said Thomas Kennedy of Drummurchy, bot his name insert thairin, lang efter the same wes past the Register

¹ Here the remainder of the names are repeated.² If.³ Blairquhan.

and Signet: And thair was na powar nor licence contenit in the said laft Commissioun for beiring and weiring of hacquebuttis and pistolettis; and seing his Maiesteis Register is the reull be the quhilk the said Commissioun sould have been directit, the same can be na Warrant to the said Erle: Vnto the quhilk it wes replyit be the said Erle, that, albeit the first Commissioun wes dischaigrit aganis the hail personis contenit thairin, except *Young Blaquhane*, zit it stude in full force and effect aganis him; and he being his Maiesteis rebell, and continewing disobedient to his Maieste, and being a ordinary hantar and keipar of company with the said Laird of Bargany, oftymes ofbefoir and senfyne, and suspectit to haue bene with him that day, he had gude Warrant and powar to searche him quhairer he mycht get knowlege of his being: And as to the said laft Commissioun, it wes replyit be the said Erle that he had a special Warrant and directioun fra his Maieste, to the Keipar of the Register, to register the said Commissioun, as it wes producit to the Register; quhilk Warrant he producit befor the saidis Lordis; sua that it was lauchfull to him to insert ony names thairin, quha wer rebellis, or guilty of sic crymes, in his plesour: And albeit thair wes na mentioun maid in the laft Commissioun of hacquebuttis and pistolettis, zit, in respect of the first Commissioun standing vndischarget, as said is, and that the laft Commissioun gaif him powar to vse all weirlyk ingyne quhilk he could deuyse for apprehensioun of the personis thairin contenit, the executioun of the same, in forme and maner as it fell out, was lauchfull: And forder, it wes replyit be the said Erle, that he being the ordinar Judge and Magistrat of the cuntrey, and not a privat persone, thair sould na sic dischaige haue bene purchest quhill¹ first he had bene wairnit to the geving thair of, and that the personis, in quhais fauour the same wes grantit, had gevin thair obedience to his Maieste, and purgit thame selfis of the Horningis quhilkis thay vnderlay. WITH the quhilkis Anfueris and Replyis, and dyuerse vtheris the ressonis and allegationis of baith the saidis pairteis, the Lordis of Secrete Counfell being weil and ryplie advyset,—THE LORDIS of Secrete Counfall FINDIS and DECLAIRIS the tua Commissiounis aboue written, producit be the said Erle, to be guid, valid, and sufficient; and that thairby he had gude powar and autoritie to searche and feik the saidis personis, and vse the same Commissiounis. AND thairfor the saidis Lordis Affoilzeis² *simpliciter* the saidis Defenderis fra that pairt of the saidis Letteris, tuicheing the convocatioun of his hienes liegeis, and beireing and weiring of hacquebuttis and pistolettis, and breking of his hienes peace: And Decernis thame quyte thairfra in all tyme comeing, and of all offence (that) may be impute to him in the vsing of the saidis Commissiounis.

(iv.) ACT of Privy Council, *The Laird of Cullane against Williame M^cPhadrik*.³

ANENT our souerane lordis Letteris, reasit at the instance of JAMES KENNEDY of *Culzeane*, mak- and mentioun: That quhair, albeit his Maieste, be the space of aucht yeiris syne, maid and set furth diuerse edictis and Proclamatiounis, prohibiting and dischaigeing all his heyneis leigeis, that nane of thame sould refset, supplie, nor intercommoun with *Thomas Kennedy*, *Thomas M^cAlexander*, *Thomas Wallace*, and *William Irving*, during the tyme of thair rebelloun and remaneing at the horne, for the odious, cruell, and detestable Murthour of vmq^{le} Sir Thomas Kennedy of *Culzeane*, father to the said complenair, committit be thame, in maner specifeit in the said Proclamatioun, vnder certane panes mentionat thairintill. Nochtwithstanding, it is of treuth, that *William M^cPhedrice*, seruitour to the Laird of *Girvanmanis*, hes continewallie, and almaist ilk day sen the dait of the said Proclamatioun, aganis the tennour of the same, refset, suppleit, and intercommonit with the said *Thomas M^cAlexander*, and remanent rebellis abouenameit, within his awin duelling house in *Air*; hes keipit mony tryftis and meitingis with him, as namelie, vpoun the xxvj Junij, 1^m. Vj. and aucht yeiris, the said *Thomas M^cAlexander* being in his dwelling hous in *Air*; and informatioun thair of being maid to *JOHNE ERLI OF CASSILLIS* and the said Complenair, and thay haueing warrand, power, and commissioun for the per- sute of the said *Thomas M^cAlexander*, and being than vpoun the feildis agaitward⁴ towards him, it is

¹ Until.
apprehend him.

² Absolves; acquits.

³ *Regist. Secr. Conc. (Acta)*, Aug. 3, 1609.

⁴ On the road or gait to

of treuth that the said William McPhedrice, being vpoun the knowlege and counfall of the said Erll and the said Complenaris said purposis aganis the said Thomas, he lap on horse and convoyit him self fecritellie away to the said hous, quhair the said Thomas wes for the tyme, and thair intercommvnt with him, reveillit, and discloft vnto him the said purposis and plat layd doun for his perfute: And that he mycht the more sauffie eschew, the said William McPhedrice horfit him on his awin horse, and pat him away; in heich and proud contempt of his Maiesteis auctoritie and lawis. For the quhilk the said Williame aucht to be persewit and pvnist in his persone and guidis, to the terrour of vtheris to commit the lyke heirafter. And anent the charge gevin to the said William McPhedrice to haue compeirit personalie before the Lordis of Secrite Counfall this present thrid day of August instant, to haue anfuert to this complaint, and to haue hard and sene sic ordour tane thairanent, as appertenit; vndir the pane of rebellion and puting of him to the horne: with certificatioun to him and¹ he failzet, Letteris sould be direct *simpliciter* to put him thairto; lyke as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof; quhillkis being callit, and the said persewar compeirand personalie, and the said Defender being oftymes callit, and not compeirand, The Lordis of Secrite Counfall thairfoir Ordanis Letteris to be direct to Officearis of airmes, schireffis in that pairt, chargeing thame to pas and denunce the said Williame McPhedrice his Maiesteis rebell, and to put him to the horne; and to eschete, &c.

(v.) ACT of Privy Council, *The Kingis Aduocat aguinft Johnne Mure.*²

ANENT our fouerane lordis letteris, readit at the instance of Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fouerane lord, for his hienes interesse, makand mentioun: That quhair the cruell, unworthie, and detestabill Murthour of vmq^{le} SIR THOMAS KENNEDY of *Culzeane, knycht*, and of vmq^{le} WILLIAME DALRUMPLE, sone to Williame Dalrumple in Aire, haueing thir mony zeiris bigane lyne obscure and hid, and no perfyte discouerie nor knowledge being had of these who wer the cheiff and principall divifaris, practizaris, and conspiratouris in the same Murthour, the said Aduocat is now informed that the personis following, thay ar to say, JOHNNE MURE, cook in Auchindrane, *Thomas Wallace*, seruitour to Auchindrane, *Andro McAlexander*, sometyme seruitour to *James Bellindane*³ in Chapildonane, *James McCaig*, sone to Adam McCaig, in Girvane, and *George Small*, in Plesance, doeth know something in that mater, and can gif some licht, evidence, and probable presumptioun and circumstanceis, for cleiring of the same: Quhairfore, necessar it is, that thay be examinat heirvpone, in presence of the Lordis of his heynes Preuey Counfall. AND anent the charge gevin to the saidis Johne Mure, cook, Thomas Wallace, Andro McAlexander, James McCaig, and George Small, in Plesance, to haue compeirit personalie, befoir the Lordis of Secrite Counfall, this present xx day of Junij instant, to haue anfuert to suche thingis as sould have bene speirit at thame tuitching the Murthour of the personis foirsaidis, vnder the pane of rebelloun and puting of thame to the horne; with certificatioun, &c. The Lordis ordanis Letteris to be direct, &c., chargeing to pas and denunce the said personis, who compeirit not, his Maiesteis rebellis, and put thame to the horne; and to eschete, &c.⁴

(vi.) SUSPENSION, *James Bannatyne, in Chapeldonall.*⁵

ANENT oure fouerane lordis Letteris, readit at the instance of *James Bannatyne in Chapeldonall*, makand mentioun, That quhair as, he is informed he is denuncit rebell and put to the horne, be virtew of Letteris, readit at the instance of *Johne Erll of Cassillis* and Sir Thomas Hammiltoun of Bynnie, kny^t, his Maiesteis Aduocat for his heynes interesse, ffor the complenair his allegeit not compeiring personalie before the Lordis of Secrite Counfall, at ane certain day bygane, to haue anfuert to ane complaint maid be the said Erll and Lord Aduocat vpoun him, tuicheing his allegit beiring and weiring of

¹ An, if. ² *Reg. Secr. Conc. (Acta)*, Jun. 20, 1611. ³ Bannatyne. At this period the name Bannatyne was indifferently spelt, Ballendyne, Bellenden, Bannatyne, and Ballantyne. ⁴ A similar entry occurs, of the same date, to denounce 'THOMAS MURE, sone to (Johne) Mure of Auchindrayne, and ANDRO SINCLAR, half-brother to the Laird of Auchindrane, for not appearing to answer at ane certane day bygane.' ⁵ *Regist. Secr. Conc. (Acta)*, Sep. 27, 1611.

hagbuttis and pistolettis, and invading and persewing of *Hew Kennedy of Garrihorne* and *Thomas Mcquhary*, both seruitouris to the said Erll, and schooting and dischairging of pistolettis at thame, &c. The Lords suspended the said Letters, *simpliciter*, on the ground of Bannatyne's not having been cited to appear, &c.

III. PROCEEDINGS IN PARLIAMENT, *as to the Forfeiture of Thomas Kennedy of Drummurchie, for the Burning of Auchinsoull,—Murder of Sir Thomas Kennedy, &c.*

(i.) *The Forfultrie of Thomas Kennedie.*

Apr. 26, 1604.—SIR Thomas Hamiltone, King's Advocate, took instruments of the Production of the Summons of Treason and executions, &c. in Parliament.¹

Jul. 11, 1604.—The Summons and other documents were again produced in Parliament,² which were of new verified in presence of the Lord Commissioner, (John Earl of Montrose,) and haill Estaittis: And siclyk, the said Aduocat produceit Lettres of Relaxatioun, relaxand the said *Thomas Kennedie* frome all proces of Horning led and deducet aganis him, for quhatfumeuir cause. And thaireftir, the said *Thomas Kennedie* being thryse callit at the tolbuith windo, to haue answerit to the said Summondis of Treassoun, he comperit nocht to ansuer thairto, and thairfoir the said Aduocat (estir that the foirsaid caus of the said Summondis of Treassoun wes fundiu relevant be the saidis haill Estaittis aganis the said Thomas Kennedie of Drummurchie) ffor preving of the pointis of the said Summondis of Treassoun aganis the said Thomas Kennedie, and of the reffoun and cans contenit thairin, repetit the Depositiones of the Witnesses reffaut, admittit, sworne, and examinat in presens of the saidis haill Estaittis vpon the foirsaid reffone and cause; and als repetit the notorie of the fact of the Burning, and the said Thomas Kennedie acknowlegeing his awin giltines, and taking of the saidis crymes vpon him, throw being fugitiue and denuncit Rebell for nocht comperance befor our said fouerane lordis Justice and Lordis of his hienes Privie Counfall *respectiue*, in maner contenit in the Lettres of Horning rasit thairvpon: And lykways, the said Aduocat producit diuerse vtheris wryttis and probatiounes, for preving of the said Summondis of Treassoun, and desyrit the saidis Estaittis of Parliament to advyse the foirsaidis probatiounes, and to gif furth thair Dome and Sentence thairintill, according to justice. And thaireftir, the foirsaidis haill probatiounis and Summondis of Treassoun being red, hard, sene and considerit be the saidis Estaittis, and they thairwith being ryplie advyfit, the saidis haill Estaittis of Parliament FINDIS, Decernis, and Declaris that the said Thomas Kennedie of Drummurchie hes committit TREASSOUN, in Raifing of the said Fyre, and Burning of the said Place of AUCHINSOULL, in maner specefeit in the foirsaid Summondis: AND thairfoir, Decernis and Ordanis THE DOME vnderwritin to be pronuncit and gevin furth aganis him, be the mouth of Dauid Lyndefay, dempster: Off the quhilk Dome, the tennour followis.

DOME. This Courte of Parliament schawes for Law, that the said THOMAS KENNEDIE of Drummurchie hes committit Treassoun in Raifing of Fyre and Burning of the said Place of Auchinsoull, pertenyng to the said Duncane Craufurde, the tyme and in maner specefeit in the said Summondis of Treassoun, persewit be his hienes said Aduocat, for his grace entres, aganis him: And thairfoir Findis and Declaris, That the said THOMAS KENNEDIE hes amittit, and tynt, and Foirfaltit for euir, all his landis, heretages, rowmes, possessionis, gudis, and geir quhatfumeuir, belonging to him ony maner of way, and quhilkis he hes, had, nicht haue, or clame, within this Realme of Scotland: And Decernis the famin to haue appertenit and to appertene to our said fouerane lord, to be confiscat, and to remane with his hienes, as his propertie, in all tyme cumming. And als Findis and Declaris, that the said THOMAS KENNEDIE hes amittit and tynt his fame, honouris, and dignitie: And he to be pvnist as ane Tratour, conforme to the Lawes of this realme. And this I gif for Dome.

¹ *Acta Parl.* iv. 260.

² *Acta Parl.* iv. 267.

(ii.) THE SUMMONDIS OF TRESSOUN of *vmq^{te}* WALTER MURE OF CLONCARDE, *past fra simpliciter be our souerane Lordis Aduocat.*¹

Jul. 11, 1604.—THE quhilk day Maister Thomas Rollok, depute for Sir Thomas Hammyltoun of Monkland, knycht, Aduocat to our souerane Lord, and in his hienes name reproduct, in presens of ane nobill and potent lord, Johne Erle of Montrose, Lord Grahame and Mukdok, Great Commissionar of this present Parliament, and in presens of the haill Estaittis thairof, the Summondis of Treaffoun vnderwrittin ; quhilkis wer product be the said Aduocat, ofbefoir, at Edinburgh, in presens of the Lordis of Articlis, vpoun the tuentie aucht day of Aprile last bipast : Off the quhilk Summondis of Treaffoun the tennour followes.²

[SUMMONS OF TREASON *against Thomas Kennedy of Drummurchie and Walter Mure of Cloncarde.*³]

JACOBUS, Dei Gracia Rex Anglorum, Scotorum, Gallorum et Hibernorum, &c. Fideique defensor : Dilectis nostris Leoni Regi Armorum, Albanie, Snawdoun, Merchemont, Rothesay, Ilay, Ros, Bute, Carrik, Ormond, Vnicorne, signiferis ; Dauid Bryfoun, Robert Stewart, Alexandro Dowglas et Jacobo Chalmeris clauigeris nostris ; necnon Joanni Fergusfoun et Joanni Wilkesfoun nuncijs, et eorum cuilibet, coniunctim et diuisim. Vobis precipimus et mandamus quatenus legitime summoneatIS THOMAM KENNEDIE *de Drummurchie*, fratrem germanum quondam Gilberti Kennedie de Barganie, personaliter, si ejus personalem presentiam habere poteritis, seu aliter apud locum sui domicilij et habitationis ; ac etiam apud cruces forales burgorum nostrorum de Air, Irving, Mayboll ac apud portus nostros de Air et Leith, et alia loca necessaria, super premonitione sexaginta dierum, eo quod dictus Thomas de presenti extra regnum nostrum Scotie morari dicitur. Necnon summoneatIS legitime ROBERTUM MURE, fratrem germanum et heredem apparentem quondam *Walteri Mure de Cloncarde*, JOANETAM MURE eius sororem germanam, personaliter, si eorum personalem presentiam habere poteritis, vel secus apud locum suorum domiciliorum et habitationis ; ac etiam dictos Robertum et Jonetam aliosque agnatos et cognatos dictj quondam Walterj Mure de Cloncard, omnesque alios interesse habentes vel habere pretendentes, necnon Tutores et Curatores dictorum Robertj et Jonete Mures, si quos habent, apud dictos cruces forales dictorum burgorum nostrorum de Air, Irving, Mayboll, et alia loca necessaria, quod compareant coram nobis et nostris Commissionarijs et Locum tenentibus, necnon coram Regni nostri Scotie Ordinibus, Edinburgi, vicefimo die mensis Aprilis proxime futuri, in Parlamento nostro incipiendo decimo die dicti mensis, hora caufarum, cum continuatione dierum ; ad respondendum nobis, necnon ad instantiam dilecti et fidelis nostri consiliarij Domini Thome Hammyltoun de Monkland, militis, nostri Aduocatj, pro nostro interesse, dictum viz. THOMAM KENNEDIE *de Drummurchie*, pro sua nefaria, scelesta, facinorosa, et proditoria Occisione et Interemptione quondam Thome Kennedie de Coiff militis⁴ per se suos complices et consortes secum conspiratores in dicto Homicidio, per summum nefas vt sequitur, perpetrato, vndecimo die mensis Maij, anno domini 1602 : NECNON pro suo scelesto, nefario, et manifesto Furto, cum violenta rapina coniuncto, vulgariter vocat. *Stuth-reiff*, marsupij seu crumene dicti quondam Thome Kennedie de Coiff militis, cum magna pecunie summa auro et argento signato, summam duorum millium mercarum extenden. quam dictus quondam Thomas cum eo portabat ; cum varijs annulis aureis, gemmatis et alijs, ac multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. in ipso actu Homicidij perpetrat. : NECNON pro sua proditoria et nefaria Obsidione, per se et suos complices, ad numerum quinquaginta virorum armatorum, Mansionis et Maneriei terrarum de AUCHINSOULL, jacen. infra vicecomitatum nostrum de Air ; ad quod, per occasionem subscriptam, dilecta consanguinea nostra JEANNA COMITISSA DE CASSELLIS, comitata septem vel octo feruis ac comitibus confugerat, salutis sue causa, cum dicta Domina Jeanna et eius ferui iter

¹ *Acta Parl.* IV. 271.

² Here the Summons which has already been given is inserted.

³ To prevent

repetition, this Summons (which is a transcript of the other against Drummurchie, with the additions relating to Cloncard) has been preferred.

⁴ A mistake for Cassillis. However, Sir Thomas was often so designed.

facerent a domicilio suo de INCHE in Gallouidia, versus aliud suum domicilium in Villa de MAYBOLL, in balliatu de Carrik et infra vicecomitatum nostrum de Air, decimo octauo die mensis Maij vltimo elapsi, 1603. ET pro maleuolo, crudeli, nefario, abhominabili, et scelesto Incendio Maneriej, in quod, causa euitandi periculi mortis, dicta Domina Jeanna Comitissa de Cassellis et serui sui confugerunt; e qua mansione et manerie de Auchinsoull, cum idem maneriem combustam essent vndique et conflagraret, metu mortis vehementia flammaram et fumi egredi coacti sunt, vbi post egressum dicte Domine Joanne Comitisse de Cassellis quondam HUGO KENNEDIE, frater germanus et heres apparens dilecti nostri consanguinej Joannis Comitis de Cassellis, Domini Kennedie, Joannes Milveiane junior de Grwmitt, Joannes Dik de Barbastoun, Andreas Cunynghame in Knokdone, Quintinus Craufurde, Robertus Hay, Willielmus Kennedie, serui et comites dicte Comitisse pro tempore, per dictum Thomam Kennedie de Drummurchie et suos complices captiui facti sunt, et vt infra dicitur abducti, et in privatis carceribus detenti. ET PROPTEREA, dictum Thomam ad videndum et audiendum se crimen Lese-Maiestatis per decretum et censuram nostri Parlamenti et regni Scotie Statuum incurrisse; et ideo, tanquam reum, Lese-Maiestatis puniri debere, capitali et vltimo supplicio; necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum et tenementorum, que dictus Thomas in regno nostro Scotie habet, habere, vel clamare poterit, in futurum. NECNON, dictos ROBERTUM MURE, fratrem germanum et heredem apparentem dicti quondam Walterij Mure de Cloncarde, et JONETAM MURE eius sororem germanam, omnesque alios cognatos et consanguineos dicti quondam Walteri, ac tutores et curatores dicti Roberti et Jonete, si quos habent, omnesque alios interesse habentes vel habere pretendentes, ad videndum et audiendum, per regni nostri Ordines in Parlamento nostro supradicto decerni et declarari, quod dictus quondam Walterus Mure de Cloncarde fuit et est reus Lese-Maiestatis, vt qui fuit actor, factor, et perpetrator dicti. criminum cum dicto Thoma Kennedie de Drummurchie modo et forma quibus infra dicitur. PRO QUIBUS eiusdem quondam Walteri memoria et fama damnari et aboleri debet, ac eius omnia bona mobilia et immobilia, terre, tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere potuit, ad nos pertinere decerni debeat; et quod ab eisdem dictus Robertus frater et Joneta eius soror, omnesque alij ab eo descendentes, debent excludi imperpetuum, propter rationes et causas subsequentes. PROPTEREA quod in Parlamento nostro tento apud burgum nostrum de Edinburgh, in Scotia, vicesimo nono die mensis Julij, anno domini 1587, per nos et tres dicti nostri regni Ordines statutum est, quod si contigerit aliquem subditorum nostrorum dicti regni Scotie, qui habet terras sibi hereditarie pertinentes, viz. vt vulgariter in dicto statuto dicitur *ony landit man*, fore legitime et secundum juris ordinem, aliquo tempore post dictum statutum futuro, de manifesto furto et vi rapine admisto, id est *Stouth-reiff* esse convictos, incurrant propterea crimen et penam Lese-Maiestatis, hoc est omissionem et forisfacturam vite, terrarum, et bonorum; prout in dicto statuto apertissime continetur. SED sic est in rei veritate, quod dictus THOMAS KENNEDIE de Drummurchie, et prefatus quondam WALTERUS MURE de Cloncarde, cum suis complicibus et consortibus, numero septem, armis, machinis bellicis, et sclopis, prohibitis et lege vetitis, instructi, et equis infidentes, dicto duodecimo die mensis Maij 1602, existentes Rebelles et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis clare constare poterit; et ex precogitata feloniam dictum Thomam Kennedie de Coiff militem, imparatum et non-opinantem, ac iter facientem, vno seruo comitatum, a domicilio suo de Coiff versus dictum burgum nostrum de Air, ac inde profecturum Edinburgum negotiorum suorum gerendorum causa, apud Capellam Sanctj Leonardi nuncupat. dimidio miliaris a dicta Vrbe de Air distan. aggressi sunt, ac eundem inuaserunt machinis bellicis ac lanceis transfixerunt et crudeliter occiderunt, et furto, rapina, et vi furtum comitante, id est le *Stouth-reif*, ex marsupio et crumena dicti quondam Thome Kennedie de Coiff predictam summam bis mille marcarum in auro signato, lie *Rois-nobillis*, et *Fyepund-peices*, *Angell-nobillis*, et *Portingall-doucattis*, violenter furati sunt et abstulerunt, cum varijs annulis, gemmatis, ac alijs, et multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. Pro quoquidem crimine, coram Justiciario nostro vocati,

vt lege subirent, contumaces facti Rebelles declarati sunt, et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis satis clare constare poterit. AC ETIAM statutum est, per aliud actum Parlamento illustrissime memorie quondam Jacobi V. Scotorum Regis, avi nostri, tenti et inchoati, apud Edinburgh, vicesimo secundo Januarij, anno 1538, quod si quis combuserit aliquos in domibus suis, reus Lese-Maestatis erit: Ac etiam, quod omnes Combustiones domorum vel granorum, et omnia Incendia voluntaria seu malitiosa, fiant crimina Lese-Maestatis; idque in odium Incendiariorum, quos leges propter criminis atrocitatem seuerius plecti iubent; sicut in eodem statuto plenius continetur: Quodquidem statutum in Parlamento nostro tento apud Edinburgh, quinto die mensis Decembris, anno domini 1567, repetitum et renovatum est, idque merito crescente in regno nostro Incendiariorum numero et audacia; prout in dicto statuto posteriori latius continetur: SED sic est, quod dictus THOMAS KENNEDIE de *Drummurchie* et dictus quondam WALTERUS MURE de *Cloncarde*, comitati circiter quinquaginta armatis equitibus, per insidias obsiderunt iter dicte dilecte consanguinee nostre JEANNE COMITISSE DE CASSELLIS, proficiscentis e domicilio de Inche in Gallovidia, in vicecomitatu nostro de Wigtoun, versus aliud domicilium suum in Villa de Mayboll et balliatu nostro de Carrick et vicecomitatu de Air, die xvij^o mensis Maij, anno domini 1603, et equis citatis in dictam dilectam nostram consanguineam, et eius seruos ac comites, inpetum facientes, iter et viam publicam deferere, metu vite sue, compulerunt: Illa autem cum refvgii causa versus Mansionem quandam de AUCHINSOWLL, quam tum inhabitabat *Duncanus Craufurde de Auchinſowll*, cum comitibus et seruis suis citatis equis accederet; qui locus, cum ad effugium commodus videtur, et viderunt ex eo loco dilectam consanguineam nostram seruos et comites eius nisi domo incensa extrahi non posse, illico illato igni domum et eius ambitum vndique incenderunt, e qua crescente fumo et irrumpentibus flammis, ad extremum periculum omnes redacti, in manus dictorum Latronum Incendiariorumque dilecta nostra consanguinea cum suis seruis et comitibus, deditioe facta, captiui devenerunt; ex quibus vnus, nomine Joannes Mcgrane, flammis superatus predictam domum combustam egressus priusquam respirare potuerit, crudeliter et nefarie gladijs et machinis bellicis, a dictis Thoma et quondam Waltero et complicibus predictis crudeliter interfectus est: Ac reliqui comites dicte nostre consanguinee, viz. HUGO KENNEDY, frater germanus et heres apparens dicti dilecti nostri consanguinei et consiliarij Joannis domini de Cassellis, Joannes Mcilveyane junior de Grwmnett, Joannes Dik de Barbestoun, Andreas Cunynghame de Knokdone, Quintinus Craufurde, Robertus Hay, Willelmus Kennedy, per dictos Latrones, Predones, et Incendiarios captiui facti sunt, et eorum arbitrio abductj, et per eos in domibus, fortalicijs, et Castris de Ardſinchell, et lie Coiff de Craignett, infra dictum vicecomitatum nostrum de Air, proditorie custoditi et detenti sunt, per dies quindecim, aut eo circiter; Nec ab illa captiuitate liberati et redempti fuerunt, donec per se et fidejussores suos obligarentur, quod dictum dilectum consanguineum nostrum Joannem Comitem de Cassellis, cui vt domino et hero suo seruire tenebantur, omnino desererent, et si secus facerent, magnam pecunie summam soluturos se promitterent, compulsis etiam diris seipſos deuouere, si contra fecissent: IN QUO, non solum Latrocinij, *Stuthreif*, Infidiationis viarum, ac proditorij Incendij crimine irritati sunt; sed etiam, proditorie Vſurpationis autoritatis nostre reos sese facerent. AC vt hec omnia notoria fiant, idem Thomas Kennedie de Drummurchie ac dictus quondam Walterus Mure de Cloncarde vocati coram Dominis Secreti Consilij nostri responſuri predicto proditorio crimini Incendij et Captiouis dictarum liberarum personarum et liegiorum nostrorum et aliis supramentionatis, contumaces effecti sunt; Ac propterea etiam Rebelles nobis declarati et denunciati sunt; prout in Literis nostris, ea de re executioni mandatis, latius continetur. QUARE, dictus THOMAS KENNEDIE de *Drummurchie*, per Decretum et censuram Parlamenti nostri et regni nostri Ordinum crimen Lese-Maestatis incurrisse decerni; et ideo, tanquam reus Lese-Maestatis puniri debet capitali et vltimo supplicio, necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum, et tenementorum, que dictus Thomas in regno nostro Scotie habet, vel clamare et habere poterit in futurum; ac etiam per dictum nostrum Parliamentum et regni nostri Ordines decerni et

declarari debet, quod dictus quondam WALTERUS MURE *de Cloncarde* fuit et est reus dictj criminis, Lese-Majestatis, vt qui fuerit actor, factor, et perpetrator dict. criminum respectiue supramentionat. cum dicto THOMA KENNEDY *de Drummurchie*, modo et forma antedict. ; pro quibus, etiam eiuſdem quondam Walteri memoria et fama aboleri et damnari debent ; ac etiam eius omnia bona, mobilia et immobilia, terre et tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere vel clamare potuit, vel prefatus Robertvs et Joneta agnati, cognati, consanguinei, et omnes ab eo descendentes, habere vel clamare potuerunt, in futurum, ad nos pertinere decerni debent, et ab eisdem dictus Robertus nunc frater germanus et dicta Joneta soror germana dicti quondam Walteri, et omnes alii ab eo descendentes, ascendentes, collaterales, et alii quicumque, excludi debent imperpetuum, propter rationes et causas suprascriptas ; intimando supradictis personis, et eorum cuilibet, respectiue, quod sine dictis die et loco cum continuatione dierum comparuerint, siue non, nos, dictusque noster Iusticiarius in premissis, iusticia mediante, procedemus et procedet. INSUPER, citetis peremptorie, coram testibus, Alanum Cathcart *de Drumjowan*, Petrum Algeo seruum Magistri Jacobi Donaldſoun Aduocati, Davidem Craufurde, Alexandrum Craufurde seruos Domini *de Kerse*, Duncanum Craufurde, Joannem Mure *de Tarquyne*,¹ Jacobum M^cartour *in Knokdone*, Gilbertum Mure *de Auchinſoull*, Gilbertum Kennedy *de Monunſoun*, Arthurum Kennedie filium Davidis Kennedie *de Balscheroyche*, Joannem Wilſoun *in Dalrumpill*, Archibaldum Gellis coquum, Hugonem Kennedie *de Garryhorne*, Allanum M^ctir *in Layne*, Jacobum Gowdie *in Lauderſdall*, Jacobum M^ctroutour *in Traboyak*, ad comparendum coram nobis dictone nostro Iusticiario, dictis die et loco, cum continuatione dierum, ad perhibendum fidele testimonium in causa predicta, sub pena legis. ET presentes Literas debite executas et indorfatas earundem latori reddatis. ET vos qui presentes executi fueritis, sitis ibidem dictis die et loco, coram nobis seu dicto nostro Iusticiario, portantes vobiscum ſummonitionis vestre testimonia inſcript. pro premissis vel ipsos testes. AD quod faciend. vobis et vestrum cuilibet, coniunctim et diuisim vicecomitibus nostris in hac parte, nostram committimus potestatem. DATUM sub testimonio nostri magni sigilli, apud Edinburgh, xij die Februarij 1604, et regni nostri Scotie tricesimo septimo, anno Anglie, Gallie et Hibernie primo.

THE quhilk Summondis, with the executiones and Indorfationes thair of, wer producit be the said Sir Thomas Hammyltoun of Monkland knycht, Aduocat to oure ſouerane lord, in preſens of the said Erle of Montroſe, Great Commiſſionar of this present Parliament, and baill Eſtattis of the ſamin Parliament, firſt vpoun the tuentie ſext day of Aprile laſt biſaſt ; and thaireſtir the ſamin wer producit in thair preſens, and preſens of the Lordis of Articlis, vpoun the tuentie aucht day of the ſaid moneth of Aprile laſt biſaſt : Vpoun the quhilk tuentie aucht day of Aprile, the ſaid Sir Thomas Hammyltoun, Aduocat to oure ſouerane lord, in his hienes name, paſt *ſimpliciter* fra the perſute of the ſaid ROBERT MURE, brother germane and apperant air to the ſaid v^mq^{le} *Walter Mure of Cloncairde*, and *Jonet Mure* his ſiſter, and thair Tutouris and Curatouris, for thair intereſſis ; as alſe, paſt *ſimpliciter* frome the haill reſſones, haill pointis and articlis contenit in the ſaid Summondis of Treaffoun, beirand and contenand as is abonewrittin, ſua far as the ſamin extendis or may be extendit to the ſaidis *Robert* and *Jonet Mures*. Lyk as, alſo this instant day, in preſens of my Lord Great Commiſſionar and haill Eſtattis of Parliament, the ſaid Sir Thomas Rollok, Aduocat depute, in abſens of the ſaid Sir Thomas Hamytloun, principall Aduocate, lykwayes paſt *ſimpliciter* frome the perſute of the ſaidis *Robert* and *Jonet Mures*, and thair ſaidis Tutouris and Curatouris for thair intereſſis ; and alſe paſt *ſimpliciter* frome the haill reſſones, haill pointis and articlis contenit in the ſaid Summondis of Treaffoun, ſua far as the ſamin extendis or may be extendit to the ſaidis *Robert* and *Jonet Mures*, and thair ſaidis Tutouris and Curatouris : Lykas, the ſaid Sir Thomas Hammyltoun, principall Aduocat ſoirſaid, vpoun the ſaid xxvij day of Aprile laſt biſaſt, had paſt *ſimpliciter* frome the ſamin, of beſoir, in preſens of the ſaidis Lordis of Articles. Vpoun the quhilkis haill premissis, the ſaid Robert Mure, for himself and his ſaid ſiſter, aſkit Inſtrumentis.

¹ In *Act. Parl. IV.*, 269, he is described *Johne Mure de Carquhene*.

IV. LORD FOUNTAINHALL'S *Abstract of the Case of Mure of Auchindrayne*.¹

THE story of the fact is remarkable. AUCHINDRANE, having conceived a deadly feud against THE TUTOR OF CASSILLIS, comes one day to Maybole, with intention to kill him, assaulted him under night, thought to have killed him, had he not been rescued by some of his neighbours. For which fact, Auchindrane and his complices past to the horne. (The Horning was produced by the Advocat.) At lenth, this enmity was taken away, not only by publick and sworn reconciliation, but also by marriage of the said *Auchindrane's eldest sone on the Tutor's daughter*. After which, *the Tutor* lived with *Auchindrane* in all friendship, trust, and assurance imaginable. And going in to Edinburgh, and willing to do *Auchindrane's* busines there, as weill as his oune, he caused his man leive at *the Schoolmaster of Air* his house, a Letter for *Auchindrane*, signifying that he was going for Edinburgh to-morrow, and would gladly meet with him at the West end of Air, at the Duppils, or² he went. This advertifement was sent with a schoolboy called WILLIAM DALRIMPLE, who delivered it to old Auchindrane, sitting with *Walter Muir of Cloncaird*; who, immediately upon his reading of it, sent back the boy, and entreated him to say, that he had neither got him, nor delivered him the Letter. Then, resolved with the said *Walter*, to advertise THOMAS KENNEDY of *Drummurchy* of the certainty of *Culzain's* journey, and the way he intended to ride; advising him to use that occasione to revenge himselfe on him. The advertifement, with this advice, (he) sends with on³ *Macadam*, as is clearly proven by the Deposition of Witnesfes. *Drummurchy*, by the advertifement, counsell, and instigation foirfaid, waites the gentleman, in the place he had tryfted⁴ *Auchindrane*; and most treasonably murders him. Wheirfor,⁵ *Drummurchy* stands forfaitured by Act of Parliament.

He, having turned fugitive, was much assisted and supported by *Auchindrane*; who, fearing that discovery of his accession to the said treasonable Murther might be made by the said *William Dalrumple*; to eschew it, caused him first to be secretly conveyed to his house, wher he keiped him long quiet; at last, sent him to Arran, to *the Laird of Skelmorly*. After some tyme, returning from thence, he sent him away with one that was going to the wars in Flanders, hoping he sould never see him againe. Wheir, having stayed some tyme, the boy longed to returne. Being returned, and *Auchindrane* getting notice theirof, he was troubled—immediately fetched him to his hous, and put him with ane JAMES BANNATYNE, in *Chapeldonald*, his tennent; whom he caused fetch him with him to THE SANDS OF GIRVAN, at 10 a'clock of even; wher they murdered him, and throw him in the Sea, so far as they could waid.

This treasonable Murder, with all its circumstances, is most clearly made out, by the Depositions of Witnesfes, who also deponed of a speciall friendship after that, pretended to the said *James Bannatyne*; so that they gave him a life-rent Take⁶ of *Chapeldonald*. Then they perswaded him to go out of the way to Ireland, giving him a Letter of recommendation to *Drummurchy*: And after he was there, he lacked for nothing. Frequent correspondence betwixt him and *Auchindrane* and his wyfe: Then, caused *James Cunninghame*, his seruand ther, who knew of their concealing of *William Dalrumple*, absent himself, for eschewing of tryall. Also, *the Lady Auchindrane*, for the same reason, absented herselfe.—Proven by Witnesfes, that *Auld Auchindrane* would have hyred *James Penny-cuick* to go to Ireland, and ther to murder *Bannatyne*.—Then he wrote to *Stairs*, that because he was bruted for the slaughter of *William Dalrumple*, he was willing to tranfact with him theirof.⁷

¹ From *Fount. Abstract of Books of Adjournal*, MS. Adv. Library. It was thought proper to preserve the account given by this eminent Lawyer;—but at same time, it appears unnecessary to point out to the reader in how many particulars his *traditional* Account differs from the Record; which renders it probable that his lordship wrote from memory, or noted down the facts from reports then prevalent. ² Before; ere. ³ One. ⁴ Appointed to meet. ⁵ For which fact. ⁶ Tack; lease. ⁷ That is, he was willing to enter into terms of compromise with the relations of the deceased. As they were not wealthy, he considered he could, through the mediation of their Chief, the Laird of Stairs or Dalrymple, easily bribe them to silence; so as either to procure from them 'Letters of Slains,' or at all events, get them to abstain from prosecuting him and his son for the Murder.

All which are so clear evidences and manifest probations, as could hardly be expected, in so covered and crafty Murthers.

V. ILLUSTRATIONS *relative to the POPULAR SUPERSTITION of touching the Corpse of a Murdered person, as an ORDEAL or TEST for the discovery of the Innocence or Guilt of suspected Murderers.*

(1.) OPINIONS *entertained by the Ancients on the subject of the Blood.*

FROM the earliest periods of History, sacred and profane, it appears to have been the general opinion of mankind, in all Nations, that the soul, as well as the vital principle, *had their existence in the blood.* This idea was greatly strengthened by the strong and repeated testimonies afforded in the Sacred Scriptures, under the Mosaic dispensation; where it is expressly laid down, as an undeniable principle, that THE BLOOD, with the spirits therein contained, is *the seat and support of life.*¹ Without multiplying quotations from the Pentateuch, which are extremely numerous, it is enough for the purpose of this enquiry, to instance the frequent injunctions of Moses to the Children of Israel, *to abstain from blood.* One of the most remarkable of these passages is, '*Blood with THE LIFE thereof, which is THE BLOOD thereof, shall ye not eat;*'²—and the same injunction was repeated throughout the Law of Moses, in almost every various form, which the wisdom and sagacity of the Legislator could devise. It is not unworthy of remark, that the early Christians strictly observed this command, which had been repeated by the Apostles, to abstain from '*things strangled, and from blood.*' This Divine command having been given to the Jews, in the subordinate instance of abstaining from the blood of the lower animals, in making use of their flesh for the ordinary purpose of food, it was by no means unnatural that they should have thence concluded, that THE LIFE or vital principle resided in the blood *after Death*, even after its particles were apparently dissolved, and after the whole mass had returned into its native dust.

A similar opinion is to be found in *Lucretius*³ and other profane writers, as *Empedocles*, *Critias*, &c. who held that THE SOUL *was a suffusion of blood about the heart*—and consequently, that *it is the blood itself.*⁴ According to this opinion, *Homer* gives death the epithet, *purple*: *πορφύρεος θάνατος.*—*Iliad*, v. 5, 83;—*Virgil* likewise alludes to it: '*Purpuream vomit ille animam.*'—*Æneid ix.*, v. 349. '*Undantoque animam diffundit in arma cruore.*'—*Æneid x.*, v. ult. Nor are we without frequent instances of this in our English poets. *Milton* says of *Abel*,

'He fell, and deadly pale,

Groan'd out his soul with gushing blood diffused.'

Sir Robert Blackmore also has the following passage:

'Gasping he lay, and from the griesly wound
The crimson life ebb'd out upon the ground.'

Lee, in the tragedy of *Nero*:

'With many a wound she made her bosom gay;
Her wounds, like floodgates, did themselves display,
Through which life ran in purple streams away.'

And *Cowley*, *David 4*:

'His life for ever spilt, stain'd all the grass around.'

It was likewise a very early popular opinion, among profane Greek and Latin authors, that the blood

¹ *Gen. ix. 4.* See also *Levit.* &c. *passim.*

² In modern times, that highly distinguished physician, *HARVEY*, the discoverer of the circulation of the blood, maintained the hypothesis, that *the blood was actually possessed of a living principle*, and that the life of the whole body is derived from it; in which opinion he was supported by the celebrated *Mr John Hunter*, and other anatomists and physicians of eminence. It would be foreign to the subject of this Notice to enter minutely into the opinions of modern writers, who are extremely divided upon the point.

³ 'That they know well, the soul consists in blood.' *Creech's Lucret. B. iii. p. 43.* ⁴ *Aristotle de Anima, lib. I. c. 2; Cicero, Tuscul. 1; Macrobius on the dream of Scipio, lib. I. c. 14; Tertullian of the Soul, cap. 4.*

springs naturally towards that part whence a blow is received¹—and they also affirmed that the soul pursued with enmity a Murderer of the body.² In conformity with this latter idea, we find that *the blood*, according to the ancients, and especially the Jews, was figuratively, but most emphatically, represented as *crying to Heaven for vengeance!*—and that that cry could only be appeased by the shedding of the blood of the Murderer. In the powerful language of Holy Writ, the Almighty, when denouncing Cain, the first murderer, is represented as exclaiming to him, ‘*The VOICE of thy brother’s BLOOD crieth unto me from the ground!*’

Accordingly, in pursuance of this sentiment, the Jews had an *Avenger of blood*, who was the next of kin to the murdered person—and whose awful, but imperious, duty it was, relentlessly to pursue the Murderer to the death.

There is no doubt that this ancient opinion of *the life being in the blood*, continued to be entertained by THE EARLY CHRISTIANS of the Western Churches of Europe, so late as the tenth century. An able writer³ asserts, that ‘the Holy Church throughout the world did, in its first and purest, and even in the darker ages of the tenth century, or later, observe and keep the precept to abstain from eating blood—and that the Churches of the East and of the South, to this day, reproach the Western Church with the violation of this Apostolical constitution.’ On this point it may likewise be remarked, that *Tertullian* is said to have written in defence of the doctrine, that the soul was *indissolubly* connected with the blood.

From these few scattered hints, the application of the doctrine to the instance in question appears to be natural and easy. The *soul* of a murdered man was considered to linger about *the body* until the Murderer could be convicted, and his blood shed to appease the *manes* of the deceased. According to the remains of this superstitious principle, which are still to be traced in modern times, in various countries, but especially in Great Britain and Ireland, and in Germany, &c., the prevailing idea was, that (even after the blood was dried up and the corpse decayed and mouldered into a mere skeleton, nay, though disjointed into separate bones and fragments) the TOUCH OR PRESENCE of the MURDERER would act upon these decayed relics, and that *the life* or blood would, upon Appeal being made, return to manifest the Murder.

A very curious instance of this branch of the superstition has been preserved by Sir WALTER SCOTT,⁴ who, in an early work, relates the circumstances in his usual felicitous manner:—‘Two young men, going a-fishing in the river Yarrow, fell out; and so high ran the quarrel, that the one, in a fit of passion, stabbed the other to the heart with a fish-spear. Astonished at the rash act, he hesitated whether to fly, give himself up to justice, or conceal the crime; and, in the end, fixed on the latter expedient, burying the body of his friend very deep in the Sands. As the meeting had been accidental, he was never suspected, although a visible change was observed in his behaviour, from gaiety to a settled melancholy. Time passed on, for the space of *fifty years*; when a smith, fishing near the same place, discovered an uncommon and curious *bone*, which he put in his pocket, and afterwards showed to some people in his smithy. The Murderer being present, now an old white-headed man, leaning on his staff, desired a sight of the little bone. But how horrible was the issue! *No sooner had he touched it, than it streamed with purple blood!* Being told where it was found, he confessed the crime, was condemned, but was prevented, by death, from suffering the punishment due to his offence.’

(2.) INSTITUTION of the BAHR-RECHT or LAW OF THE BIER, and FORM of the CEREMONIAL.

THERE cannot be a doubt that, from very early times, TESTS or ORDEALS were instituted by the common consent of almost all Nations, for the detection of hidden and atrocious cases of Murder, which had baffled all the ordinary methods of judicial scrutiny. The mysterious doctrines taught by the Metaphysicians of the dark ages, on the subject of an *universal sympathy* and *antipathy* existing in nature, would lead those who believed in their theories to approve of such an obvious Test as that

¹ See quotation from *Lucretius*, ‘*Idque petit corpus,*’ &c. in *Del Rio's* and *De L'Ancre's* notices. ² *Plato*, &c.
³ Dr Deacon. ⁴ *Minstrelsy of the Scottish Border*, II. 425.

of compelling suspected persons to come forward and *touch the murdered corpse*—and accordingly, the *BAHR-RECHT*, or *LAW OF THE BIER*, was early recognized, even by Judicial authority, throughout all civilized Europe. It is extremely probable, that such a striking ceremonial as that just referred to, would first be seized upon by the Clergy; for it would tend, in a great measure, to strengthen their own hands, while it would also promote the interests of ‘Holy Mother Church;’ and, at the same time, the almost miraculous discovery of secret crimes would directly lead a superstitious and ignorant people to give God the glory, and to ascribe to His immediate presence and intervention, the detection and subsequent punishment of the Murderer.

Perhaps it may be premised, that, properly speaking, the recognized *ORDEALS* or Appeals to the immediate interposition of God, being what was termed the *Vulgaris Purgatio*, or *Judicium Dei*, were the *Judicium Ferri callidi*, *Aquæ, et Ignis*, *i. e.* Trials by *RED-HOT IRON, FIRE, and WATER*. In process of time, the *JUDICIAL COMBAT*, the *ORDEAL OF THE CROSS*,¹ and the *CROSSED*,² or consecrated bread and cheese, were added to the other Appeals. In the East, no less than *nine* Ordeals are still in use, *viz.* the Balance, the Fire-ordeal, the Water-ordeal, the Poison-ordeal, Trial by the Cosha or three draughts of consecrated water, the Rice-ordeal, the Ordeal by hot oil, the Ordeal by a red-hot Iron ball or lance-head, the Ordeal by Dharmarch, or drawing forth from a jar of certain Images, cloth, &c. Amongst all these various forms, the touching of a Murdered corpse is not reckoned as a proper Ordeal; but, as will be immediately shown, it was adopted and recognized as a Test, or popular Ordeal, both on the authority of the Church and of the Criminal Tribunals of civilized Europe.

In regard to *THE FORM OF THE CEREMONIAL*, it must have been extremely imposing; and especially, when regulated by the Church, who increased the otherwise solemn spectacle by Processions, the exhibition of their holy relics, lighted tapers, and all the usual machinery of the Romish Church, was admirably calculated to have inspired the guilty mind of the already conscience-struck Criminal with awe and terror, and eventually compel him to confess his enormous crimes, in the face of the assembly.

The mangled body of the murdered person was stretched upon a bier, covered with a fair linen cloth, and placed before the High-Altar; when, after a procession of Priests hymning an anthem, the suspected person was conducted forward to the High-Altar, where, after performing his devotions, the face of the deceased was uncovered before him. He was then called upon to place one hand upon the mortal wound, and often the other upon the mouth of the deceased—and, in that posture, to invoke Heaven to attest his innocence—at the same time calling down its curses and instant vengeance on his head, should he, after such asseverations, be guilty. If, on his approaching the body, or during the above ceremo-

¹ Two pieces of wood were prepared exactly like each other; but on one of them was the form of the Cross. Both being wrapped up in fine wool, were laid on the altar, and after prayers, &c., a Priest approached the Altar, and took up one piece, which if it proved to be that on which the Cross was cut, the accused was found innocent. Other solemnities, unnecessary to be noted, also took place. ² This primitive Ordeal was thus performed. A piece of barley bread and a piece of cheese were laid upon the Altar; and, after various Prayers, at length the Priest fervently petitioned, that ‘if the party accused was guilty, God would send his angel *Gabriel* to stop his throat, that he might not be able to swallow that food.’ This ended, the accused advanced to the Altar, took up the bread and cheese, and commenced eating. If he swallowed deliberately and freely, he was declared innocent—but if he could not swallow them, he was pronounced guilty! This coincides with the Eastern Ordeal of the Rice, &c., and originates in this well-known circumstance, that persons labouring under violent mental excitement, such as accusation of a crime of which they are *conscious of guilt*, are, in a great measure, deprived of the natural supply of *saliva* necessary for the process of mastication and deglutition; and, consequently, it would generally happen, that the strong mental struggle under which the accused was suffering, would be the means of preventing his fulfilling, what, at first sight, appears so foolish and simple a Test. It is hardly necessary to remind the reader, that barley bread which has been baked for several hours, requires a considerable quantity of liquid to enable one to swallow it. The pungency of the cheese would act as a sufficient stimulant to assist an innocent person who was required to undergo this Ordeal; but would merely increase the confusion and hasten the discomfiture of one whose mouth was already parched with conscious fear and remorse. It was almost universally noticed, that *the guilty* greedily snatched large mouthfuls, under the mistaken idea of getting sooner over with it!—and that usually a second or a third attempt to swallow produced cough and constant choking, so as to force them to desist, and either to confess their crime, or permit sentence to be passed against them in silence. On the other hand, *innocent* persons leisurely ate the portion given them, with little or no inconvenience. It will be found, upon examination, that many similar Ordeals and rites proceeded on the like minute knowledge of natural causes.

nial, the blood should gush from the mouth, nostrils, or wound—this was held sufficient evidence of his guilt.

The reader may here be reminded, that the Ceremony, thus shortly and imperfectly described, was only reserved for *extreme cases*, where all legal proof had failed; and where there was strong circumstantial evidence to implicate the party accused, either as ‘guilty actor, art, or part’ of the Murder. It is impossible to state precisely what Nation first practised this Ordeal,—but it was obviously founded on a deep knowledge of human nature. Few even of the most hardened and practised villains could have undergone such a Test unmoved; and when it is considered that the act was performed in the presence of the Judges, Clergy, and the accusers, it would generally be easy to distinguish between the confusion of an innocent person accused of the crime, and the terror and conscience-struck countenance and demeanour of the Murderer; and even should he have nerve enough to brave the worst part of this severe Ordeal, his very confidence and studied boldness would prove the means of his detection. The accidental bleeding of the corpse, also, might overthrow the assumed courage of the Murderer,—and, in fact, was often the means of producing the most abject Confession of the crime; and compelled the recreant felon to utter cries for mercy, which even *the torture* had failed to extort.

Nothing can so well illustrate this remarkable Ceremonial, as the following powerful passage from the pen of the greatest living writer of this age, who has bestowed much attention on such subjects; and has done more towards the elucidation of the manners, customs, and superstitions of this country than any preceding author. ‘The eastern window, richly and variously painted, streamed down a torrent of chequered light upon the high altar. On the bier placed before it were stretched the mortal remains of the murdered man; his arms folded on his breast, and his palms joined together, with the fingers pointed upwards, as if the senseless clay was itself appealing to Heaven for vengeance against those who had violently divorced the immortal spirit from its mangled tenement. The face was bare, as were the breast and arms. The rest of the corpse was shrouded in a winding-sheet of the finest linen, so that, if the blood should flow from any place which was covered, it could not fail to be instantly manifest. He paused before the Bier, and his voice faltered, as he swore by all that was created in six days and six nights, by Heaven, by Hell, by his part of Paradise, and by the God and author of all, that he was free and sackless of the bloody deed done upon the Corpse before which he stood, and on whose breast he made the sign of the Cross, in evidence of the Appeal. No consequences ensued. The body remained stiff, as before. The curdled wounds gave no sign of blood.’¹

Another writer, to whom the Antiquities and History of England has been vastly indebted for the large stores of information rescued by him from sources which may be termed as generally inaccessible, even to the great bulk of antiquaries, has, in a posthumous work, professedly undertaken for the purpose of illustrating the Superstitious observance now under consideration, embodied the result of his enquiries in the following striking passage.²

‘BARON. At thy request th’ Ordeal is prepared :
I grant thee this appeal ! What, though it claims
With me no faith ? By custom authorized,
Let it be made. At least, this good results,
We better satisfy the common mind.

BENEDICT. Experience, good my Lord, has often proved

¹ Sir Walter Scott’s *Fair Maid of Perth*, vol. ii. p. 306. ² Strutt’s *Test of Guilt, or Traits of Ancient Superstition*; Quarto, Lond. 1808, p. 79;—a posthumous work of the celebrated English Antiquary, Joseph Strutt, published by his son. Unfortunately Mr Strutt did not live to compose the notes which he had intended to prepare illustrative of this remarkable subject, which would have put the Public in possession of all that was worthy of knowing about it. As it is, the Editor has done his best to pave the way, by providing materials for some abler and more successful Antiquary doing justice to such an enquiry, in a regular treatise.

That Providence, in such Appeals as these,
Has manifested suddenly its power,
And struck the guilty mind with sharp remorse—
Enforced confession—or abash'd the heart,
That, coward-like, th' offender has shrunk back
Confused, and manifested signs of guilt
Too plain to be mistaken.

BAR. I, indeed,
Have heard such tales.—Well, Father, then proceed.

BEN. Before the holy Altar lies the corpse—
Here let th' accused come—and come with him
All his accusers—no exception made:
They all must touch the body. 'Tis with us
To scrutinize with care each countenance—
For then 'twill be an index of the heart,
Unless the heart be callous to all good,
Devoid of feeling, nay, be changed to stone.

BAR. Proceed—and may success clear up my doubt!
But miracles, I ween, are out of date.

BEN. Let young Fitzhugh approach—and bring with him
All his accusers.—Now begin the rites.

[A procession of priests, singing a dirge—and when ranged on both sides of the altar, conclude with a chorus.]

BEN. HENRY FITZHUGH, come forward!—Touch the corpse—
May Holy Saints protect the innocent!

HENRY. Thy mangled body, Dorothy, I touch—
And make, with all my soul, Appeal to Heaven!
Ah! could those ghastly wounds bot speak, they would
Proclaim mine innocence!—But I submit.

BEN. Pass on, my son.—You see, no change appears—

[Aside to the BARON.]

Come forward, his accusers—and first, thou,

[To GRIM.]

Most loud against him—touch, and make Appeal!

GRIM. Why should I touch her? No! I will not yield
To such fond Superstition!—I stand not
Within the pale of accusation!—No!

BEN. What then can hinder thee to make Appeal?
If thou be guiltless, Heaven is thy friend!

GRIM. Or friend or foe, I will not make Appeal!

BEN. Thou art afraid.—Thy conscience is not clear!

GRIM. 'Tis false!—I'm innocent!—Well, if I must
Join in the folly—What is to be done?

BEN. Look up to Heav'n, and touch the breathless corpse.

[GRIM strikes his hand down suddenly—and then starts from the body.]

RALPH. See! Where Grim touch'd, the blood has gush'd afresh!—

.....

Letter Earl of Cassillis to his Brother
to kill Auchincloich

Mye love of taffee the Comend of mye delect
we feal somebome brother see howe of browne
we see dlines this age laie of suffredome by
of me see mark and a thankfull regard to my
and yme of ye peace of mye friende and ye
biddyn we have 6 ye by in and of more
yame In southe we have by mye
mye immediate of our smythynge of the
died / we some we have some In sou
late, we see our to ye see some gentillmen of
fir we have as rathir southe we have and we
we obly we have some In southe we have
it may be we see day of february 1602

Johne earle of Cassillis

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(3.) OPINIONS relative to the abstract question, whether the CORPSE of a Murdered person BLEEDS on the touch of THE MURDERER? And the causes and consequences of such an exhibition.

It is the Editor's conviction, that the most satisfactory, as well as the most faithful, manner of treating matters of an abstruse and forgotten description, such as the Superstition under examination, is, to afford to the reader miscellaneous extracts from writers of various ages and countries, who have commented on the subject. Besides being the plan laid down at the outset of this work, this mode enables the reader to examine their theories and conclusions in the very language of the respective authors themselves, many of whose works are now of rare occurrence, and are very seldom consulted, excepting for the explanation of similar facts.

In the preceding remarks it has been shown that the ancient opinion was, that the Soul of a Murdered person lingered about the body, until appeased by the discovery of the foul deed, and by the subsequent shedding of the Murderer's blood. It is obvious, therefore, that on the original institution of this Test or Ordeal, during the earlier and in the dark ages, the purpose of requiring the accused to prove his innocence before the Corpse, originated in the idea and belief, that by the Murderer's approach, and especially by his polluted touch, the Soul was excited to an instant manifestation of its indignation, by appearing in the form in which it was supposed to subsist, viz. in that of blood.

(i.) To commence, then, with the examples alluded to, *Delrio*,¹ who is the great authority on such subjects, remarks, 'Cadaver coram occifore, propter præcedentem contactum, fanguinem folet fundere. Refp. Varias reddi caufas, quidam miraculo tribuunt; quidam cafui, quo factum fit aliquando, ut cadaver tum cruorem mitteret, cum præfens erat reus Homicidii. Recenfui alio loco multas hac de re fententias et auctores laudavi:² Neque adhuc dum video, quid folidius adferatur illa antipathia, ex vehementi odio occifi in occiforem; quod qualitatem latentem et arcanam imprefferit corpori, cum cadavere permanentem: Et huc referendum illud *Lucretii*:

Idque petit corpus mens unde eft faucia amore.
Namque homines plerumque cadunt in vulnere, et illam
Emitat in partem fanguis, unde icimur ictu.
Efti cominus eft, hoftem ruber occupat horror!

Ut fit vivi amantis et mortui hoftis comparatio.³—In treating of ORDEAL BY WATER he thus expreffes himfelf:—'Octavum argumentum, teftè *Binsfeldio*, Indicium homicidii ex cadauere fanguinante coram occifore petitum, videtur foli Divino miraculo adfcribendum: Ergo fentiendum fimiliter de fagis fupernatantibus? Refpondeo, quid de antecedente fentiam, hoc opere non femel me indicaffe; fed efto, fit adfcribendum miraculo: An eadem ratio huius probæ? Dicis non probas. Ego qui nego difcrimen dabo. Nulla in fanguis illa miffione caufa fubeft fufpicionis de pacto cum Dæmone; nihil illic mifcetur fuperftitiofi: non queritur illic a Deo fignum; et proinde nec Deus tentatur,' &c.⁴

(ii.) He also mentions in another place:⁵—'Ex communi opinione Doctorum et Judicum, fi cadaver pofitum coram reo fanguinem emittere inciperet vel ex vulnere, vel ex ore, vel ex naribus, hoc indicium quidam magni faciunt, et de ejus cum alias a me difputatum hoc eodem opere. Ego iftud indicium nunquam exiftimarem fufficere ad torturam, quicquid graves doctores quidam in contrarium dixerint.⁶ Moveor, quia verè eft indicium remotum, et quafi prodigiofum, de cujus cum non conftat, et incertiffimum, quod nullo jure vel caufâ juridicè probatâ nobis conftat, et tortura maximi eft prejudicii. Quare nifi accedant fama, minæ, inimicitia, vel fimile adminiculum, nunquam ad torturam ex

¹ *Disquisitionum Magicarum libri sex, &c. Martini Delrio, Edit., Venetiis, 1606. Lib. i. cap. 3, q. 40.* ² Comment. in Octaviam Senecæ, ver. 127. ³ Sic Lemnius, lib. 2; De occultis naturæ miraculis, cap. 7; Langius, epist. 40. Pictorius, Dialog. 9; Gemma, lib. 1; De caracterism, cap. 6. ⁴ *Delrio*, Lib. iv. cap. iv. quæst. v. de proba aquæ frigidæ, &c. ⁵ *Delrio*, lib. v. p. 25. ⁶ Post *Ang. et Parid. Boerius* dec. 166; *Blanchus* de ind. ad l. fin. de quæst. n. 408; *Carrer.* tract. de indic.; *Indi.* 27, n. 2; *Novel. regu.* 184; *Menoc.* de arb. cas. 270. n. 16; et de præsu. l. 1, q. 89, n. 128; et alii.

hoc indicio Deum timenti iudici procedendum, affirmavit *Farina*. nu. 156 post Ant. Gomez, lii. fufé et prudenter hoc discutientem d tom. 3 cap. 13 a num. 15, et *Marfil*. in pract. et diligenter num. 181. *Mafcard* et alios.

(iii.) ANOTHER author, who was Counsellor of State to King Louis XIII of France, makes the following interesting observations, under the Title,—‘DES ATTOUACHEMENS DES HOMMES : *Sçavoir si vn Meurtrier s'approchant, ou touchant le corps d'un homme qu'il a meurtry, en peut faire reiaillir du sang.*—‘JE commenceray par ce traict commun, que le Corps d'un homme meurtry, estant touché ou approché de Meurtrier, fait reiaillir du sang, tesmoignant qu'il entre aussi-tost en accusation, et crie vengeance contre luy, voulant comme tirer à compassion tous ceux qui le voyent, et comme les esmououir à lay en faire auoir raison. *Theodoric* vit dans vne escaille ou tect de poisson, qui luy fut seruy à table, la teste de *Symmachus*, qu'il avoit tué, laquelle le menaçoit, versant du sang en quantité, dequoy il eut si grande frayeur, qu'il en mourut bien-tost apres. Et ne sçay si ce qu'on dit y est necessaire qu'il faut que ce soit vn corps fraichement assassiné. Veu qu'un homme d'honneur, faisant le procez à vn Meurtrier, m'a asseuré, que, l'ayant approché du corps qu'il nioit auoir tué, ietta du sang par le nez assez abondamment, apres le seiziesme iour de l'homicide commis. Sur quoy *Del-Rio* dit, qu'il ne voit aucune raison plus solide que celle de l'antipathie qui est entre le Meurtry et le Meurtrier, et leur haine, la quelle aggraué certaine qualité latente et cachée, et la tient imprimée dans le corps demeurant encore avec le cadauer; employant là-dessus ces vers de *Lucrece* : “ Idque petit,” &c.¹ Comme s'il auoit quelque conuenance et raport, entre vn amy viuant, et vn ennemy mort !

‘ Mais la verité est, qu'on ne sçauroit colliger de là nulle sorte de charme, causé par la veuë ou par l'attouchement, vn corps mort estant bien d'autre nature, que celuy d'un homme viuant. Et de dire que c'est quelque dissension cachée, qui tesmoigne l'inimitié qui est entre eux, laquelle ce corps ainsi outré, fait encore paroistre apres la mort, le declarant par ceste emission de sang. On ne sçauroit rendre nulle raison valable de ceste dissension. Et se peut dire, qu'aucuns ont auancé et tenu ceste experience pour veritable, pour l'auoir parauanture essayée ou veuë vne seule fois et par cas fortuit. Car il se peut faire que le corps d'un homme mort, qui a demeuré feize iours gifant en repos en quelque lieu, estant remué pour souffrir quelque visite de Chirurgiens, esmouuera par ce mouuement le sang qui s'est retiré és veines, et le fera fortir en abondance. Mais cela n'arriuera pas plustost en la presence du Meurtrier, que du Juge qui luy fait le procez, ou deuant quelqu'autre que ce soit.’²

(iv.) THROUGH the kindness of DR SAMUEL HIBBERT, late Secretary to the Society of Antiquaries of Scotland, F.R.S.E., &c. whose philosophical, geological, and antiquarian researches have justly entitled him to a very conspicuous rank in the literature of his country, the Editor has an opportunity of giving the following interesting extract from a rare volume in his Collection, entitled,—‘*Physiologia Epicuro-Gassendo-Charltoniana* : or a Fabrick of Science Natural, upon the Hypothesis of Atoms, &c. &c. By Dr Walter Charleton, Physician to the late Charles, Monarch of Great Britain.’ London, 1654. In this singular treatise, the author, in discussing ‘*the cause of the fresh cruentation of the Carcass of a Murthered man, at the presence and touch of the Homicide,*’ thus expresses his opinion :—‘THE cruentation (and, according to some reports, *the opening of the eyes*³) of the Carcass of a Murthered man at the presence and touch of the Homicide, is, in truth, the noblest of antipathies : And scarce any writer of the secrets or miracles of nature, hath omitted the consideration thereof. This Life in Death, Revenge of the Grave, or loud language of silent Corruption, many venerable and Christian Philosophers have accounted wholly miraculous or supernatural, as ordained and effected by the just judgement of God for the detection and punishment of the inhumane Assassin !

¹ The same verses as in *Delrio's* quotation are here repeated. ² DR L'ANCRE, Conseiller du Roy, Lud. XIII. en son Conseil d'Etat, sur l'*Incredulité et Mescreance du Sortilege*. Quarto, Paris, 1622, fol. 153. The curious reader is likewise referred to the following old authorities,—*Vair*, l. 2, c. 10, De Fascino. *Del Rio*, de Contactu. *Lemnius*, de Occultis naturæ miraculis, cap. 7, &c. ³ See the Case of *Jane Norkott*, afterwards quoted, p. 192.

And, lest we should seem too forward to expunge from the mind of any man the belief of that opinion, which to some may be a more powerful argument than the express command of God, to deter them from committing so horrible and execrable a crime as Murder, we shall so far concur with them as to conceive this effect to be Divine only in the *instituition*, but meerly natural in the *production* or *immediate causes*. Because the appearance seems not to transcend the capacity of natural means, and the whole syndrome and series of its causes may be thus explained. It is an opinion highly consentaneous, that in every vehement passion there is formed a certain idea, as well of the object whereupon the imagination is most intent, as of the good or evil connected unto, and expected from, that object; and that this idea is, as it were, impressed, by a kind of inexplicable sigillation upon the spirits, at the same instant the mind determineth to will the present prosecution or avoidance of the object; so that, by the mediation of the spirits (those angels of the mind), the same idea is transmitted to *the blood*, and, through the arteries, diffused into all parts of the body, as well into the nerves and muscles, which are inservient to such voluntary motions as are requisite to the execution of the decrees and mandates of the will concerning the prosecution or avoidance of the object. This being so, we may conceive that the phanfy of the person assaulted by an assassine, having formed an idea of hatred, opposition, and revenge; and the same being characterized upon the spirits, and by them diffused through the blood; though the blood become much less fluid in the veins after death, by reason the vital influence and pulfick faculty of the heart, which animated and circulated it, is extinct, yet, because at the presence of the Murderer, there issue from the pores of his body such subtle emanations as are consimular to those which were emitted from him at the time he strove with, overcame, and killed the patient; and those emanations entering the dead body, doe cause a fresh commotion in the blood, remaining yet somewhat fluid in its veins, and, as it were, renew the former collocation or duell betwixt the yet wholly uncondensed spirits of the slain and those of the Homicide; therefore is it that the blood, suffering an æstuation, flows up and down in the veins to seek some vent or sallyport, and finding none so open as in *that part wherein the wound was made*, it issues forth from thence! And where the Murdered person is destroyed by strangulation, suffocation, or the like unbloody death, so that there is no manifest solution of continuity in the skin or other exterior parts of the body, in that case it hath been observed that the carcass bleeds at *the mouth* or *nose*, or both; and this only because in all vehement strivings, and especially in collocation for life, the spirits and blood flow most plentifully into the arteries and veins of the head, as is visible by the great redness of the eyes and face of every man that fights; and where the blood fixeth in most plenty, there will be the greatest tumult, æstuation, and commotion when it is ferment, agitated, and again set afloat, by the Discordant Effluvia emitted from the body of the neer approaching or touching Murderer—and, consequently, there must the vessels suffer the greatest strefs, distension, and disruption, or apertion of their orifices.

This passage fully explains the extraordinary opinions which were formerly entertained by the most eminent physicians, in England, during the reign of King Charles II.

(v.) DR HIBBERT likewise transmitted the following extract from the well-known work, entitled, ‘Ludovici Lavateri Theologii eximii de Spectris, Lemuribus, variisque præfagitionibus Tractatus vere aureus.’—‘Aliquis à latronibus interceptus fuit; accedentibus latronibus ad cadaver, *statim cepit recentem sanguinem stillare*, aut aliis signis præsentiam latronis significari. *Plato*, 1, *Legum* 1,² tradit eorum qui occisi sunt animas, sæpe interfectorum animas hostiliter insequitendi. *Marfilius Ficinus* fortè contingere putat, ut occisi hominis vulnus etiam jacente cadavere in eum qui vulneraverat, si modò ille cominus inflet, vulnus ipsum inspiciens, sanguinem rursus ejiciat, quod quidem evenire *Lucretius* affirmavit, et *Judices* observarint. *Dido* apud *Virg.* minetur *Æneæ*: Et cum frigida mors anima se duxerit artus, omnibus umbra locis adero; dabis, improbe, pænas.—Similis locus est apud *Horat.* et alios

¹ Lugduni Batav. Apud Henricum Verbiest. Anno 1659.

² Lib. xvi. cap. 5, De Animorum Immort.

Poetas. Latro affedit mensæ, everso poculo, vinum per solidum lignum mensæ manavit omnium magna admiratione.'

To conclude these Notices, the Editor, without offering farther observations on this branch of the subject, presents a variety of other extracts, all bearing on the same point, and tending to show the universal concurrence of Lawyers, Divines, Historians, Physicians, and Philosophers, in the ancient opinions already related as obtaining so general a belief over the civilized world, and especially in Europe.

(vi.) 'IN a secret Murther, if the dead carkaffe be at any time thereafter handled by the Murtherer, it will gush out of blood; as if the blood were crying to Heaven for revenge of the Murtherer.'—*King James VI, Dæmonologie*, p. 136.

(vii.) 'I HAVE heard, by credible report, that the wound of a man murdered, renewing bleeding at the presence of a dear friend or of a mortal enemy. Divers also write, that if one pass by a murdered body (though unknown), he shall be stricken with fear, and feel in himself some alteration, by nature.'—*Scot's Discovery of Witchcraft*, p. 170.

(viii.) 'WHO can allege any certaine and firme reason, why the blood runnes out of the wounds of a man murdered, long after the Murder committed, if the Murderer be brought before the dead bodie? Galeotus Martius, Jeronymus Maggius, Marfilus Ficinus, Valleriola, Joubert, and others, have offered to say something thereof.—Who (I pray you) can shew why, if a desperat bodie hang himselfe, suddennlie there arise tempests and whirlewinds in the aire?'—*Living Librarie*, fol. Lond. 1621, p. 283.

(ix.) 'WHY dead bodies bleed in the presence of their Murtherers? Because nothing is so hidden from Justice as Murder, they use not only torments of the body, but also the torture of the soule, to which its passions doe deliver it over, of which Feare discovering itselfe more than the rest, the Judges have forgotten nothing that may make the suspected person fearefull. For, besides their interrogatories, confronting him with witnesses, sterne lookes, and bringing before him the Instruments of Torture, as if they were ready to make him feele them, they persuade him that a carkaffe BLEEDS in the presence of his Murtherers, because dead bodies being removed doe often bleed; and then, he whose conscience is tainted with the *synterefsis* of the fact, is troubled in such sort, that by his mouth or gesture he often bewrayes his own guiltinesse, as not having his first motions in his owne power.'—*Five Philos. quest. answered*, 4to, Lond. 1653.

(x.) In the *Athenian Oracle*, I. 106, there is inserted a particular relation of a corpse falling a-bleeding at the approach of persons supposed to have in any way occasioned its death. The phenomenon is thus endeavoured to be accounted for. 'The blood is congealed in the body for two or three days, and then becomes liquid again, in its tendency to corruption. The air being heated by many persons coming about the body, is the same thing to it as motion is. 'Tis observed that dead bodies will bleed in a concourse of people, when Murderers are absent as well as present; yet legislators have thought fit to authorize it, and use this trial, as an argument at least, to frighten, though 'tis no conclusive one to condemn them.' *Vid.* also p. 193.

(xi.) 'IT is a thing known, yea, by many undeniable instances witnessed, that marvellous discovery of concealed Murder, by the bleeding of the body, upon the touch of the Murderer! I confess, it

¹ 'What is it that should make men's guilt so legible oft in their countenance, even when they study most to conceal it; and thus cause them give their tongue the lie, yea, bewray to bystanders whether they will or not some

should be hard to assert the lawful and warrantable practice of such an Appeal to so extraordinary and stupendous a sign from the Lord, where Scripture goeth not clearly before us. But, on the other hand, such a thing so surely tried for such an end, and in the case where all ordinary means of discovery have been wanting, I think, calleth us to a serious remark thereof, while it so visibly seemeth to witness his hand who doth make inquisition for blood!

(xii.) SIR KENELM DIGBY takes it for granted that a Corpse often bleeds on such occasions—and thus accounts for the phenomenon. ‘ And to this cause, peradventure, may be reduced the strange effect which is frequently seen in England, when, *at the approach of the Murderer, the slain body suddenly bleedeth afresh*. For certainly the Souls of them that are treacherously Murdered by surprize, use to leave their bodies with extreme unwillingness, and with vehement indignation against them that force them to so unprovided and abhorred a passage! That Soul, then, to wreak its evil talent against the hated Murderer, and to draw a just and desired revenge upon his head, would do all it can to manifest the author of the fact! To *speak* it cannot—for in itself it wanteth the organs of voice; and those it is parted from are now grown too heavy, and are too benumbed, for to give motion unto: Yet some change it desireth to make in the body, which it hath so vehement inclination to; and therefore is the aptest for it to work upon. It must then endeavour to cause a motion in the subtlest and most fluid parts (and consequently the most moveable ones) of it. This can be nothing but THE BLOOD, which then being violently moved, *must needs gush out at those places where it findeth issue !* ’

(xiii.) EXTRACT from a Letter, the Rev. H. Cross, Caithness, Jun. 11, 1712, to the Rev. Robert Wodrow.² ‘ Some Murthers in this cuntry have been discovered, *by causeing suspected persons touch the deid corps ; which upon their touching have immediatly bled ; wherupon some have confessed guilt, and have been executed. I cannot tak up time in telling the particular circumstances thereof.* ’

(xiv.) MR BURNETT,³ in treating of presumptive evidence, remarks, that ‘ in various Trials for Murder, we find the notion of *the corpse bleeding, if touched by the Murderer* , a circumstance founded on. In *Stewart Abercrombie’s Case* ,⁴ we see it stated, in the Information for the prisoner, as a circumstance in his favour, that he had, without fear or dread, gone and touched the body of the person murdered. And in the Case of *Howatson* ,⁵ before Lord Justice-Clerk Cockburn, we find it stated and insisted on as a strong circumstance of suspicion against him, *that he had refused to go to the lifting of the corpse* . This even is stated as one of the circumstances in the Interlocutor of relevancy; and perhaps rightly so, on the supposition of *the popular belief of THE MURDERER’S TOUCHING THE CORPSE.* ’

(4.) PARTICULAR INSTANCES *where the CORPSES of Murdered Persons have been TOUCHED, as a TEST OF GUILT—REMARKABLE CRIMINAL TRIALS, in which this circumstance was founded on—THE OPINIONS OF LAWYERS, &c.*

(i.) THE earliest recorded notice which the Editor has been able to find, in British History, of this superstitious custom, is in Buchanan’s History of Scotland;⁶ who relates, that, in A.D. 972, after the atrocious Murder of KING DUFFUS⁷ by the assassins hired by Donald, Governor of the Castle of Forres, they ‘ carried him out so cunningly a back way, that not so much as a drop of blood appeared,’

secret trouble and sore they have within? Doth it not clearly show the power of Conscience, which hath such authority on men, that without violence or constraint from others, doth even force them to confess the truth, and supply the room of witnesses.— *Fleming’s Fulfilling of the Scripture* , 3d edit. Glasg. 1681.

¹ *Ibid.* ² WODROW MSS. Orig. Letters. Quarto, XIX. ‘ Remarkable Providences.’ Adv. Library, Edinburgh. No traces can be had of the particular instances to which the Rev. Gentleman alludes. They would doubtless prove of much interest, could they be still discovered. ³ *Burnett on Crimes*, p. 529. (Note.) ⁴ Jan. and Feb. 1718. ⁵ James Howatson, tried for Murder, at Dumfries, May 1727. ⁶ *Buchanan’s History of Scotland*, Ed. 1762, i. 247. ⁷ Son of King Malcolm I. He was murdered A. D. 972.

&c.—‘ The executioners of that bloody fact were sent out of the way by Donald ; because there is an opinion, *received from our ancestors*, which as yet obtains amongst the vulgar, *That BLOOD will issue from a dead body, many days after the party's being murdered*, IF THE MURDERER BE PRESENT ; *just as if the fact had been newly committed.*’ This takes it for granted, that the understanding was, that *the TOUCHING of the corpse* must have been infinitely more available, towards the discovery of the Murderer.

(ii.) RAPIN¹ records a circumstance, as having occurred at the interment of KING HENRY II. of England, A.D. 1189. That monarch having fallen sick at *Chinon*, caused himself to be carried into the Church, before the Altar ; where, after confessing himself, and expressing repentance, he expired. ‘ His corpse was removed to Font-Evrard, in Anjou, where he was buried, according to his own order. An extraordinary accident rendered the funeral of his body very remarkable. His son RICHARD (*Cœur de Lion*) coming to meet the funeral pomp, in order to attend his father to his grave, upon his approach THE BLOOD *in great abundance gushed out of the mouth and nostrils of the corpse!* RICHARD, though naturally very hard hearted, was so moved at this sight, that he burst out into tears, and openly accused himself of being the occasion of his father's death.’ *Hume*² adds, that ‘ he exclaimed, *agreeably to a vulgar SUPERSTITION, that he was his father's MURDERER!*’

(iii.) BUT, without attempting too laborious an investigation of our early Historians and Chroniclers on so insulated a point, it is enough for our purposes to preserve the memory of such Cases as have been peculiarly striking, and which have occurred nearer to our own times. Accordingly, one of the most remarkable instances of *Touching* as a Test of Murder,³ is the Case of the Murder of JOHAN NORKOTT, wife of Arthur Norkott, the incidents of which were fortunately preserved amongst the papers of *Sir John Maynard*, Sergeant at Law,⁴ and afterwards one of the Lord Commissioners of the Great Seal of England, &c. who noted the particulars at the Trial, at the bar of the King's Bench, 4th Car. I. (1628.) This eminent Lawyer's Notes are followed here, as closely as possible, in his own words.

‘ *Johan Norkott* having been murdered, the question was, How she had come by her death? The Coroner's Inquest, on view of the body, and Depositions of *Mary Norkott*, *John Okeman*, and *Agnes* his wife, inclined to find JOHAN NORKOTT *Felo de se* ;—for the evidence persuaded the Coroner and Jury that she was found dead in her bed, the knife sticking in the floor, and her throat cut—that the night before, she went to bed with her child, her husband being absent—and that no other person, after she had gone to bed, came into the house—the Examinants lying in the outer room, and they must needs have seen or known if any stranger had come in. Whereupon the Jury gave up to the Coroner their Verdict, that she was *Felo de se*.

‘ But afterwards, upon rumour among the neighbourhood, and their own observation of a variety of circumstances, which manifested, that she did not, nor, according to those circumstances, could possibly murder herself—the Jury, whose Verdict was not yet drawn into form by the Coroner, desired that the Body, which had been buried, might be taken up out of the grave. The Coroner assented to their desire ; and THIRTY DAYS after her death, she was taken up, in presence of the Jury and a great concourse of people ; and, in consequence of what transpired, the Jury altered their former Verdict.

‘ The persons accused were tried at *Hertford Assizes*, and Acquitted ; but so much against the Evidence, that *Judge Harvey* expressed his opinion, that it were better an Appeal were brought, than so foul a murder should escape unpunished.

¹ Rapin, Fol. Lond. 1784, l. 221.

² *Hume's Hist. of England*, 8vo. Edin. 1805, i. 484. See also *Bened.*

Abb., p. 547. *Brompton*, p. 1151. *Mat. Paris*, p. 107.

³ See also *Gent. Mag.* (Sep. 1731,) i. 395. *Ellis's*

Brand's Popular Antiquities, ii. 543.

⁴ See *Howell's State Trials*, xiv. 1324. But especially *History of the Works of the Learned*, for the year 1739, Art. 12, to which curious publication *Sir John Maynard's Papers* were originally communicated by *Dr Rawlinson*.

‘ Accordingly, at the ensuing Easter term (*Pascha*, 4 *Car.*), they were tried on the Appeal, which was brought by the Young Child against his father, grandmother, and aunt, and her husband *Okeman*.¹ *The Minister of the Parish*² where the Murder was committed, deposed, “ That the Body being taken up out of the grave, *thirty days after the party’s death* ; and lying on the grafs, and the four defendants being present, *were required each of them to TOUCH THE DEAD BODY*. *Okeman’s* wife fell upon her knees, and prayed to God to shew a Token of her Innocency, or to some such purpose—her very words I have forgot. The Appellees *did touch the dead body* ;—whereupon *the brow of the dead*, which before was of a livid and carrion colour,³ begun to have a *dew or gentle sweat* arise on it, which increased by degrees, *till the sweat ran down in drops on the face*. The brow turned to a *lively and fresh colour*, and *the deceased opened one of her eyes and shut it again* : And this opening the eye was done *three several times*. She likewise *thrust out the ring or marriage finger three times*, and pulled it in again ; and *the finger dropped blood from it on the grafs*.”

‘ SIR NICHOLAS HYDE, *Lord Chief Justice*, seeming to doubt the Evidence, asked the Witness, “ Who saw this besides you ? ” *Witness*. “ I cannot swear what others saw—but my Lord, (said he,) I do believe the whole company saw it ; and if it had been thought a doubt, Proof would have been made of it, and many would have attested with me.” The Witness observing some admiration⁴ in the auditors, he spake further. “ My Lord, I am Minister of the Parish, and have long known all the parties ; but never had any occasion of displeasure against any of them, nor had to do with them or they with me, but as I was Minister.—The thing was wonderful to me, but I have no interest in the matter ; but as called upon to testify the truth, that I have done.”—Whereupon, applying himself to the *Chief Justice*, he said, “ My Lord, my brother, here present, is *Minister of the next Parish adjacent*—and I am assured saw all done that I have affirmed.”

‘ Therefore that person was also sworn to give Evidence, and did depose, in every point, *viz. the sweating of the brow—the change of the colour—opening of the eye—and the thrice motion of the finger*, and drawing it in again. Only, the first Witness added, *that he himself dipped his finger in the blood which came from the dead body*, to examine it—and he swore *he believed it was blood!*’

Sir John Maynard adds, ‘ I conferred (my Notes) afterwards with *Sir Edward Powell*, Barrister at Law, and others, who all concurred in the observation—and for myself, if I were upon oath, can depose, that these Depositions (especially of the first Witness) are truly reported, in substance.’

‘ The other Evidence was given against the Prisoners, *viz. the Grandmother of the Plaintiff*, and against *Okeman* and his Wife—that they confessed they lay in the next room to the dead person that night, and that none came into the house till they found her dead the next morning ; therefore, if the did not Murder herself, they must be the Murderers. To that end further proof was made.

‘ *First*, That she lay in a composed manner in her bed, the clothes nothing at all disturbed, and her child by her in bed.—*Secondly*, Her throat cut from ear to ear, and her neck broken ; and if she first cut her throat, she could not break her neck in bed, nor *contra*.—*Thirdly*, There was no blood in the bed, saving there was a tincture of blood on the bolster whereon her head lay—but no substance of blood at all.—*Fourthly*, From the bed’s head there was a stream of blood on the floor, which run along till it ponded in the hollows of the floor, to a very great quantity ; and there was another stream of blood on the floor at the bed’s foot, which ponded also on the floor, to another great quantity,—but no continuance or communication of blood of either of these two places from one to the other, neither upon the bed—so that she bled in two places severally : And it was deposed, (that on) turning up the mat of the bed, there were clotts of congealed blood in the straw of the mat underneath.—*Fifthly*, The

¹ The individuals on whose Depositions the original Verdict had been pronounced. ² ‘ A very reverend person, as I guessed, of about seventy years of age. His testimony was delivered gravely and temperately—but to the great admiration (*wonder, astonishment*) of the auditory.’ ³ ‘ That was the verbal expression, *in terminis*, of the Witness.’

⁴ Wonder, astonishment, amazement.

bloody knife was found in the morning sticking in the floor, a good distance from the bed; but the point of the knife, as it stuck, was *towards the bed*, and the *haft* or handle *from the bed*.—*Sixthly*, There was a print of the thumb and four fingers of a left hand. *Sir Nich. Hyde*, Chief Justice, said to the Witnesses, “How can you know the print of a left-hand from the print of a right-hand, in such a case?” *Witnesses*, “My Lord, it is hard to describe—but if it please that honourable *Judge* to put his left-hand upon your left-hand, you cannot possibly place your right-hand in the same posture.” Which being done, appeared so.

‘The Defendants had time to make their Defence—but gave no evidence, to any purpose.’

‘THE JURY departed from the bar—and returning, ACQUITTED *Okeman*, and found the other three GUILTY; who, being severally demanded, “What they could say, why Judgement should not be pronounced?” said nothing—but (saying that) each of them said, “I did not do it! I did not do it!”’

‘JUDGEMENT was given accordingly, and the Grandmother and the Husband executed; but the Aunt had the privilege to be spared execution, being with child.’

‘I inquired if they confessed any thing at their Execution; but did not, as I was told.’

(iv.) THE next case which shall be mentioned, is that of MARIOUN PEEBLES,¹ *alias* Pardone, spouse to SWENE, in Hildiswick, who was, on March 22, 1644, sentenced to be strangled at a stake, and burnt to ashes, at *the Hill of Berrie*, for WITCHCRAFT and MURDER. Marion and her husband having ‘ane deadlie and venefical malice in her heart’ against Edward Halcro in Overure, and being determined ‘to defroy and put him down,’ being ‘transformed in the lyknes of ane pellaack-quhail, (the Devill changing her spirit, quhilk fled in the same quhail,)’ and the said Edward and other four individuals being in a fishing-boat, coming from the Sea, at the North-banks of Hildiswick, ‘on ane fair morning, did cum under the said boat, and overturnit her with ease, and drowned and devoired thame in the fey, right at the shore, when there wis na danger wtherwayis.’ The bodies of Halcro and another of these hapless fishermen having been found, Marion and Swene ‘wir sent for, and brought to see thame, and to lay thair hands on thame, dayis after said death and away-casting, quhaire thair bluid was evanished and defolved, from every natural cours or caus, shine, and run; the said umquhill Edward *bled at the collir-bain or craig-bane*, and the said ,² *in the hand and fingers, gushing out bluid thairat*, to the great admiration of the beholders—and revelation of the judgement of the Almytie! And by which lyk occasionis and miraculous works of God, made manifest in Murders and the Murderers; whereby, be many frequent occasiones brought to light, and the Murderers, be the said proof brought to judgment, conuict and condemned, not only in this Kingdom, also this countrie, but lykwayis in maist forrin Christiane Kingdomis; and be so manie frequent precedentis and practising of and tuitching Murderis and Murdereris, notourlie known: So, the foirsaid Murder and Witchcraft of the saidis persons, with the rest of their companions, through your said Husband’s deed, art, part, rad,³ and counfall, is manifest and cleir to all, not onlie through and by the foirsaid precedentis of your malice, wicked and malishes⁴ practifes, by Witchcraft, Confessionis, and Declarationis of the said umquill Janet Frazer, Witch, revealed to her, as said is, and quha wis defyrit by him to concur and assist with you to the doing thereof; but lykways *be the declaration and revelation of the justice and judgementis of God, through the said issuing of bluid from the bodies!*’ &c.

(v.) A SIMILAR and very remarkable instance is related in the following Trial: In the Dittay of CHRISTIAN WILSON, *alias the Lanthorne*,⁵ accused of Murder, Witchcraft, &c., (which is founded

¹ See *Dr Hibbert’s Hist. of Orkney*, &c. to which this remarkable Trial is appended.

² The name left blank.

³ *Rede*; advice.

⁴ Malicious.

⁵ The name given her at her baptism by the Devil. From *Collection of Original Documents*, belonging to the Society of Antiquaries of Scotland, MS. As a specimen of the other charges, take the following: “*Williame Richardstone*, in Dalkeith, haiving felled ane hen of the said Cristianes with ane stone, and wpon her sight therof did imediatly threatne him, and with ane frowninge countenance told him, that he ‘should newer cast ane vther stone!’ And immediatly the said Williame fell into ane franic and madnes, and

upon the examinations of James Wilson, Abraham Macmillan, William Crichton, and Fyfe and George Erskine, &c. led before Sir William Murray of Newtoun, and other Commissioners, at Dalkeith, Jun. 14, 1661,) it is stated, that ‘ Ther being enimitie betuixt the said Christiane and Alexander Wilfone her brother, and shoo having often tymes threatned him, at lenth, about 7 or 8 monthes since, altho’ the said Alexander was sene that day of his death, at three houres afternone, in good health, walking about his buffnesse and office; yitt, at fyve howres in that same night, he was fownd dead, lying in his owne howse, naked as he was borne, with his face torne and rent, without any appearance of a spot of blood either wpon his bodie or neigh to it. And altho’ many of the neiboures in the toune (Dalkeith) come into his howse to see the dead corpe, yitt sho newar offered to come, howbeit her dwelling was nixt adjacent thairto; nor had shoo so much as any feiming greiff for his death. Bot the Minister and Bailliffes of the towne, taking great suspitione of her, in respect of her cairiage, comandit that shoo showld be browght in; bot when shoo come, shoo come trembling all the way to the howse—bot *shoo refused to come nigh THE CORPS or to TUITCH it*, saying, that shoo “ nevir tuitched a dead corpe in her lyfe!” Bot being earnestly desyred by the Minister, Bailliffes, and hir brother’s friends who was killed, that shoo wold “ bot *tuitch the corpses softlie*,” shoo granted to doe it—but before shoo did it, the Sone being shyning in at the howse, shoo exprest her selfe thus, humbly desyring, that “ as the Lord made the Sone to thyne and give light into that howse, that also *he wald give light to discovering of that Murder!*” And with these words, shoo *TUITCHEING the wound of the dead man, verie softlie*, it being whyte and cleane, without any spot of blod or the lyke!—yitt *IMEDIATLY, whill her fingers was wpon it*, *THE BLOOD RUSHED OWT OF IT*, to the great admiratioune¹ of all the behoulders, who tooke it for *discoverie of the Murder*, according to her owne prayers.—For ther was ane great lumpe of flesh taken out of his cheik, so smowthlie, as no rasor in the world cowld have made so ticht ane incisoune, wpon flesh, or cheis—and ther wes no blood at all in the wownd—nor did it at all bleed, altho’ that many persones befor had tuitched it, whill² shoo did tuitche it! And the howse being searched all over, for the shirt of the dead man, yitt it cowld not be found; and altho’ the howse was full of people all that night, ever vatching the corpses;³ neither did any of them tuitch him that night—which is probable⁴—yitt, in the morneing, his shirt was fownd tyed fast about his neck, as a brechame,⁵ non knowing how this come to pass! And this Cristian did immediatlie transport all her owne goods owt of her owne howse into her dowghter’s, purposing to flie away—bot was therwpon apprehendit and imprisoned.⁷

(vi.) THE next instance which shall be cited, refers immediately to the Case of THE MURES OF ACHINDRANE; being an extract from a ‘ RELATIONE of quhat past betuixt the Commitie⁶ and MR JAMES MITCHELL,’ &c.⁷ January 18, 22, and 24, 1676. In the course of the pleadings as to the lawfulness of inflicting Torture, the following interesting passage occurs. “ Bot in this preparative, the practife is wnparalleled, to put a person to it be such a *Tortour*, to turne (contrarie the cowerse of nature and expresse law of God) to be his own accuser; no, not in *Peiter Aroy*, the Highland Rober

tooke his bed, and newer rose agane, but died within a few dayes: And in the tyme of his sicknes, he alwayes cryed owt, that the said Cristiane wes present befor him, in the liknes of ane gray catt! And some tyme eftir his death, James Richardsons, nephew to the said Williame, being a boy playing in the said Cristiane her yaird, and be calling her *Lantherne*, shoo threatned, that ‘ if he held not his peace, shoo sowld cawse him to die the death his nephew (uncle) died of!’ Whairby it would appeare that shoo tooke wpon hir his nepheas (uncle’s) death.”

¹ Wonder; amazement. ² Until. That is, many previous trials had been made of other persons suspected, or of those who were near neighbours, perhaps living at enmity with the deceased, who had voluntarily offered themselves to this solemn ordeal, or had been called upon thus publicly to attest their innocence of his blood. ³ Holding the *lyke-wake*.

⁴ Can be proved, by testimony or probation. ⁵ The large collar which goes about a draught-horse’s neck. ⁶ Of the Estates of Parliament. ⁷ *Wodrow’s MSS.* as to ‘ *the Sufferings*,’ Adv. Lib. xxxvi. Quarto, No. 2. This Document relates to the Tortures used to *Mitchell*, who had been accused of an attempt to Murder, by shooting a pistol at *Archbishop Sharpe*, and the *Bishop of Orkney*, Jul. 9, 1668, &c. 29 Car. II, Jan. 7, 1677. See for the particulars of her Trial, *Salm. State Trials*, p. 334, &c.

and Murthrer ! Bot he, being legalie convicted himself, was put to *the Tortowr*, to cause him declaire who was his confederats and affociats in committing of such horrid crymes. Bot if any man shall object that about *THE LAIRD OF AUCHINDRANE*, I answer: 1st, Thair is no paritie in the cawse; be-cawse he was accused of an horrid and privat Murther, quhair thair was altogether penurie of Witneffes, and not of a dentie contraverted be Apostats: 2dly, GOD, in a soveraine and singlar way, *witnesed it from Heaven, by his own immediate hand, and proved the Deed against him!* viz. the Corpes of the man Murthered, being buried in *Girvane Kirk-yard*, as a man cast away at sea, and cast owt thaire, *the Laird of Coleaine*, whose servant he had beine befor, driming¹ of him in his sleipe, and that he had a muse-marke wnder his left pape;² and when he awook owt of his sleipe, wpon searck, found it to be trwe—came to the place, and taking wpe the Corpes owt of the place quhair they were buried, found him to be Murthered. Wpon which, he *sumoned in all the men in that pairt, to towck the Corpes, as the custome was in such cafes*; and all compeiring, except the faids *Laird* and *his son*, who were the Murtherers; and his dwelling house and familie being neire to the place, *ane young chyld of his, MARIE MURE be name*, seing the people, went to the place; and *when she drew neire to the Corpes* (to the admiration of all the people,) *did spring owt wpon her in abundance of blood!* Wpon which they were apprehended and put to tryell.”

(vii.) A VERY singular incident is related by *Law*, in his ‘*Memorials*.’³ Two men having been executed at Glasgow, Jun. 14, 1683, for the Murder of a gentleman (David Monroe) at Inchbelly-bridge; in consequence of the enormity of the offence, their bodies were appointed to be hung up in irons. For this purpose, the bodies of the Criminals were conveyed to the spot, where, according to the terms of the Sentence, they were to be gibbeted. *Law* relates, that “*Though their entrails were taken out, and their bodies cleansed from all blood, yet when it (the body of one of the culprits) came to the place where the Murther was committed, did gysh out in blood, in the arm which was cut; te stified to be a truth by the beholders; which was a testimony of their guilt!*”

(viii.) Of a like nature with the last instance, a strange story is told in the *Biographia Scoticana*, which has likewise been elsewhere repeated. That a few days after Mr James Guthrie was executed, and his head placed upon the Netherbow Port of Edinburgh, *Middleton’s* coach coming down that way and passing through the Port, *several drops of blood fell from the head* upon the top of the coach;—which, as the legend goes, ‘*all their art and diligence could not wipe off!*’ Physicians were called, and desired to enquire if any natural cause could be given for this event—but they could give none! “*This odd incident being noised abroad, and all means tried, at length the leather was removed, and a new cover put on!!!* But this was much sooner done, than the wiping off the guilt of this great and good man’s blood upon the shadders of it, and the disgrace from this poor Nation!”

(ix.) FEW instances of this description are entitled to the consideration which the following Case possesses, as well in a legal as in a philosophical point of view. In the very remarkable Scottish Trial of PHILIP STANFIELD,⁴ for *Parricide*, (executed Feb. 15, 1688,) the circumstance of the body of Sir James Stanfield of Newmills, who was Murdered near Haddington, in Dec. 1687, *having bled on the touch of his son Philip, the Parricide*, was urged and argued with the utmost earnestness, in Court. *James Muirhead*, Surgeon, one of the Witnesses, swore, that “*upon the prisoner’s affitting to lift the body of his deceased father, Sir James Stanfield, after it had been sewed up,*⁵ and clean linen

¹ Dreaming. ² A mouse mark under his left breast. ³ *Law’s Memorials*, p. 252. ⁴ See *Howell’s State Trials*, XI. 1371.—*Salmon’s State Trials*, p. 610.—*Fountainhall’s Decisions*, I. 484.—See also *Fountainhall’s Diary*.—*Arnol’s Criminal Trials*, p. 33, Note. ⁵ The body had been opened and examined, by *Judicial authority*, for the purpose of determining the precise cause of the deceased’s death. The surgeons to whom this remit had been granted, reported, that Sir James had died from *strangulation*, not from drowning—and that the idea of *felo de se*, which had been attempted to be proved by the son, was utterly impossible.

put on, it DARTED OUT BLOOD *through the linen, from the left side of the neck, which the pannell TOUCHED*—but, that when he (the Witness) and the other Surgeon, *James Crawford*, put on the linen, and stirred and moved the head and neck, before, *he saw no blood at all!*"

This fact was corroborated by other Witnesses—and it is, perhaps, worthy of notice, as the most striking peculiarity of that Case, that Sir James had not been stabbed, shot, or assassinated by the cutting of his throat—but was *strangled*, and then thrown into a water; so that there was no *external wound* on the neck.

A singular feature in this Case of Stanfield, is the rank and eminence of the Public prosecutors, *Sir John Dalrymple*, younger of Stair, *Sir George Mackenzie*, and the gravity with which these superstitious circumstances are argued. The Dittay states, "When his father's dead body was sighted and inspected by Chirurgions, and the clear and evident signs of the Murder had appeared, the body was sewed up, and most carefully cleaned; and his nearest relations and friends were desired to *lift* up his body to the coffin: ¹ And accordingly, *James Row*, merchant (who was in Edinburgh at the time of the Murder), having lifted the left side of Sir James, his head and shoulder, and the said *Philip* the right side; his father's body, though carefully cleaned, as said is, so as the least blood was not on it, did (ACCORDING TO GOD'S USUAL METHOD OF DISCOVERING MURDERERS) *blood afresh upon him, and defiled all his hands*; which struck him with such a terror, that he immediately let his father's head and body fall with violence—and fled from the body!—And, in consternation and confusion, cried, *Lord, have mercy upon me!*—and bowed himself down over a seat in the Church, (where the Corps was inspected,) wiping his father's innocent blood off his own murdering hands, upon his cloaths!" But as the arguments are fortunately preserved, and as they shew many of the peculiarities of these superstitions, and give the reasonings of the most eminent Lawyers of that time, it may be proper, and can hardly fail to be interesting, even to the general reader, to enter a little into details.

Sir Patrick Hume,² Counsel for Philip Stanfield, urged, that this is but a superstitious observation, without any ground, either in Law or reason. And *Carpzovius* relates, *Part 3, quest. 122, no. 31*, that several persons had been unjustly challenged, and that he, in his own experience, had seen a dead body bleed, in presence of the person who was *not guilty!* And *Matheus de Criminibus* is of the same opinion, *Tit. 16, de questionibus, num. 12*, "de sanguine porro de Cadavere profuente, quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint—ratio vero idonea nulla reddi possit, non putaverim indicium ad Torturam sufficiens esse, non enim sapientis Judicis est incerto experimento credere, quod certa ratione dirimendum est." And the truth is, *the occasion* of the dead body's bleeding was, that the Chirurgeon that came out to visit the body did make an incision about the neck, which might be the occasion of the bleeding;—and also the very moving of the dead body, when it was taken out of the grave and out of the coffin, might occasion the bleeding; especially, seeing the body did not bleed for some time after, which certainly was made by the motion and by the incision: As also, a further evidence that it could not be the defender's *touching* the body, the Chirurgions did likewise touch the body, as well as he, and several others present; so that the bleeding could no more be ascribed to *his touching*, than the touching of the other persons present.

Sir James Dalrymple, Lord Advocate, answered, that "although the deceased's servants had made a *mutiny* against the Burial, till the Corps were sighted, yet the pannel caused bury the Corps that same

¹ This may, no doubt, have been resorted to, for the purpose of proving Philip's participation in the Murder—but, of itself, this ceremony is still universally observed in the middle and lower ranks of life; and is a most affecting spectacle to those who are so deeply interested. It is called "the chesting" or "coffining" of the corpse—a duty almost never (in Scotland) intrusted to hirelings—but is most solemnly performed by the nearest relations, as the last endearing act of respectful and affectionate regard, which they can offer, to the breathless remains of those who had been nearest and dearest to them.

² Along with this gentleman were Sir David Thoires, Mr William Monniepenny, and Mr William Dundas, as counsel for the prisoner.

night' without shewing them !" After Warrant for raising the body had been obtained, the inspection by Surgeons, and the touching, as before detailed, took place; when the pannel let his father's head fall to the ground, and cried out, O God !—and ran away and went to a desk in the Church, where he lay groaning and in confusion, and durst never return to touch the Corpse. And that as there could no *natural* reason be given, but an ordinar and *wonderful Providence of God in this kind of discovery of Murder*, so the fact was never more evident and sure. Though half a dozen of persons were bearing the Corpse, *no man's hands were bloody but the pannels !* That the Corpse being two entire days in the grave, in that weather and season, the blood, by the course of nature, was become stagnant and congealed—so that the former tossing and lifting of the Corpse, and even the incision itself, had occasioned no such effusion, but only some water or gore—but upon *the first touch* of the pannel, *the Murderer*, there appeared *abundance of liquid florid blood !*

Sir David Thoirs, in reply, argued, that the falling of blood from the wound could neither be a ground nor presumption for guilt—and though the pannel was *surprised* to see his father's blood, yet the same did only proceed from *natural duty and affection*, and not from any apprehension of guilt ! *Sir Patrick Hume* added, that he offered to prove, that *the pannel had touched his father's body before the incision*, AND IT DID NOT BLEED.

Sir George Mackenzie, in his address to the Jury, asserts that ' GOD ALMIGHTY *himself was pleased to bear a share in the testimonies which we produce ; that Divine power which makes the blood circulate during life, has oft-times, in all Nations, opened a passage to it, after death upon such occasions,—but most in this case !*

The sentence of the Court was, that he should be ' hanged on a gibbet till he be dead—and his tongue to be cut out and burnt upon a scaffold—and his right hand to be cut off and affixt on the East Port of Haddingtoun—and his body to be carried to the Gallowee, betwixt Leith and Edinburgh, and there to be hanged up in chains,' &c.

(x.) BESIDES the class of notices which has already been afforded, it is natural to expect that vestiges of so prevalent a superstition should appear in the ancient Popular Poetry of all Nations. The Editor's present leisure and opportunities do not admit of his entering upon so wide a field as that just alluded to, for the illustration of such an enquiry. It is sufficient to mention, generally, that such traces do appear in the Ballads of Scotland, England, Germany, and other European Nations. The ancient Romance also, and the Drama of all these countries, abound with allusions to this superstition ; and some of them make use of the ceremonial of touching the Corpse, as a powerful aid in exciting the feelings, and in heightening the interest of the reader, or auditory.

As a specimen of one of the Scottish Ballads illustrative of this superstition, the Editor may cite the conclusion of the Romantic Ballad of *Young Huntin*, or *Earl Richard*,² as it is too long for insertion at length :—

“ PUT na the wite³ on me,” she said,
 “ It was my may⁴ Catherine !”
 Than they hae cut baith fern and thorn,
 To burn that maiden in.—

‘ It wadna tak upon her cheik,
 Nor yet upon her chin,
 Nor yet upon her yellow hair,
 To cleanse the deidly sin !

¹ The same night the body had been found in the water, having been incrustated with frozen ice, owing to the inclemency of the season ; the Murder having been perpetrated in the month of December, during a storm. ² See *Minstrely of the Scottish Border*, II., 420—*Herd's Ballads*—*Chambers's Ballads*, &c. ³ Blame. ⁴ Maiden.

' *The Maiden touch'd the clay-cauld Corpse,*

A DRAP IT NEVER BLED ;

The Lady laid *her* hand on him,

And soon *the ground was red !*

' Out they hae ta'en her, may Catherine,

And put her mistress in.

The flame tuik fast upon her cheik,

Tuik fast upon her chin,

Tuik fast upon her fair bodye—

She burn'd like hollin green !'¹

(xi.) BEFORE concluding these notices, it may be remarked, for the benefit of the curious inquirer into the superstitions of his native country, that absurdities greater by far than this Test or Ordeal have been gravely stated and maintained, even before the Supreme Criminal Tribunal of Scotland. Perhaps the most extraordinary instance of this description occurred in *the Trial of THE MARQUIS OF ARGYLL*,² before Parliament, 1661, where the Indictment, after setting forth a variety of alleged Murders and cruelties, proceeds, ' That THE LORD from Heaven did declare his wrath and displeasure against the aforesaid inhumane cruelty, by striking the tree whereon they³ were hanged in the said month of June, being a lively fresh growing ash-tree, at the Kirk-yard of *Dunoone*,⁴ among many other fresh trees with leaves. THE LORD struck the said tree immediately thereafter, so that the whole leaves fell from it, and the tree withered, never bearing leaf thereafter, remaining so for the space of two years; after which, being cut down, there sprang out of the very heart of the root thereof a *spring like unto BLOOD, popling up, running into several streams all over the root; and that for several years thereafter*,⁵ till the said Murderers or their favourers, perceiving that it was remarked by persons of all ranks resorting there to see this *Miracle*, they caused hock out the root,⁶ covering the whole with earth, which was full of the said matter like blood !'

There cannot be a doubt that the foregoing Case, monstrous and shocking in the extreme as it is, is merely an *improvement* upon the popular Superstition we have been considering; and the inference they wished to deduce from the whole matter is,—that '*blood will have blood*,'⁷—that God will not suffer Murder to pass over unavenged, even in this world;—and farther, that if man fails to discover guilt, the Almighty will, by *extraordinary* and even *miraculous* means, disclose the Murderer's horrid secret.

¹ Green holly. ² *State Trials*, (old Edit.) III. 422, and VII. 379.—*Howell*, XI. 1380. ³ The persons thus mercilessly murdered by the commands of Argyll, and massacred by his followers, were thirty-six in number; who were hanged on this single tree, being ' special gentlemen of the name of *Lamond*, and vassals to *Sir James Lamond* of Innerin,' (that Ilk.) And on the same day, they ' Murdered with durks, and cut down with swords and pistols,' a number of other unhappy creatures, among whom *John Lamond* in Auchinshallach, ' who being about the age of fourscore years, &c. they most cruelly and barbarously stabbed with *durks* and *skanes* at the ladder-foot.' *The Provost of Rothesay* was shot through the body thrice, yet finding some life in him, they thrust at him with durks and skanes, and at last cut his throat with a long durk; others they cast into holes, their victims ' spurning and wrestling, whilst they were suffocated with earth; having denied to them any time to recommend themselves to God !' These are part of the atrocities of the Marquis's followers, detailed in the remarkable Dittay above alluded to; and besides this, they murdered and massacred a number of innocent *women*, and inhumanly left their bodies as a prey to ravenous beasts and fowls, and ' young and old, yea suckling children, some of them not one month old !' The reader is referred to the *State Trials* for other particulars, which are too circumstantial to be enumerated here. ⁴ An ancient Castle on the Clyde, of which the Family of Argyll are still the nominal heritable Keepers. It has long since been razed with the ground. The *Dun*, on which it was situated, has a very peculiar and commanding form, and is a beautiful and picturesque object from the opposite coast, and from the river. The ' Kirk-yard' is still surrounded by lofty trees. ⁵ *Ovid's Metamorphoses* are a trifle to this; but still such execrable and almost blasphemous ravings were not only tolerated, but gravely *discussed* before Parliament ! It ought, however, to be kept in mind that the fanaticism which then prevailed had a large share in producing this gross and shocking exhibition, which can only be viewed as solemn mockery of all judicial proceedings, and indeed of every thing sacred. ⁶ Dig up; extirpate.

Slaughter — Shooting of Pistolets, &c.

Jul. 24.—ALEXANDER DUMBAR, Younger of Kilbowak;¹ Robert Dumbar, his brother; Niniane Dumbar, sone to Williame Dumbar of Hemprigis; James Dumbar, sone to Gawin Dumbar, Archedeane of Murray; Thomas Falconer, seruitour to the said Alexander.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Dumbar of Waistfield (Scheref of Murray); committit the first day of Junij last: And contravening of the Actis of Parliament, in beiring and schuiting of pistolettis, &c.

PERSEWARIS.

Johnne Dumbar of Waistfield, as brother to the defunct; Sir Thomas Hammiltoun.

PRELOCUTOURIS for the Pannell.

Mr Johnne Ruffell, Mr Thomas Hoip, Mr Thomas Nicolfoun, Aduocatis; the Constable of Dundie, elder, the Laird of Monymusk, the Laird of Halkertoun.

The Justice, of consent of ather parteis, continewis this dyet to ffryday nixt. The Assyse wairnit *apud acta*, ilk persone, vnder the pane of twa hundreth merkis.

(Jul. 26.)—The Justice continewis this dyet, as ofbefoir, with consent of ather pairtie, to Wednisday nixt, &c.

(Jul. 31.)—The persewar passis *simpliciter* fra the perfute of the persones on pannell; and is content that thai be put to libertie. Quhairupoune the pannell askit instrumentis.—Compeirit Patrik Dumbar of Blarie, and producet the Counfallis Warrant to the Justice, quhair of the tennour followis.

WARRANT for the *Dumbaris libertie*.

JUSTICE, Justice Clerk, and 3our deputis: Quhear as, Alexander Dumbar of Kilboyak,² (&c.) are to be presentit befor 3ow this present day, to vnderly the lawis for pe slauchter of vmq^{le} the Scheref of Murray: And We, vnderstanding that pe pairtie persewar will nocht insift in the perfute of pir persones, bot ar content and will consent that pai be put to libertie and fredome: Thairfoir 3ow fall tak guid cautionn of thame, that pai fall compeir befor his Maiesteis Justice, the thrid day of pe nixt Justice-air of the scheref dome quhair pai duell,³ or soner vpon a fyftene dayis warning, and vnderly pe law for the Slauchter foirsaid; vnder pe panes contentit in the Actis of Parliament: And this cautionn being fund, 3ow fall put them to libertie and fredome, and suffer pame pas quhair pai pleis: Quhairanent pir presentis fall be 3our Warrant. AT EDINBURGH, the last day of Julij, 1611.

AL. CANCELL^r. JO. PRESTOUN.

Patrik Dumbar of Blarie and Robert Falconer of Ballandro became cautionne for thame, coniunctlie and feuerallie, to the effect aboue writtin.

THE Justice, according to the directioun of the former Warrant, ordanit the saidis persones on pannell to pas frie, and nocht to returne to the said Tolbuthe furth of the quhilk thai war brocht. Quhairupoune Alexander Clerk, ane of the Bailleis of Edinburgh, askit instrumentis.

¹ See Jul. 31, 1616.

² The rest of the names are recited.

³ Elgin.

Egyptians remaining within the Kingdom after Proclamation.

Jul. 31.—MOYSES FA, DAVID FA, ROBERT FA, and Johnne *alias* Willie Fa, Egiptianis.

Dilaittit for Abyding and remaining within this Kingdome, they being Egiptianis; contrair the tennour of the Actis of Parliament.

THE ÆGIPTIANIS DITTAY.

MOYSES FA, DAVID FA, and JOHNNE FA, 3e ar indytit and accuset; That quhair, be Act of Parliament haldin at Edinburgh the xxiiij day of Junij, the 3eir of God I^m.Vj^c. and nyne 3eiris, it was statute and ordanit that all the vagabundis, foirneris² and cownone thevis, cownonlie callit ÆGIPTIANES, fould haif past furth pairof, and nevir returnet within pe samyn, estir pe first day of August, the foirfaid 3eir of God I^m.Vj^c. and nyne 3eiris, vnder the pane of deathe: And that it fould be leifum to all his Maiesteis guid subiectis, or ony of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cownone, notorious, and condempnet Thevis, only to be tryt be ane Assyse, that pai ar callit, knawin, repute, and haldin in³ Egiptianis: NOCHTPELES, 3e and ilk ane of 3ow being vagabundis, foirneris, cownone thevis, repute, callit, and haldin Egiptianis, in contempt of his Maieste and his Lawis, hes presumet to remane in this Kingdome, and hes nocht departit and abiddin furth pairof, sen pe said first day of August, pe 3eir of God I^m.Vj^c. and nyne 3eiris foirfaid; bot be the contrair, 3e and ilk ane of 3ow hes remanet within this Kingdome, in contempt of pe said Act of Parliament, and ar notoriousslie knawin to be Egiptianis, and sua repute and haldin: And pairfoir 3e and ilk ane of 3ow aucht to be demanit to pe death, and suffer pe panes pairof; conforme to the said Act of Parliament.

PERSEWAR, Mr Robert Foullis, substitute to our fouerane lordis Aduocat.

The Pannell, viz. Moyfes Fa, producet ane Licence, grantit to him be the Counsell; quhilk the Aduocat acceptis, *in quantum*.—It is allegit be the Aduocat, that the conditiones specifeit in the Licence grantit to Moyfes Fa is nawayis keipit be the pannell, viz. that he fould find cautioun for fulfilling the perticular injunciones specifeit in his Licence: Quhilk cautioun,⁴ for his nocht entrie afoir⁵ the Counfel, is vnlawit in the pane and penaltie of ane Thowfeand pundis; and the cautioner being charget for payment to the Thesaurer of the said penaltie, hes past to the horne: And thairfoir, in respect of the wordis of the Act of Parliament, and of the nocht payment of the penaltie, as also in respect that the conditiones specifeit in the Licence is nocht keipit, the said Moyfes Faw hes fallin vnder the danger of the said Act of Parliament, and the pane of daith inflictit vpon him; and the remanent perfones, his complices, aucht and fould be vneist to the daith, conforme to the said Act: And protestis for Wilfull Errorr aganis the Assyse, gif thai acquit, according to the said Act: And produces the Counfallis Act contrair the cautioner, quhair he wes vnlawit in the sowe;⁶ togidder with the Letteris of Hoirning vsset aganis him: And repeittis the Depofitioun of James Ballache, testifeing the said Moyfes being in companie and societie with the Egiptianis, and of his geving Band to the said James, for redressing of dyuerse Thiftis: And repeittis the Act of Parliament to the Assyse.

¹ See Jul. 19, 1616. surety.

⁵ Before.

² Who forcibly take free quarters, &c.

⁶ The sum or amount.

³ As.

⁴ Cautioner;

THE Justice, nochtwithstanding of the allegiance proponit be the said Moyfes Fa, vpone the pretendit Licence product be him; and in respect of the anfuers maid thairto be the Aduocat, referrit the samyn Dittay to the knowlege and tryell of ane Assyse.

VERDICT. The Assyse all in ane voce, be the mouth of Williame Murehead, mercheand burges of Edinburgh, chancellor, ffand, pronuncet, and declairit the saidis Moyfes Fa, Daud Fa, Robert Fa, and Johnne *alias Willie* Fa, notoriouflie knawin to be Egiptianis, at the leift sua repute and haldin, to be ffylit, culpable, and convict of contravening the tennour of the said Act of Parliament, in thair contemptuous remaining and abyding within this kingdome, continuallie, sen the said first day of Auguft, in the foirsaid yeir of God I^m. fax hundreth and nyne yeiris, expres contrair the tennour of the said Act.

SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be hangit quhill thai be deid: And all thair moveabill guidis and geir pertening to thame, to be escheit and inbrocht to our fouerane lordis use, as culpable and convict, &c.

Abiding from the Raid of the Isles.

Sept. 17.—JOHNNE M^cMILLANE in Merkelloch, Johnne M^cMillane in Bank, and Cuthbert M^cmillane in Drumreifehe.

Dilaitit for contravening of his Maiesteis Proclamatioun, maid in the yeir of God I^m.Vj^c. and aucht yeiris, in nocht passing fordward with his Maiesteis Lieutenant to the Raid of the Ilis.

For releif of thair Cautioneris, and in respect that thai thame felfis ar na ffrie-halderis nor landit gentilmen, haifing nather landis nor rentis, bot ar removeable Tennentis, and sa nocht comprehendit vnder the saidis Proclamatioun, thay thairfoir compeirit this day and place, in the hour of caus, and offerit thame felfis to the Tryell of the Law, and to vnderly the rigour thairof, gif it war fund that thai war ony wayis comprehendit vnder the said Proclamatioun: And forder, offerit to mak the Kingis Maieftie assignay to thair haille landis and heritages within this realme, gif thai ony had, at that tyme. In respect of the quhilk premisses, and of thair compeirance this day and place, in the hour of caus, and offer maid be thame in maner aboue specifit, thay Protestit for thair cautioneris releif; and that thai fould onnawayis be callit, charget, or trubillit for the said allegit cryme in ony tyme cuming.

Resset and Intercommuning with Mr Alexander Ruthven, &c.— Gowrie Conspiracy.

Nov. 7.—DAUID SPALDING of Effintullie.

Dilaitit of the tressonable Resset and Intercowmoning with Mr Alexander

Ruthven, sone to vmq^{le} Alexander Ruthven of Freland, and suppoirting of him with money and vther intertenement, he being his Maiesteis declairit Tratur, fforfalt in Parliament, and fugitiue, for airt and pairt of the treassonable assist-ing and pairt-taking with JOHNNE, sumtyme ERLE OF GOWRIE, Alexander Ruthven his brother, in the treffonable Conspiracie devyset aganis his Maieftie, at Perth, vponè the fyft day of August, 1600 yeiris.

THE Justice continewis this dyet to the fourt day of Marche, quhilk is the first Wednisday thairof : And ordanit the defender to find caution for his compeir-ance that day. *Plegio, Johanne Spalding de Innerrydray.*

PRELOCUTOURIS for the pannell, Mr Thomas Nicolfoun, Mr Andro Aytoun.

(Mar. 4, 1612.)—My Lord Advocat desyres that this mater may be continewit to the tuentie day of Maij nixtocum, in respect that, be his Maiesteis Letter, directioun was gevin that probatioun sould be ministrat to the Affyse, of the pannellis giltines of the fact lybellit : And that, in the meane tyme, his Maieftie may be acquaintit with the informeris slaknes in the perfute.

THE Justice continewis this matter to the tuentie day of Maij nixtocum. *Plegio, ut supra.*

PRELOCUTOURIS in defence.

Mr John Ruffell, Mr Andro Aytoun, Mr Thomas Nicolfoun, Mr James Oliphant.

(Maii 20, 1612.)—Compeirit Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our souerane lord, and declairit, that informatioun was gevin to him be his Maieftie, to follow furth this perfute aganis the pannell, his Informeris furneiffing probatioun in that matter, vtherwayis to desist : And in respect na diligence is vsed be the Informeris in this eirand, for fortherance of this perfute ; he thairfoir declairit, that he wald nocht insist in perfute of the pannell, at this tyme, bot desyret that the dyet sould desert.—Quhairupoun the pannell and his prelocutouris askit instrumentis, and protestit, that he be nocht callit, charget, or persewit for the crymes aboue specifeit, in ony tyme cuming. And nochtwith-standing of the premisses, in respect of his innocence of the saidis allegit crymes, as he affirmet, offerit him selff instantlie to the tryell of the Law, disassenting to all maner of continuatioun ; protesting also, that na Letteris be direct aganis him for the said Cryme in tyme cuming ; becaus this is the fourt dyet keipit be him in this matter.

Slaughter.

Nov. 8.—JOHNNE FARQUHARSOUN of Innerchald, Allaster Farquhar-foun, his brother, Donald Farquharfoun younger, Allaster Farquharfoun, his brother, James Farquharfoun in Achalater, Johnne Robertfoun of Straloch, *alias Barrone Reid*, Johnne Gairdin in Balliemoche, Findla Farquharfoun in Glenylay.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Clerk in Auldranie ; committit in anno 1610 yeiris.

Compeirit Thomas Sinclair indueller in Edinburgh, and Robert Auchinlek, wryter, as procuratouris, speciallic constitute be Elspeth Kow the relict, and be Andro Howie, now hir spous, for his entreis ; and be vertew of the Letter of Procuratorie grantit to thame, of the dait at Aberdene the third day of November instant, subscryuit be James Daidfoune and Mr Andro Clerk connoteris,¹ in name, and at command, of the said Elspeth and hir spous, past simpliciter fra the perfute of the haill perfonas on pannell, &c.

The pannell protestis that thai nor nane of thame be callit or persewit for the said allegit slaughter in ony tyme cuming.

Slaughter—Stouth-reif—Shooting of Culberings, &c.

Nov. 27.—WILLIAME FORBES of Monymusk.

Dilaitit, accuset, and persewit off the crymes following, viz.

FORSAMEKILL as vpon the nynt day of Maij, the 3eir of God I^m. Vc. fourfoir 3eiris, vmq^{le} Alexander Menzeis, sone to vmq^{le} Gilbert Menzeis of Culrie, Proveist of Aberdene, being directit be the said vmq^{le} Gilbert Menzeis of Culrie, his fater, to vissie² ane Halk-nest appointit be him to haif bene keipit and preferuet to our fouerane lordis vse and plesoure,³ within the Craig⁴ of Findoun, pertening heritabillie to the said Gilbert Menzeis, oy⁵ to the said vmq^{le} Gilbert Menzeis of Culrie, lyand within the Scherefdom of Kincairdin ; the said vmq^{le} Alexander Menzeis, estir visitatioun of the samyn, and that he had ordanit the tennentis of the saidis landis of Findoun to geve earnestt attendance to the keiping of the said halk-nest⁶ for his Maiesteis vse, as said is ; he being in sober and quyet maner returneand thairfra, cumand agaitwardis to the burgh of Aberdene, trusting in the meane tyme na inquieta-tioun, truble, harme, nor iniurie to haif bene done to him, be ony perfonas ; bot to haif frelie past furth the hie way, as his hienes frie subiect, in respect that he had offendit na man, nather be word nor deid : Neuertheles it is of veritie, that the said Williame Forbes of Monymusk, accompaneit with Alexander Robertfoun, Thomas Dik, and Mylne, then his servandis, and ytheris thair complices, with convocatioun of our fouerane lordis legis, to the number of aucht perfonas, or thairby ; bodin in weirlyk maher, with secreitis,⁷ steil-bonettis, gantiletis, suordis, culveringis, and pistolettis, expresse prohibeit to be borne, worne, vsed vpon thair perfonas or in thair companeis, privatlie or oppinlie, outwith houffis, or schote with, be the Actis of Parliament, vnder the panes thairin contenit ; vpon the said nynt day of May, the yeir of God foirsaid, the said Williame Forbes, with his complices, came tymoussie in the moirning, befor the sone-ryseing, to the Cairne⁸ of Loriestoun, lyand within the scherefdom foirsaid, quhair thay darnet⁹ thamefelffis, maist obscurlie, behind the said Cairne, with thair

¹ Co-Notaries. ² Inspect. ³ King James VI., like many others of his ancestors of the Royal House of Stuart, was passionately fond of the sport of Hawking, and appears to have spared no expense in procuring the finest breeds, from various parts of Scotland (chiefly from the North of Scotland and from the Western Islands and Orkney.) The choicest kinds seem to have been brought from Denmark and Norway ; and, in many instances, the Falconers, who had trained them in those countries, were taken under the King's immediate protection and patronage.

⁴ Craig, a precipitous rock or crag. ⁵ Grandson ; oe. ⁶ The books of the Lord High Treasurer abound with entries of payments to men 'for watching a halkis-nest' at such a place, so as to secure the brood, and give timely notice when they were fledged and ready to take wing.

⁷ A shirt of chain-mail, secretly worn under the ordinary dress. ⁸ A heap or pile of stones, commonly erected on an eminence, which marks the place of sepulture of some remarkable persons. Cairns were often reared to preserve the memory of a remarkable Murder, &c. ⁹ Concealed ; hid.

chargit culveringis, placet vpon restis,¹ awaiting the said vmq^{le} Alexanderis bycuming, for his slauchter : Lyk as, thay lay at await for his slauchter behind the said Cairne, continuallie, fra befor the sone-ryeing, quhill about aucht houris in the moirning; till at last, haifing perfauet the said vmq^{le} Alexander soliter, him self allane, in sober and quyet maner, cumand by the said cairne, thay, af thair restis, dischargit thair culveringis at him, or euir he was circumspect of thame; and thairwith schote him throw the heart and body with tua bullettis; and thairby, maist schamefullie, crewallie, and vnmercifullie slew him, upone set purpois, prouisioun, be way of Brigancie,² in vmbefetting the hie way, and foirthocht fellonie : AND nocht being satisfeit thairwith, thay seing him fall doun deid with the said schote, thay incontinent thairestir ruschet fordwaris to him, and with thair suordis and quhingeris maist schamefullie, crewallie, and tirannoussie gaif the said Alexander nyne bludie woundis about his heart, nochtwithstanding that thay had perfauet him lyand deid and slane be thame of befor : AS ALSO, at the samyn tyme, be way of stouthreif, staw,³ rest, and away tuik with thame his suord, quhinger, cloik, and uther graith being vpon him; had and convoyit the samyn with thame, and disponit thairupoun at thair plefour : And the said Williame Forbes of Monymusk is airt and pairt of the said crewall Slauchter of the said vmq^{le} Alexander, and of the Maisterfull stouth-reif of his fuord, quhinger, cloik, and vtheris aboue writin. FOR the quillkis, and for contravening the tennour of the said Act of Parliament, in beiring, weiring, and schuiting of the saidis Culveringis, dagis, and pistolettis, he aucht and sould be puneist, conforme to the Lawis of this realme.

PERSEWARIS, Gilbert Menzies of Pitfoddellis, as eldest brother-sonne; Sir Thomas Hammiltoun of Byres, kny^t, Aduocat, &c.; David Menzeis of Tilliepowreis, as brother.

PRELOCUTORIS in defence, My Lord of Mar, My Lord of Moirtoun, Mr Thomas Henderfoun, Mr Alexander Peiblis, Mr James Oliphant, Aduocattis.

Efter the reiding of the said Dittay and accufatioun of the said Williame Forbes of the saidis crymes, the Aduocat, with the parteis persewaris aboue writtin, his informeris, befor all forder proces, past fra that article of the Summondis anent the 'Stouth-reif,' *pro loco et tempore* : As also declairit, that he wald nocht insist vpon that woird of the Dittay beiring 'foirthocht fellonie : ' And adherit allanerlie⁴ to the Slauchter and committing thairof, in maner contenit in the Dittay, be schottis of hagbuttis and pistolettis; and in beiring and weiring of the saidis hagbuttis, contrair the Actis of Parliament : Quhairvpon instrumentis was tane be the said Williame Forbes of Monymusk and his prelocutouris; quha, nochtwithstanding thairof, offerit thame selffis reddie to defend for the saidis crymes past fra. And as concerning the Slauchter aboue writtin and remanent crymes lybellit, allegit that the Justice could not put the samyn to the Tryell of ane Assyse, becaus nocht only had the said Williame obtenit tua feuerall Letteris of Slanes fra tua of the brether to the defunct, in respect of thair satisfioun contenit thairin; bot also, the Kingis Maiestie, of his special grace and mercie, hes, be his Letteris of Remissioun, pardonit and remittit the said Williame Forbes of Monymusk for the saidis crymes : And for verificatioun

¹ When the culvering or musket was first introduced, the barrel was so heavy as to require a separate staff, called a *rest*, from which a deliberate aim could be taken. The circumstance of the culverings being placed upon their rests, is noted as an aggravation of the crime, and a strong proof of the malice of the parties. Specimens may be seen in *Grose*, or in the more recent publication of *Meyrick on Ancient Armour*, &c.

² Fr. *brigand, brigancie*.

³ Stole.

⁴ Alone; only.

thairof, producet tua feuerall Remiffiones, baith vnder the Grit Seill ; the ane, for the Slauchter aboue writtin, daitit vpon the xxvij day of Junij laft, and the vther, daitit vpon the firft day of Auguft laftbypaft, for beiring and weiring of the hagbuttis and piftolettis ; and vpon the productioun thairof askit instrumentis. To the quhilkis Remiffiones, and his Maieftis pardoun fet down thairin, the faid Williame Forbes tuik him self, and offerit caution to fatisfie fa mony of the kyn and freindis of the faid vmq^{le} Alexander as ar nocht fatisfieit alreddie, according to the modificatioun of the Lordis of Sefsioun, and thair Declaratour to be gevin thairintill.

Quhilkis tua Remiffiones, the Justice admittit ; and ordanit the faid Williame Forbes of Monymusk to find the faid Caution for the parteis satisfioun, in maner aboue fpecifeit : Quhairupoun the faid Williame Forbes askit instrumentis.

And for obedience of the faid Justice Ordinance, ffsand Williame Forbes of Port-Lethem caution with him self, coniunctlie and feuerallie, to fatisfie fa mony of the kyn and freindis of the faid vmq^{le} Alexander, as ar nocht fatisfieit alreddie, for the Slauchter aboue fpecifeit ; conforme to the modificatioun of the faidis Lordis of Sefsioun, and thair declaratour to be gevin thairintill, as law will : Quhairupoun the faid Gilbert Menzeis of Pitfoddellis, as eldest brother-sonne, and the faid Dauid Menzeis, as brother to the defunct, askit actis and instrumentis.

Murder under colour of Law—Drowning for a petty Crime, &c.

[THE Case which follows seems to have taken its origin from feelings of vindictive malevolence, on the part of a Notary in Lanark, a dependent of the Laird of Lee ; who, to gratify his base and revengeful temper, adopted the plan of conspiring against his patron's life and fortune, by accusing him of Murdering a poor man, under colour of Law ! This tale was so well got up, that the Lord Advocate entertained his complaint, and raised Criminal Letters against Lockhart. A more effectual channel was likewise made use of by Weir the Notary, who directly complained, through the Marquis of Hamilton, to the King, who was at all times accessible to such accusations of oppression ; from the double motive of desire to redress the wrongs of his injured subjects, and from his overmastering ' greed of filthy lucre : ' for many were the schemes resorted to by the British Solomon to enrich his coffers with the proceeds of the heaviest fines and pecuniary compositions which could be exacted, as peace-offerings, to appease his Majesty's inflexible justice ! A doubt having arisen in the mind of the Editor as to the truth of the accusation contained in the Criminal Record, he made a pretty extensive search, and has fortunately been enabled to trace the matter to its origin. Without proper vouchers having been produced, the reader would naturally have inferred, from a close inspection of the Record, that the Lord Advocate had been tampered with by some powerful friends of this influential Baron of Lee—and that Lockhart had been really guilty of the atrocious crime imputed to him by his accusers. The Letter from the Privy Council to the King, and the Deposition of Weir, which are appended, satisfactorily explain the matter, and clear the character of the Laird of Lee from the slightest suspicion on this score.]

Dec. 3.—JAMES LOKHART of Lie.

Dilaitit for Drowneing and puting violentlie to death of vmq^{le} James Watfone, in Auchcat-burne, and vtheris crymes fpecifeit in his Dittay.

In respect of the Advocate's absence, he protestis for relief of Johnne Lokhart of Bar his cautioner : And he farther protested for relief of George Auchinleck of Balmanno, cautioner for ' his compeirance befor my Lord Justice and his deputis, in the Tolbuth of E^r, vpon the xx day of December instant, and that he be nocht haldin to compeir the said day,' &c.

Dec. 20.—Compeirit James Lokhart of Lie, quha proponit and declairit, fforfamekill as he being charget, &c., in the moneth of October lastbypast, to find caution to haif compeirit befor the Justice or his deputis, vpon the saxt day of November thairefter, now lastbypast, in the hour of caus, to haif vnderlyne the Law for the allegit Murthour and putting to death of vmq^{le} James Watsone, vnder cullour of Law ; as he that was convict of sic meane crymes, as, be the Lawes of this realme, the dome of death could nocht be inflicted vpon ; and for certane vtheris allegit crymes, at lenth specifeit in the Letteris direct thair-ament. The said James Lokhart of Lie, the tyme of the geving of the said charge, being furth of this realme, in the pairtis of England, yit nevertheles, be the advyse of his freindis, in his absence, efter knowlege gevin to thame of the said charge, and for eschewing of the danger of Hoirning contenit in the saidis Letteris, in caice of disobedience, George Afflek of Balmanno became cautioner for his entrie, the said saxt day of November, to vnderly the Law for the saidis crymes ; at the quhilk day, the said George Afflek haifing, in respect of the said Laird of Leyis nocht returning, obtenit of the Lordis of Seffioun thair Lordschipis Warrant, direct to the Justice, for continuatioun of the dyet that day, to this present day : The Justice, for obedience of the said Warrant, of consent of my lord Aduocat, personallie present that day, as persewar, continewit the said dyet to this day. Lykas, the said George Afflek than become cautioner, &c.

In respect that my lord Aduocat nor na vther pairtie compeirit this day and place, as persewaris, to insist in his persute, being oft tymes callit to that effect, thairfoir Protestit for releif of the said George, &c. Quhilk Protestatioun the Justice admittit : Quhairupoun the said Laird of Lie askit instrumentis.

I. LETTER, *the Privy Council of Scotland to THE KING.*

MOST GRACIOUS AND SACRED SOUERANE,

ACCORDING vnto your Maiesteis directioun, send vnto me, for trying of those contradictorie informationis maid to your Maiestie be the MARQUES OF HAMMILTOUN¹ and THE LAIRD OF LEE, anent the executioun of *vmquhile James Watsone*, and setting to libertie of *Jannet Forrest*, his spous, I caufit warne the Marques and the Laird of Lie to compeir this day, for iustifeeing of thair informationis. The

¹ James, *second* Marquis of Hamilton, a nobleman high in favour with the King, who granted him the Abbey of Aberbrothock, which was erected into a temporal Lordship, appointed him a Privy Councillor, one of the Gentlemen of the Bed-Chamber, Lord Steward of the Household—and subsequently, created him an English Peer, with the titles of Baron Ennerdale, and Earl of Cambridge, Jun. 16, 1619. Besides other great appointments, he was High Commissioner to the Parliament at Edinburgh, August 4, 1621, and was installed Knight of the Garter, Jul. 7, 1623. He died at Whitehall, Mar. 2, 1624-5, ætat. 36. He married Lady Anne Cuninghame, fourth daughter of James, *seventh* Earl of Glencairn.

Marques comperit be Sir Johne Hammiltoun, his brother, who affermed, that Jedeone Weir, notair in Lanerk, and Clerk of the proces led againis the said v^mq^le James Watfoun, declairit and shew vnto the Marques, that this Watfone and his spous wer onlie callit and convict, and Watfoun execute, for steilling of ane lamb, and that the wyffe, after her convictioun, wes sett at libertie. And for verificatioun of this his affermatioun, he exhibite the said Jedeone Weir; who, vpoun examinatioun, confessit that he had gevin this informatioun to the Marques, as alswa to your Maiesteis Aduocat, the tyme of the raising of the Criminall Letteris aganis Lie; as your Maiestie, be his Depositioun, heirwith fend vp, will perfare. The Laird of Lie compeirand, affermed constantlie, that this Watfoun wes callit and convict, vpoun his awin judiciall Confessioun; and accordingleie execute, for the steilling of nyne scheepe. And for verificatioun heirof, he produceit the proces, writtin every worde with Jedeone Weiris awne hand; whilk, being showne vnto him, he could not deny the same.

This is all that hes bene tryit in this mater; whairby it appeiris, that the Marques hes bene abusid¹ be the said Jedeone Weir, who, vpoun some priuat passioun and miscontentment aganis the Laird of Lie, maid this informatioun. And as for the wyffe, thair wes no thing verifeit aganis hir, bot the stealing of ane lamb, confessit be hir self. Whairupoun she wes dimittit,² in respect that the Assise could gif no verdite aganis hir. At this examinatioun, I wes assistid be the Archiebischop of Glasgw,³ the Erll of Glencairne,⁴ the Lord of Scone,⁵ the President,⁶ Preuie Seill,⁷ Secretair,⁸ Justice Clerk,⁹ Aduocat,¹⁰ and Sir Robert Meluill;¹¹ who all thocht meete that Warrant and directioun fould be gevin for deserting of the dyet appointit for the Laird of Lies tryale; whilk accordingleie wes done, whill the forder knowledge of your Maties gracious will and pleasour heiranent, whairvnto I fall conforme my self. And so, with my humble and hairtie prayeris vnto God, recommending your sacred Matie and all your royall progenye to his faderlie and devyne protectioun, I rest for ever,

Your Maiesteis most humble and obeyent subiect and seruitour,

(EDINBURGH), 28 Nouember, 1611.

DUNFERMELINE.

TO THE KING his most sacred Majestie.

II. ; JEDEAN WEIR, his DEPOSITION, 27 Nouemb. 1611, anent Laird Lie Lockhard,⁷
referred to in the foregoing Letter.

JEDEONE WEIR, notair in Lanerk, sworne, and demandit vpoun the forme and maner of the Dittay and accusatioun of v^mq^hile James Watfoun in Lie Mure, and Jonnet Forrest, his spous, and of the convictioun and executioun following thairupoun: Deponis, that the said v^mq^hile James and his spous wer only callit and persewit for the stealing of ane lamb; and that thay wer convict thairof: And that the said James Watfoun wes drownit for the stealing of the lamb; and that the said Jonnet Forrest, his spous, wes sett at libertie: And that this Deponner wes Clerk of the proces; and that the proces is writtin with his awne hand: And this he deponis, so fer as his memorie seruis him. And deponis, that he gaif this informatioun to the Marques of Hammiltoun, as alswa to Sir Thomas Hammiltoun of Byris, knight, his Maiesteis Aduocat.

TENET cum principali, J. PRYMROIS.

Chest—Falset (Forgery)—Imposture—Perjury, &c.

Dec. 12.—DAVID DONALDSOUN, chopman in the Cannogait.

Duped; imposed upon. ² Dismissed *simpliciter* from the bar. ³ John Spotiswood, the Church Historian, &c. ⁴ James, seventh Earl of Glencairn. ⁵ David, first Lord Scone, who, while he was Sir David Murray of Gospertie, was successively Cup-bearer, Master of the Horse, Captain of the King's Guard, and Comptroller. For the share he had in rendering the King so essential service, on occasion of Gowrie's Conspiracy, he got the Barony of Ruthven, with the Abbacy of Scone, which last was erected into a temporal Lordship; and he was afterwards created Viscount of Stormont. ⁶ John Preston of Fenton Barns, President of the College of Justice. ⁷ Sir Richard Cokburn of Clerkington. ⁸ Sir Thomas Hamilton, afterwards Earl of Haddington. ⁹ Sir John Cokburn of Ormiston. ¹⁰ Sir Thomas Hamilton. ¹¹ Of Bruntisland, one of the Extraordinary Lords of Session.

Dilaitit of the ffalfiefeing, fforgeing, and counterfuteing of ane fals Affignatioun, &c. fpecifeit in his Dittay following.

PERSEWARIS.

Sir Thomas Hammiltoun of Byres, kny^t, Johnne Alfhunder,¹ indueller in the Cannogait.

DAUID DONALDSOUN, chopman in the Cannogait, 3e ar indytit and accufet, fforfamekill as 3e, haifing ingyret² 3ourfelf in the acquentance of Johnne Alfchander, indueller in the Cannogait, ane pur, aged, fimple³ man, wanting childrene and freindis ;⁴ of fet purpois to mak 3our advantage, vnlauchfullie, of him, and to defraud him of that fmall portioun of geir quhilk refted⁵ to him for his intertenement,⁶ in his decriped and decayed age ; and be 3our flatteris and fubtelteis, promeiffing to him 3our affiftance in his actiones and effairis, with his intertenement in 3our houfe ; haifing pairby obtenit of him credeit to handill and pervyfe his writtis and eidentis ; 3e, in the moneth of September, or pairby, in the 3eir of God I^m.Vj^c. and ellevin 3eiris, thiftiouflic ftaw and conceillit frome him, and retaynit in 3our handis, tua Obligationis maid to him ; the ane pairof, of the dait the xxj day of Januar, I^m.V^c.lxxxxvij 3eiris, quhairby Johnne 3oung in Dudingftoun was obleift to pay to him the fowme of ane hundreth pundis, and fail3eing pairof to infeft him (in) ane annuel-rent ; and the vper, of the dait the fyft day of Februare, I^m.Vj^c. and ten 3eiris, quhairby Johnne and Thomas Carffis was bund to the faid Johnne Alfchunder to pay to him pe fowme of ane hundreth and tuelf pundis : And redelyuering to him pe reft of his writtis, 3e affirmet to him, that 3e had delyuerit to him his hail writtis and eidentis. AND eftir that 3e had thiftiouflic ftowin fra him his faidis Obligationis, in maner and at pe tyme aboue fpecifeit, and had confiderit with 3our felff that pe faidis Obligationes wald be vnproffitable to 3ow vnles 3e war maid affignay pairto, and knowing alfo that pe pur man was nocht altogidder fo fenfles as to denude him felf of his hail guidis, geir, obligationes, and dettis in 3our fauour, being ane ftranger, to quhome he was nawayis obleift, and quhome he had no reffone to trust with his hail moyane and eftait ; 3e, fallic, wicketlic, and effrontellie refoluet to fforge, counterfute, and ffalfiefie to 3our felf and 3our awin behuife ane Affignatioun to the faid Johnne Alfchunderis foirfaidis Obligationes and hail remanent guidis and geir : ffor performeance quhairof, knowing that 3e behovet to haif pe affiftance of fum man quho wald tak vpon him pe name and represent the perfonage of the faid Johnne Alfchunder, 3e firft delt with Ramfay, ane aged begger, to play that perfonage ; and eftir 3e had craftillie intyfed him to consent pairto, 3it foirfeing⁷ with 3our felff the grit and mony

¹ Alexander. ² To ingratiate, by artifice and circumvention. From Lat. *in*, and *gyro*, to twist or turn round ; to entwine, &c. ³ Weak ; facile. ⁴ Childless, and having no blood-relations, &c. to care for him in his old age. ⁵ Remained. ⁶ Livelihood ; maintenance. ⁷ Forefeeing

differences, in fauour and stature,¹ betuix him and þe said Johnne Alschunder, wald easilie bewray 3our falsset, 3e delt with Cuthbert, cordiner in the Kowgait, quha haifing refuifet to be actour in so pernicious and wiked ane interpryse, at last 3e delt with Johnne Henrie, cobbler in the Cannogait, and finding him bothe fit and willing to play the pairt of so damnable a tragedie, and knawing that gif his face sould be sene bare and vncoverit, it wald be þaireftir easilie discoverid, that he haifing the sicht of bothe his eyis nicht easilie be discernit from Johnne Alschunder, quho is blind of one of his eyis, 3e causit þe said Johnne Henrie cover one of his eyis and þe syde of his face with ane blak clothe, vpon the tuelf day of November lastbypast, and than informet him sufficientlie of all the circumstances necessar to be vsed þe him in the representatioun of the persone of the said Johnne Alschunder, for accomplieffing 3our wicket, pernicious, and fals purposis: And immediatlie þaireftir, convoyit him with 3ow to the toun of Leith; and pair travellit with Patrik Glasfurd, notter, to forme ane Affignatioun to 3ow of the foirsaidis Bandis, and of the said Johnne Alschunderis haill remanent guidis; quhilk being done at 3our desyre, 3e þaireftir convoyit the said Johnne Henrie, cobbler, to þe wryting-buithe of the said Patrik Glasfurd in Leyth, in quhais presens, and in þe presens of Archibald Norwell, connotour,² and dyuerse honest witnesses, altogidder ignorant and innocent of 3our false, dissaueabill, and wicket purposis, the said Johnne Henrie, cobbler, quhome 3e supposed in place of þe said Johnne Alschunder, and quho, of 3our speciall causeing, command, counsell and persuasioun, taking vpon him, falselie and mischantlie,³ þe name and personage of þe said Johnne Alschunder, gaif command to the saidis connoteris to subseryve to 3ow and in 3our fauouris the foirsaid Affignatioun⁴ to the said Johnne Alschunderis Obligatiounes and guidis. Quhilk being done, and subseryuit be þe saidis Notteris and witnesses insert; and þe Notteris, for dischairge of þair deutie, haifing proponit to 3ow, that ressonne and conscience requyret that 3e sould provyde for þe pure auld man Johnne Alschunderis intertenement, during his lyftyme, 3e consented that þai sould forme ane Bak-Band, obleiffand 3ow to him to þat effect, during his lyftyme; quhilk 3e subseryued and delyuered to the said Johnne Henrie, affirmeing him self fallsie to be the said Johnne Alschunder: AND schortlie þaireftir 3e causet registrat the foirsaidis Obligatiounes, and gaif in the said Affignatioun to the Register; and

¹ In point of looks, complexion, personal appearance, and stature. ² Co-Notary. ³ From O. Fr. *meschant*, wicked, worthless, &c. ⁴ By the Law of Scotland, blind or maimed persons, and those who cannot write, may execute Last-wills and deeds of the greatest importance and solemnity, through the medium of two Public Notaries, who, in presence of four or more witnesses, read over and explain the nature of the Deed to be then completed; and on getting the instructions of the party, write out an official and Notarial schedule, or '*docquet*,' as it is called, attesting the fact, and stating precisely the reason of their being called upon to subscribe the deed in question. On the Notaries adhibiting their official signatures—the witnesses likewise, in attestation of the fact, subscribing their names—the writing is perfectly valid in Law.

pairupoun and vpone the said fals Assignatioun 3e raifet Letteris of Poinding and Intromiffioun, and fallie, wicketlie, and thiftiouflie mellit¹ and intromettit with fourtene fcheip pertening to the said Johnne Alschunder, flew and difponit vpone tua of thame, fauld and difponit vpone the reft, and waifed and confumed the price pairof in fatisfeing the gluttonie of 3our deboifched² affociattis: AND being callit befor þe Lordis of Secreit Counfell, 3e abaid at þe verritie of the said Assignatioun, vpone 3our grit aith, and vpone the perrell of 3our lyfe: LYKAS, 3e haifing abiddin þairat, in prefens of the Lordis of Sefsioun, and peruredlie avowed the fame to be ane trew evident, eftir that be þair dilligence in 3our Examinatioun, 3e was put frome all cullour of iufitfeing þairof, 3it 3e maliciouflie and impudentlie preifed to cleir 3our felff, and bring wrangus imputatioun pairof vpone 3our innocent wyfe and hir ffather. QUHAIRBY, 3e haif committed the crymes of Thift, Impoifture, Periuurie, Falfet, and Diffaitful fuppositioun of ane counterfute perfonage, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alschunder, to his diffait, preiudice, and manifft oppreffion, in maner aboue writtin. For the quhilk, 3e aucht to be exemplarlie punefchet, as ane Theif, abufear, impofture, and periuured falfer, and perfuader of ane pernicious villane to vfurpe, affume, and tak vpone him the name and perfonage of ane of his Maieftis trew fubiectis, for his diffait and ouerthrow.

THE perfones of Affyfe being chofin, fuorne, and admittit, eftir accufatioun of new agane of the said Dauid Donaldfoun, be Dittay, in thair prefens and audience, of the crymes aboue writtin, and eftir production to thame, be our said fouerane lordis Aduocat, of ane Decreit of the Lordis of Sefsioun, of the dait the elleuint day of December instant, finding and declairing the foirfaid Assignatioun allegit, maid and grantit to the said Dauid Donaldfone be the said Johnne Alschunder, in maner fpecifeit in his Dittay, to be ffals and fenzeit in the felf, forget, and devyfet be the said Dauid; and thairfoir, decerning and ordaning him to be punefchet in his perfone and guidis thairfoir with all rigour, in exampill of vtheris.

VERDICT. The Affyfe, be the mouth of Johnne Mathie, bonat-maker, chancellor, ffand, pronuncet and declairit the said Dauid Donaldfoune to be Giltie, culpable, and convict of the crymes of Thift, Impoifture, Periuurie, Falfet, and Diffaitful fuppositioun of the said Johnne Henrie, cobler, ane counterfute knaif, fallie, wicketlie and diffaueabillie to affume and vfurpe the name and perfonage of the said Johnne Alschunder, ane pair, aget, fimple man, to his diffait, preiudice, and manifft Oppreffion; in maner fpecifeit and at lenth fett down in the said Dittay.

¹ O. Fr. *mesler*, to intermeddle, &c.

² O. Fr. *desbauché*, debauched, worthless, &c.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and his haill moveable guidis and geir to be efcheit and inbrocht to our fouerane lordis vse, as culpable and convict of the saidis crymes:—And lykwayis, Ordanit thir woirdis, ‘FOR THIFT, FOR FALSET, FOR IMPOSTURE, AND PERIURIE,’ to be writtin in grit letteris vpone tua feuerall paperis, and affixt, ane vpone his bak, the vther vpone his breift, the tyme of his executioun. Quhilk was pronuncet for Dome.

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

ASSESSORES *nominat to the Justice be the Lordis of Secreit Counsell.*

Mr Johnne Prestoun of Pennicuik, President of the College of Justice; Sir Richard Cokburne of Clarkingtoun, Lord Previe Seall; Sir Alexander Drummond of Medope; Mr Williame Oliphant of Newtown.

‘**Invasion**’—**Taking Captive**—**Wearing Hagbuts, &c.**

Dec. 21.—WILLIAME DOUGLAS, Younger of Drumlanerig.¹

Dilaitit of the Invaiding and perfewing of Williame Kirkpatrick of Kirkmichell; and for Vsurpatioun of our fouerane lordis royall pouer and authoritie, in taking him Captiue and Priffoner at Dreffitland, and thairfra transpoirting him to the place of Drumlanerig, quhair he was detenit; and keiping him in cloise priffone, within the Tour of Drumlanerig, for the space of sax or sevin dayis, or thairby, he being our fouerane lordis frie lege; committit vpone the fyftene day of July, 1610 yeiris: And for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and pistolet tis.

PERSEWARIS, Williame Kirkpatrik, appeirand of Kirkmichell; Sir Thomas Hammiltoun of Byres, kny^t. PRELOCUTORIS in defence, Mr Alexander King, Mr Thomas Hoip, Aduocatis; my Lord of Angus; my Lord of Wigtoun; Sir James Douglas elder of Drumlanerig; my Lord Sanquhar.

It is allegit—na proces at Kirmichollis instance, becaus he is rebell; and producet the Hoirning for verificatioun thairof, at the instance of the Laird of Cloisburne elder, for nocht payment of the pryces of certane victuall. It is ansuerit, aucht to be repellit, in respect he is relaxt; and producet the Relaxatioun thairupoune.—It is forder allegit, that he is at the horne for nocht payment of the Taxatioune.—Thaireftir, my Lord Aduocat declairit that he had Warrant of his Maiestie to perfew, and conforme thairto, declairit he wald infist in the pannellis perfute, for the crymes contenit in the fummondis.

It is allegit be my Lord Aduocat, that this Hoirning for the Taxatioun aganis Kirkmichell can nocht debar him to perfew, becaus, be Act of Parliament, in anno 1597, it is appointit that all Hoirningis execute aganis ony pairtie, fall ather be producet judiciallie, or in presens of ane Notter and foure witnesses: And trew it is, that the Registratioun thairof is contrair to the said Act. It is

¹ See the Case of Alexander Kirkpatrick, sone to Sir Thomas K., of Cloisburne, kny^t, Jun. 28, 1611.

anfuert that the Act of Parliament in anno 1597 is tane away by a pofteriour Act of Parliament, viz. in anno 1600.—It is allegit be my Lord Aduocat, that this Hoirning is nocht competent in the perfone of the pannell, feing it is nocht execute at the pannellis instance for ane criminall caufe; and forder, the pairtie perfewar is relaxt, albeit he haif nocht his Relaxatioun vpoun him. It is anfuert, it is verrie competent to allege na proces at the instance of the perfewar, fa lang as he ftandis rebell.

THE Justice, with advyfe of the Affeffouris, ffindis na proces at the instance of Kirkmichell, fa lang as he ftandis rebell, vnrelaxt.—Quhairupoun the pannell askit instrumentis.

My Lord Aduocat declairis he infiftis, for his Maieftis intreis, in perfute: quhairupoun the pannell askit instrumentis.

It is allegit, that my Lord Aduocat man (*must*) condiscend in the Summondis: *Firft*, that the pannell, anent the beiring of Piftolettis, thai war borne on his perfone: *Secundo*, gif thai war borne in his companie, man¹ condiscend vpone that perfone: *Tercio, non fuit dolo*, becaus gif any was borne in his cumpany, it was by² his knowlege.—It is anfuert, aucht to be repellit, in respect of the Summondis beiring that the Laird of Drumlangrig and his complices, at the leift ane or vther of thame, buir piftolettis at the tyme lybellit, viz. thais quha ar exprefit in the Summondis, and euerie ane of thame, at the leift ane or vther of thame.

THE Justice, with advyfe of the Affeffouris, ffindis the fummondis, as thai ar fett down, to be relevant, beiring that the pannell, with thair complices, lurkit and darnit³ thame felfis in maner lybellit.—Quhairupoun my Lord Aduocat askit instrumentis.

It is allegit, that the pannell can nocht be convenit for *Williame Douglas of Reidhous*, becaufe the faid Williame, being convenit for piftolettis afoir the Counfell, was fynet be the Counfell thairfoir; and producet ane Decreit of Counfell, for verifeing thairof: And in respect of the Act of Parliament, in anno 1600, can nocht be perfewit afoir the Justice, for that cryme, of new agane.—It is anfuert, aucht to be repellit, in respect of the Summondis. It is allegit, that Williame Douglas being perfewit at the instance of the pannell, befoir the Counfell, for bering of piftolettis, and the (injury) done to the pannell the tyme lybellit; as the Decreitis beiris: It is thairby tryit,⁴ that the beiring thairof was in Kirkmichellis companie, and nocht in the pannellis company: *Secundo*, feing Douglas is fynet befoir the Counfell fen that cryme, as be the faid pofteriour Act of Parliament he fuld nocht be of new perfewit befoir the Justice for that cryme, *per confequentiam* the pannell can nocht be perfewit as haifing Douglas in his companie.—It is anfuert be the Aduocat, that it is a verrie evill confequence,⁵

¹ Must. ² Without; contrary to. ³ Concealed; hid. ⁴ Decided. ⁵ A very false conclusion.

and the allegiance aucht to be repellit, in respect of the Summondis.—It is allegit for *Hob Hunter*, that he was deid before the tyme lybellit; quhilk he offerris to preve, be Witnesses present at the bar.—It is anfuert, that that probatioun can nocht be reffaut, bot man be tryit be the Assyse.—It is allegit that the Summondis is nocht relevant, except the perfonen contenit in the Summondis war the pannellis houshald serwandis, or cum furth of his house with him; be his directioun, and that thai¹ war borne *ex mea scientia*: And that na fact or deid is done with pistolettis to the hurt of ony persone, quhilk is nocht exprest in the Summondis.—It is anfuert, aucht to be repellit, in respect of the Act of Parliament and Dittay foundit thairupoun: And forder, seeing the lyk perfute hes oft tymes bene decydet and fund relevant in this Judgement ofbefoir, desyres my lord Justice to advert thairvnto.—It is anfuert be the pannell, that the preceis wordis of the Law is not to be respectit, bot *anima et ratio legis*, for the Law-maker is nocht to puneise perfonen for haifing pistolettis in thair cumpany by² thair knowlege, bot³ the breker of the Law be schuting of pistolettis, and beiring of thame of purposis to offend thairwith.—Anfuert the Aduocat, aucht to be repellit, in respect of the Act of Parliament, quhairto he referris him self.

THE Justice, with advyse of the Assessoris, Repellis the allegiances, in respect of the lybell as it is set doun, except for *Reidhous*, quhilk the Justice continewis that matter quhill⁴ the Counsell be advyset thairwith.

It is forder alleget for the pannell, that feing the Judge has ffund the Dittay relevant, in respect he and his complices darnit and lurkit in maner lybellit; that thairfoir, the pannell can nocht be convenit for *Williame Douglas* beiring of pistolettis; becaus it is cleir, be the Decreit of Counsell productet, that *Reidhous* wes vpon the Ball-grene, playing with him, Kirkmichell, the hail lycht, and sa possibillie could nocht be darnit ofbefoir in the leght; and the persewer is nocht able to afferme that thai war darnit eftir the boillspell⁵ dissoluit.—It is anfuert be the Aduocat, it is nawayis contrair, feing *Williame Douglas* mycht haif bene in Kirkmichellis company afoir none, and with the pannell (efter none).

It is allegit be the pannell, that the taking of ane man is nocht capitall, bot is only persewit as ane Ryote befor the Counsell; and productet tua practikis⁶ led afoir the Counsell for the lyk cryme.—It is anfuert, aucht to be repellit, in respect of the cowmoun Law and practik obseruit befor the Justice in the lyk perfutes ofbefoir: Repeittis Dumbrekis practik, M^cgregouris, and Fintreis for verifeing thairof.—It is anfuert, for *Dumbrekis* practik, that he is nocht sa

¹ Viz. the pistols. ² Without. ³ Unless. ⁴ Until. ⁵ After the party broke up. This term is commonly written and pronounced *Bonspeil*, signifying a contest between two parishes or parties at 'curling' on the ice, archery, golf, &c. It is likely, in the present instance, to have been a match at 'golf,' or, more probably, *foot-ball*, both of them favourite games in Scotland. The *Ball-green* favours this conjecture. ⁶ Decisions; instances; parallel cases.

mekill convict for taking of the Kingis frie lege, as for Thift and Stouthe-reif; quhilk he referris to his convictioun.—It is allegit be the Aduocat, that *Dumbrek* is convict of Treffone, for the taking and detening of Meldrum of Aquhorteis, and Andro Meldrum his brother. Allegis the lyk for *M^cGregouris*, quha war bayth convict and put to the death for the saidis crymes: And as for *Fintrie*, the Summondis was ffund relevant, albeit he was abfoluet be þe Affyfe.—It is anfuerit be the pannell, thair was ma¹ cryme conioynt in thair Dittayis, nor² fimple Taking only, and mair nor ane Taking; and the Law Ordanis *exercitium Privati carceris*, only to be ane cryme, *loco*, ‘*Jubens*,’ *codice*, ‘*de Privatis carceribus*,’ *et Baldus ibid.*: Quhilk Law is also derogait be ane posteriouir Law in that samyn Title, be quhilk (*exercitium*) *privati carceris* is only punifchet *pena* and the practyk of³ is only to puneife *pena pecuniaria*; and allegit Julius Clarus.⁴

It is allegit, the Laird of Kirkmichell, the tyme of his taking lybellit, was at the horne, and be vertew of Letters of Captioun, was tane be the Scheref of the fchyre, quhome the pannell affistit allanerlie⁵ in the Taking: And producet the Hoirning and Letteris of Captioun, be the quhilk the Scheref-Depute, Robert Creichtoun, was charget to tak him, being rebell. It is anfuerit, that the allegance aucht to be repellit, in respect the Letteris quhairupoun the Laird of Kirkmichell is denuncet war fuspendit *simpliciter, in foro contradictorio*, and he relaxt be the fpace of ane half yeir of befoir.—It is allegit be the pannell, that the tyme of Kirkmichellis taking, thair was na Relaxatioun fchawin, and na knowlege was gevin of his Relaxatioun to the Schireff; and fa he was *in optima fide* in taking of the Kingis rebell, nocht knawin to him to be relaxt: And forder producet ane Act, quhair Robert Creichtoun was constitute Scheref-depute. It is forder allegit, that gif the Scheref had been perfewit for Taking of the Kingis fre lege, nocht knawn to him to be relaxt, bot charget to tak him; as na Dittay could be relevant aganis him, in lyk manner, na proces aganis the pannell for being in his companie, and affifting the Scheref at that tyme.—It is anfuerit, aucht to be repellit, in respect of the Summondis, Decreit fufpending the Hoirning, and Relaxatioun producet; and the lybell beiring that Young Drumlanerig and his complices hurt and woundit Robert Creichtoun for ftaying them to flay Kirkmichell; and fua can nevir allege that thai affistit him in execution of his office.

It is forder allegit, that this Dittay can nocht be comptit ane cryme, in respect the perfone tane was the Kingis rebell; and for verifeing thairof, repeittis the Hoirning producet for nocht payment of the Taxation; and thairfoir the Dittay can nocht be put to ane Affyfe: Quhilk Hoirning is daitit the xj of Februar

¹ More. ² Than. ³ Obliterated in Record. ⁴ An old Commentator. ⁵ Only; merely.

1601. It is anfuerit, that it is nocht onlie for Taking of the Kingis frie lege that the pannell is conuenit, bot for Vfurpatioun of the Kingis authoritie.—It is allegit, that except the perfone tane, the tyme of his taking, had bene the Kingis frie lege, it can nocht be fund that the pannell vfurpit the Kingis authoritie.—It is anfuerit, that the taking of ony perfone but¹ Commissioun of the Prince is Vfurpatioun of the Kingis authoritie, quhidder he be rebell or nocht.

THE Justice continewis, with advyse of his Assessoris, Interlocutour vpon the former allegeances to Tyfday nixt.

It is forder allegit, that as of the Law, *bannitus potest impune occidi, sic multo fortius capi et incarcerari*; quhilk is expresse decydit be Baldus, in the foir-said Law ‘*Jubens*,’ codice ‘*de Privatis carceribus*,’ numero finali: And be Julius Clarus, L. *sententiarum* § *Homicidio*.—It is anfuerit be the Aduocat, that *Banniti*, of the Cowmoun Law, was only thay quha war declairit rebellis for ane capitall cryme.—It is duplyt for the pannell, that of the Ciuill Law, that *Banniti* war alaweill rebellis for crymes, as for pecuniall fowmes; and for preving thairof citit Julius Clarus, L. *sententiarum* § *Homicidium*.

THE Justice Continewis Interlocutour, with advyse of his Assessoris, to Tyfday nixt.²

Dec. 24.—Compeirit Williame Douglas, younger of Drumlanerig, quha declairit that he offerit him self reddie to anfuer and abyd tryell vpon the Summondis and Dittay, at the instance of his hienes Aduocat: And als, is content, that nochtwithstanding the Laird of Kirkmichell be rebell, and was declarit be Hoirning the last dyet, to pas fra the said Hoirning vset aganis him, and that he haif place and perfone to stand in Judgement aganis him, and to insist in his persute on the Summondis and Dittay producet aganis him: And in respect thairof, the pannell defyret my Lord Justice to pronounce Interlocutour vpon the allegeances and anfueris maid in this caus vpon Setterday last, quhilk was the last dyet of this proces.

THE Justice Defertis this dyet, and that in respect that my lord Aduocat and the Laird of Kirkmichell, parteis persewaris, quha war oft tymes callit to insist in this persute, compeirit nocht to that effect.—Quhairupone the pannell askit instrumentis; and that nochtwithstanding thairof, he offerit him self to defend accoirding to the Law, for the haill crymes contenit in the Dittay.

(Apr. 24, 1612.)—MY Lord Aduocat declairit that he wald insist for baithe the crymes contenit in the Summondis, alaweill for taking and incarceration, as beiring and weiring of pistolettis.—The pannell, ffor cleiring of his In-

¹ Without. ² [On the margin of the Record,] “This haill proces preceeding, be ane Act maid vpon the xxiiij day of Apryle, 1612, is be the Justice, with advyse of the Lordis of Secreit Counsell, ordanit to be deleit furth of the Buikis of Adiornall,” &c.

nocencie of the first pairt of the Summondis, concerning the taking of the Laird of Kirkmichell, &c., producet ane Letter, subscryuit be the Laird of Kirkmichell, and certane famous Witnesses ; quhairof the tennour followis.

I, WILLIAM KIRKPATRICK, appeirand¹ of Kirkmichell, Testifeis and declairis, that pe tyme I went with Young Drumlanerig to the place pairof, quhilk was vpon the xv day of July, I^m.Vj^c. and ten zeiris, it was at my speciall desyre to gang with him, for eschewing of farther inconvenient to my brother and sic vtheris as war in my companie, for allegit wrangis done to his saper ; quhairof I was innocent : And declairis pat I wes nocht tane pair against my will ; and that efter I come to the Place of Drumlanerig, I was honestlie and courteouslie interteneit, haifing frie libertie to pas quhair I pleisit, as ane frie Gentilman : And being on the morne paireftir oft and dyuerse tymes requyret be Young Drumlanerig to pas quhair I pleaset, I refuset to go forth, in respect of sum informatioun I had ressaunt ; and remanet pair against his will, quhill he forcet me to pas away, alwayis with sic forme of courtesie as he could vse to sic ane Gentilman : And that I was nawayis detenit nor keipit as Captiue or Prisoner : And that pe Letteris raisit at my instance aganis him befoir pe Justice, was by² my knowlege or advyse : Quhilk I testife to be of treuth. AND consentis pat pir presentis be insert and regiftrat in the Buikis of Counsell or Adiournall : And to that effect, Constitutis Mr Alexander King, aduocat, my Pro^r, to compeir and consent to pe registering heirof ; quhilk is writtin be Williame Penman, wryter in Edinburgh, and subscryuit with my hand, AT ED⁸, the ellevint day of Januar, the zeir of God I^m. fax hundreth and tuelf zeiris, befoir pir Witnesses, Thomas Greirfone of Bariarg, James Greir his brop^r, Sir Williame Greirfone of Lag, kny^t, James Dowie, wryter, and George Bryce, inserter of pe dait and witnesses heirintill.

KIRKMICHELL, Zounger.

Lag, witnes, THOMAS GRIERSONE, witnes, JAMES GRIERSONE, witnes,
J. DOWIE, witnes, GEORGE BRYCE, witnes.

Compeirit the said Mr Alexander King, as pro^r for Williame Kirkpatrick, younger of Kirkmichael, and desyrit the samyn to be insert and regiftrat in the Buikis of Adiornall, to the effect foirsaid ; and alledges, that the said cryme of Taking and Incarceratioun of Young Kirkmichell, can nawayis be put to the knowlege of ane Assyse, in respect of the said Letter and contents thairof : And for better securitie, desyret, as of befoir, the said Letter and Declaratioun to be insert and regiftrat in the Buikis of Adiornall, therin to remane *ad futuram rei memoriam*.

My Lord Aduocat takis instrumentis of the production of the said Letter and Declaratioun thairin contenit. The Pannell declairis he will vse na vther defence in this matter, bot the allegiance immediatlie preceiding, and renunes all vther exceptiones proponit be him in this caus of befoir for this cryme, or competent to him aganis the same. My Lord Aduocat producet HIS MAIESTEIS LETTER, and desyret the clause following, insert thairintill, quhilk concernis this persute, to be insert in the Buikis of Adiornall ; quhairof the tennour followis.

AND as for that vther poynt of your Letter, concerning the forder following of that persute intentit aganis YOUNG DRUMLANERIG, sforasmuch as We understand that he, being laitlie reconceillit to Kirkmichell zounger, is to compeir befoir our Justice at pe day and place specifeit in your last Summondis raisit against him, and pairby (for clearing him self of that cryme quhairof he is accuset) to alledge that he did naper violentlie apprehend, nor detene the said Kirkmichell. It is pairfoir our speciall

¹ Heir apparent.

² Contrary to; without.

pleafour, that at þe foirfaid dyet ʒow continow ʒour perfute againſt him, and that vpon his alleging þe foirfaid exceptioun, ʒow do demand of him, gif he will nocht halilie rely pairupoun, renunceing all vther exceptiones formerlie proponit in his defence : And vpon his Declaratioun that he will do ſo, ʒow fall than inſiſt for remitting þe Tryell and furder confideratioun pairof to the Lordis of our Counfell ; inſiſting, in the meane tyme, earneſtlic, that theſe vther exceptions heirtofor vſet in his defence, being ſo dangerous, and by no preſident warranted, may nocht heireftir be recordit in the Registeris of Ad-iornal, as lauchfull or tollerable Defences to be proponit in the lyk Caiſſis, in ony tyme cuming :¹ Quhairin, nawayis douting of ʒour cair and reddines, We bid ʒow fairweill. Frome our Court, ATT QUHYTEHALL, the nynteneth of Merche, 1612.

And in reſpect thair of, and of the allegiance proponit be the pannell and his Judiciall Declaratioun, that he renunes all his former Defenſſis, proponit of befoir in this cauſe, for this cryme, or competent to him aganis the ſamyn, except vpon the particuler allegeance foundit vpon Kirkmichellis Declaratioun aboue mentionet, ſubſcryuit be him, and producet be the pannell this day ; firſt, deſyres, according to his Maieſteis commandment, that the tennour of the former Defenſſis proponit be the pannell in this cauſe, be deleit furth of the Register of Ad-iornall ; quhilk the Juſtice hes preſentlie ordanit to be done : And nixt, deſyret my lord Juſtice, that he will be advyſet with the Counfell, concerning the allegeance aboue writtin, proponit this day be the pannell. My Lord Aduocat declairit that he paſt fra the perfute of the pannell, for the laſt pairt of the Summondis, for the beiring and weiring of piſtolettis at this tyme and place : Quhairupone the pannell aſkit inſtrumentis.

INTERLOCUTOR and Decision of the Juſtice and Lords of Secret Council.

THE JUSTICE, In reſpect of this Letter producet be Mr Alexander King, ſubſeryuit be the Laird of Kirkmichell, and circumſtances contenit thairin, with advyſe of the Lordis of Secret Counſall, findis that this matter can nocht be put to the knowlege of ane Aſſyſe : And ſiclyk, in reſpect that the pannell hes this day paſt fra the haill former Defenſſis proponit be him in this cauſe, for the ſaid cryme, of befoir, in maner contenit in his former Declaratioun, the Juſtice, with advyſe of the Lordis of Secret Counſell, ſittand this day in Counfell, Ordanis the haill former allegeances proponit in that matter of befoir, to be deleit furth of the Buikis of Adiornall.

Quhairvpon my Lord Aduocat aſkit inſtrumentis ; lyk as the pannell alſo aſkit inſtrumentis, vpon the firſt pairt of ſaid Interlocutour.

Slaughter.

Feb. 12, 1612.—ROBERT SCOTT and ADAME SCOTT, Bailleis of Hawik ; Jok Scott, belman in Hawik ; Williame Donald, alias *Nymbill*, in Hawik ; John Lidderdaill, thair, callit *Jok the Deacone* ; Hob Scott, thair, callit *Hob the Lonkie* ;

¹ It is obvious that ſteps had been taken by the Officers of the Crown, in this remarkable Caſe, to procure the private agreement of the parties ; and on this being effected, the ‘*dangerus*’ Defences, ſo boldly and ably urged by the eminent Counſel and fore-ſpeakers, would forthwith be expunged from the Record ; or, at all events, never be permitted to be cited as precedents in future. The Defences were accordingly withdrawn, on this understanding, that the matter would be privately adjusted by the Lords of the Privy Council, as umpires. No deletion appears on the face of the Record.

Jok Schorte, thair; and Williame Johnnestoun, seruitour to *Mariones Hob*.

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Johnne Ellote in Redden, callit Johnne of Rynfiegill, committit within the said Jok Schortis duelling hous in Hawik, in the moneth of July, the yeir of God I^m.Vj^c. and ten yeiris.

PERSEWAR, Bessie Ellote as relict, with the ffyve fatherles bairnes, &c.

PRELOCUTORIS for the pannell, Mr Thomas Nicholfoun and Lawrence Scott, Advocatis.

The persewar producet the Letteris deulie execute and indorsate; and in respect thair of, and that scho offeris hir self reddie to persew, protestis for the releif of George Elphingstoun of Glenfakisbarneheid, and Williame Elphingstoun his brother, of thair cautionerie.

It is allegit, that the Dittay is nawayis relevant to be put to ane Assyse, in respect that the Dittay beiris that he was fund lying deid in the Irnes;¹ bot it is of verritie, that vpon the morne thaireftir his committing to waird,² he hangit him self in his awin belt; and sa, haifing desperatlie put hands in him self, the pannell can nocht be put to the Tryell of ane Assyse, as airt or pairt of his death.—It is anfuert, aucht to be repellit, in respect the allegiance is contrair to the lybell.

THE Justice remittis the matter, anent the Slauchter of the defunct, and tryell of the treuth of pannellis allegiance, concerning the putting handis in him self, to the knowlege of ane Assyse.

ASSISA, Jok Ellote, in Braidlie, Will Scott, in Branxholme, George Airmestrang, in Grundunfyde.³

Robert Layng, being suorne, in prefens of the pairtie and Assyse, and being inquiryret concerning Jok Ellotes death, quhat he kenis thair of? Deponis, he is ane mercheand; being in the Kirkzaird of Hawik priking sum skynniss,⁴ and heirring that Jok Ellote was hingand in the steppill,⁵ come, vpon the repoint thair of, into the steppill, quhair he saw the defunct hingand, in his awin belt; quhill belt he cuttit, and thair being lyfe in the defunct, was brocht out, bot shortlie thaireftir he deceift.—*Robert Scott*, being examinat and solempnelie suorne in the premisses, *est conformis precedenti, in omnibus*

VERDICT. The Assyse, all in ane voce, be the mouth of James Greiff in Bowmanehill, chancellor, ffind, pronuncet, and declairit the saidis persones, and ilk ane of thame, to be Cleane, innocent, and acquit of airt and pairt of the Slauchter aboue specifreit.—Quhairvpon thai, and ilk ane of thame, askit actis and instrumentis.

¹ *Irons*, or fetters.

² After his commitment to prison or confinement.

³ Niniane

Quhigholme in Peilbrae, (now written *Whigham* or *Wigham*,) and nine other 'Assyfouris' names follow.

⁴ Being a leather merchant.

⁵ The accomodation for prisoners (in England as well as Scotland) was at this period of the most wretched description. Steeples were often fitted up with fetters in their square or lower parts, riveted into the wall, where these luckless victims were detained until Trial, without any Jail allowance. In cases of Witchcraft, &c., iron collars were added; and it is highly probable that cases of suicide were by no means infrequent, owing to the desperate circumstances of these miserable creatures. See *Sir Walter Scott's Letters on Demonology, &c.*

“RODGER SCOT, Capitane of the Airmetage, Robene Ellote of Dunlabyre, Robene Ellote of Copshaw, Frances Ellote his brother,” and nine others of lesser note, “vnlawit and amerciat, ilk ane of thame, in the pane of ane hundreth merkis,” for thair nocht compeirance to haif past vpon the Assyse.

Reuerend Speeches against the King, his Council, &c.—Thieft, &c.

Mar. 11.—WILLIAME TUEDIE, callit *Coill-hoill*, in Heuchbrae.

Dilaitit of airt and pairt of certane poyntis of Thieft, &c. : And for certane vnreuerent and disdanefull speiches vtterit be him aganis the Kingis Maiestie, his hienes Counsell, and Justices of peax.

DITTAY against the Pannell.

FORSAMEKILL as it is statute and ordanit, be dyuerse Actis of Parliament, alsweill maid in his hienes awin tyme, as in his hienes predicessouris tyme, of guid memorie, that na maner of persone or persones presume nor tak vpon hand to vtter or geve out sclanderous, reprochefull, or tressonabill speiches, aper be woird or writ, aganis HIS MAIESTIE, his Counsell or Nobillitie, vnder the pane of deid ; as the saidis Actis at lenth beiris : Nochtwithstanding quhairof, it is of veritie, that pe said Williame Tuedie, in the moneth of December lastbypast, haifing committit, ofbesoir, dyuerse Oppressiones aganis sindrie of his hienes peceable subiectis, and speciallie aganis Richerd Powrie, Minister at Dawik, quha haifing complenit vpon pe said Williame Tuedie to the Justices of peax within the Sheref dome of Peiblis for pe samyn, thay directit Johnne Mathiesone in Stobo, and James Ruffell, tua of the Constabillis of the said Scheref dome, to summond and arreist him, to compeir befor thame, in the Tolbut of Peiblis, at ane certane day, to haif ordour tane with him for the saidis Oppressiones ; quha, accoirding to pair directioun, cam and summond and arreistit pe said Williame, first in his Maiesteis name, and than in the name of pe Lordis of his hienes Secreit Counfall, and of the saidis Justices of peax, to the effect foirsaid ; nochtwithstanding quhairof, he, altogidder vnmyndfull of his deutie, first towardis his God, our Souerane lord, and Lordis of his hienes Secreit Counfallis auctoritie, and of the saidis Justices of peax, his hienes Judges and ordiner Magistrattis ; nocht only irreuerentlie, reprochefullie, and sclanderuslie vtterit and gaif vnsemelie speiches to the saidis Constables against the saidis Justices of peax, be saying that he ‘ wald nocht gif ane scab of his erse for thame !’ And desyret thame ‘ to cum and kifs his erse !’ Bot lykwayis, the said Williame, at pe same tyme, maist tressonabillie, vnreuerentlie, sclanderuslie, and vndewtiefullie said to the saidis Constables, that he ‘ wald nocht gif pe scab of his erse’ for his sacred Maiestie and Lordis of his hienes Secreit Counsell ; and bad ‘ his Maiestie and thame cum and kifs his erse !’ And sua, be vtering of the saidis tressonabill, vndeutifull, vnreuerent and sclanderus speiches, he hes contravenit pe tennour of pe saidis Actis of Parliament, and incurrit the panes of death appointed aganis pe contraveners pair of : Quhilk aucht and sould be execute vpon him, with all rigour, to the terrour and exampill of vperis. AND siclyk, being Indytit and accuset, ffor cuming, in pe moneth of November 1583, to Carrane-mouth, in Stobo-hoip, and pair thiftiounlie staw,¹ rest, and away-tuik, fra tua cowmoun Thevis, xxiiij auld scheip, quhilkis war stowin² be pame furth of Cliddisdail : And for letting the saidis Thevis to frie libertie, and nocht presenting of pame to pe Justice. ITEM, ffor airt and pairt of the steilling and away-taking of ane beir stak,³ contening tuelf schevis of beir, committit in Januar, 1600 zeiris. ITEM, ffor airt and pairt of the steilling of ane quhite wedder-lamb, pertening to Williame Ruffell in Eistertoun of Stobo, furth of the Knovell-fald ; committit in the moneth of Junij, 1601 zeiris. ITEM, ffor airt and pairt of pe Slauchter of vmq¹⁶ Eduard Curres in Braidfurd, be casting of ane stane at him, quhairwith he strak him ane deidlie straik on the hert ; be the quhilk straik, he tuik bed and dwynet in pe space of ane zeir, and in end deceiffit of pe said hurt ; committit in Junij, 1596. ITEM, ffor airt and pairt of the steilling of ane blak zeild⁴ kow, fra James Foulden in Harro of

¹ Stole.

² Stolen.

³ Stack of barley.

⁴ Barren ; not giving milk.

Stobo, furth of the Hammer-bank, callit the Braid-flak-heid, in the moneth of November, 1607 3eiris. ITEM, ffor airt and pairt of the steilling fra Patrik Mathiesone, in Harro, of ane quhyte 3ow,¹ furth of pe grund of Harro, in the moneth of December, 1607 3eiris. ITEM, for dryveing to ane bucht² at pe Blak-hill-stell, in Harro-heid, of aucht 3owis, pertening to Johnne Alexander, in Harro-heid: And ffor the thiftious clipping of the said aucht schein, and steilling and away-taking of the hail aucht fleiffes of woll; committit in the moneth of Junij, 1602. ITEM, ffor airt and pairt of the steilling, cutting-doun, and away-taking of tuelf grit allour-treys,³ furth of Dawik-woid, in the moneth of August, 1607 3eiris. ITEM, ffor airt and pairt of the Murthour and Slauchter of Mathiesone, his spouse, be striking her in dyuerse partis of hir body, quhair of scho deceiffit pairstir. ITEM, ffor Cowmone Thift, Cowmone Resset of Thift, outputting and inputing of Thift fra land to land, fra cuntrie to cuntrie, baith of auld and new.

PERSEWAR, Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our souerane lord.

PRELOCUTORIS for the pannell, Mr Laurence M^cgill and Mr Dauid Aytoun, Aduocatis.

It is allegit, that the pannell aucht to haif bene citet vpone xv dayis wairning. It is anfuert, aucht to be repellit, in respect the pannell is brocht furth of waird to the Bar; quha hes bene wairdit this foure monethis for the crymes lybellit.—It is allegit that *Johnne Mathiesone* can nocht pas vpone this Assyse, becaus he is pairtie and vpgeter of the Dittay, and is Constable, to quhome the allegit speiches was vtterit. Aucht to be repellit, in respect of the persute at the instance of the Minister of Dawik, quha persewit the pannell afoir the Counsell, for injurie done; and the said Johnne Mathiesone was alredie ressaunt Witness, and examinat be the Counsell; and sa may be ane Assyfour.⁴

ASSISA.

Johnne Mathiesone, Constable of the parochin of Stobo; James Ruffell, Constable thair; James Rammage, Constable thair; Johnne Reidschaw in Wester Hoprew; Adame Ruffell, smyth thair.⁵

The Aduocat, for verificatioun of the Dittay, &c., producet ane Decreit of the Lordis of Secreit Counsell, finding the speiches aboue writtin to be cleirlye provin; and protestit for Wilfull Error, in caise thay Acquit.—The pannell askit instrumentis, that nane compeir to sweir the Dittay.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Johnne Mathiesone, chancellor, fband, pronuncet, and declairit the said Williame Tuedie to be ffylit, culpable, and convict of the sclanderus, reprocheful, and vnreuerent speeches vtterit be him aganis his Maiestie, his hienes Secreit Counsell and Justices of the peace, in maner specifeit and contenit in the first Article of his Dittay, and Decreet of the Lordis of Secreit Counsell, producet, for verificatioun thair of: And as to the remanent crymes aboue writtin, contenit in the said Dittay, fband, pronuncet, and declairit the said Williame to be Cleane, innocent, and acquit thair of.—Quhairvpone the said Williame askit instrumentis.

¹ Ewe. ² 'Ewe-bucht,' a pen or fold, where sheep are sheltered at night. ³ The *aller* or alder-tree. ⁴ The admission of this person and his fellow-Constables, was contrary to every principle of justice; and very strongly shows how extremely arbitrary the proceedings of the Court were, at this period. ⁵ Ten other names are inserted, but they were persons of no note.

THE Justice continewis the pronunceatioun of Dome, to fryday next, that in the meane tyme he may tak advyfe with the Lordis of Secretit Counfell thair-
anent.

(Mar. 13.)—SENTENCE. The Justice, with advyfe of the Lordis of his hienes Secretit Counfell, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the said Williame Tuedie, in Heuchbra, to be SCURGET through the Burgh of Edinburgh: And thaireftir to be BANISCHET furth of his Maiefteis haill dominionis: And nawayis to returne agane within the famyn, vnder the pane of hanging to the deid, but¹ forder Dome: And being fcourget throw the towne, that the Magiftratis of Edinburgh returne him bak agane to his waird, within thair Thevis-hoill, thairin to remane quhill ane fchip be provydit to transpourt him furth of his Maiefteis dominions, in maner foirfaid.

Slaughter.

Mar. 13.—ALEXANDER FRENCHÉ, Tutour of Thorniedykis,² and James Wicht, at Gordoun-mylne, his fifter-fone.

Dilaittit of airt and pairt of the Slauchter of vmq^{le} Johnne Cranftoun, brother to Patrik Cranftoun of Corfbie; committit be thame vpon the grund and landis of Boun, in the Merfe, vpon the tent day of Februare laftbypaft, be wounding of him in the heid, leg, and dyuerfe vtheris pairtis of his bodie, to the effufioun of his blúid in grit quantitie: Off the quhilkis ftraikis and deidlie woundis the said vmq^{le} Johnne nevir thaireftir convaleffit: bot, vpon the firft day of Merche instant, depairtit this lyfe, of the saidis hurtis and woundis.

PERSEWAR, Patrik Cranftoun of Corfbie, as brother.

The perfewar, be his grit aithe, declairis that he hes moft caus to perfew: And fueris the said Dittay to be of verritie, and takis instrumentis thairupoun; and Protestis for Wilfull Error, gif the Affyfe Acquit. As also, for verificatioun thairof, haifing vset and producet the Depositiones of certane famous Witneffes, quhilk was oppinlie red in Judgement.

VERDICT. The Affyfe, all in ane voce, be the mouth of Hew Bell in Blithe, chancellor, ffind, pronuncet, and declairit the said James Wicht to be ffylet, culpable, and convict of the crewal and vnmerciefull Slauchter of the said vmq^{le} Johnne Cranftoun. AND ficlyk, for the maift pairtis, Declairit the said Alexander Frenché, to be ffylet, &c.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair, thair heidis to be ftrukin frome thair bodeis; and all thair moveable guidis to be efcheit and inbrocht to his Maiefteis vse, as convict, &c.

¹ Without.

² See the Trial of Sir Patrick Chirnesyde of East Nisbet, and others, Nov. 8, 1616, for Forcible Abduction and Marriage of Adam Frenché of Thornydykes, &c.

Raid of Glenfrwne—Fire-raising—Slaughter.

May 8.—DOUGALL M^cGREGOUR alias *Dougall M^ccandochie*, Callum M^cgregour callit *M^ccalexter scoir*,¹ and Duncane M^ccarlich Culzame M^cgregour.

Dilaitit for being in companie with THE LAIRD OF M^cGREGOUR and his complices, at the Raid and ffeild of Glenfrwne,² in the moneth of ffebruarye 1603 yeiris, aganis the Laird of Lufe, his kyn, and freindis : And for being in cumpanie with the Laird of M^cgregour, at the burning of Barnehill, pertening to Colene Campbell of Laweris,³ quhair thai slew nyne men and thre bairnes ; Robert Abroche M^cgregour, and Johne M^cffadrik, being thair with thaim.

THE Justice continewis the puting of the perfones foirsaidis to ane Assyfe to Thurisday nixt.⁴—Thaireftir, the perfones on pannell, be Ordinance of the Counfall, war ordanit to be delyuerit to the Erle of Lynlythgow, and he to hald Court vpon thame, conforme to ane Commiffioun gevin to the said Erle to that effect.

Treasonable Intercommunung with John, sometime Lord Maxwell, &c.

May 16.—NINIANE AIRMESTRANG callit *Ninianes Thome*, sone to Thomas Airmestrang ; and Johnne Amulliekyn, in Cruikis.

Dilaitit ffor the treffonabill Refset, fupplie, Intercowmoning, and accompaneing of JOHNNE, fumptyme LORD MAXWALL,⁵ his Maieftis declairit Tratour, fforfalt in Parliament, for dyuerfe crymes of Treafone and Lefmaieftie, at lenth fpecifeit and contenit in the proces and dome of fforfaltour deducet aganis him : And namelie, the said Johnne Amulliekyn, for Refsetting, Suppleing, and Intercowmoning with the said fumptyme Lord Maxwell, within his awin duelling hous in the Cruikis, and in his barne thairof, vpon the tuentie fax day of Apryle laft-bypaft ; at the quhilk tyme, he haifing reffaut fra the said fumptyme Lord Maxwell the fowme of ten pundis ; he, for obedience of the said Lord Maxwellis directioun, pafthairwith vpon the morne thaireftir to the Toun of Dumfreis, to the said Niniane Airmestrang, quhair thay bocht ane hagbut and ane pair of fchone,⁶ quhilk was delyuerit be the said Johnne Amulliekin to the said Niniane, to be gevin to the said fumptyme Lord ; conforme to the said Johnne Amulliekyn his Depofitioun, maid be him in prefens of my Lord Chancellor, and vtheris Lordis of his Maieftis Previe Counfell : AND ficlyk, the said Niniane, for Intercowmoning and keeping companie with the said Johnne, fumptyme Lord Maxwell,

¹ M^callaster scoroch, q. d. *buck-toothed*.

² See Jan. 20, 1604.

³ This person is under-

stood to have been Colin Campbell of ABERUCHILL, and the *Barnehill*, which is here stated to have been burned, is likely to have been some appendage of that property.

⁴ In consequence of the

subsequent order, no further procedure took place before the High Court of Justiciary.

⁵ See

his Trial, Jun. 24, 1609, &c., III., 28, &c.

⁶ Shoes.

declairit Tratour, in the said moneth of Apryle lastbypast, be the space of fyve dayis togidder, in the Langwoid and Schillingtonehill ; and for bringing of ane hagbut fra James Louk, and delyuering the same to the said Lord Maxwell, his Maiesteis declairit Tratour ; and bringing of the said vther hagbut, with the pair of schone ressaunt be him fra the said Johnne Amulliekyn, within the toun of Dumfreis, and delyuering the samyn to the said Lord Maxwell ; as at lenth is contenit in thair Dittayis. IN doing quhairrof, the saidis Johnne and Niniane had committit manifest Treasone : And thairfoir, according to the Lawis of this realme, had incurrit the panes and pwneischment of tynsell¹ and fforfaltour of lyfe, landis, and guidis, to be inflictit vpon thame ; to the terrour of vtheris.

VERDICT. The Assyse, be the mouth of Dauid Bailzie, burges of the Cannogait, chancellor, ffind, pronuncet, and declairit, all in ane voce, the saidis Johnne Amulliekyn, and Niniane Airmestrang, and ather of thame, to be ffylit, culpable, and convict of the crymes aboue specifeit in thair Dittay ; and that in respect of thair awin Judiciall Confessioun and Depositiones producet.—SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill thai be deid : And all thair landis, heritages, guidis, and geir, gif thai ony haif, to be fforfaltit and escheit to his Maiesteis vse, as convict, &c.

‘ Unbesetting the hie-way’—Slaughter.

JUN. 3.—GAWIN HORNE in Inner Kethie, and Isobel Jak, mother to the said Gawin.

Dilaitit, accusit, and persewit, that thei with their complecis, being bodin in feir of weir, with swordis, durkis, and vther vapones *invasiue*, laitlie, vpon the faxyt day of Januar lastbypast, haifing confaunt ane deidlie feid, rancour, and mallice causles, aganes wmq¹⁶ Patrik Low in Naderdaill, came vnder silence and clud of nycht to the toun of Nether Kethie, quhair he was going hame to his duelling hous, in maist peciabill maner, vnder Godis peax and our souerane lordis, and thair Vnbefet his hie-way and passage,² and crewallie Invaudit him for his Slauchter, hurt and voundit him in his body and breist, with durkis and swordis, to the effusione of his bluid in grit quantitie : Of the quhilkis hurtis he newer convalessit, bot continewing bedfast in grit dollour and diseis thairof, vnder the cuir of chirurgeanes, be the space of fourtein dayes, or thairby ; quhill at last, the said wmq¹⁶ Patrik, vpon the twenty day of the said moneth of Januar, depairtit this lyfe : And swa wes crewallie and vnmercifullie flane be thame ; and thei and ather of thame wer airt and pairt of the said crewall Slauchter.

¹ Loss ; deprivation. ² Waylaid ; lurked, or lay in ambush for, for the purpose of ‘ besetting.’ See various Trials in this Collection, where this phrase repeatedly occurs. The highway was likewise said to be ‘ umbeset,’ when one party blocked up the road with his retainers, for the purpose of *daring* his rival to pass—or to give battle, and thus force a passage, if he could.

PERSEWAR, Andro Low as sone. PRELOCUTOR for the persewar, Mr Williame Livingstoun.

PRELOCUTOR for the pannell, Mr Johnne Ruffell, Aduocat.

Protestis for Wilfull Errorr in caise they Acquit.

Mr Johnne Ruffell takis instrumentis, that thair is nane to sweir the Dittay bot ane young boy of saxtene yeir awld ; and swa can mak na faith.—Produces ane instrument subscriuit be the Justice of Peax and the Constabill, for verificatioun of the Slauchter of vmq^{le} Patrik Low and cleiring of the samyn, subscriuit be the said Constabill, Johnne Innes of Knokcorth, ane of the Constabillis of peax ; and schawis that Williame Smairt confessit that he hurt and voundit the said vmq^{le} Patrik.—Quhilk cryme the pannell alluterlie denyit.

VERDICT. The Assyse, be the mouth of George Leslie in Drumblair, chancellor, for the maist pairt, ffand, pronuncit, and declairit the saidis Gawin Horne and Issobell Jak to be Clein, innocent, and acquit of airt and pairt of the said Slauchter.

Abiding from the Raid of the Isles.

Jun. 5.—ROBERT MAXWALL of Potterak, Alexander Fergusone of the Yle, Johnne Charteris in Redingwoid, Johnne Wallace in Carnezeill, Thomas Edzer in Holme, and Mr Samuell Kirkpatrik.

Dilaitit for Contravening the Proclamatioun in abyding fra the Raid of the Yles, in anno 1608.

PERSEWAR, Andro Lord Stewart of Vchiltrie.

My Lord Vchiltrie passis fra perfute of Mr Samuell Kirkpatrik. He also passis from the purfuit of *Hew Douglas* and *Thomas Douglas in Dalvene*.—*Williame Greir* provin to be feik, be the Depositioun of Johnne Broun, Minister of Glencairne.—*James Fergusoun of Crochedow*, provin to be feik, be the said Ministeris Depositioun.

THE Justice continewis this matter to the morne, *in eodem statu quo nunc est*.

Jun. 6.—IN respect na pairtie compeiris this day to insist in thair perfute, Protestis for thair cautioneris releif ; and that thai be nocht charget or trubillit for the said allegit cryme, in ony tyme cuming. And thairupoun askit instrumentis.

Mutilation and Demembration.

Jun. 12.—WILLIAME RUTHERFURD of Synewallis, and George Well his feruand.

Dilaitit for the Mutilatioun and Demembring of James Weir, seruitour to Williame Weir in Softlaw ; committit in ffebruar 1611, of the formest finger of his left hand.

PERSEWER, James Weir.

PRELOCUTORIS in defence.

Sir Robert Stewart, Mr Johnne Rutherford, Mr Johnne Ruffell, Mr Johnne Dauling.

JAMES WEIR, seruitour to Williame Weir in Softlaw, Dilaitit of airt and pairt of the Mutilatioun of Williame Rutherford of Synewallis of his hand, at the leift of the mid-finger thairof; committit in februar 1611.

PERSEWAR, Williame Rutherford of Synewallis.

PRELOCUTORIS in defence.

The Laird of Blaikwoid, The Laird of Lammington, The Laird Symontoun,
The Guidman of the Caveris, Robert Hammiltoun, Aduocat.

It is allegit be Mr Johnne Ruffell, that the Dittay is altogidder irrelevant; and thairfoir can nocht pas to ane Assyse: And as to that article of the Dittay, concerning the demembring James Weir of the finger, quhilk is the only point that fould be tryit in this Judgement, nather mutilatioun nor demembratioun is relevant; becaus, except the haille hand had bene cuttit af, it can nocht be comptit demembratioun; and the finger is nocht ane member, *sed tantum est pars membri*. It is forder allegit, that this Dittay aganis Rutherford and his man can nocht pas to ane Assyse, becaus, gif ony mutilatioun or hurting was done to Weir, the samyn was done in Rutherfordis awin defence, he being in sober maner passand out the hie-way, convoyand ane gentilman to his hors; at quhilk tyme, vnder nycht, Weir, with ane drawin fuord, invalidit Rutherford; and sa, gif ony hurt wes gevin to Weir, it was in Rutherfordis defence.—It is ansuerit, that the Dittay is relevant, nochtwithstanding of the allegiance; and desyres the Assyse to cognosce, quhidder the samyn was done in Weiris defence or nocht; quhilk Weir altogidder denyis.—It is allegit be James Weir, that the lybell at the instance of Williame Rutherford aganis him can nocht pas to ane Assyse; and gif ony mutilatioun was done to the said Williame Rutherford, the samyn was done in Weiris awin defence.

Compeirit, Williame Lord Cranstoun, Commissiouner for his Maiestie, and desyret my Lord Justice, that thir tua persutes, movet in this Judgement, may be remittit to the Commissiouneris, to be tryit befor thame, feing the factis lybellit was done within the boundis of thair Commissioun: And siclyk, feing thair is ane Court affixt to be haldin within the boundis thairof, quhair justice fall be ministrat to ony pairtie, conforme to the Lawis of this realme.

THE Justice continewis this matter to Thurisday nixt, vnto the tyme he be advyset with the Counsell, concerning my Lord of Cranstones desyre.

Lawburrows are granted at the instance of the parties against each other, viz. 'Mr Johnne Rutherford become fouertie and Lauborris for Synlawis and his serwand, &c. vnder the pane of ffyve hundreth merkis, and thre hundreth merkis. William Rutherford of Synlawis for the said Mr Johnne, vnder the pane of thre

hundreth merkis. And James Douglas of Todhoillis for George Weir of Blaikwoid, and for the pannell James Weir, vnder the pane of ane thowfeand pundis, and thre hundreth merkis.'

Thaireftir the Justice abfolutelie, without forder continuatioun of this matter, Remittit the tryell of baith thir actiones, perfewit be ather pairtie aganis vtheris,¹ to the Commiffioneris, to be cognofcet and tryet be thame as accoordis of the Law.

Abiding from the Raid of the Isles.

Jun. 25.—ROBERT HEREIS, in Lafoun, and five others.²

Dilaitit for contravening of his Maieftis Proclamatioun, in nocht paffing forward with Andro Lord Stewart of Vchiltrie, his hienes Lieutenant, to the Raid of the Yles, in anno 1608.

PRELOCOUTOURIS in defence, Mr Johnne Halyday, Mr Johnne Belfis.

The perfones on pannell takis instrumentis of thair compeirance, and declairis that thay war nawayis fubiect to the tennour of the Proclamatioun; in respect thai ar nather Erles, lordis, barrones, feweris, frehalderis, or landit gentilmen; and gif the famyn can be tryit³ that thai war fic men, the tyme of the making of the faid Proclamatioun to the faid Raid, thay ar content to affigne, and be thir presentis affignis, thair haill landis and heritages to the Kingis Maieftie, &c. And in respect thair is na pairtie perfewer present to infist in thair perfute, protestis for thair cautioneris releif, and that thai be nocht callit or perfewit, for this matter, at ony tyme heireftir.

Slaughter.

Jul. 1.—ROBERT FORBES, fone to James Forbes of Mylnebowie.

Dilaitit, accuset, and perfewit by DITTAY following.—FORSAMEKILL as he, accompaneit with Williame Forbes, callit of Mylnebowie, and Patrik Forbes his brother, now rebellis and att the horne for the cryme vnderwrittin, and diueris vtheris thair complices, haifing confaut ane deidlie feid, rancour, and malice aganis the faid vmq^{le} Johnne Ker, vnderftanding him to haif bene att the Kirk-toun of Skene, att the mariage of his wyfes fifter; thay, vpone the fyftene day of October laftbypaft, darnit thame⁴ in the hie-way, betuix the faid Kirk-toun of Skene and the faid vmq^{le} Johnne Ker guidfatheris hous, in . . . , quhair the faid vmq^{le} Johnne had his refidence for the tyme; and thair, bodin⁵ with fwordis, dageris, gantilletis, and vtheris wapponnis invafue, lay att wait all that day for the faid vmq^{le} Johnnis hame-cumming: Lyke as, about the ewening, vnder filence and cloud of nycht, the faid vmq^{le} Johnne, lipning for na ewill, harme, or

¹ By both parties against each other. instructed.

² This case was continued from Jun. 23.

³ Proved;

⁴ Hid; concealed themselves.

⁵ Furnished; provided.

iniurie of ony personnes, bot to haif past hame to his hous in peceabill maner, vnder Godis peax and our souerane lordis, haifing tane his hors with ane young woman on behind him ; in his hame-passing to his said guidfatheris duelling hous, was vmbesett in the hie-way, be the foirnameit persones ; quhair, befor ewir he wes aduertesit of thame, thay, with thair wappinnis foirsaidis, maist schamefullie strak him fra his horse, and maist crewallie inuidit him for his slauchter, gaif him twa crewall and deidlie straikis in the heid with their swordis, and hurt and woundit him in dyverse partis of his body ; to the effusioun of his blude in grit quantitie : Off the quhilkis crewall woundis, he newir thaireftir conualest, bot continewand in grit dolour and payne thairof, vnder the cuir of cherurgeonis, be the space of elleuin oulkis¹ or thairby thaireftir ; quhill² at last, the said vmq^{le} Johnne Ker, in the moneth of Januar lastbypast, deceissit of the saidis deidlie woundis ; and swa wes crewallie and vnmerciefullie slayne be the saidis (persones) : And the said Robert Forbes is airt and pairt of the said crewall slauchter of the said vmq^{le} Johnne Ker ; committit vpoun sett purpois, prouisioun, and foirthocht felony.

PERSEWAR,

Johnne Ker at the mylne of Clwny, as father ; Alexander Gordoun of Clwny, assistit in this persute.
PRELOCUTORIS for the pannell, Mr Johnne Ruffell, (Advocate.) -

It is allegit, that this matter can nocht pas to ane Assyse, becaus in November 1611, eftir the allegit hurting, this persewar haifing intentit actioun befor the Counsell aganis Williame Forbes of Mylnebowie, and Patrik Forbes, his brother, committeris of the slauchter, to haif hard and sene thame decernit to haif committit ane oppin and manifest Ryote and Oppressioun : ffor preving of the quhilk complement befor the Counsell, the said Johnne Ker vsset the pannell as ane witness to verifie the same ; and sua, haifing anes vsset him as witness in the said matter, thai can nevir be hard to follow him as pairtie. For verifeing quhairof, producet the Counsellis Act, and ane testificat of his summonding, subscriuit be Alexander Watfone, messinger. Anfuersis, thair was na witness led in the proces afoir the Counsell ; and albeit at that tyme na knowlege of the pannellis giltines was cleirly knawin, yet that can nocht liberat him fra pwneischment, his giltines being tryit³ thaireftir.

THE JUSTICE remittis the same to the Assyse.

VERDICT. The Assyse, be the mouth of Alexander Thome in Eister Cairny, chancellor, all in ane voce, stand, pronunceit, and declairit the said Robert Forbes to be Cleane, innocent, and acquitt of the slauchter of the said vmq^{le} Johnne Ker ; and of airt and pairt of the said Slauchter.

¹ Weeks.² Until.³ Proved ; established.

Slaughter.

Jul. 3.—THOMAS MAXWALL of Arenyning,¹ brother to Alexander Maxwell of Logane; Johnne Huttone, messenger in Carlingwark.

Dilaitit of the crymis sett doun in the Letteris and DITTAY following. FOR-SAMEKILL as the said Thomas, accompaneit with Johnne Maxwell, sone to the said Alexander Maxwell of Logane, now fugitiue and at the horne for the slauchter vnder writtin, vpon the tuentie nyne day of Apryle lastbypast, haifing confaet ane deidlie feid, rancour, and malice againt vmq^{le} Johnne M^cnacht of Kilquhannatie, and vnderstanding that thair was ane tryft² affixt to be keipit at the toun of Carlingwark, betuixt him and Dauid Maxwell of Newark, the said day; the said Thomas and Johnne, his brother-sonne,³ and vtheris thair complices, bodin⁴ with fuordis, quhingeris, and vtheris wapponis inuasiue, come to the said toun of Carlingwark, quhair the said vmq^{le} Johnne M^cnacht was rydeing vp and doun, attending vpon the said Dauid Maxwell of Newarkis cuming, in sober and quyet maner for the tyme, lipning for na harme, iniurie, or persute of ony persone, bot to haif leuit vnder Godis peax and our souerane lordis; and haifing first violentlie drawin him af his horse, and thaireftir compellit him to pas with thame in to Johnne Huttone messengeris hous, in Carlingwark, thay thair, efter dyuerse ruche⁵ and hard speiches vtterit to him, drew thair quhingeris and fuordis, and within the said hous persewit him for his slauchter: The said Thomas Maxwell grippit him be baith the airmes, and held him, vnto⁶ the tyme the said Johnne Maxwell, his brother-sonne, gaif him tua straikis, the ane at the hert, and the vther on the left airme: Off the quhilkis, he immediatlie thaireftir deceiffit; and sa was crewallie and vnmerciefullie slane be the saidis Johnne and Thomas Maxwellis: And thay and ather of thame ar and war airt and pairt of his said slauchter; committit vpon set purpois, prouisioun, and foirthocht fellonie; in hie and manifest contempt of our souerane lordis auctoritie and lawis.

PERSEWARIS, Johnne M^cnacht, burges of Edinburgh, neir kynfman; (Capitane) Charles Geddes of Rachan; [Margaret Gordoun, Lady Kilquhannatie, the relict, with the thrie fatherles bairnes, kyn and friendis of vmq^{le} Johnne Maknacht of Kilquhannatie.]

PRELOCOUTOURIS for the pannell, Alexander Maxwell of Logane; Johnne Maxwell of Couhaithe; Robert, Maifler of Maxwell; Mr Williame Maxwell of Caveris; Mr Alexander King, Aduocat; Adame Cunninghame, Aduocat; Sir Robert Maxwell of Spottis; The Guidman of Cowhill.

The persewaris, vnderstanding Johnne Huttone to be innocent of the slauchter, passës *simpliciter* fra his persute; quhairupoune Johnne Huttone askis instrumentis.

VERDICT. The Assyse, be the mouth of James Cannane of Killochie, chancel-lar, all in ane voce, ffind, pronuncet, and declairit the said Thomas Maxwell to

¹ In the Dittay called of Aremein. furnished.

⁵ Rough; uncouth.

² An appointed meeting.

⁶ Until.

³ Nephew.

⁴ Provided;

be Cleane, innocent, and acquit of the slauchter of the said vmq^{le} Johnne M^cnacht of Kilquhannatie, and of being airt or pairt thairof.

Alexander Maxwell of Logane become plege and fouertie for Thomas M. his brother germane—and Capitane Charles Geddes of Rachan, and Johnne M^cnacht, mercheand burges of Edinburgh, ather of thame become pleges and fouerteis for vtheris,¹ that thai and ather of thame fall obserue and keip his Maiesteis peax to all our souerane lordis legis, and nawayis to molest or trouble thame in thair perfones, guidis, or possessiones, vtherwayis nor² be ordour of law and justice; ather of thame vnder the pane of ffyve hundreth merkis.

Murder under trust—Slaughter—Theft.

Jul. 11.—PETRIE M^cGILLIEVORICHE in Brachloche.

Dilaitit of the crewall Murthour and Slauchter of Duncane M^callaster and M^cgilliecreist,³ his tua sifter-sones; and for dyuerse poyntis of thift, (viz.) FOR airt and pairt of the crewall and abhominabill Murthour vnder Trust of vmq^{le} Duncane M^callaster, his sifter-sonne, be schuitting him with ane hagbut throw the body; committit in the moneth of Apryle, the yeir of God I^m.Vj^c. and thre yeiris. ITEM, for airt and pairt of the thiftious steilling, at the leist reffetting, of fourtie scheip, pertening to the Guidman of Campbell-Burnet. AND for airt and pairt of the thiftious steilling of tua oxin and ane kow, pertening to Johnne Leith in Edingerroche; committit a tua yeir syne, or thairby. ITEM, for airt and pairt of the steilling fra Adame Leith of foure oxin; committit a tuelf yeir syne, or thairby. ITEM, for cowmoun thift, cowmoun reffet of thift, outputting and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new.

PERSEWAR, Mr Williame Oliphant of Newtoun, Aduocat to our soueran lord.⁴

ASSISA.

Williame Forbes of Monymusk, Younger,	George Jope in Cowclarachie, Johnne Woid in Mylnebowie,	Mr Johnne Horne, seruant to the Laird of Frendraucht,
Mark Mawer of Mawerstoun, Edmond Gradane in Kinloche,	Andro Meldrum of Dumbrek, Alex. Irwing, Younger of Lenturk,	Johnne Forbes, seruitour to my Lord Forbes,
Williame Lummisden, brother to the Laird of Cufchnie,	Patrik Mortimer, Mr Patrik Grant, Minister at	George Gordoun, seruitour to the Laird of Lesmoir,
Tho ^s Cowie, burges of Abirdene,	Cromedail,	Mr Robert Elphinstoun, Tutour of Glak.

VERDICT. The Assyse, be the mouth of the said Williame Forbes of Monymusk, chancellor, all in ane voce, ffand, pronuncet, and declairit the said Patrik to be ffylet, culpable, and convict, according to his awin Confessioun, set down in his Depositiones, of the crymes *respectiue* aboue specified.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, vpone ane gibbet, to be hangit quhill he be deid: And all his landis, heritages, &c.,

¹ For each other. ² Otherwise than by form of Law.
in the Dittay or proceedings of this murder of M^cgilliecreist.
time, in the Record, as Lord Advocate.

³ No mention is otherwise made
⁴ He appears here for the first

guidis and geir pertening to him; to be fforfault and efcheit to his Maiefteis vfe, as convict and culpable of the faidis thiftious and abhominable crymes.

Slaughter, &c.

Jul. 17.—SUBMISSION betwixt GEORGE (*fifth*) ERLE OF CAITHNES, (WILLIAM) LORD BERRIDAILL, his fone, and (JOHN *seventh*) ERLE OF SUTHERLAND.¹

Compeirit Mr Johnne Manfone and Mr Johnne Sinclair, feruitouris to George Erle of Caithnes, and producet ane WARRANT of THE LORDIS OF SECREIT COUNSALL, anent the deserting of the criminall perfutes appointit, *hinc inde*, aganis the Erles of Caithnes and Sutherland, to be disputit and reffonit afoir the Justice this day: off the quhilk Warrant the tennour followis.

MY LORDIS of Secreit Counfell, vnto 3our lordschipis humlie meanis² and schawis, we 3our feruitouris, GEORGE ERLE OF CAITHNES, LORD BORRIEDAILL, his fone, ffor our selffis, and in name of our friendis and fervandis, quho ar charget in the matter vnderwritten: That quhair, pe xvij day of Julij instant is appointit vnto ws for our compeirance befoir pe Justice and his deputis, in the Tolbuthe of Edinburgh, to vnderly the Law, for the slauchter of Neill Nathmarne; the hurting and wounding of Johnne Gordoun of Golfpitour, Donald M^cky, fear of Far, and some vther friendis and seruandis to THE ERLE OF SUTHERLAND; the taking and detening priffoner of Angus M^cWilliam;³ and for certane vtheris crymes, specifit and contenit in the Letteris raifit and execute aganis ws at pe instance of pe faidis perfones, and of his Maiefteis Aduocat for his hienes intreis: Lyk as, pe Justice intendis to proced in pis matter aganis ws, althocht it be of verritie, that howbeit we wer moft willing and reddie to haif submittit our selfis to the Tryell of the lawis, for pe haill crymes contenit in the faidis Letteris; and for this effect, to haif presentit our selfis in judgement befoir the Justice the day foirfaid: Zit it was 3our lordschipis plesour to burdene ws with ane Submissioun of all matteris questionable betwix ws and the Erle of Sutherland, and M^cky and pair freindis; in the quhilk Submissioun, pir matteris ar speciallie and perticulerlie comprehendit: AND feing thay ar now in 3our lordschipis handis, vnder Submissioun, as said is, the dyett appointit to ws afoir pe Justice aucht to desert. Heirfoir we beseik 3our lordschipis to geve command to the Justice, Justice clerk, and pair deputis, to desert pe said dyet, and to desist and ceife fra all proceeding pairintill, and to dispens with our personall compeirance: Quhairanent pir presentis falbe vnto thame a Warrant, and 3our lordschipis anfuere.

APUD ED^B, xvj Julij, 1612. *ffiat ut petitur.* AL. CANCELL^S. J. PRYMROIS.

At command of the quhilk Warrant, the Justice ordanit baithe the dyettis appointit, *hinc inde*, to this day to desert.

Lykas, Johnne Gordoun, appeirand of Sydra,⁴ compeirand personallie in judgement, in name of Sir Robert Gordoun, brother to my Lord of Sutherland, Duncane M^cky, fear of Far, Johnne Gordoun, appeirand of Gordoun of Golfpitour,

¹ *Vid.* Jul. 30, 1612. In order to a proper understanding of this FEUD, reference may be made to *Gordon's History of the Family of Sutherland*, Edinburgh, 1813, p. 317, &c. It would occupy too much space to give a suitable outline of the various disputes in which these families were embroiled.

² Complains; literally, *moans*.

³ *Alias* Herrach (Herraugh).

⁴ The eldest son of John Gordon of Sidderay.

and producet the Letteris raifit be thame, and remanent complineris infert thairin, aganis my Lord of Caithnes, my Lord of Berriedaill, his fone, and remanent defenderis thairin contenit; be the quhilkis, thay and everie ane of thame ar charget to find caution for thair compeirance befor the Justice or his deputis, this day and place, in the hour of caus, to vnderly the law for the slauchter of Neill Nathnear, vmq^l Airthour Smyth, taking captiue and priffoner of Angus M^cWilliam, *alias* Herrach, but Commiffioun; and dyuerfe vtheris crymes fpecificit in the faidis Letteris—askit instruments, and protestis for relief of the faid Sir Robert Gordoun, kny^t, of his cautionerie.

**Slaughter—Fire-raising—Theft—Intercommuning with
Clan Gregor.**

Jul. 28.—GREGOUR BEG M^cGREGOUR, fone to vmq^l Gregour M^ceane; Gregour M^cAllafer Galt¹ Johnne M^cinleithe;² Johnne Dow M^cgilliephadrik V^crobert; Allafer M^callafer V^ccoule; Patrik M^cgregour Craiginche; Duncane M^ccoule cheir; Patrik Roy M^cGregour, fone to Johnne M^cphadrik, in Rannache; Gregour M^ceane V^ccoulcheir; Johnne Dow Moir M^cgregour, in Rora.

Being all presentit vpon pannell, dilaitit, accuset, and perfewit be Dittay, at the instance of Sir Williame Oliphant of Newtown, kny^t, Aduocat to our fouerane lord, for his hienes intreis, of the crymes *respectiue* following, viz. THE faidis *Gregour Beg M^cgregour, Gregour M^cAllafer Galt, Johnne Dow M^cinleith, and Johnne Dow M^cgilliephadrick V^crobert*, ffor airt and pairt of the tressonabill raiseing of ffyre, burning and distroying of the haill houffis and biggingis of Glenlocha and Achallader: And for the Slauchter of M^ccoleane, bowman to the Laird of Glenvrquhie, with dyuerse vtheris perfones, to the number of aucht perfones: Burning of thre zoung bairnes, dochteris to Johnne M^ckischak: And for Steilling of fax scoir ky and oxin furth of Glenlyoun, committit in Apryle, 1604. AND siclyk, the faidis *Allafer M^callafer V^ccoule, Patrik M^cgregour Craiginche, Duncan M^ccoule cheir, Gregour M^ceane V^ccoule cheir, and Patrik Roy M^cgregour*, fone to Johnne M^cfadrik in Rannache, being indytit and accuset, ffor airt and pairt of the burning and distroying of the haill houffis and biggingis vpon the fourtie merk land of Abervrchill, pertening to Colene Campbell: And for the Slauchter of Duncane Wobster, Johnne Seatone, Patrik Stavache, Johnne M^cgillievorich: Burning of the thre dochteris of Johnne M^ckischak, steilling and away-taking of auchtene scoir ky, faxscoir peife of horsis,³ aucht scoir schein and gait, pertening to the faid Co-

¹ The stranger, or travelled.
son of rough, or dark John.

² M^cinleiche, son of the leech, or doctor. Query, M^cindreiche?

³ One hundred and twenty *piece* of horses, as we say *head* of oxen.

lene: And lykways for burning of the mylne of Bolquhafter, with the hail houffis and bigingis vpon the grund and landis of Carne, Downe, and Dillater, pertening to Robert Campbell of Glenfalloche, and of his hail houffis and bigingis vpon his landis of Ardcancknockaur;¹ committit be thame in the moneth of Junij, 1611. ITEM, the said *Gregour M^cgregour Beg*, ffor airt and pairt of the Slauchter of vmq^{le} Solomon Lany, *alias* Buchannane; committit at the Kirk of Kilmaheug, at tuentie yeir fyne, or thairby. ITEM, the said *Johnne Dow Gilliephadrik*, ffor airt and pairt of the steilling and away-taking furth of Glenfynles of ane grit heirschip² of ky and oxin, pertening to the Laird of Lufe and his tennentis: And Slauchter of vmq^{le} Johnne Reid, wobfter, and Patrik Lang, iervand to the Laird of Lufe; committit vpon the saidis landis of Glenfinles, in the moneth of December, 1602. AND siclyk, the said *Johnne Dow Moir M^cgregour*, in Rora, ffor steilling and away-taking of ane grit number of guidis,³ pertening to my Lord Ogilvie, furth of Glenylay: And siclyk, for taking and keiping of the Ileand calit Ileand-Varnak,⁴ against his Maiesteis Commissioner, and herreing⁵ and oppreffing of the hail tennentis and inhabitantis of the cuntrie about;⁶ taking and inbringing of thair hail guidis and bestiall, to the number of aucht scoir ky and oxin, xvij scoir scheip and gait, quhilkis war eittin and flane be thame, wih in the said Ileand.⁷ ITEM, the hail foirnamet perfonen indytet and accuset, ffor cowmone thift, cowmone resset of thift, cowmone foirning,⁸ and oppreffing of his Maiesteis peceable and guid subiectis; and for Intercowmoning with the rest of the surname of M^cgregouris, fugitiues and at the horne, and sfunneiffing of thame with meit, drink, and money; and keiping of tryftis, counfallis, and gaddingis⁹ with thame, contrare the tennour of his Maiesteis Proclamations—war all put to the knowlege of ane Affyse of the perfonen following.

ASSISA.

Colene Campbell, appeirand ¹⁰ of Glenvrquhie,	James Campbell, seruitour to the Laird of Lundie,	Johnne M ^c dowgall of Raray, Duncan Menzeis of Comereife,
Johnne M ^c farlane of Arrochar, James Campbell of Laweris,	Duncane Campbell, Capitane of Carrik, ¹¹	Williame Sterling of Achyle, Mr James Schaw of Knokhill,
Dauid Drummond, seruitour to my Lord of Perth,	Johnne Drummond, seruitour to my Lord of Perth, and Chal- merlane of Stratherne,	Johnne Buntene of Ardoche, Mr James Kirk, seruitour to my Lord of Argyle.
Alexander Menzeis of that Ilk, Alexander Schaw of Cambusmoir,		

The Aduocat takis instrumentis of the fwering of the Affyse, and protestis for

¹ Ardchenachrochtan, the now celebrated inn and farm at the Trossachs. ² Plunder, or spoil.
³ Stock, cattle. ⁴ A small Island, near the western extremity of Loch Katrine, on its north shore,
 opposite Portnellan. ⁵ Spoiling; plundering. ⁶ Circumjacent. ⁷ The Clan-Gregor had a
 garrison here, in January 1611; and were besieged by Campbell of Glenurchy's second son, Robert
 Campbell of Glenfalloch, who abandoned the siege, owing, as is alleged in *the Book of Taymouth*, to
 a storm of snow. ⁸ Taking free quarters by violence, &c. ⁹ Appointed meetings, councils, and
gatherings, or convocations. ¹⁰ Heir-apparent. ¹¹ Captain of the Castle of Carrik, on the banks
 of Lochfyne.

Wilfull Errour, in caice thay clange the pannell of the crymes contenit in thair Dittay; in respect of the notorietie thair of, and of thair Confessioun.

VERDICT. Eftir accusatioun of the foirsaidis perfones enterit vponne pannell of the crymes *respectiue* aboue writtin, be our said fouerane lordis Aduocat, quhilk was verifeit be thair Depositiones and Confessiounes, maid in presens of ane grit number of the saidis perfones of Assyse, the said Dauid Drummond, chancellor, in name of the said Assyse, all in ane voce, exponit, pronuncet, and declairit the saidis perfones on pannell, in respect of thair awin Confessioun, to be ffylit, culpable, and convict of the crymes *respectiue* aboue specifreit, contenit in thair Dittayis.—SENTENCE. To be tane to the Burrow-mure of Ed^r, and thair to be hangit quhill thair be deid; and thair haill landis, heritages, and annuelrentis, takis, possessiounes, guidis and geir pertening to thame, to be sforfalt and escheit to his hienes vse, as convict and culpable of the saidis crymes.

Slaughter — (Pannel ordained to satisfy the Private Party, notwithstanding of the King's Remission, and 'Letters of Slains' from the Eldest Son of the Deceased.)

Jul. 29.—WILLIAME MURRAY, sone to Williame Murray in Glasfurd, sumtyme seruant to James Hammiltoun of Evindaill.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Archibald Stevinfoun, in Gallowfarvene; committit with schottis of hagbuttis and pistolettis, vponne the xxiiij day of Marche, I^m.Vj^c. and aucht yeiris.

PERSEWARIS, Archibald and Thomas Stevinfones, as fones; Agnes Finlay, as relict; Gawin Stevinfone, baxter, burges of Ed^r, as neir kynfman.

The said Williame tuik him selff to our fouerane lordis Remissioun, grantit to him vnder his hienes Grit Seall, vponne the nynt day of Januar lastbypast, beirand,¹ that his Maiestie, of his speciall grace and mercie, had pardonet and forgevin the said Williame all actioun, cryme, and offence that mycht be imput² to him, for airt and pairt of the Slauchter of the said vmq^{le} Archibald; and in respect thair of, and of his Maiesteis clemencie, mercie, and pardoun expressit thairin, al-legit, that the Justice could nawayis put him to ane Assyse, for the said crymes.—To the quhilk it was ansuerit be the persewaris, that the foirsaid Remissioun is null, and thairfoir sould nocht be admittit; in respect, be Act of Parliament, maid be our fouerane lord and thre Estaitis, in the moneth of Julij, 1593, cap. 174, it is exprellie provydit, statute and ordanit, be his Maiestie and Estaittis foirsaidis, that na Respett nor Remissioun be grantit to ony persone or perfones, at na tyme thaireftir, that passet to the horne for thift, reif, slauchter, burning, or heirschip, quhill the pairtie skaithed³ be first satisfeit; and gif⁴ the samyn be

¹ Bearing.

² Imputed.

³ Until the party injured, &c.

⁴ If.

vtherwayis grantit, without satisfioun of pairtie, all sic Respettis and Remiffiones to be null, alsweill be way of exceptioun as reply: And trew it is, that the pairtie perfewar is nawayis satisfeit, conforme to the said Act; and thairfoir, nochtwithstanding of the foirsaid Remiffioun, the pannell fould be put to ane Affyse, for the said cryme.

To the quhilk it was duplyit be the pannell and his prelocutouris, that the foirsaid Remiffioun man¹ be admittit, in respect the samyn is grantit vpon the sicht of ane Letter of Slanes gevin be Andro Stevinsoun, eldest lauchfull sone to the said vmq^{le} Archibald, and nerrest of kyn to him, with consent of Agnes Finlay his mother, and Mathow Thomesone, his vncl, beiring satisfioun maid to the said Andro for the said slauchter: And for verificatioun thairof, producet the said Letter of Slanes, of the dait the penult day of Julij, I^m.Vj^c. and ellevin yeiris: And vpon the productioun thairof, togidder wth the Remiffioun aboue writtin, askit instrumentis.

THE JUSTICE, in respect of the Letter of Slanes producet, Admittis the Remiffioun; and ordanis the pannell to find cautioun to satisfie the pairtie, conforme to the lawis of this realme.—James Murray of Guidisburne, and Gawin Murray of Vdstounheid, become cautioneris, &c.

Slaughter.

Jul. 30.—DONALD M^cKY, fear of Far, Johnne Gordoun, younger of Golfpitour, and vtheris.²

Dilaitit ffor being airt and pairt of the Slauchter of vmq^{le} Johnne Sinclair of Stirkco, and James Sinclair of Dyn, and remanent crymes contenit in the Letteris.

Compeirit personallie George Murray, feruitour to my Lady Sutherland, quha produceit ane Warrant of the Lordis of Secretit Counfall, &c. off the quhilk the tennour followis.

JUSTICE, Justice clerk, and your deputis. Quhairas, thair ar Letteris direct at pe instance of George Sincler of Dyn, as brother to vmq^{le} James Sinclair of Dyn, and mother-brother to vmq^{le} Johnne Sinclair of Stirkco, and Sir Williame Oliphant of Newtown, kny^t, Aduocat to our fouerane lord, for his hienes intreis, aganis *Donald M^cky*, fear of Far, *Johnne Gordoun*, 3ounger of Golfpitour, *Adame Gordoun* in Geartie, *Murdo Neill*, *Johnne Williamesoun* in Achines, *Neill Mcallaster Neillsoun* and *Donald Myller*, feruitouris to the said Donald M^cky, fear of Far, and remanent perfones defenderis, pair complices, contenit in the saidis Letteris, chargeing thame to compeir befor 3ow, in the Tolbuth of Edinburgh, the penult day of Julij instant, to vnderly the law, for airt and pairt of the Slauchter of pe saidis vmq^{le} Johnne and James Sinclairis. And feing all matteris questionable betuix THE ERLE OF SUTHERLAND and M^cKY, and pair kyn and freindis, on the ane pairt, and THE ERLE OF CAITHNES, his kyn and freindis, on the vther pairt, is be our moyane and travellis submittit; in the quhilk Submissioun the saidis tua Slauchteris of pe saidis Johnne and James Sinclairis ar speciallie comprehendit, and pe decyding pairof restis in our handis, to be discuffit be ws. It is pairfoir our Will, and

¹ Must.

² Vid. Jul. 17, 1612.

We command ȝow to DESERT þe said dyet appointit to þe said penult day of Julij instant, for tryell of þe saidis crymes, and nawayis to proceid in vnlawing of the saidis perfones defenderis, or pair cautioneris; dispensing with thair non-compeirance, in that respect: Quhairnant þir presentis fall be to ȝow ane sufficient Warrant. Subscryuit be ws AT ED^a, the xxv day of July, 1612.

AL. CANCELL^r. LOTHIANE. S^a T. HAMILTON.

At command of the quhilk Warrant, the Justice ordanit the said dyet to desert, &c.

Slaughter—Beiring, Weiring, and Shooting of Hagbutts and Pistolets.

Jul. 31.—JAMES HALL of Foulebar; Mr Williame Hall, indueller in Dumbarten, his brother-germane; Thomas Stewart, at the Ferrie-boit of Inchynnane.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Montgomerie, younger of Scottistoun; committit with schottis of hagbuttis and pistolettis, within the burgh of Renfrew, in the moneth of November, the yeir of God I^m.V^c. fourfcoir nine yeiris: And als, for contravening of the Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis, schoiteing and slaying of the said vmq^{le} Johnne Montgomerie younger thairwith, at the particuler tyme and place aboue mentionet.

PERSEWARIS.

Johnne Montgomerie, elder of Scottistoun, as father; Sir Williame Oliphant of Newtown, kny^t.

PRELOCUTORIS for the pannell, Mr Alexander King, Mr Laurence McGill, Aduocatis.

Sir Johnne Buchannan of that Ilk, kny^t, become fouertie for Thomas Stewart his entrie, vpone xv dayis wairning, to vnderly the law for the slauchter aboue writtin, vnder the panes contenit in the Actis of Parliament.—The said James Hall, and Mr Williame Hall, his brother, tuik thame selffis to tua feuerall Remiffiones, grantit to thame be our fouerane lord; the ane beirand, that his Maieftie, of his speciall fauour and grace, remittis and gevis pardoun to the saidis James Hall of Foulbar, and to Mr Williame Hall, his brother, for airt and pairt of the slauchter of the said vmq^{le} Johnne Montgomerie Younger of Scottistoun, and for all actioun and cryme that may follow thairupoun, or may be input to thame thairfoir; quhilk is daitit at ffalkland, the aucht day of Julij, the yeir of God I^m.V^c. fourfcoir fyftene yeiris (1596), vnder his hienes Grit seill: The vther of the saidis Remiffiones beirand, that his Maieftie, of his speciall grace and mercie, gevis pardoun and remiffioun to the said James Hall, feruitour to Archibald Erle of Argyle, and to the said Mr Williame Hall, his brother, and to ather of thame, for all cryme and offence that mycht be laid to thair charge, ffor thair beiring, weiring, or schuiting with hagbutis and pistolettis, contrair to his Maiesteis Actis of Parliament, at ony tyme bygane, preceeding the day and dait of the

same Remiffioun, quhilk is daitit at Edinburgh, the tent day of Julij instant, I^m.Vj^c. and tuelf yeiris.

THE JUSTICE admittit the samyn, nochtwithftanding of dyuerfe allegeances maid be our fouerane lordis Aduocat in the contrair ; and Ordanit the saidis perfonnes vponne pannell to find cautioun to fatisfie the pairtie, conforme to the lawis of this realme : Quhairupone the saidis James and Mr Williame Hallis askit instrumentis : And for obedience of the said ordinance, ffand, with thame selfis, Williame Sempill of Foulewoid, and James Wallace of Johnnstoun, cautioneris for thame, to fatisfie the pairtie, &c.

Slaughter, committed by a Youth fourteen years of age.

Aug. 26.—JAMES MIDDLETOUN, sone to vmq^{le} Robert Middeltoun, tailzeour, burges of Edinburgh.

Dilaitit off airt and pairt of the crewall Slauchter of vmq^{le} Clement Mauchane, sone to vmq^{le} James Mauchane, mercheand, burges of Edinburgh, be streking of him with ane durk, vnder the schorte ribbis, vpwardis, on his left syde, the lenth of aucht or nyne inches, vponne the *diaphragma*, or midreid, quhilk is ane noble pairt ; committit within the burgh of Edinburgh, within the duelling hous or ludgeing of Alexander Hunter, burges thair, vponne the threttene day of August instant : Off the quhilk crewall and deidlie straik sa gevin to him, he nevir thair-eftir convaleschet, bot immediatlie thaireftir taking bed within the foir chalmer of vmq^{le} Henrie Lummifden, chirurgane, to the quhilk he was led and cayreit, remanit bedfast in grit dollour and pane, vnder the cure of chirurganes, the space of nyne dayis togidder, or thairby ; and at last, vponne the xxij day of August instant, about nyne houris afoir none, he depairtit this lyfe, of the said deidlie straik : And sa, was crewallie slane be the said James Middeltoun, vponne set purpois, prouisioun, and foirthocht fellonie ; in hie and manifest contempt of our fouerane lordis auctoritie and lawis.

PERSEWARIS, Mr James Mauchane, as brother ; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCOUTOURIS in defence, Mr Johnne Ruffell, Mr Laurence M^cgill.

The persewaris producet the Dittay, with the roll of the Affyse, and desyret proces.—THE JUSTICE Ordanit the Dittay to be red.

Mr Laurence M^cgill, prelocoutour, in name of Johnne Carmichell, decone of the Tailzeouris, Alexander Miller, tailzeour to his Maieftie, and of the mother and certane vtheris the pannellis freindis, befoir ony forder proces, and to eschew forder disputatioun in this matter, offerit to the persewaris, that for thair satisfioun for the slauchter aboue writtin, that thai war content to caus the pannell ather imbrace the Sentence of perpetuall Banisfchment ; or vther wayis, to thair power,¹ to mak sic vther satisfioun, baith of honour and guidis, to the

¹ To the utmost extent of their means.

persewar, as be the advyse of friendis sould be inioynet to him, his lyfe being saifit.—The said Mr James Mauchane, as brother, and persewar of this mater, for ansuer declairit, that, seing his brother is flane, aganis the Law of God and his Maiesteis lawis and Actis of Parliament, refusit altogidder to enter in capitulation of agrement of this matter; and thairfoir desyret that justice be ministrat, accoirding to the lawis of this realme.

THE JUSTICE, in respect of the persewaris ansuer and desyre aboue writtin, Ordanis proces.

It was allegit be the pannell and his prelocoutouris, that this matter sould nocht pas to the knowlege of ane Assyse ffor tua caussis; *ffirst*, becaus he is nocht wairnit vpone fyftene dayis wairning, conforme to the Act of Parliament; *secundo*, he was nocht tane *in fragranti crimine*; in respect be the Dittay it is affirmet, that the fact was committit vpone Thurisday the xiiij day of August instant, and vpone the fyftene day of the said moneth, being Setterday, was tane be the Magistratis of Edinburgh, as suspect giltie and culpable of the said fact, albeit¹ the Magistratis of the said bur^t had na power sa to do, the tyme limitat to thame being expyret, viz. xxiiij houres allanerlie² eftir the committing of the fact; and sa, he nocht being tane *in fragranti crimine*, bot within thre dayis eftir the allegit time of the committing thairof, the pannell, of all equitie, aucht to haif bene summond vpone fyftene dayis wairning.—It is ansuerit be my lord Advocat, that the foirsaid allegeance aucht to be repellit, in respect of the Dittay beiring the slauchter to be committit vpone the xiiij day, be the pannell, and he to be tane and apprehendit be the Magistratis vpone the xv day thaireftir, and committit to waird; quhairin he hes remanit to this hour. And sa, the Slauchter being committit recentlie, and the pannell tane thairfoir *in fragranti crimine*, he aucht to be put to ane Assyse, but³ ony citatioun preceeding; speciallie, in respect he is brocht fra the priffone to the bar, be the Magistratis, his takeris.

THE JUSTICE Ordanis the pannell to pas to ane Assyse, nochtwithstanding of the former allegeances.

It is forder allegit be the pannell, that my lord Justice can nocht put the pannell to the knowlege of ane Assyse, for this cryme; becaus, be ane text of the Cowmone Law, *de delictis puerorum*, the fyft of *the Decretallis*, it is speciallie declairit, that minoris within xiiij yeiris of age committing crymes, ar nocht *doli capaces*, quhilk can nocht be estimat to be done be thame *ex certa scientia*; and thairfoir, can nocht be persewit thairfoir: Lyk as, in the accident that fell furth be the scolleris of the Grammer-scole of Edinburgh, in slaying of Johnne M^rmorane, being ane bailzie, and in the executioun of his office, this allegeance being proponit in the persute intentit aganis thame for the said Slauchter, it was ffund, be Interloquitour of the Judge, in respect of thair minoritie, that thai war nocht

¹ Although.

² Only.

³ Without.

doli capaces, and sa wer affoilzeit,¹ and na perfute followit furth aganis thame : Quhilk practique the pannell repeittis, and sayis, that in respect of the Cowinone-law and practique aboue writtin, he being minor *et non doli capax*, he can nocht pas to ane Affyse for the said cryme. *Secundo*, the slauchter aboue writtin was nocht committit vpon set purpois or foirthocht fellonie ; in respect thair was na querrell betuix the defunct and the pannell ofbefoir, bot only the defunct missing his dager, quhilk was tane fra him be Capitane Erskine, quaha also was with him in companie, and was cassin vp be him vpon ane almerie heid,² the defunct, for wanting thairof, challanget the pannell, and maist outrageoufli abufet him, baith with langaige and ftraikis ;³ lyk as, the pannell, finding him self sa vset, and feing ane durk vpon the buird besyde him, tuik vp the said durk and defendit him self thairwith, vpon the quhilk durk, haldin out be the pannell for his awin defence, the defunct ran him self ; and sa was the caus, him self, of his awin slauchter : And thairfoir, fould nocht pas to ane Affyse.

To the quhilk it is ansuerit, be my lord Aduocat, that the foirsaid allegeance of minoritie fould be repellit, becaus it is nocht condiscendit be the proponer of the said James Middeltones age, quhidder he be past xiiij yeiris or within the samyn, quhilk of necessitie man⁴ be condiscendit vpon ; becaus he being past xiiij yeiris of age, *est doli capax*, and sua may be perfewit and pwneist to the daith for the slauchter : Alwaysis,⁵ to mak the matter cleir to my lord Justice, it is affirmet be the perfewer that he is past sevintene yeiris of aige, befoir the committing of the slauchter, as is manifest, nocht onlie be ocular inspectioun, bot be the extract of the tyme of his birth furth of the Register of the Kirk-buikis of Edinburgh, he being baptizet vpon the 23 day of Julij I^m.V^c.lxxxxv.—As to the practique allegit betuix Johnne M^cmorrane and the Chancellor of Caithnes sone, and the rest of the bairnes, quhome the pannell allegis to haif bene perfewit for the said Johnne M^cmorrane's slauchter, it is certane that all the bairnes that war perfewit and accuset for that slauchter war within fourtene yeiris of age ; and thair was na Interlocutour gevin in that cause, bot the matter was tane vp be his Maiesteis expres Warrant.—And acceptis the Confessioun of the durk in his handis, and Slauchter thairwith.

Thaireftir the pannell, for satisfeing the desyre of my lord Aduocatis allegeance, condiscendis that he was within fourtene, at the leifst fyftene yeiris of age, the tyme of the committing of the slauchter lybellit. And quhair, it is allegit and affirmet that the haille bairnes perfewit for Johnne M^cmorrane's daith war within fourtene yeiris, thair is na thing producet to verifie the samyn. And last, as to the Tes-

¹ Absolved ; dismissed. ² Cast or thrown by him on the top of a cupboard or press. ³ Both by words and blows. ⁴ Must. ⁵ Nevertheless ; at all events.

timoniall producet be the perfewar, anent the pannellis baptifme; *ffirft*, it is anfuerit, that na fayth can be gevin thairto, becaus it is nocht regiftrat; *fecundo*, it hes na witneffes; *tertio*, of the Law, *teftibus et non teftimonijs credendum eft*.—The perfewar repeitis his former anfwer, with the Testimoniall extractit furth of the Kirkis Register.

The Justice Repellis the allegeances proponit be the pannell; and Ordanis him to be put to the knowlege of ane Affyfe.

ASSISA.

Jo ⁿ Quhyte, culteller, burges, Ed ^r ,	Patrik Craig, mercheand, burges of Ed ^r ,	James Cathkyn, librar, burges of Ed ^r ,
Johne Naper, tailzeour in Poketfleve,	Johne Mitchelhill, mercheand, burges thair,	Dauid Laufone, mercheand, burges thair,
Johne Gilbert, tailzeour in the Cannogait,	Patrik Meayue, couper, burges thair,	Thomas Cuthbertfone, culteller, Troyalus Laufone, baxter, burges of Ed ^r ,
Johne Smyth, mercheand, burges of Ed ^r ,	Robert Zoung, maltman,	James Halyburtoun, mercheand, burges of Ed ^r ,
Clement Ruffell, mercheand, burges thair,		Johne Johnneftoun, tailzeour, burges of the Cannogait.

It was allegit aganis Johne Quhyte, that he can nocht be admittit vpon this affyfe, becaus *vtro citroque gessit se hoc negotio*, in furtherance of this perfewer, in perfute of the pannell; and defyret the Judge to tak his ayth thairupoun, and to purge him of partiall counfall; quha being fuorne, declairit, that he had gevin na partiall counfall in that matter: In respect quhair of, the Justice admittis him vpon the Affyfe.

The Defender, eftir his accusatioun be Dittay of the Slauchter aboue writtin, vpon his conscience, denyis the samyn; and allegit, that thair was nathing producet to the Affyfe to verifie his giltines of that fact.

Mr James Mauchane, perfewer, and brother to the defunct, being fuorne, gaif his ayth vpon the Dittay, that he had just caus to perfew the pannell for the slauchter of his brother: And repeittis to the Affyfe the notorieite of the slauchter, in maner fet down in the Dittay.—My Lord Aduocat takis instrumentis of the sweiring of the Affyfe; and repeittis, for their forder instructioun, the offer maid be the pannell to the perfewer, ather to imbrace the sentence of Banifchment, or vtherwayis, in honour or guidis, to mak fatisfacioun to thair power; quhairin the pannell hes confest his giltines of the fact, in maner fet down in the Dittay. And proteftis, in respect thair of, for Wilfull Errorr aganis the Affyfe, in caice thay acquit.—It is allegit be the pannell, that the offer allegit maid be him to the pairtie perfewer, in the begyning of the cause, was nocht maid be him, bot be Johne Carmichell, deacone of the Tailzeouris, and vtheris his brether, the pannellis freindis and weill-willeris, out of thair awin box,¹ quhilk offer was

¹ Out of the box or funds belonging to the Incorporation.

nocht maid to induce ony Confessioun of the cryme, *sed ad evitandum litigationem*.—My Lord Aduocat, as ofbefoir, repeitis the offer, and notorietie of the fact committit; and proteftis for Wilfull Errour, gif the Affyfe acquit.

VERDICT. The Affyfe, all in ane voce, be the mouth of the said James Cathekyn, buikfeller, ffand, pronuncet, and declairit the said James Middletoun to be ffylet, culpable, and convict of the crewall slauchter of the said vmq^{le} Clement Mauchane; committit at the tyme and in maner specifcit in the said Dittay.—SENTENCE. The Justice, be the mouth of John Dow, dempfter of Court,¹ decernit and adiudget the said James to be tane to the Mercat-croce of Ed^r, and thair his heid to be ftrukin frome his body; and all his moveable guidis and geir, gif he ony hes, to be efcheit and inbrocht to his hienes vfe, as convict of the said Slauchter.²

Horse and Sheep Stealing — Theft — Perjury.

Sep. 18.—ALEXANDER IRWING, sone to vmq^{le} Gilbert Irwing of Wyfbie, James Irwing, sone to vmq^{le} Williame Irwing, brother to the said vmq^{le} Gilbert.

Dilaitit, accuset, and persewit, bē Dittay, at the instance of Williame Mannecht in Echt, and Alexander Wilfone, gairdner thair, and be Sir Williame Oliphant of Newtoun, kny^t, aduocat to our fouerane lord, off the feuerall pointis of Dittay following, viz.

FOR airt and pairt of steilling and away-taking of thre lynning wobbis furth of the houffis of Gulielandis, pertening to ane pure woman thair; committit in Julij, 1610 yeiris. ITEM, ffor airt and pairt of the steilling of sevin naigis and meiris³ furth of the landis of Moufwall and Drummwre; committit in the moneth of October, 1610 yeiris. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of aucht schein furth of Dronnok, fra James Quhyte thair; committit in September, 1609. ITEM, ffor airt and pairt of the steilling and away-taking of tua naigis and ane mere, pertening to Johne Gillefpie, and George Ker, in Robiequbat; committit in October, 1610. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of sax oxin furth of the landis of Lochirgrane, within Drummwre; committit be the said Alexander, in the yeir of God I^m. sax hundreth and aucht yeiris. FOR the quhilkis feuerall crymes, the saidis Alexander and James Irwingis being arreistit to the Justice Court, haldin be the Commiffioneris in the Tolbuthe of Dumfreis the fyftene day of October, I^m.Vjc. and ellevin yeiris, thay, for thair non-compeirance, war declairit fugitiues and put to the horne, as rebellis and fugitiues, for the saidis crymes. ITEM, the saidis James and Alexander Irwingis war indyttit and accuset, at the instance of the saidis persewaris, ffor airt and pairt of the steilling and away-taking furth of the waird of Echt of ane gray naig, pertening to the said Williame Mannecht, and of ane broun naig, pertening to the said Alex^r Wilfoun, gairdner in Echt; committit vnder filence of nycht, vpon the first day of August lastbypast; quhilkis tua naigis war brocht Southe ower be thame to Ed^r to Thomas Lokeis hous, at the Wast-Point thair of, quhair thai war keptit for the space of thre

¹ This person appears, for the first time, as dempster, in the Record. ² See Nov. 18, 1618, when, after six years' imprisonment, the party relents, and Myddiltoun goes into voluntary exile for life. This arrangement is sanctioned by the Privy Council and the Justice, to whom the matter had previously been submitted. ³ Riding horses and mares.

dayis and thre nyctis; and vpon the . . . day of the said moneth, being Mononday, the ordinar mercat day of the said burgh,¹ presentit thame to the horse-mercat thair of to be fauld, quhair the saidis tua horffis war challanget in thair possessioun, be Airthour Forbes of Sonnahony; and thair thairefter apprehendit and committit to waird within the Tolbut of Ed^r, thair to haif remanit quhill thair tryell. ITEM, ffor airt and pairt of the steilling and away-taking of ane horfe furth of the Heuch of Duris, pertening to Thomas Frazer, sone to the auld Laird of Duris; committit in Junij lastbypast. ITEM, ffor airt and pairt of the steilling, conceilling, and away-taking of ane blak horfe, pertening to Johnne Clark in Auchroffe; committit in the moneth of Maij, 1^m.Vj^c. and ten yeiris. ITEM, ffor the detestable and odious cryme of Periurie, in the periureing and menfweiring² of thame selffis, the tyme of thair examinatioun and vptaking of thair Depositiones; the said James Irwing, be his grit aithe, affirmeing him selff to be namet Johnne Poole, quhairat he still abaid quhill the contrair was verifeit vpon him, and he maid to confes the treuth thair of; quhilk was also sworne and affermet be the said Alex^r Irwing, that the said James was namet Johnne Pole. ITEM, thay and ather of thame war indytit and accuset for Cowmone thift, Cowmone reffet of thift, fra the South to the Northe, and fra the Northe to the Southe, in outputing³ of the samyn.

My lord Aduocat, for verifeing the first point of Dittayis, producet ane Precept of the Commiffioneris, be the quhilk the pannell ar denuncet fugitiues, for certane poyntis of thift gevin vp aganis thame; and repeatit the fueiring of the Dittay be the tua persewaris, anent the steilling of thair tua naigis: And in respect thair of, and of the notorietye of the pannellis thiftious lyfe, protestit for Errour, gif thay acquit.

VERDICT. The Affyfe, be the mouth of Johnne Abercrombie, in Leith, chancellor, ffind, pronuncet, and declairit the saidis Alexander and James Irwingis to be ffylit, culpable, and convict of the haill crymes *respectiue*, aboue expremitt.— SENTENCE. To be tane to the Castell-hill of Ed^r, and thair to be hangit vpon ane gibbet, quhill thay be deid: And all thair guidis and geir to be efcheit, &c.

Slaughter.

Nov. 5.—JOHNNE HAY, fervitour to James Henderfone, chirurgane.

Dilaitit, accuset, and persewit be Cristiane Adamesone, the relict of vmq^{le} Niniane Paterfone, ftaibler in Ed^r, and Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, of the crymes following, viz.

FORSAMEKILL as the said Johnne Hay haifing, in the moneth of Maij bypast, hyret and conducet the said vmq^{le} Niniane Paterfones horfe to Roiffing-mylne, for hame-bringing of pe said James Henderfones bairne; and pe said Niniane haifing past with him, of purpois, at his lichtig,⁴ to haif attendit vpon his said hors, the said Johnne Hay, be the way, directit the said vmq^{le} Niniane to ryn befoir, and to attend⁵ his cuming, becaus he was him selff to repair to Lefuaid, thair to speik with his faper and vtheris his freindis; lyk as, about ten houris at evin, the said Johnne, haifing cum to the said mylne, altogidder ouerfet with drink, and fa, nawayis being able at that tyme of the nycht, and in fa beifflie estait, to governe him self, let be to haif horfet and cayreit befoir him his said maisteris bairne, without danger of bothe pair lyves; becaus pe said vmq^{le} Niniane maid sum oppositioun and resistance to that his intentioun, in ryding at pat tyme of the nycht; he pairfoir, in his beifflie rage and furie, ran vpon

¹ Now held on Wednesdays.
Fr. *attendre*.

² Mansweiring.

³ Selling; disposing of.

⁴ Alighting.

⁵ Await.

him, and with his kneis and feit possit¹ him vnder his feit, best and dang² him in pe heid, bellie, breiftis, and sydis, and brak and birfet³ his haill intrallis within him : And nocht being fatisfeit with that his crewall and outrageous abuse, the said vmq^{le} Niniane, being rissin vp on his feit, the said Johnne come to him and hurrillit him maist violentlie over the brae besyde pe mylne, of purposis to haif drowned him in the dambe, quhilk, be reffone of pe said downward fall, he had nocht failzeit to haif done, war nocht, be pe Providence of God, he was haldin and stayit be pe stobe and rute of ane trie, his face and heid, nochtwithstanding, being maist schamefullie demanit⁴ and hurt, be occasioun of pe said fall : Off the quhilkis straikis, hurtis, and woundis, sa gevin to the said vmq^{le} Niuiane, in maner foirsaid, he nevir paireftir convalescit ; bot being borne and cayreit hame to his duelling hous, tuik bed, quhairin he remanit bedfast, in grit dollour and payne, continuallie paireftir, to pe tyme of his daith ; and at lenth, vpone Lambes day⁵ paireftir, quhilk was pe first day of August lastbypast, he deceissit of pe saidis hurtis and woundis ; and at pe hour of his daith, and dyuerse tymes of befoir, during his seiknes, left his deid,⁶ and pe only cause pairaf, vpone pe said Johnne : And sa was schamefullie, crewallie, and vnmercifullie slane be pe said Johnne Hay ; and he is airt and pairt of pe said crewall slauchter, committit vpone set purposis, prouisione, and foirthocht fellonie ; in hie and manifest contempt of his hienes auctoritie and lawis.

PRELOCOUTOURIS in defence, Gilbert Hay, as fader to the defender ;

Mr Lawrence M^cGill, Adame Cuninghame, Johnne Elphingstone of Schank.

It is allegit, be the pannell, that this lybell is nocht relevant, in respect the perticuler day of the moneth of the allegit committing of the fact lybellit, is nocht condiscendit vpone.—To the quhilk it is ansuerit be the persewar, that the allegiance aucht to be repellit, in respect of the Summondis beirand the cryme lybellit to be committit, be this defender, in the moneth of May last ; and that be the straikis gevin to the defunct, at that tyme, he deceissit thairof in August thaireftir.

THE JUSTICE, nochtwithstanding of the allegiance, in respect of the persewaris ansuer, remittis this matter to ane Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Inglis, burges of Ed^r, chancellor, ffind, pronuncet, and declarit the said Johnne Hay to be clene, innocent, and acquit of the Slauchter of the said vmq^{le} Niniane, and of airt and pairt thairof.—Quhairupoun the said Johnne Hay askit instrumentis.

Thett.

NOV. 24.—THOMAS MOWAT, sumtyme seruant to Williame Lord Keith.

Dilaitit of airt and pairt of the thiftious steilling and abstracting fra Williame Lord Keyth, his maister, of ane purse, togidder with sax scoir Angellis of gold, being thairintill, vnder nycht, furth of ane foir chalmer in Ed^r, quhair his said maister was ludget for the tyme ; committit vpone the xij day of Marche last.

This case was continued to Dec. 23, Jan. 29, Feb. 5 and 12 ; and at length

¹ Pushed. Fr. *pousser*. ² Beat and struck. ³ Bruised. It is sometimes in the Record expressed by '*braist*,' burst. ⁴ Used ; treated. ⁵ Lammas-day, 1st August, or the Feast of St Peter ad Vincula (in bonds) ; supposed to be so named, because lambs were offered at this Mass, in commemoration of the command of our Saviour to the Apostle, 'Feed my lambs.' This metaphorical expression was, as usual, seized upon by the Romish Church, and converted into a source of substantial profit. ⁶ Death.

was prorogated to the Justice-air of 'Sterling, tertio Itineris, vel super premonitione xv dierum.' No procedure is recorded, saving these continuations, owing to the absence of Lord Keith, &c.

'Englisch Pirattis'—Piracy—Theft.

Feb. 2, 1613.—**JOHNE DAUIDSOUN**, borne at Rattleiff, besyde Lundoun,
Johnne Lowis, borne in Cairleill, baith Inglish Pirattis.

Dilaitit of Piracie and Thift, committit vpon dyuerse his Maiesteis subiectis, bothe in Ingland and Scotland, viz.

FOR the thiftious steilling of ane schip-boit furth of Rattleiff; committit vpon the fourtene day of Januar last, and passing thairwith to the fie: AND for airt and pairt of the buirding of ane catche or oister-bott, and thiftious away-taking of the samyn, vnder silence of nycht; and passing thairwith, furth of the river of Thames to Liefswall, quhair thai buirdit ane Harwadge Hoy, and be way of maisterful thift and stouthe-reif, rest and away-tuik furth thairof ane piece of stuff worth threttie schillingis sterling, togidder with breid, beir, and vther victuallis: AND thairfra, foranent Harwadge,¹ persewit and buirdit ane Yarmouth bark, and tuik furth thairof thre caidis of reid heiring, and ane half barrell of quhyte heiring, with the barkis topsaill, the skipperis cloik, and ane stand of apparell, laid over with siluer laise: AND thaireftir, come to Yarmouth-Raid, quhair thai persewit and buirdit ane Scottis bark, pertening to Alexander Law in Kirkcaldie, inuidit the skipper with his companie, being thairin, hurt and woundit the said Alexander Law, skipper, in the heid: AND for dyuerse vtheris crymes of Pirracie, at lenth specifit in the Dittay.

Quhilkis ('feuerall crymes') war confessit iudicially be thame to be of verritie.

VERDICT. The Assyse, be the mouth of Walter Lukkie, skipper in Leyth, chancellor, fand, pronuncet, and declairit the saidis Johnne Dauidson and Johnne Lowis to be ffylet, culpable, and convict of the perticuler crymes of Thift and Pirracie aboue specifit.—**SENTENCE.** To be tane to the Sandis of Leithe, within the fluid-mark thairof, and thair, vpon ane gibbet to be hangit quhill thay be deid; and all thair moveable guidis to be escheit, &c.

Fire-raising—Burning—Murder—Theft—Piracy.

Mar. 30.—**NEILL M^cCLAUD**, sone-naturall to vmq^le Rorie M^cclaud, sumtyme of LEWIS.

Dilaitit of airt and pairt of the crewall Burning of dyuerse houffis, erectit and biggit be the Lairdis of Balcomie, Airdrie, Wormestoun, &c. vpon **THE ISLE OF THE LEWIS**, and for dyuerse vther crymes, set down in his **DITTAY** following.

¹ Opposite to Harwich.

NEILL MACCLAUD, sone naturall to vmq^{le} Rorie Mcclaud, sumtyme of Lewis. 3E ar indytit and accufet, fforfamekill as, from 3our verrie 3outhe, 3e being tranet vp in all maner of barbarous crewaltie and wicketnes, and following þe pernicious example of 3our godles parentis, kynsfolk, and cuntrie people, haifing committit innumerable oppreffiones, heifschipis, and violent factis aganis sic perfonas as 3e mislyket, duelland within the cuntrie of THE LEWIS, and vtheris HIELAND YLES pairabout, to the heich offence of Almychtie God, displefour of the King's Maieftie, contempt of his royall authoritie, and violatioun of his hienes lawis; ffor forder manifestatioun of 3our extreame and vnnaturall mischancie,¹ vnderstanding that THE KINGIS most excellent Maieftie, for repressing of the abhominable villaneis, crewalteis, and oppreffiones committit be 3ow and 3our associattis duelland within þe Yleand of the Lewis, out of his princelie wifdome, had directit ane grit number of his hienes peceable and guid subiectis furth of þe Lawlandis, bodin² with all maner of furnitour, and necessar prouisioun for pair intertenement, towardis þe said Ile of þe Lewis, thair to haif plantit and sett doun Tounes and Villages, and to haif establischet all guid ordour and ciuilitie; of purpois, pairby, to haif extirpat and ruteit out þe name of barbaritie furth of thais partis: 3E, accompaneit with *Tormond Mcclaud*, 3our broper, and with tua hundreth barbarus, bludie, and wicket Hielandmen, foirneris and avowed malie-factouris, ancient inhabitantis and lawles perfonas within the Lewis, quhome 3e conuenit to 3our selff, to resist and withstand the purpois and godlie intentioun resoluēt vpon be his Maieftie, anent þe quyeting of pat cuntrie—come, all bodin in feir of weir,³ with bowis, darloches, tua-handit-fuordis, hagbuttis, pistolettis, and vperis wappones *invasiue*, in oppin and hosteill maner, about a fourtene 3eir syne, or pairby, to the said Ileand of the Lewis, quhair vmq^{le} WILLIAME LORD PITTINWEME, the *Laird of Wormestoun*, the *Laird of Fingask*, the *Laird of Balcomy*, the *Laird of Airdrie*, accompaneit with dyuerse Inlandis Gentilmen, his Maieftis peceable and obedient subiectis war landit, and in planting of dyuerse houffes, pairtie of tymmer, and pairtie of stane and fail,⁴ for þe tyme, lipning for nothing les nor to haif bene inuidit and withstuid in thais pair vertious⁵ proceedingis; and pair, maist fearcelie inuidit and persewit the saidis Lawland Gentilmen and pair companeis, maist crewallie murdreist and slew vmq^{le} Robert Traquair, vmq^{le} James 3oung, vmq^{le} Wedderburne, and dyuerse vtheris, to the number of tuentie tua perfonas, maist tressonabillie put handis in the persone of the said *Laird of Balcomie*, be taking him as captiue and prissoner: AS ALSO, maist tressonabillie raisit ffyre, brunt and distroyit to the grund the hail houffis erectit vp be thame, with þe victuall and furnitour of meill, malt, and vther prouisioun, to the avail⁶ of tuentie thouseand merkis: AND pair-estir, be way of maisterfull Thift and Stouth-reiff, thiftioullie stall and away-tuik the hail horsis, ky, oxin, scheip, and vther bestiall, pertening to þe said Lawland gentilmen, to the avail of ten thouseand pundis. And 3e, the said *Neill*, ar airt and part of the saidis tressonable and barbarus crymes, and was þe special ringleider and Chiftane, with the said *Tormond*, 3our broper, in putting of the samyn to sic mercieles executioun: quhilk 3e can nocht deny. ITEM, 3e ar Indytit and accufet, fforfamekill as *Johnne Pullet* and *Robert Blair*, burgeses of Perth, haifing past, with ane Schip pertening to thame, to *Loche-Brume*, to the fischeing, 3e, vnderstanding pairof, come with ane number of thevis and lymmeris, 3our associatis, to þe number of fourtie men, or pairby, all bodin in feir of weir; and haifing devydit 3our companie in tua severall companeis, and enterit in tua boittis, 3e pairestir rowit af þe land towardis the said schip; and pair, as Pirattis, Thevis, and Sea-robberis, estir discharginge of dyuerse muscattis, hagbuttis, and vperis ingynges of fyre-work at the said schip and companie pairof, 3e buirdit the samyn, intromettit with the hail furnitour, mercheandice, wynes, claithe, and vper prouisioun being pairintill, disarmet the merchandis, skipper, and marineris, and tuik af þame pair hail clething, and abulzementis,⁷ pat tua (of) þe companie of the said schip a land, and in maist pitiefull⁸ maner murdreist and slew þe rest of the companie, to the number of sevin or aucht men; and pairestir,

¹ O. Fr. *meschancie*, *meschanceté*, wickedness. particular quality. ⁵ Virtuous; honourable.

² Provided.

³ In warlike array.

⁴ Thickly cut turf, of a

⁶ Valuc.

⁷ Dress; apparel.

⁸ Piteous.

disponit vpon the said Schip, mercheandice and guidis being pairin, at pair plesour: And the said *Neill* was and is airt and pairt of the Thiftis and crewall Murthouris aboue writtin. ITEM, 3e ar indytit and accuset, sforamekill as 3e, perseveiring in 3our former devillifche and abhominable tred of lyfe, 3e, accompaneit with dyuerse thevis, soirneris, and brokin men, 3our complices, to the number of thre hundreth persones, or pairby, all bodin in feir of weir, with suordis, durkis, bowis, darloches, hagbutis, muscattis, and pistolettis, resolveing with 3our selff to putt the haill Lawland Gentilmen being than within the said Ileand of pe Lewis to pe suord, quhairby thay nor na vperis sould haif any power or commandiment in that Ileand to withstand 3our wicket attemptis, in the moneth of Apryle, the 3eir of God I^m.Vj^c. and sevin 3eiris, 3e of new agane come to that pairt of the said Ileand, quhair pe said Lawland Gentilmen had biggit dyuerse Townes and Villageis, and erectit dyuerse houffis: And the bettir to bring 3our wicket resolutioun to pas, 3e, in freindlie maner, humbillit and offerrit 3our selffis to becum peceable and obedient people, and desyrit thame to accept 3ow in seruice, to quhome 3e wald be willing to do all maner of guid and steidable¹ offices, as 3e sould be employit, in regard 3e fand (as 3e declairit) pair cuming to pat land to be for na evill intent, bot for guid: And pe saidis Gentilmen, beleveing 3our fair promeissis, and lipning nathing les pan that ony Treafone sould haif bene practiszet be 3ow, haifing grantit 3ow sum ouersight,² 3e, with 3our associattis, maist tressonabillie, vnder trust and freindschip, and in pe dark and maist quyet tyme of the nycht, enterit within the Campment belonging to the said Lawland Gentilmen, raifit fyre, and brunt and distroyit with fyre ane hous erectit and pertening to *Sir George Hay of Nether Liff*, ane vper hous pertening to *the Laird of Airdrie*, ane vper hous pertening to *the Laird of Wormestoun*, ane vper hous pertening to *Johnne Dalgleishe*, with dyuerse vperis houffis, newlie buildit within the said Ileand, and alangis pe Sea coist pairrof, brunt and distroyit the haill victuallis, furnitour, insicht and pleniffing being within the saidis houffis, to the avaiill and estimatioun of ten thowseand pundis: And at pe samyn tyme, maist crewallie Murdreift and Slew v^mq^le *Patrik Giffert*, servand to the Laird of Airdrie, with dyuerse vtheris servandis and office men within the said Campment, in pair cuming out of pe saidis houffis, to save thame selffis frome the rage and violence of the fyre, being all his Maiesteis faithfull and guid subiectis: And 3e, the said *Neill*, ar and war airt and pairt of the saidis tressonable and crewall factis. AND finallie, 3e, the said *Neill*, in regard of 3our former abhominable lyfe, feiring 3our awin apprehensioun, and haifing, for 3our gritter suretie and releiff, fled af pe Mayne and Continent-land to ane Craig callit *Birsay*, ane myle within ane Loche, quhilk 3e mannit and fortiseit with men, munitioun, and all maner of prouisioun for 3our intertenement; and haifing also tua boittis provydit, for 3ow and 3our complices passage and repassage fra pe land to pe said Craig, 3e, with 3our associattis, during 3our abyding within the said Craig, and keiping pairrof, come a land, and ran dyuerse furrowes³ throw the cuntrie, and in maist thiftious maner flaw, rest, and away-tuik with 3ow, to pe said Craig, dyuerse guidis and bestial fra pe inhabitantis of the countrie about, namelie, fra *Gilliechallum Mcallaster Coule* and *Gilliechallum Mcconell*, fra aper of thame, tuelff ky and oxin; quhilkis, with dyuerse heirschipis of coirne, victuall, and vther necessaris, stovin and rest be 3ow, was transportit be 3ow to pe said Craig, in maist thiftious maner; quhair-upoun 3e disponit and interteneit 3our selffis at 3our plesour: And 3e, the said *Neill*, was airt and pairt of the saidis crymes. To the taikin, 3e haif confessit the haill premisses to be of verritie, the tyme of 3our lait Examinatioun, in presens of the Lordis of his Maiesteis maist honourabill Previe Counsell.

The pannell, be the interpretatioun of Andro Monro, Duncane Cunninghame, and James Logie, suorne to the trew interpretatioun of all that fall be anfuertit be the pannell,⁴ Confest the haill poyntis of Dittay producet aganis him. Quhair-

¹ Serviceable.

² Oversight; superintendence.

³ Forays.

⁴ This is one of the earliest instances on record of sworn Interpreters being allowed to Highlandmen or foreigners. The practice had no doubt been common long before this period, though the circumstance has not been entered in the Books of Adjournal.

upoune the Aduocat tuik instrumentis. In respect of the quhilk Judiciall Confessioun, the Justice referrit the samyn to the Tryell and knowlege of ane Assyse. And for forder verificatioun of the said Neillis giltines, producet his Depositiones tane in presens of the saidis Lordis of Secreit Counfall, confessing the hail premisses to be of verritie. And in respect thair of, Protestis for Wilfull Erroure aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of Dauid Weymes, skipper in Leyth, chancellor, fand, pronuncet, and declairit the said *Neill*, be reasone of his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the hail tressonable crymes of ffyre-raiseing, Burning, Murthour, and seuerall Thiftis at lenth sett down in his Depositiones, and Dittay foundit thairupoune.—**SENTENCE.** To be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid; and thaireftir, his heid to be strukin frome his body, and affixt and set vpon ane priket, aboue the Neper-boll Poirt¹ of the said burgh: And his hail landis, heritages, takis, steidingis, rowmes, possessiones, guidis, and geir, pertening to him, to be forfalt and escheit to his Maigestis vse, &c.

Slaughter.

May 19.—**JOHNNE WEIR**, callit of the Quhytecleuch; Mungo Weir, his brother.

Dilaitit of airt and pairt of the slauchter of vmq^{le} Johnne Hammiltoun, mercheand burges of Edinburgh; committit be thame in the moneth of September, the yeir of God I^m.Vj^c. and aucht yeiris: **AND** siclyk, the said Mungo Weir, for airt and pairt of the slauchter of vmq^{le} Walter Couthird, in Crawford-Johnne; committit at Lambes laft, be schuiting him throw the body with ane pistolett.

PERSEWARIS, Jonet Small, the relict of vmq^{le} Johnne Hammiltoun; Williame Hammiltoun, as brother; Johnne and Mungo Couthirdis, as sones to vmq^{le} Walter Couthird.

ASSISA.

Johnne Gordoune of Earlstoun, Johnne M^cmathe of Corbank, Eduard Creichtoun of Peiltoun, Johnne Creichtoun of Craufurdstoun, Harie Gordoun of Kilsture, Johnne Masone, burges of Ed.²

Quhilkis crymes war judiciallie confest be thame to be of verritie, in presens of the said Justice and Assyse.

VERDICT. Fand the saidis Johnne and Mungo, accoirding to thair awin Judiciall Confessioun, to be ffylet and convict of airt and pairt of the said Slauchter.—**SENTENCE.** To be tane to the Mercat-croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis and geir to be escheit, &c.

¹ The Nether-Bow-Port.

² The rest of the Assise were burgesses.

Slaughter.

Jun. 2.—DAVID ERLE OF CRAWFURD; Harie Lyndfay, callit of Blarie-fadden; Harie Stewart, sone to vmq^{ro} James, Lord Stewart of Newtoun; and Johnne Bellenden, servandis to the said Erle.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{ro} Sir Walter Lyndfay of Balgaweis; committit betuix the Citie of Brechin and the Place of Edzell, vpon the xxv day of October, 1605 yeiris.¹

PERSEWARIS, Margaret Lyndfay, as dochter; Duncane Hunter of Ballagane, hir spous; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTORIS in defence, Mr Alexander King, Mr Robert Lermonthe.

Continewit, of consent, to the ix day of Junij instant. My Lord of Tulliebairne² caution for the entrie of the pannell, this day aucht dayis, the ix *instantis*.

Jun. 9.—Margaret Lynd with consent of the said Duncane Hunter of Ballagan, hir spous, for his entreis, being baith perfonallie present, passis *simpliciter* fra the perfute of the said Daud Erle of Crawford, &c., and renunes all actioun, instance, and perfute quhatfumeuir, &c. And forder, producet to my Lord Justice, his Maiesteis Remmissioun grantit to the said Erle and remanent his complices, enterit vpon pannell for the said slauchter, daitit at Newmercat, the xxiiij of Nouember, I^m.Vj^o. and aucht yeiris, togidder with tua feuerall Letteris of Slanes, the ane grantit be Daud Lyndfay of Balgaweis, sone to the said Sir Walter, daitit the xx of Nouember, 1607, the vther gevin and grantit be the said Margaret, with consent of hir said spous, daitit the sevint day of Junij instant, beiring satisfioun and Assythement to be maid be the said Erle to thame for the foirsaid Slauchter, &c.

THE JUSTICE Admittit the protestatioun, and Ordanit the said dyet appointit to this day to desert; as also, that Johnne, Lord Lindfay of Byres, Harie Lyndfay of Kinfawnes, and Maister of Tilliebairne, cautioneris for the said Erle, sould be fred and exonerit, &c.

Incest — Adultery.

Jun. 16.—JAMES STEWART, sone to Allane Stewart, Capitane of Dalkeith.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, knycht, for his hienes intreis, of the cryme vnder written, viz. FORSAMEKILL as the abhominable, vyld, and filthie vyce of Incest, being sa odious and detestable in the presence of Almychtie God, and be the same eternall God his expres woird, sa cleirlie condempned: Thairfoir our souerane lord, out of his godlie dispositioun and zeale, be dyuerse his hienes Actis of Parliament, hes expreslie statute and ordanit, that quhatfoeuir perfone or perfonnes committis the said abhominable

¹ See this Collection, Jul. 8, 1607, and Sep. 19, 1609.

² William, *second* Earl of Tullibardine.

cryme of Incest, fall be pwneifched to the deith; as the saidis Actis of Parliament in thame felffis proportis: Nochtwithftanding quhairof, it is of verritie, that the said James Stewart, being mareit with Aleifoun Clogie, his lauchfull spous, dochter to Johnne Clogie, cordiner, burges of Edinburgh, maift schamefullie, but¹ feir of God, or respect to our fouerane lordis lawis, hes gevin the vfe of his body to Katharene Clogie, his wyfes fister, in the monethis of Marche, Apryle, and Maij, I^m.Vj^c. and tuelff yeiris, in his and hir journeying togidder betuix the burgh of Edinburgh and the toun of Elgyn, and within the said toun of Elgyn: In the quhilk filthie and incestuous copulation, scho hes procreat to him ane bairne; committing thairthrow the detestable crymes of Incest and Adulterie, to the heiche displefoure and offence of Almychtie God, violatioun of the Kingis Maiefteis lawis, and evill exampill of vtheris to ryn in the lyk filthie and abhominable vyce, gif the famyn be sufferit to remane vnpwneift.

VERDICT. Fylet, culpable, and convict of the said cryme.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir his body to be brunt in asches: And all his moveabill guidis to be efcheit, &c.

Theft—Slaughter—Fire-raising—Oppression, &c.

Jun. 22.—DUNCANE M^cPATRICK M^cGREGOUR, Allaster Cafe (Cafs)² M^cgregour, Johnne Dow M^ccondochie Vayne M^cRobert, Patrik Roy M^ccoulecheir, Erwin Crowbache³ M^cgregour, Johnne M^cneill Corroche.⁴

Dilaitit of airt and pairt of dyuerse pointis of Thift, Slauchter, Burning, and Oppreffion following, viz. THE said *Duncane M^cpatrick M^cgregour*, ffor being in cumpanie with Gregour M^ccondochie Glen, at the burning of the Castell of Achallader and landis of Glenlocha: And ffor being at the ffeild of Benvek,⁵ quhair vmq^{le} Patrik Dow M^cnab, Donald Campbell Oig, fone to Johnne Campbell, and dyuerse vtheris, to the number of fevintene perfones, war flane: And ffor airt and pairt of the slauchter of vmq^{le} Allane M^cdougall, fervand to the Laird of M^ccoule. THE said *Allaster Cafe M^cgregour*, ffor the crewall slauchter of vmq^{le} Neill M^cweyane, chopman, be streking him in the bellie with his awin knyfe, quhairof he deit: ITEM, ffor cowmone foirning, thift, and oppreffion. THE said *Johnne Dow M^ccondochie Vayne*, ffor being at the ffeild of Glenfynles, and of airt and pairt of the heirfchip,⁶ reft and tane away af the Landis, pertening to the Laird of Lufe and his tennentis: ITEM, ffor airt and pairt of the fteilling of certane ky and horfis, pertening to Walter Sterling of Ballagan, furth of the parochin of Campfie: ITEM, ffor being in companie with the reft of the

¹ Without. ² Short-tempered; passionate. ³ Deformed. ⁴ Hasty; precipitate. ⁵ Bintoik?
⁶ Spoil; booty; plunder.

CLAN-GREGOUR at the Burning of Abervrchle, and heirfchip brocht furth thair-
of: As also, ffor airt and pairt of the Slauchter of vmq¹⁶ Johnne M^cgillip, ane
fidler, vnder my Lord of Tulliebairne: And for cowmoun Thift and foirning.¹
THE faid *Patrik Roy M^ccoule-cheir*, ffor being in companie with *Duncane M^c-
ewin M^cgregour*, callit THE TUTOUR,² at the Burning of Abervrchle, quhair
fevin men war flane, thre bairnes war brunt, tuentie ky and oxin war stowin,
reft, and away-tane: And for Cowmone-thift, Soirning, and Oppreffion. THE
faid *Ewin Crowbach M^cgregour*, ffor airt and pairt of the steilling of ane meir
fra Robert M^claren: And ffor airt and pairt of the steilling of tua horsis fra M^c-
Innerich, in Cregan: And for breking of ane pur mannis hous in Kynnaldie,
taking of the faid pur man and binding vp his eyne, and steilling and away-
taking of the haill inficht pleniffing of the faid hous: And for steilling of ane
kow fra Donald M^cconneill Vayne, furth of Johnne Stewart Neilfones landis.
THE faid *Neill Corroche*, ffor being in companie with the faid Duncane M^cewin
M^cgregour, callit *the Tutour*, at the Burning of Abervrchle, and slauchter and
heirfchip aboue writtin, committit be thame: And ffor affifting and taking pairt
with the rebellis and fugitiues, that tuik in the Ile callit Ileand-Vernache; and
in taking in to the faid Ile of aucht scoir ky and oxin, auchtene scoir fcheip and
gait, stowin, reft, and away-tane fra the Inhabitantis of the cuntrie about: And
ficlyk, ffor airt and pairt of the steilling of ffyve ky fra James Chifholme, Don-
drwne: And for cowmone Thift, Soirning, and Oppreffion.

War all fax put to the knowlege of ane Affyse of the perfones vnderwritten.

ASSISA.

Mr James Kirk, fervand to my Lord of Argyle,	Johnne Buntene of Ardoche, Patrick Colquhoun of Trafeill,	Allaster M ^c Rannald of Gargow- oche, ³
Johnne Stewart Neilfoun of Gra- niche,	Allaster Colquhoun V ^c James, in Calvin,	George Stewart of Downe-Mach- reif,
Johnne Makfarlane of that Ilk, David Drummond, callit the Chal- merlane,	Robert Alexander, notter in Drymmene, Johnne Buchannane, fervand to my Lord of Madertie,	Johnne Stewart of Pitfowrie, Patrik Stewart of Balliachan, David Chirnefyde of Poffo.
Alex ^r Schaw of Cambufmoir,		

VERDICT. The Affyse, be the mouth of the faid Johnne M^cfarlen of that Ilk,
chancellor, fand, pronuncet, and declairit the faidis fax perfones vpone pannell,

¹ Taking free quarters by force and violence. ² The TUTOR OF GLENSTRAE, styled, in the Record of Secret Council, 21st December, 1613, 'Duncan M^cEwin of Moirinsche, Tutour of Glenstrae.' In the same Record, 31st January, 1611, he is spoken of, to the prejudice of his Ward, as 'now callit THE LAIRD;' and, in the Justiciary Record, 8th May, 1612, as 'THE LAIRD OF M^c-GREGOUR!' In a Letter from the King, from his Court at Roystoun, 23d October, 1611, to the Scottish Council, (who took it into consideration 17th November following,) he is described as 'Duncan M^cEwne, alias Duncane THE TUTOUR.' He was cousin-german of Allaster M^cGregor of Glenstray, executed at Edinburgh in 1604; and was Tutor to Gregor M^cGregor, otherwise John Murray, nephew and heir of Allaster, and who, on the King's recommendation, was restored to the Lands of Glenstray, in 1624. Duncan the Tutor assumed the protective surname of DOUGLAS, in compliment, probably, to the *Dowager Countess of Argyle*. ³ Lineal ancestor of Macdonald of Keppoch. In the Record, he is sometimes styled 'the Laird of M^cRannald.'

be reffone of thair awin Confessiones, maid in prefens of the maift pairt of the faid Affyfe, to be ffylet and convict of the hail crymes aboue reherfit.

SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be hangit vpon the cowmoun gibbit, quhill thay be deid: And all thair moveabill guidis to be efcheit and inbrocht to oure fouerane lordis vfe, as culpable and convict of the faidis crymes.

**Fire-raising — Slaughter — Intercommuning with MacGregors
— Slaughter and Houghing of Oxen, &c.**

Aug. 3.—DONALD DARG¹ M^cALLANE, fervand to Johnne Calder; Donald M^ceane V^cAllaster Bayne; Johnne M^cfyndlay M^cquiben.

Dilaitit of the crymes *respectiue* following, viz. THE faidis *Donald Darg M^callane*, and *Donald M^ceane V^callaster Bayne*, ffor being in companie with Johnne and Donald Calderis, fones to Thomas Calder in Delneis, vpon the xxj day of Maij laft, at the trefsonabill Raifeing of ffyre, burning, and diftroying of the Hall, kitching, and remanent office-houffis within the precink of the clois of Clwnes, pertening to Colene Campbell of Clwnes: And ffor airt and pairt of the faid ffyre-raifeing and burning. As alfo, ffor airt and pairt of the Slauchter of four horfis and meiris, being vpon the landis of Clwnes at that tyme, pertening to the tennentis thairof: As alfo ffor cuming, vpoun the xxiiij day of the faid moneth, bak agane to the faidis landis of Clwnes, and thair, for airt and pairt of the Burneing of the hail houffis and biggingis within the Myd-toun of Clwnes, callit the Thornyfur, and Burning of tua barnes and ane ftale, in the Nether-toun, quhilkis war left vnbrunt ofbefoir: AND ficlyk, ffor airt and pairt of the crewall Slauchter and Hocheing² of threttie heid of ky, oxin, and vther beftiall, pertening to Mr Williame Campbell of Breachlie his tennentis; committit vpon the xxv day of the faid moneth of Maij laft: AND ffor airt and pairt of the crewall and vnnatural Slauchter of fourtie heid of guidis, within the Forrest of Leonache; committit vpon the Mononday befoir St Colmes-mefs laft. AS ALSO, the faid *Johnne M^cfyndla M^cquiben*, off airt and pairt of the Slauchter of vmq^{le} Patrik M^cgreffie Roy in Budzet, with ane durk; committit be him a tua yeir fyne, or thairby: AND for being in cumpanie with Robert Abroche M^cgregour, his kyn (and) freindis, Thevis and Soirneris, be the fpace of ane moneth, in dyuerfe thair wiket and thiftious deidis.

Quhilk Dittay was verifeit be the faidis perfones Depofitiones, producet in proces.

The Aduocat repeittis the Depofitiones alreddie producet, and in the Clerkis keping; takis instrumentis of the fweiring of the Affyfe; and proteftis for Wilfull Errour, gif thai acquit.

¹ Red-skinned; ruddy-complexioned. *Roy* fignifies red-haired.

² Ham-stringing.

Dilaitit of faying and heiring of Messis, contrair the tennour of the Actis of Parliament, &c.

FORSAMEKILL as, be dyuerse Actis of Parliament, speciallie be the fyft Act of our fouerane lordis first Parliament, and be the first Act of his hienes fourtene Parliament, it is speciallie provydit, statute, and ordanit, that na maner of persone or persones, of quhatfumeuir degre or condition they be of, preswme nor tak vpone hand to say Mefs within this kingdome, or zit heir Mefs, nor be present pair-at; vnder the pane of deid, with confiscatioun of thair hail moveabill guidis; as the saidis Actis of Parliament in thame selfis proportis: Nochtwithstanding quhairof, it is of verritie, that the said *Mr Robert Phillope*, Preist, quha ressaunt the ordour of Preistheid in Rome, haifing remanit furth of this kingome sen the zeir of God Im.Vc. fourfcoir nyntene zeiris, studeing the Catholique Romane Religiou; in the moneth of Maij lastbypast, he returnet hame to this cuntrie, off purpos and intentioun (as he hes declairit) to convert saules to the Romane Religiou; sen the quhilk tyme of his hame cuming, viz. in the monethis of Maij, Junij, and Julij lastbypast, ffor performeing of his former Idolatrous intentioun, expres contrair the tennour of pe saidis Actis of Parliament, as ane Seminarie Priest, and perverter of his Maiesteis guid subiectis frome the trew Religiou, professit presentlie within pis realme, he hes seducet and conferrit with dyuerse of his hienes subiectis, doing quhat in him lay, be his fals and hereticall doctrine, to pervert pair saules from the treuth, and to convert thame to his erroneus opinioun: AND for that effect, hes, within the said space, said and celebrat, to pe number of sax or sewin Messis, in dyuerse partis and places of pis realme, secreitlie, in dyuerse houffis within the samyn, namelie: ANE of the saidis Messis was said be him in grit solemnitie, with his Mefs-claithes, consecrat alter, Mefs-buik, and with his vther superstitious rites and ceremoneis belonging pairto, within foure or fyve myles to the burgh of Dumfreis, Mr George Aflowane, sone to the Laird of Garroche, being Clerk pairto, and bringer in of the fyre to lycht pe candillis; quhairin the said Mr Robert hes contravenit pe tennour of the saidis Actis of Parliament, and incurrit the panes and pwnesment mentionat pairintill, quhilk aucht and sould be execute vpone him, with all rigour: LYKAS also, it is of verritie, that *James Stewart*, callit of *Jerusalem*, indueller within the burgh of Edr, being ane oppin and professit Papist, keiping and beiring companie with Jesuitis, Seminarie Preistis, and excommunicat traffiqueing Papistis, and ane cownone ressoner in all companeis for pe said Romane Religiou, aganis pe trew Religiou, professit be his Maiestie and his hienes loyall subiectis within this his kingdom, expres contrair the tennour of pe saidis Actis of Parliament, in the monethis of Januare, Februare, Marche, Apryle, Maij, Junij, Julij, August, September, October, November, December, in the zeiris of God Im. sex hundreth and nyne, sex hundreth ten, sex hundreth elleuin, and sex hundreth tuelff zeiris,¹ at the leist, in ane or vther of the saidis monethis and zeiris of God, he hes hard and gevin his bodielie presence to dyuerse Messis, said be dyuerse Preistis within this realme, in dyuerse places of pe same; and namelie, the said *James Stewart*, avowing himself to be ane Catholik Romane, in pe zeir of God Im.Vjc. and nyne zeiris, or pairby, was present at ane Mefs said be *Mr Patrick Anderson*, Jesuite, within his duelling hous of *Patrik Abercrombie* in Edr, in the *Laird of Leyis land*, besyde the buriall zaird of the said burgh: Lyk as, the said *James Stewart*, accompaneit with the said *Johnne Logane*, portioner of Restalrig,² about ane quarter of ane zeir pairestir, was present at the heiring of ane vther Mefs, quhilk was said in the said *James* awin duelling hous in Edr, a littill aboue the Nether-boll-Poirt, quhair he duelt for pe tyme, be *Johnne Burd*, Preist, quha was brocht to pe said hous be pe said *Johnne Logane* to the effect foirsaid, nane being present at that Mefs bot pe Preist, the said *James Stewart* and his wyfe, with the said *Johnne Logane*, and ane vther blak man. ITEM, schoirtlie pairestir, the thrid Mefs was said within the said *James Stewartis* duelling hous in the Cowgait of Edr, quhair he duelt for pe tyme, the said *James* being present him selff at the heiring and faying pair of be the Preist. BE the quhilk wilfull heiring and present-being at pe saidis

¹ There was a Messe the same moneth (May 1613) in Edinburgh, in *James Stewart's* house, who wes called *James of Jerusalem*. The Preist and the said *James* fled. Sundry of the company were taken and wairdit.—*Calderwood's MS. Church Hist.* Adv. Lib.

² See his Trial, immediately following the present.

feuerall Messis *respectiue* foirfaidis, the said James Stewart hes contravenit pe tennour of the saidis Actis of Parliament, and hes incurrit the panes and pwneifchment mentionet pairintill, quhilk fould be execute vpon him with all rigour, to the terrour of vperis.

Quhilk Dittay being red, in prefens of the saidis Mr Robert Phillipe and James Stewart, and thay accuset, be vertew thairof, of the feuerall crymes aboue specifeit; thay and aither of thame confessit, in face of judgement, that thai had contravenit his Maiesteis lawis and Actis of Parliament, in heiring, saying, and being present at dyuerse Messis, in maner specifeit in thair Dittay, ffor the quhilk thay offerit thame selffis, and become in his Maiesteis will: Quhairupoun instrumentis was tane be my Lord Aduocat.

Nochtwithstanding quhairof, the Justice ordanit thame to be put to the knowlege of ane Assyse.¹—The Aduocat, for verificatioun thairof, repeittit to the saidis perfones of Assyse thair former Judiciall Confessioun maid of thair crymes, aboue specifeit; and thairwith producet thair Depositiones and Confessiones, maid in prefens of dyuerse Lordis of his Maiesteis Previe Counfall, and of the Ministeris,² subferyuit with thair awin handis; and tuik instrumentis vpon the production thairof.

VERDICT. Fylet, culpable, and convict of the contravening of his Maiesteis Actis of Parliament, viz. the said *Mr Robert Phillipe*, for saying of the feuerall Messis set down in his Dittay; and the said *James Stewart*, for heiring and being present at the feuerall Messis, also set down in his Dittay: conforme to their awin Depositiones, and ratificatioun thairof in judgement.

THE JUSTICE Ordanit the perfones convict to be returnet to waird,³ thairin to remane, in strait firmance, vnto the tyme DOME be pronuncet aganis thame.

(Nov. 19.)—COMPEIRIT Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, and producet ane Warrant, direct fra the Lordis of his hienes Counfall to the Justice; quhairof the tennour followis.

JUSTICE, Justice clerk, and 3our deputis: 3ow fall, vpon the sight heirof, appoint ane Justice Court to be haldin within the Tolbuthe of Ed^r, at fuche convenient and lauchfull day as 3ow fall think meit; and pair call befor 3ow JAMES STEWART, callit of *Jerusalem*, and MR ROBERT PHILLOPE, Preist, and pronunce DOME aganis thame, vpon the Sentence of convictioun alreddie gevin aganis pame, as followis, to wit: Decerne the saidis James Stewart and Mr Robert Phillope to be BANISCHET his Maiesteis dominiones; and to depairt furth pairof, within the space of ane moneth; and nevir to returne agane within the samyn, without his Maiesteis Licence had to that effect, vnder the pane of deid. Quhairanent jir presentis fall be 3our Warrant. AT ED^r, the xvj day of November, 1613.

AL. CANCELL^r. SANCTANDROIS. ARGYLE.

‘DOME’ pronounced, according to the terms of the above Warrant.

Hearing of the Mass.

Sep. 16.—JOHNNE LOGANE, portioner of Restalrig.

Dilaitit for the wilfull heiring of ane Mess, and being present thairat, in com-

¹ All tradesmen.

² Of the gospel; clergy.

³ Prison.

panie of James Stewart, callit of *Jerusalem*; quhilk Mefs was faid in James Stewartis hous, a littill aboue the Nether-boll-Poirt of Ed^r, quhair he duelt for the tyme, in the yeir of God I^m. sex hundreth and nyne yeiris, or thairby, be Johnne Burd, Preift.¹

Andro Logane of Coitfield proteftis, in respect of the entrie of the pannell this day, that the vnlaw quhairin he was adiudget the laft dyet,² be nocht buikit nor gevin out aganis him: And producet the Counfallis Warrant, fubfcriyuit be my Lord Chancellor, daitit the xv of this infant, Ordaning the faid vnlaw nocht to be buiket; bot the faid Johnne Logane, for quhome he became cautioun, and now enterit vponne pannell, to be put to ane Tryell for the cryme fpecifeit in his Dittay.

My lord Aduocat producet the Dittay; and efter reiding thairof, defyret the pannell to be put to the Affyfe for the crymes fpecifeit thairintill.

It is allegit be the pannell, that, as to the firft Act of the firft Parliament halden be our fouerane lord and Eftaitis, he can nocht, be vertew thairof, incur the pane and pwneifchment of daith mentionat in the Dittay, becaus the maift that the faid Act extendis to, is only daith to be inflictit for fic as the thrid tyme fall be fund culpable and convict of heiring of Mefs, or beis wilfullie present at the heiring thairof: And trew it is, that in the faid Dittay, producet aganis him, thair is only mentioun maid of ane Mefs hard be him: *Igitur*, &c.—To the quhilk it is anfuerit be my lord Aduocat, that he infiftis only in perfute of the pannell for contravening the firft Act of his Maieftis fourtene Parliament, maid aganis wilfull heiris of Mefs, fen the moneth of Junij 1594, quhilk is the dait of the faid Act, quhairvponne the Dittay is speciallie foundit: In respect quhairof, the pannell fould be put to ane Affyfe, for heiring, and wilfullie being present at ane Mefs, in maner, and at the tyme contenit in the Dittay.

It is forder allegit be the pannell, that he can nocht be put to ane Affyfe for contravening the Act of the xiiij Parliament, becaus he nevir was present at ane Mefs within this realme, bot anes, fen his cuming out of Flanderis, quhilk is four or fyue yeir fyne; and the Act aucht only to be extendit aganis fic as hes hard mony Meffis: Lykas, the pannell was drawin to the faid Mefs be feniftrous informatioun, and at the infligatioun of James Stewart, quha inveitit him to his hous to the heiring thairof; and fa, in effect, come thairto contrair his will; ffor the quhilk cryme he is maift penitent, and craves firft God, and nixt his Maieftie and Counfall, and the Kirk, pardoun for the samyn: Lyk as, in respect of his penitence and greif for the faid offence, he was reflaut in fauour with the Kirk

¹ The Dittay is conceived in terms precisely similar to the preceding case. ² On Sep. 14. This marking is inserted—'Mp. The Guidman of Coitfeild being vnlawit pis day, for nocht entrie of Johnne Logane, portioner of Restalrig, to haif bene tryit for pe faid crymes; the Act of buiking pairof, be pe Counfallis Warrant, was (in respect of Johnne Loganes entrie in waird) difcharget.'

and Seffioun of the parochin quhair he duellis ; and hes fenfyne borne office in the Seffioun thairof, resoirtit continuallie to the heiring of the woird, and at all tymes was present at the celebratioun of the Communioun and ministratioun of the Sacramentis : Protesting, be God's grace, to continew ane trew and constant Professour of the trew Religioun, presentlie professit within this realme, to his lyves end ; and for the offence aboue writtin maist humlie becumis in his Maiesteis will.—It is anfuert be my lord Aduocat, that the allegiance maid be the pannell is na relevant cause, of the Law, to stay the puting of him to the tryell of ane Assyse, vpon the Dittay lybellit ; becaus all perfonen man be comptit wilfull heiraris of Mefs that cumis voluntarlie thairto, and patientlie abydis and heiris the samyn ; and it is nocht allegit be the pannell that he was compellit to cum and heir that Mefs ; nather can the samyn be sustenit, except he purge the samyn be ane violent deid compelling him to resoirt thairto : And albeit the pannell hes communicat fenfyne, and borne office in the Kirk, he anis haifing wilfullie hard Mes, quhilk is ane cryme capitall, be the said Act of Parliament, na deid done be him, without his Maiesteis pardoun and Remissioun past, can purge that cryme : And forder, to mak it knawin that he was ane wilfull heirar of the Mefs lybellit, it is affirmet that he come to James Stewartis hous at the Nether-boll, and brocht with him Johnne Burd, Preist, quha cravet seruice, James Stewart then being sleiping in his bed ; and being walknit, he anfuert, that for releif of his conscience he was content to heir him : And than the Mefs was said in the said James Stewartis hous, quhair thairefter thay dynet altogidder. This is verifeit be James Stewartis awin Depositioun, subscryuit with his hand, and heirwith productet, for verifeing the premisses.

THE JUSTICE Repellis the allegiances aboue writtin, and findis the Dittay relevant ; and Ordanis the pannell to pas to the tryell of ane Assyse, for the cryme lybellit.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Fischer, mercheand, chancellor, ffand, pronuncet, and declairit the said Johnne Logane, conforme to his awin Depositioun, subscryuit with his hand, and ratificationis thairof maid in judgement, in thair presens and audience, to be ffylet, culpable, and convict of the heiring of ane Mefs said be the said Johnne Burd, Preist, within the duelling hous of the said James Stewart ; in forme and maner, and at the perticuler tyme specifit in the said Dittay.

THE JUSTICE Ordanit him to be tane bak agane to waird within the Tolbuth of Ed', thair to remane quhill DOME war pronuncet vpon his former convictioun, &c.

(Nov. 26.)—The Lord Advocate produced a Warrant of the Privy Council, dated ' at Ed', the xvj day of November, 1613,' ordaining the Justice to ' pro-

nunce DOME aganis him, vpon þe Sentence of Convictioun alreddie geven aganis him, as followis, viz.'

SENTENCE. That he mak payment to his Maiesteis Thesaurer depute and Resseuer, in his Maiesteis name, of the sowme of ane Thowseand pundis money, as a fyne imposit vpon him.

Incest and Murder.

Sep. 24.—JOHNE RAMSAY of Pryour-Lethame.

Dilaitit for the filthie and abhominable cryme of Incest, committit be him with Margaret Ramsay, his awin dochter: As also, for airt and pairt of the crewall Murthour and slauchter of vni^q Williame Ofett, his awin fervand; and remanent crymes contenit in the Letteris.

Mr Vmphra Blinshell, Aduocat, as bailzie and procuratour for George, Archebischope of St Androis, Lord of Regalitie thairof, quha exponit and declairit that the said Johnne is duelland within the boundis of the regalitie of St Androis, and thairby is subiect to the said Lord of Regalitie, his judgement and jurisdiction, for the crymes aboue specifit: And thairfoir Protestit, that quhatsoever war done be the Justice this day, fould nawayis preiudge the said Lord of St Androis, nor his privilege of Regalitie thairof.

Michell Ramsay of the Forther vnlawit and americiat in the pane of fyve hundredth merkis, for nocht entrie of the said Johnne. And siclyk, that the said Johnne, for his nocht compeirance, be denuncet rebell and put to his hienes horne; and all his moveabill guidis to be escheit, &c.¹

Fire-raising—Houghing of Cattle—Oppression, &c.

Nov. 5.—THOMAS CALDER, in Delneis; Robert Caddell (Calder), sone to Johnne Caddell in Flines.

Dilaitit for airt and pairt of the coming to the landis of Clunes, pertening to Colene Campbell of Clwnes heretable, and maist tressonable and awfullie Rasing of ffyre in the hall, chalmeris, barnis, byris, and scheip-coit thairof, and burning and distroying of the samyn, and be Maisterfull Oppressioun, houching² and slaying of thre meiris (*mares*) and ane horse, pertening to the said Colene; committit vpon the xxij day of Maij lastbypast, vnder sylence and cloud of nycht. AND siclyk, for cuming to the said landis of Clunes, on the xxiiij day of the moneth of Maij lastbypast, att tuell houris in the day licht, and willfullie, awfullie, and tressonabillie Rasing of ffyre, in ane toun,³ callit in Ersch⁴ *Andraane*, and in

¹ No farther notice is taken of this case, which had likely been quashed by Archbishop Gladstones, (translated from the See of *Caithness*, A.D. 1606,) or privately compromised within his Regality.

² Hamstringing.

³ Farm-steading.

⁴ Gaelic.

Scottis *Thorne-furd*; and to the Cot-toun of Clune, and Burning and distroying of the samin, togidder with the haill infycht and pleneiffing, pertening to the said Colene Campbellis tennentis thair: And swa, for committing of oppin and manifest Treasoun.

PERSEWARIS, Colene Campbell of Clwnes; Sir Williame Oliphant of Newtoun, kny^t, Aduocat, &c.

THE Justice, of consent of the persewaris, Continewis this matte to the fyftene day of December nixt.

(Dec. 15.)—James Cuning of Alter, cautioner for the said James, vnlawit and amerciat in the pane of tua hundreth merkis, for his non-entrie; and Colene Campbell of Both, cautioner for the said Robert Calder, in the pane of ane hundreth merkis: And the pannels Decernit to be denuncet our souerane lordis rebellis, &c., and all thair movable guidis to be escheit, &c.

Murder—Theft—Fire-raising.

Nov. 24.—ALLANE CAMRONE *alias* M^cEandowie of Lochzell; Eugen Camrone in Caldort; and Allane Dow in Clinischphairne, &c.

Dilaitit for airt and pairt of the crewall Murthour and Slauchter of Johnne Camrone, *alias* Bodache, Allafter Camrone of Glennevas, and vmq^{le} Ewin M^cconneill V^cewin, and remanent crymes of Murthour, Slauchter, Thift, and ffyre-raising, at lenth specifeit and fett down in the Letteris.¹

James Gordoun of Knokaspek, as cautioner, for reporiting the Letteris, deulie execute and indorfate, purchest at the instance of Marie Neane Jeane Oig, the relict of the said Johnne; Meriorie Ewin, the relict of the said Allafter; Marie Neane Lauchlane V^callane, relict of vmq^{le} Ewin; with the remanent kyn and freindis, producet the saidis Letteris, deulie execute, &c., be the quhilkis thai ar all denuncet rebellis, and put to the horne.

Usurpation of King's authority—Destroying green Corn, &c.

Nov. 26.—WILLIAME FORBES, elder of Monymusk; Robert, Johnne, and Mr James Forbis, his thre fones; Johnne Forbes, callit of Burnegranes; James Geillis and Johnne Farquhar, domestik seruitouris to Monymusk; and George Raitt, in Coiff.

Dilaitit for vsurpation of his Maiesteis authoritie, in taking of Williame Dougat, (Duguid?) seruitour to George Gairdin; committit the 24 of Julij last: And for contravening the Actis of Parliament, in cutting of certane grene growand coirnes, pertening to Gilbert Menzeis of Pitfoddellis, growand vpon his landis of

PERSEWARIS, Gilbert Menzeis of Pitfoddellis; Williame Dougat, seruitour to George Gairdin; Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

¹ The Dittays are not inserted in the Record.

THE Justice, with advyse of my lord Aduocat, Continewis this dyet to the thrid day of the Air (of Aberdeen), or soner, vpone xv dayis wairning; and Ordanis caution to be fund be the pannell. Plegio, Joanne Kynnaird de eodem.

Cutting and Destroying Corn.

NOV. 26.—MARGARET IRWING, Lady Pitfoddellis; Gilbert Menzeis of Pitfoddellis, hir spous, for his entreis; David Knowis, his domestik fervand; Johnne Ramsay, his greif; Johnne Philp, Williame Daveny, Williame Dougatt, and Johnne Ramsay.

Dilaitit of airt and pairt of the contravening of our souerane lordis Actis of Parliament, in cutting and distroying of coirnes; committit in the moneth of July lastbypast.

PERSEWARIS.

Williame Forbes, elder of Monymusk; Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

This case¹ also continued to the same Air. Plegio, Pitfoddellis.

Slaughter.

DEC. 1.—HEW SOMERVELL of Drum.

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Johnne Bryfone, in Gilmertoun, be gevin to him of dyuerse straikis, hurtis, and woundis, with ane lang battone or girth-sling,² in his sydis, schoulderis, breift, and bellie, and dyueris vtheris pairtis of his body, at the dur of his duelling hous in Gilmertoun, vpone the xxiiij of September last; off the quhilkis straikis, he haifing tane bed, and remaning bedfast the space of aucht dayis, in grit dollour and pane, deceiffit thair of vpone the first day of October thaireftir.

PERSEWARIS, Agnes Mcindo, the relict; Patrik and Margaret Bryfone, as bairnes.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Laurence Mcgill.

It is allegit be the pannell, that the Dittay is nocht relevant, in sa far as it is nocht qualifeit thairin, that the cryme was committit vpone foirthocht fellonie; without the quhilk war condiscendit vpone, na cryme can be inferrit: And thairfoir, as the Dittay is qualifeit, it can nocht pas to ane Affyse. And forder, it is affermit be the pannell, that the said Johnne Bryfonis death nawayis procedit vpone ony straik or hurt gevin to him the tyme lybellit; bot be the contraire, the said Johnne, that same day of the allegit reffaueing of the straikis, past to the Coilpot-hill, and thairfra with his coillis³ come to Ed^r, quhair he fauld the

¹ It is obvious that the preceding cases arose out of the deadly feuds which then raged between the families of Monymusk and Pitfoddels. No information is afforded by the Record, how these Cases terminated—but from their withdrawal to ‘the Air,’ it is likely they were compromised by the intervention of mutual friends.

² Dr Jamieson interprets this word to signify a pole from which a girth, gird, or barrel hoop is made.

³ Coals. GILMERTON, at that period, as well as now, was famous for its collieries and stone quarries, and appears to have been, even in these early times, peopled by a most barbarous and regardless race. The recent atrocious case of Rape and Murder is too fresh in the public mind to require any farther notice of the proverbially savage nature of the colliers and carters inhabiting that village. A bare allusion to the evidence adduced in that shocking Trial is more than enough to justify the preceding observation.

famyn ; and passing hame, that same nycht, to his awin hous, lay down haill and feir ;¹ and his haill famelie being visseit with the hett-fever,² be the space of ane moneth ofbefoir, the said Johne being also visseit thairwith, in aucht dayis thair-estir, sa reaget thairin, that in end, at the tyme lybellit, he deceiffit of the said ffever, notourlie knawin to the haill cuntrie about. And sa, can nocht pas to ane Assyse, for ony cryme set down in the summondis.

THE Justice findis the Summondis relevant, nochtwithstanding of the former allegiances : and Ordanis the famyn to pas to ane Assyse.

ASSISA.

Mr Pat. Edmestoun of Wowmet,	Nicoll Crawford, in Nether Lib-	Mr Jo ⁿ Wardlaw, in Libbertoun,
George Ramsay, Nether-houffis,	bertoun,	Symone Henderfoun, thair,
Robert Eddislaw, in Lefuaid,	Henrie Arnote, in Lefwaid,	Dauid Ramsay, in Pethheid,
Nicoll Ramsay, thair,	Michaell Craufurd, at Libber-	Geo. Pacok, in Nether Libbertoun,
Gilbert Hay, thair,	toun-Kirk,	Thomas Andro, in Lefuaid.

It is allegit be the pannell (that) George Ramsay, Robert Eddislaw, Nicoll Ramsay, can nocht be ressaunt vpon his Assyse, becaus thai ar tennentis, haifing na frie landis of thair awin ; and the pannell being ane landit Gentilman, within the degrie of ane Barroune, halding his landis of Drum, and vtheris pertening to him, immediatlie of the Kingis Maiestie, fould thairfoir be tryit be his peiris, viz. be Barrones ; at the leift, the maist pairt of thame fould be in that rank ; *igitur*, &c. Repeitis the former allegeance aganis the remanent Assyfouris of the lyk qualitie.

THE Justice, vpon tryell of the said George Ramsay and remanent Assyfouris rank and estait, finding thame to be honest, substantialious men, Admittis thame vpon the said Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Andro, in Lefuaid, chancellor, fand, pronuncet, and declairit the said Hew Somervell of Drum to be Cleane, innocent, and acquit of the said slauchter.

Witchcraft—Poisoning—Treasonable Murder.

[THE Case of ROBERT ERSKINE, which follows, and the subsequent Trial of his three sisters, HELEN, ISOBEL, and ANNAS,³ afford very lamentable proofs of the baneful effects of an all-engrossing spirit of covetousness. There cannot be a doubt that the sordid avarice of these individuals, habitually indulged, and permitted to acquire the entire ascendancy over their minds, rapidly terminated in the perpetration of the highly revolting crimes for which their lives were justly forfeited to the offended laws of their country.

It is melancholy to reflect that these atrocious criminals, whose cold-blooded and calculating crimes form the subject of these Trials, were immediate descendants of the eminently good and pious John Erskine, Baron of Dun, and Superintendent of Angus and Mearns, one of the most active promoters of the Reformation of Religion in Scotland, whose character and public services are well known. This excellent man died Mar. 12, 1591, in the 82d year of his age, having, throughout his long and useful life, bestowed much of his time in attending to the religious and moral education of his children and

¹ Whole and sound.

² Probably the Scarlet fever.

³ See their Trial in this Collection, Jun. 22, 1614.

their numerous descendants. The Superintendent was the eldest son of John Erskine of Dun, by Margaret Ruthven, daughter of Sir William de Ruthven, first Lord Ruthven, and relict of Alexander, *second* Earl of Buchan. He married Lady Elizabeth, third daughter of David, *seventh* Earl of Crawford. John Erskine, the next Baron of Dun, married Margaret, eldest daughter of James, *fifth* Lord Ogilvy of Airlie. His son, John Erskine of Dun, married Margaret Keith, second daughter of Robert Lord Altrie, last mentioned. This Baron was succeeded by John Erskine of Dun, who married the Honourable Margaret Lindsay, daughter of Sir Alexander Lindsay, first Lord Spynie, (slain 1607,) and was probably the father of Robert and his sisters, Helen, Isobel, and Annas. David Erskine of Dun, the brother of these criminals, and father of their victims, John and Alexander Erskine, married Jean, eldest daughter of Patrick Maule of Panmure, by Margaret daughter of John Erskine of Dun.

It must therefore be obvious, owing to the high respectability of the ancient Family of Dun, and the rank and power of the numerous connexions of the pannels, that every influence must have been used for averting the stain of a public Trial and an ignominious execution ; but their crimes were of too deep a dye to admit of the public prosecutor waiving this imperative duty.

One very striking feature of this remarkable Case is, that the brother was urged forward to the perpetration of this crime by the repeated suggestions and solicitations of his sisters ; who, with desperate wickedness, goaded him forward to consent to the act. These wretched females were both the prime movers and the actors in this shocking tragedy. Their brother appears to have been a passive instrument in their hands.

It only remains for the Editor to state, that, after much research, he has only been able to procure the following notices, from an authentic source.¹

(Nov. 30, 1613.) ‘ ROBERT ERSKINE, vnclē to THE LAIRD OF DYNNE, being examināt be foure of the Counsell, depute to that effect, vpon the practize of poifone aganes his tua nephewes, the brether of the Houfe of Dynne; after dyuerse denyallis and confrontationes with some who avowed that mater vpon him, he is come to a cleere Confession of the hail treuthe of that mater ; to wit, that he wes a deallar, confultor, and consentar to the Murthour of his tua nephewes by poyfone ; and that his thre fisteris wer the first movearis of him to that wicked deide, that therby he might atteane to the right of the leving of Dynne. Direction is gevin to the Justice to putte him to the tryall of the lawes, and Commiffion is gevin to the Erle of Mar to apprehend the three fisteris, and some otheris gevin vp be the said Robert, as guyltie, and to present thame heare to there tryell.’—(Dec. 1, 1613.) ‘ Robert Erskyne wes this day execute for the practize of poifone, wherin he wes a counsellour and consentar againes the tua bretherine of the Houfe of Dynne.’]

Dec. 1.—ROBERT ERSKYN, sone to Johnne Erskyn, appeirand of Dwn,
callit *Johnne of Logy*.

Dilaitit, accuset, and perfewit, be Sir Williame Oliphant of Newtown, kny^t,
Aduocat to our fouerane lord, for his hienes intereis, of the crymes following, viz.

DITTAY *against Robert Erskyn*.

FORSAMEKILL as, be the Law of the Almychtie God, loveable Constitucionēs of all Christiane kingdomes, and Municipall Lawis of this realme, all Witchcraft, Sorcerie, Confultatioun with Witches, seiking of help or resposnes of thame, and vfearis of Poyfone or Poyfoneable herbis, quhairthrow ony Cristiane man, woman, or bairne may take hearme, is prohibeit and discharged, vnder the pane of deid, confiscatioun of all the offendouris moveabillis, and dyuerse vtheris grevous

¹ Minutes of Privy Council Proceedings, Denmylne MSS. Adv. Library. *Balf. Annales*, II. 44.

panes and pwneifchmentis, at moir lenth expreffit in the faidis Lawis, Actis, and Ordinances : Nochtwithftanding quhairof, it is of veritie, that þe faid Robert Erfkyn, being blinded with the godles and infatiable defyre of þe landis and leving of Dwn, and knowing perfytlie that he could nevir attene to be full Laird pairof, fo long as Johnne and [Alexander] Erfkynis, the tuo lauchfull fones of vmq^{1e} Daud Erskin, his elder lauchfull brother, was on lyfe : ffor removeing of the quhilk impediment, vpone a pretendit miscontentement confaует be him and his thre fifteris, Iffobell, Helene, and Annas Erskinis, becaus vmq^{1e} Erfkyn of Dwn, quho was fone-in-law to the Laird of Pitcur, vpone his deid-bed had nominat Johnne Erskin, Minister at St Ceres Kirk, to be Tutour Testamenter to the faidis tuo 3oung boyis, his brother-fones, and that be þe faid nominatioun of Tutorie, the faid Robert, as nerrest agnat of bluid to thame, was defraudit of the charge of þais bairnes and þair Estait ; albeit þe faid Robert his cheif discontentment was, becaus, be þe furvieving of the faidis tuo bairnes, 3our (*his*) rycht of fuceffion to the faid leving was impeidit. The faid Robert, þairfoir, ffor removeing of the faid impediment, in his devillifch difpofitioun, conuenit to him felff his faidis thre fifteris, Iffobell, Annas, and Helene, within the Place¹ of Logy, about Mydfomer, in the 3eir of God I^m. sex hundreth and ten 3eiris, and þair treited, confulted, deliberat, and refolued vpone the destructioun and Murthour of þe faidis tuo 3oung childrene, his broper-fones,² be Witchcraft and Poxfoun : AND for this effect, tuo of his fifteris, haifing proponit to ane Daud Blewhous, that gif³ he wald vndertak to get ane Witche, that, be sum finifterous meanis, wald tak away the lyves of þe faidis tuo boyis that war betuix þe faid Robert and the leving of Dwn, that þe faid Daud fould reffaue for his rewaird ane poffeffioun, for his lyftyme, out of the landis of Dwn, and fyve hundreth merkis of filuer ; and promeift to caus þe faid Robert, vpone the morne þaireftir, ratifie to þe faid Daud the former conditioun : Lykas, fchortlie þaireftir, þe faid Robert, cuming to the faid Daud Blewhous duelling hous, and haifing forgadderit⁴ with him þair, he þan demandit of þe faid Daud, quhat he had done concerning the purpois impairtit be his fifteris to him, anent þe diftructioun of þe faidis tuo bairnes ? And becaus, be þe anfuer maid be him to þe faid Robert and his fifteris, the faid Robert could nocht get his wiket purpois effectuat be þe faid Daud Blewhous, thairvpone the faidis Annas and Helene, his tua fifteris, of the fpeciall caufeing, fending, hounding out, airt, þairt-taking, counfell, and devyfe, þaft, in ane evening, fra þe faid Place of Logy, over þe Cairnemouth, towardis þe Mure-ailhous, and þair forgadderit with ane woman, quha namet hir felf Jonet Irwing, ane notorious Witche and abuser of þe people ; and eftir conference with hir in the faid purpois, thay, for accomplefchment pairof, reffaut of hir ane grit

¹ Mansion-house.² Nephews.³ If.⁴ Met.

quantitie of herbis, quhilkis war brocht with thame (with iniunctioun how to vse the saidis herbis) hame to Logy. Quhilk being sene be þe said Robert, in þair handis, and he altogidder distrusting that thais herbis war hable¹ to do that wicket turne for the quhilk þai war brocht, ffor clering of his dout, he, togidder with Johnne Kirk, past over þe Month towardis the Mure-ailhous, quhair he consultit and conferrit with the said Jonet Irwing, Witche, off quhome at þat tyme he resfauet ane full resolutioun that þe herbis delyuerit be hir to his sifteris was forceable aneuche to effectuat þe former wicket turne: LYK AS, schortlie paireftir, þe said Robert, returning hame agane, he concurrit and consultit with his sifteris in all þair wicket resolutions, to þe tyme that þe said poyfoneable drink was gevin be þame to the saidis tuo boyis; quha paireftir, be þe said Robert his counsall and advyse, tuik þe saidis herbis, and steipit þame amangis aill ane lang space; and paireftir, it being in deliberatioun betuix þe said Robert and his sifteris, quhidder it sould be cassin out or vsfet, in end, it was vniformelie aggreit and concludit amangis thame, that þe drink quhairin the saidis herbis war steipit sould be gevin to the saidis tuo boyis: ffor accomplisment quhairof, tuo of the saidis sifteris, accompaneit with Gilbert Campbell, his horse-boy for þe tyme, haifing also in companie with thame the said *Johnne Erskine*, the eldest of the saidis tuo boyis, past altogidder furth of Logy to þe burgh of Montrois, quhair þe vther boy with his mother remanit and duelt for þe tyme; and þair, of þe said Robert Erskine his knowlege, counsell, and devyse, the said poyfoneable drink was gevin to the saidis tuo boyis, his brother-sones: Quhilk drink, eftir þair ressaueing þairof, wrocht so violentlie vpone þame, that immediatlie paireftir thay tuik sic ane extraordiner preise² of vomeiting, that na persone expected for þair lyfe: Be occasioun of the quhilk poyfoneable drink, sa ministrat and gevin to thame, the said *Johnne Erskine*, the eldest of the tuo, contracted sic a deidlie diseas and seiknes, that his skyn turning all blak, and his haill nobill pairtis inwardlie consumeing, he daylie and continuallie paireftir dwynet³ in grit dollour and pane, to the tyme of his death, viz. to the terme of Witsonday last; at quhilk tyme, he in maist lamentable maner deceiffit, of the said vennemous and poyfoneable drink, vttering befor his death thir or the lyk woirdis, to all sic as war present, “Wo is me, that I evir had richt of succeffion to ony landis or leving! ffor gif I had bene borne sum pure coitteris sone, I had nocht bene sa demanet,⁴ nor sic wicket practizes had bene plottit aganis me for my Landis!” AND sa, was crewallie and tressonabillie Murthoret; and be þe foirsaid vnlawfull and poyfoneable drink, cuttit aff be þe said Robert Erskine, his uncle: And he was airt and pairt of the said treasonabill Murthour, and of þe damnable consulting and devyseing with the said Jonet Irwing, ane notorious Witche, ffor

¹ Lat. *habilis*.² Literally, *press*.³ Pined away.⁴ Treated.

making and ministrating of þe said poyfoneable and vennemous drink, for the saidis tuo bairnes Murthour and destructioun. LYKAS, the vther of the saidis tuo boyis remanis as ʒit fair viffeit with intollerable payne, and feiknes vniuerfall throw his haill body, be occasioun of the said drink gevin to him at þe time foirsaid; off quhais lyfe þair is na hoip. TO THE TAIKIN of the quhilkis premisses, þe said Robert being examinat be the Lordis of his Maiesteis Previe Counfall; quhairupoune, eftir lang deilling with him þairintill, in end, come to his Confessioun, in maner specifeit in his Depositiones: Lyk as, he being charget, be vertew of Criminall Letteris, to haif compeirit and fund cautioun that he sould vnderly the Law for þe saidis crymes, was, for his nocht finding cautioun, denuncet to the horne, and declairit fugitiue fra his Maiesteis Lawis, for the crymes aboue specifeit; at the quhilk Hoirning he hes ever sen syne remanit vnrelaxt pairfra. As þe saidis Letteris of Hoirning, producet aganis him, in the self proportis.

Eftir reiding of the quhilk Dittay, and accusatioun of the said Robert Erskine, be vertew thairof, of the crymes aboue expremit, quhilkis war Confessit be him to be of verritie, the Justice, of his awin consent, ferrit the samyn to the Tryell of ane Assyse of the persones following.

ASSISA.

Mr Ja ^s Durehame of Duntervie,	Sir George Ramsay of Dalhouffie,	Johnne Beatone of Falay,
Mr Francis Bothuell, brother ger-	Mr Alexander Seatoun of Gormok,	Patrick Maxwell of Newark,
mane to vmq ^{le} Johnne, Lord	Cuthbert Cunninghame, Proveist	Aulay M ^c caulay of Ardincapill,
Halyrudhous,	of Dumbarten,	Duncane Menzeis of Comerie,
Robert Falconer of Ballandro, Menzeis of Weyme,	Mathow Bailzie of Littillgill.
Sir Johnne Prestoun of Vallafeild,	Patrik Auchterlonie, Dunlope of that Ilk.

Quhilkis crymes the said Robert Erskine of new, in the said Assyse presens and audience, confessit and acknowlegit to be of verritie. Quhairupoun instrumentis was tane be our said souerane lordis Aduocat; and quha, for the said Assyse forder resolutioun, producet to thame the said Robert Erskines Depositiones, subscryuit with his hand, and dyuerse of the Lordis of his Maiesteis Previe Counfall; togidder with the saidis Letteris of Hoirning, beiring him to haif bene fugitiue fra his Maiesteis lawis, continuallie sen the committing of the said fact.

VERDICT. The Assyse, all in ane voce, be the mouth of Mr James Durhame of Duntarvie, chancellor, be resson of his former Depositiones, and ratificatioun thairof, maid in judgement, ffand, pronuncet, and declairit the said Robert Erskin to be Giltie, culpable, and convict of airt and part of the Murthour and destructioun of the said Johnne Erskine, his brother-sonne, be ministrating to him and his said brother of the poyfoneable drink, in maner specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair hisheid to be strukin from his body: And all his moveabill guidis to be escheit, &c.¹

¹ See the Trial of Helen, Issobel, and Annas Erskine, Jun. 22, 1614.

Horse and Sheep Stealing.

Jan. 28, 1614.—PETER DAVIDSOUN in Heddene; James Wallace, sumtyme duelland in Dundie; and Donald Smyth in Dumbarten.

Dilaitit as follows, viz. The said *Peter Davidsoun* ffor the thiftious steilling, conceilling, reffetting, and away-taking of ane cut-luggit stanet naig, moufeshewit and ftug-taillit;¹ togidder with ane foird baffoned meir,² haifing thre quhyte feit, alfo ftug-taillit, a faxtene myles bezond Beruik in England; committit about Mydfomer laft. ITEM, for the thiftious steilling and away-taking of ane gray ambland meir, with ane littill foired meir, a fevin or aucht myles abone Annik,³ in England; committit at Lambes laft, &c. AND the faidis *James Wallace* and *Donald Smyth*, ffor airt and pairt of the thiftious steilling, conceilling, reffetting, and away-taking of tua horfe, furth of the landis of Kerfe, &c. &c.

VERDICT. Fylet, culpable, and convict, conforme to thair awin Judiciall Confessiones.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thai be deid; and all thair moveabill guidis to be efcheit, &c.

Chest of Title-deeds, &c.

May 20.—PATRIK EVIOT, sone to Finlay Eviot in Mwretoun, and sumtyme fervand to Patrik Eviote of Mwretoun.

Dilaitit, accufit, and perfewit be Sir Williame Oliphant, &c. and Johnne Mathow of Balhouffy, of the crymes following.

DITTAY against the Pannell.

FORSAMEKILL as Johnne Mathow of Balhouffy, in the moneth of Apryle, the 3eir of God I^m. sex hundreth threttene 3eiris, haifing repairit towardis the Citie of St Androis, to haif procurer Confirmation of certane his landis, haldin be him of pe Proveist of pe Auld Colledge pairf; and haifing tane his evidentis⁴ with him to that effect, lyke as, vpon the 26 day of the said moneth of Apryle, being the Senzie-ffair-day⁵ of St Androis, the said Johnne Mathow, being within pe said burgh, in his cuming alongis the Hie streit pairf, accompaneit only with Alexander Blair, than his fervand, quba than had cayreing vnder his airme the said Johnne Mathow his wallet, quhairin thair was ane grit number of his evidentis and writtis, with tua pair of filk schankis,⁶ ane pair of worfet schankis, ane pair of fyne filk ga'rtanes, with ane certane quantitie of gray veluet, and vther fmall necessaris pertening to him, all bund vp togidder within the said wallet; and at pair cuming foiranent Robert Russell his stable, quhair pe said Johnne Mathowis horfe was stablet for pe tyme, the said Alexander Blair, his fervand, haifing than paff in to the said staibleris hufe, to geve the faidis Johnne Mathowis horfe fum corne; and in this meane tyme, haifing laid down pe said wallet, with the faidis evidentis and vtheris foirfaidis being pairin, vpon pe buird;⁷ it is of verritie, that pe said Patrik Eviote, fervand to the said Patrik Eviote of Myretoun, of the speciall causeing, directioun, hounding out, and command, reffett, assistance, and ratihabitoun of his said master, being for the space of tua or thre dayis of befoir, ever attending and following adreich⁸ vpon the said Johnne Mathow and his boy, in all pairtis of pe said Citie of St An-

¹ A crop-eared stoned horse, mouse-coloured and dock-tailed. ² A sorrel-coloured mare, marked with white on her face. ³ Alnwick. ⁴ Title-deeds. ⁵ Synod-fair. ⁶ Stockings. ⁷ Table. ⁸ Dodging, and following at a little distance.

drois quhairvnto thay maid ony repair: And haifing persauet the said Alexander Blair pafs fra his maisteris bak, and to enter within pe said Robert Ruffellis duelling-hous, and pair to haif laid doun pe said wallet vpon the burd-heid pairof, in maner foirsaid; in maist thiftious maner, he convoyed him self within pe said Robert Ruffellis hous, as the said Alexander Blair was in geving corne to his maisteris horse, and thiftioullie past vp, staw, conceillit, reffet, and away-tuik furth pairof, the said wallet, with the evidentis, silk schankis, worset schankis, silk gairtenis, gray veluet, and vperis his necessaris pertening to him; being all bund vp togidder pairintill, had and transpoiritit the samyn away with him to sic pairtis and places as he pleisit, nevir making ony restitutionoun nor redelyuerance pairof to the said Johnne Mathow, just awner of the samyn, to his grit hurt and perrell of pe securitie of his landis, be abstracting and withholding of pe saidis evidentis pairof. AND siclyk, ffor the thiftious steilling and away-taking of ane pair of blanketis, pertening to the Lady Balhouffie; and of ane pair of fyne marillit¹ plaidis, pertening to Roife of Cragie. And for cowmone Thift, and Reffett of thift, &c.

VERDICT. Fylet, culpable, and convict of the hail thiftious crymes aboue specifreit.

THE JUSTICE Continewis the pronunceatioun of Dome to the morne: And Ordanit the pannell to be committit to waird, in the meane tyme.

May 21.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid: And all his moveabill guidis to be escheit, &c.

Taking Captive — Slaughter.

Jun. 1.—WILLIAME M^cINTOSCHE of Effie; Martene M^cewin V^cewir; and Lauchlane M^coneill V^clauchlane in Bancher, (and others).

Dilaitit for the taking of Colene Campbell of Clwnes captiue and prissoner; And for the slauchter of vmq^{le} Donald M^cintailzeour, and vtheris crymes.

Colene Campbell of Clwnes producet the Letteris, be the quhilkis thay ar denuncet rebellis, and put to the horne, for nocht finding cautioun to haif compeirit, &c. And producet lykwayis ane Warrant, subscriuit be my Lord Chancellor, Secreter, and Thesaurer, for deserting the saidis Letteris aganis *Duncane M^cintoshche of Aberairdour*, Williame M^clauchlane V^cwilliame M^cintoshche, Angus Rofs, servand to Williame M^cintoshche in Boirlum, and Williame Bayne M^cconneill V^callaster Vayne, in Delnavert.

Consulting with Witches — Poisoning — Treasonable Murder.

[THE Editor begs to refer the reader to a short introductory Notice prefixed to the Trial of ROBERT ERSKINE,² the brother of the pannels, whose crimes form the subject of the following Trial. It only seems necessary in addition to state, that he has been so fortunate as to obtain the following authentic memorials³ of the proceedings against these unhappy victims of ungoverned passions, and of base and unbridled avarice. Their fate is written in letters so legible, that he who runs may read.

(Dec. 16, 1613.)—"THE tua sifteris of the deceased ROBERT ERSKYNE, who iustlye suffered

¹ Variegated; mottled; marbled; or chequered.

² See Dec. 1, 1613.

³ From *Denmylne MSS.*

Adv. Library, "Minutes of Privy Council Proceedings." See also *Balfour's Annales*, II., 53.

deathe, for the practyse of Witchcraft and Poyson vsed be him againt his twa nephewes, the breecherine of THE HOUSE OF DYNNE, are brought to this Toun; and being examined, are obdured in a constant denyall of all that mater, nochtwithstanding that there late brother past constantlye to deathe, with avowing that detestable cryme vpon thame, as being the first devysares therof, the motionaris therof to him, and the executoures therof in there own perfones. Thay are to be confronted with on who affistid thame in confell and executioun of that deede; and thairefter, in caise of there perfeverance in there denyall, thay are to be pute to the Torture."¹—(Jun. 22, 1614.) "THE xxij day of Junij nixt is appoyntit for the Tryell of HELENE and ISSOBELL ERSKENIS, for the Poyfoning of the twa brether of the Hous of Dynne; and directioun is gevin to the Justice and his Maiesteis Aduocat to proceed in the perfute, tryall, and punischment of that mater accordinglie."—(Jun. 23.) "THE thrie susteris of the Houffe of Dinne wes this day pannelled, accoofed, and convicted of the Poyfoning of there two coofinges, the brether of Dinne; and Sentence is geven aganes thame to lose there heades; whilk wilbe execute vpon the xxiiij of this instant."]

Jun. 22.—HELENE ERSKINE, Isfobell Erskine, and Annas Erskyne, Sifteris to vmq^{le} Robert Erskyne, brother to the Laird of Dwn, and dochteris lauchfull to vmq^{le} Johnne Erskine, appeirand of Dwn, callit Johnne of Logie.

Dilaitit of airt and part of the Poyfoneing of vmq^{le} Johnne Erskine, thair brother-sonne,² be miniftrating to him and to Alexander Erskine, his brother, of ane poyfoneable drink; of the quhilk the said vmq^{le} Johnne Erskine depairtit this lyfe; committit about Witsonday, in anno 1610 yeiris.³

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTORIS in defence, Mr Thomas Wilfone, and Mr Laurence M^cgill, (Advocates,) Mr Johnne Erskine, Minister,⁴ Mr Williame Keithe, Patrik Bruce.

Mr Thomas Wilfoun and Laurence M^cgill, Aduocatis, produces ane WARRANT of the Lordis of Secreit Counfall, be the quhilk thai war charget to compeir for the thre susteris on pannell, in thair defence; and in respect of the schortenes of tyme quhairupoun thay ar charget, and of the wechtines of the caus quhairupoun the pannell is dilaitit, desyres my lord Justice to grant ane continuatioun to ffry-day nixt, that in the meyne tyme thay may haif lasure to advyse with the pairtie in the caus.—The Aduocat anfueris, that na continuatioun can be grantit, in respect the perfones on pannell was charget vpon fyftene dayis wairning; and ane autentik coppie of thair Dittay was delyuerit to thame, at the geving of the said charge.

THE JUSTICE Ordanis proces; and the Summondis to be red.

It is allegit be the pannell and thair prelocoutouris, that the Dittay is nawayis relevant, in thre feuerall poyntis, viz. *ffirst*, in the allegit consulting with Jonet Irwing, Witche, nocht condiscending vpon the woirdis of consultatioun, or quhat

¹ The Editor has found no satisfactory evidence to establish that the Torture was actually put in force, in this Case.

² Their Nephew, who was the heir-apparent of David Erskine, their eldest brother.

³ The 'Dittay' is a mere echo of their brother Robert's, and is therefore unnecessary to be inserted here. See Dec. 1, 1613.

⁴ At St Ceres Kirk.

response was gevin to the pannell be the Witche. *Secundo*, anent the allegit reffauing of the vennemous or poyfoneable herbis, for the vse contenit in the Dittay, *non relevat*, except the perfewar war speciall vpon the names of the herbis, and qualitie thair of. *Tertio*, as to the allegit iniunctiones gevin for vseing of the saidis herbis, *non relevat*, except the perticuler woirdis of iniunction war speciallie fet down in the Dittay.—To the quhilk it is anfuert, that the allegiance aucht to be repellit, in respect of the lybell, quhilk he vses *coniunctim* in the haill pointis, as is qualifeit, viz. that the pannell past and consultit with ane Witche, fra quhome thay reffaut the poyfoneable herbis, with iniunctiones how to vse the samyn, for the away-taking and distructioun of thair brother-sones,¹ in maner specifeit in the Dittay; in respect quhair of, the Dittay fould pas to the knowlege of ane Assyse.

THE JUSTICE findis the Dittay relevant, *coniunctim*; and nochtwithstanding of the allegiance, Remittis the samyn to ane Assyse. Quhairvpon the Aduocat askit instrumentis.

ASSISA.

James Douglas of Todhoillis,	Adame Cunninghame of Chapell,	Mr Robert Stratoun, in Strathe,
Mr Joseph Hadden,	Williame Somervell of Pole,	Mr Robert Purves, in Ballache,
Thomas Craingelt of that Ilk,	Johnne Norie, in Brechin,	Johnne Moncur, in Blacok-mure,
Thomas Inglis of Eiftscheill,	Mr Thomas Ramsay, thair,	Johnne Barclay, in Balmakellie,
James Somervell of Spittell,	Robert Barclay, at Marie Kirk,	Johnne Barclay of Johnnstoun.

The Aduocat, for verificatioun of the Dittay, produces ane Letter writtin be Mr Airthour Erskine, the pannellis father-brother,² thair Confessioun of the cryme lybellit, and thair penitence for the same; with a defyre of his lordschipis supplie and help, to transport thame furth of the cuntrie.

The said Letter being presentit to Johnne Erskin, Minister, now Tutour of Dwn, and being inquyret gif the samyn was the said Mr Airthouris hand-writ or nocht, Declairit that the samyn was everie woird the hand-writ of the said Mr Airthour. Quhairupoun the Aduocat askit instrumentis.

Thaireftir my lord Aduocat producet the Depositiones maid be vmq^{1e} Robert Erskine, thair brother, quha past to the deid³ at the Mercat-croce of Ed^r, that the pannell war the only first proponeris of that wicket fact to him; and that the samyn was committit and done be the persones on pannell, in maner specifeit in the Dittay.—Repeittis the affirmatioun maid giudiciallie be *David Blewhous* of his former Depositiones; quhilk my lord Aduocat causet reid ouer to Blewhous. Producet lykwayis the Depositiones maid be *Gilbert Campbell*, and *Johnne Kirk*, in the said matter; and defyret the Assyse to cognosce thairupoun; And protestit for Wilfull Errorr, in caice thai acquit the pannell of the saidis crymes.

VERDICT. The Assyse, be pluralitie of voittis, fand, pronuncet, and declairit

¹ Nephews.² Paternal uncle.³ Death.

the saidis Iffobell, Helene, and Annas Erskynis to be ffylet, culpable, and convict of the haill crymes specifeit in the said Dittay; and that be the repoint and Declaratioun of the said Thomas Craingelt of that Ilk, chancellor.

SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis to be escheit, &c.

DOME OF BANISCHEMENT *vpone Helene Erskine.*

(Mar. 22, 1615.)—Helene Erskine, ane of the thre lauchfull dochteris of vmq¹⁰ Johnne Erskine, appeirand of Dwne, callit *Johnne of Logie*, being brocht furth of waird, out of the Tolbuith of Ed^r, quhairin scho had remanit sen her last convictioun, and presentit vpone pannell, to heir DOME of new agane pronuncet aganis hir, as scho that was convict and the dome of daith pronuncet aganis hir, &c. Ane ACT of *Secretit Counfall* was presentit, and delyuerit to the Justice; quhairof the tennour followis.

APUD ED^r, *decimo sexto die mensis Marcij, anno Domini millesimo sexcentesimo decimo quinto.* FORSAMEKILL AS, by the executioun to the daith of *Robert Erskine* and his tuo sifteris, the impoysoning of the tuo bretherene of Dwne is sufficientlie pwneifched: And whearas, thair remaneth 3 it, in fure custodie, for the same offence, HELENE ERSKINE, who being moir penitent, thogh les giltie, than the rest, doith mereit the moir commiseratioun: HIS MAIESTIE is thairfoir gracioullie pleafit to spair hir lyfe, 3it so as scho fall nocht eschaip the pwneifchment of hir pairt of the said offence; bot pat scho be BANISHED out of this kingdome, during hir lyftyme. THAIRFOIR, the Lordis of Secretit Counfall, according to the Kingis Maiesteis will, plefour, and directioun, send vnto thame in this matter, Ordanis and commandis his Maiesteis Justice, Justice clerk, and pair deputis, to appoint and set ane new Justice Court, to be haldin be thame in the Tolbuthe of Ed^r, at such tyme as thay pleis (to) affix; and pair to call the said *Helene* befoir thame, and to pronounce new sentence and dome aganis hir; ordanng hir to be BANISHED this kingdome, and nevir to returne agane within the same during hir lyftyme, without his Maiesteis Licence had and obtenit to pat effect; and to depairt furth of this realme, within the space of fourtie dayis estir pe pronouncing of the said new dome, vnder the pane of deid: With certificatioun to hir, and¹ scho sailgie, and depairt nocht furth of this realme, within the terme soirsaid prescryuit vnto hir; and being depairtit furth of pis realme, yf scho returne agane within the same, without his Maiesteis Licence had and obtenit to that effect, that the pane of deid salbe execute against hir, without fauour or mercie.

EXTRACTUM de Libris Actorum Secreti Consilij f. d. n. regis, per me, Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

THE JUSTICE, for obedience of the will and ordinance thairin contenit, be the mouth of Johnne Dow, dempster of Court, Ordanit, nochtwithstanding of the former dome of daith first pronuncet, the said Helene Erskine to be BANISCHET, &c.²

Child-Murder.

Jun. 25.—JONET BROWN, dochter to Johnne Broun in Bigger.

Dilaitit, ffor samekill as Johnne Stewinsone in Bigger, haifing this last yeir

¹ An; if; in case.

² The terms of the Warrant are repeated, *verbatim*, in the Record.

gottin ane bairne with hir, in the filthie cryme of ffornicatioun, scho, for avoid-
ing the sclander and pwneischment, conceillit the said bairne, sua that nane of
the parochin knew hir to haif bene thairwith ; and about the moneth of Marche,
or thairby, last, being cum to the tyme of hir delyuerie, scho past furth of hir
fatheris duelling-hous to the feildis, neir to the said toun of Bigger ; and without
seiking of ane meidwyfe, or vther ordiner help, scho travellit, and was delyuerit of
ane quik madin-bairne ; quhilk chyld scho strangillit immediatlie, and tuik the
same to ane dyk-syde outwith the said toun of Bigger, and coverit the samyn
with ane number of turves : And sa, be neglecting the ordiner meanis in hir
birth, scho crewallie murdreift and slew the said bairne.

The pannell denyis the Murthour of the bairne ; and sayis that the bairne
deit schortlie efter the beiring, being ane las-bairne ; and being deid, scho eirdit¹
the samyn in the grund of ane truff stak,² in maner specifeit in the Dittay.

VERDICT. The Assyse, be the mouth of Williame Flemyng of Perfilandis,
chancellor, ffind, pronuncet, and declairit the said Jonet to be ffylet, culpable,
and convict of the Murthour and distructioun of hir said infant bairne, conforme
to hir Dittay.—SENTENCE. To be tane to the Castell-hill of Ed^r, and thair to
be hangit quhill scho be deid : And hir moveable guidis to be escheit, &c.

Thett.

Jun. 25.—ANDRO GULE, borne in Clermond, vnder the Laird of Dairfie.

Dilaitit and accuset for the steilling and away-taking of tua pair of scheittis,
ane pair of blankettis, ane littill panne, and ane fuord, pertening to Williame
Perfone, in the Hill of Bathe.—Grantit the samyn to be of verritie, and cravet
God mercie thairfoir ; a d offerit him self in our souerane lordis will, and his
hienes Justice will, for the saidis crymes : Quhome the Justice reffaut.

SENTENCE. To be SCURGET throw the burgh of Ed^r, and to be BANISCHET
furth thairof for euir : And gif euer he war apprehendit for Thift heireftir, fould
be hangit to the deid, but faour.

Cattle-stealing—Slaughter.

Jul. 15.—GILBERT JOHNNESTOUN, brother to Gawin Johnnestoun in
Annand-holme.

Dilaitit, accuset, and persewit, be Hew Douglais of Dalwein, as sone, Sir
Robert Dowglais of Carschogill, as neir kinsman, of vmq^{le} Hew Dowglais of Dal-
wein, ffor airt and pairt of the thifteous Steilling, conceilling, and away-taking,
vnder silence and clud of nycht, furth of the landis and Maines of Dalwein, of
threttie fax heid of ky and oxin, pertening to the said vmq^{le} Hew and his ten-

¹ Earthed ; buried.

² Peat or turf stack.

nentis ; committit be him, and vtheris his complices, cowmone and notorious thevis, rebellis, and fugitiues, vpone the xxviij day of August, I^m.V^c. fourfcoir fevintene yeiris : AND siclyk, ffor airt and pairt of the crewall Murthour and slauchter of the said vmq^{le} Hew Douglas of Dalvene, in the following and redding of the said guidis, at the tyme foirfaid ; vpoun set purpois, prowisoun, and foir-thocht felonie.

ASSISA.

Johnne Lyndfay of Auchinfeoch,

Robert Johnnestoun of Vamphra,

James Greir of Pitfillan,

Capitane James Hunter, burges of Ed^r,

Mr Samuel Kirkpatrik of Auchinlek,

Williame Johnnestoun of Lokerbie,

James M^cMath of Schaw,

Johnne Bell, burges of Edinburghe.¹

VERDICT. Fylit, culpable, and convict.—Sentence continewit quhill the Justice war advyset with the Lordis of his Maiesteis Previe Counfall thairanent.

Jul. 16.—SENTENCE. The Justice, ffor obedience of ane WARRANT, direct to him be the Lordis of Secreit Counfall, subscryuit be my Lord President, my Lord of Roxburgh, my Lord of Bynning, Secretar, my Lord of Blantyre, and be my Lord of Kildrummye, be the mouth of Johnne Dow, dempster, decernit and ordanit the said Gilbert to be tane to the Castell-hill of Ed^r, and thair to be hangit vpoun ane gibbet, quhill he be deid ; and all his moveabill guidis to be escheit, &c.

Slaughter.

Dec. 9.—SIR PATRIK HEPBURNE of Vachtoune, kny^t ; James Ker, Patrik Diksoun, David Allan (Ellem), Patrik Mortoun stewart, Andro Gyller cuik, George Quhyt horskeipar, Diones Smart huntifman, Williame Carfrae scheiphird, Williame Drummond, all feruitouris to the said Sir Patrik.

Dilaitit for airt and pairt of the slauchter of vmq^{le} Robert Broun, feruitour to Mr Richart Dowglais of Brokhollis.

Patrik Dowglais, baxter, burges of Ed^r, producit the Letteris, dewlie execute and indorfat, purchest be Johnne and George Brounes, as brether, and the said Mr Richart, as maister and neir kynsman of the said vmq^{le} Robert, and our fouerane lordis Aduocat, and protestit for releif of his cautionerie ; the quhilk the Justice admittit.—Mr John Hepburne of Gilmertoun, as cautioner for the saidis Sir Patrik, for his releif of the said cautionerie, producet the Counfallis Warrant, ordaning this dyet to be desert, &c.

JUSTICE, Justice clerk, and 3our deputtis : fforfamekill as the nynt day of December instant is appointit to Sir Patrik Hepburne of Vachtoun, kny^t, James Ker, Patrik Dickfone, David Ellem, and vtheris, his feruitouris, for thair compeirance befor 3ow in the Tolbuith of Ed^r, to vnderly our lawis for the slauchter of vmq^{le} Ro^t Broun, feruitour to Mr Richart Dowglais : And feing pe pairteis ar now

¹ The rest were burgesses of Edinburgh.

agreit, and hes chopin¹ handis, in prefence of diueris of our Nobiletie and of his Maiesteis Counfall : Theis ar thairfoir, in his Maiesteis name, to command 30w to desert the said dyet, and forbeir all forder proceeding pairintill : Quhairnent pir presentis salbe 3our Warrant. AT ED², the sewint day of December, I^m.Vj^c. and fourtein 3eiris.

AL. CANCELL³. AL. MAR. R. CAITHNES. LYNLY⁴GOW. KINGORNE. LOTHEANE.

High Treason—Resisting the King's Lieutenant and his Forces —Rebellion in Orkney, &c.

[THE proceedings which were adopted against PATRICK EARL OF ORKNEY, in the years 1610 and 1611, have already been noticed in a former part of this Collection;² and as THE REBELLION IN ORKNEY, as a matter of history, has been recorded in almost every History of Scotland, it is unnecessary here to enter into any minute detail or recapitulation. Owing to the relationship which existed between the Earl of Orkney and the King, and the high favour in which that Nobleman had long stood with his Majesty, every device appears to have been resorted to, on the part of the Privy Council and the Lord Advocate, for the purpose of enabling the Earl to prove his innocence of the former accusations of cruel Oppression and Tyranny, which had been brought against him by the wretched inhabitants of Orkney and Shetland, after they had submitted, as long as was consistent with human nature, to endure such barbarous treatment. The Earl was accordingly confined in Edinburgh Castle; and in the meantime, the Privy Council deputed the Bishop of Orkney to enquire into the truth of these serious charges, and to report to them within a reasonable time.

Owing to his attempts to escape from ward in Edinburgh Castle, the Earl of Orkney was conveyed, as a state prisoner, to the Castle of Dumbarton; where it was considered he would be in more sure custody, and would, besides, be farther removed from the intrigues in which it had long been conjectured he was busily engaged. Notwithstanding of the vigilance of his keepers, he contrived to instruct his 'bafè son,' ROBERT STEWART, one of the subjects of the following Trial, to proceed to Orkney, under the pretence of uplifting the rents which were due by his tenants, but, in reality, his design was to seize upon the Castle of Kirkwall and other strengths in Orkney, which had been confided to the custody of the Bishop, the Sheriff, &c., to raise the standard of Rebellion, and, finally, to throw off his allegiance to the Crown of Scotland. The Earl had anticipated that, by means of the money to be thus raised, he would easily overcome the fidelity of his keepers, or otherwise provide the means of his own escape. Having ordered ammunition and other supplies to be procured from Norway, he calculated, that in those remote regions, which were rendered almost inaccessible during many months in the year, at that period, when the art of navigation was at so low an ebb, he might assume the despotic rule of these Islands, as an independent Prince.

The successful termination of the Earl of Caithness's Commission of Lieutenancy, the capture of the Castle of Kirkwall, and all his remaining strongholds, the capitulation and unconditional surrender of Robert Stewart and the other rebels, together with the subsequent execution of the ringleaders in this Rebellion, for ever dispelled the absurd reveries and the wicked plots of this guilty man, who was doomed, in February 1615, to forfeit his life upon the scaffold. Reference is here generally made to his two Trials, for the sake of brevity.

It only remains to state, that *Calderwood*, in his MS. Church History,³ preserves the following notice of the Execution of these unhappy and deluded criminals.—(Jan. 6, 1615.) 'ROBERT STEWART, sone naturall to the Erle of Orkney, with other five of his complices, convicted of treasonable taking, keeping, and defending of the Castle of Kirkwall and the strengths in Orkney, were hanged at the market crosse of Edinburgh, and died penitent. The said Robert confessed his father, the Earle, who

¹ Struck; shaken hands.

² Vol. III., p. 81, &c.

³ *Calderwood's Church Hist.*, MS. Adv. Library.

then was wardit in the Castle of Edinburgh, commandit him to doe that which he did ; but granted he gave him a contrare-mand, before he entered in executione. The Gentleman, not exceeding 22 years of age, was pitied of the people, for his tall stature and comely countenance.'

As the details of this Rebellion are entirely unknown to the public, the Editor has the pleasure of laying before his readers a mass of Original State Papers, Dispatches, Examinations, Confessions, and other interesting Documents, which he has appended to this Trial, and to that of the Earl of Orkney, Feb. 1, 1615. As usual, the sources from which these Illustrations have been procured are noted ; and it is hoped, that the whole will be considered as an acceptable addition to the history of that period.]

Jan. 5, 1615.—ROBERT STEWART, bafe sone to Patrik, lait Erle of Orknay ;¹ Thomas Blak, alias Dowglas, fumtyme Chalmerlane and Bailzie to the said Erle ; Archibald Murray, wricht in Birsay ; Andro Mairtene, fumtyme servend and secretar to the said lait Erle ; Alexander Layng, also his servend ; and Thomas Layng, indueller in Kirkwall.

Dilaitit of the Treffonable taking and surprifing of his Maiesteis CASTELL OF KIRKWALL, KIRK, and STEIPLE OF KIRKWALL ; treffonable resisting of THE ERLE OF CAITHNES, his Maiesteis Lieutenant ; and vtheris treffonabill crimes, contenit in thair Dittayis following.

DITTAY against Robert Stewart and others.

FORSAMEKILL AS, albeit it was mair nor nottour and manifest to 3ow, that our souerane lord the Kingis Maieftie, and Lordis of his hienes Previe Counfall of his Kingdome, had depute and authorizet *Sir James Stewart of Killeith*, kny^t, to be Chalmerlane of the Erledome of Orknay and Lordschip of Zeitland ; quha, be reffone of pe said office, nocht only became in posseffioun, in vplifting to his Maiesteis vse of pe haill rentis, casualities, and deuties of the said Erledome, lordschip, and leving pairof, bot lykwayis, be him self, his servendis, and substitutis, obtenit the charge, custodie, and keiping of pe haill Palices, Houffis, Castellis, and strenthis within the samyn ; speciallie, pe Castell of Kirkwall, the Hous and Palice of Birsay, and remanent houffis fumtyme pertening to pe said *Patrik, lait Erle of Orknay*. As also, 3e, pe said *Robert Stewart*, being bundin, vpon 3our grit aithe, nocht to haif repairit to pe boundis of pe said cuntrie of Orknay and Zeitland, without his Maiesteis Licence, grantit to 3ow for that effect ; uocht-withstanding quhairof, it is of verritie, that 3e, the said Robert Stewart, being oft tymes thraitnet and minasset be the said lait Erle 3our father, vpon a miscontentment consauet be him aganis 3ow, ffor 3our supposet overgeving of pe said Castell of Kirkwall and vtheris Houffis tane and keipit be 3ow, maist treffonabillie schaiking af 3our allegeance and obedience to our souerane lord, and preferring the vnhappie plott and counfall of 3our said ffather to the dew reuerence and regard of his Maiesteis autoritie and lawis, and thairwith making schip-

¹ See Trials of Patrick, Earl of Orkney, Aug. 2, 1610 ; and Feb. 1, 1615.

wrak of your faith, honour, and credeit, quhairin ye stuid bund vpone your grit and solemne aith, as said is : Off the speciall causeing, sending, hounding out, command, counfall, devyse, and directioun of the said lait Patrik, lait Erle of Orknay, your ffather, in the moneth of Maij lastbypast, or pairby, expreslie aganis your former faith and former promeis, adresst your selff furth of thir pairtis to the said cuntrie of Orknay ; quhair ye, togidder with *Patrik Halcro*, quha also was employit and directit be your said ffather to assist you in your intendit Rebellioun, convenit to your selffis the saidis *Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat*, and *Thomas Layng*, with dyuerse vtheris mwthinous and evill disposet persones, your associatis, plotteris, and practizeris with you, in your hail rebellious and tressonabill courses following : AND *ffirst*, be your craftie and subteill meanis, convoyit and possessit your selff and your associattis within þe Palice of Birsay, and violentlie expellit furth þairof Barnard Stewart, Keiper of the samyn ; drew in to your selff, within the said hous, to the number of threttie persones, bodin with hagbutis, muscatis, poulder, leid, and vther maner of weirlyk preparatioun : Lykas, the taking of the said Hous and manning þairof, in maner soirsaid, be you and your rebellious associattis being maid knawin to *Mr Johnne Fynlayfone*, Schereff depute ; and he, in regaird of his office, and for preventing of your intendit Rebellioun, haifing assemblit ane grit number of the best affectionat gentilmen and cowmonis of þe cuntrie, in the said moneth of Maij, or pairby, lastbypast, cuming forwardis to the said Hous of Birsay, tane and keipit be you and your rebellious associattis, as said is ; and haifing, at his cuming þairto, be found of trumpet, in our fouerane lordis name and authoritie, causit charge you to cum furth of his Maiesteis Hous, and to rander þe samyn to him, as Judge and Magiftrat of þe cuntrie, vnder his Maieftie, without forder trouble to follow þairupoun, under þe pane of Tressone ; ye, with your associattis, nocht only maist tressonabillie and contemptuoufflie disobeyit þe said charge (and) refuifet altogidder to rander the said Hous, but schote furth þairof dyuerse schotis of hagbutis and muscatis at þe said Schereff and his companie, than cled¹ with our fouerane lordis authoritie, in þe executioun of his office, and geving of þe former charge : At quhilk tyme, the said Schereff and his cumpany being vnwilling to encounter with you, be way of deid, than left you with your rebellious company, within the said Hous, and returnet to Kirkwall, of intentioune to haif stayit your Rebellioun fra haifing ony forder course. Bot ye, altogidder myndet to pas forwardis þairintill, eftir þe Schereffis depairting fra the said Hous, convocat your rebellious company togidder, and be the space of ane moneth togidder, keiping your daylie consultations and meitingis with vther,² ye þair plottit, devyset, and concludit the tressonabill intaking and man-

¹ Clothed.² One another ; each other.

ning of the Kirk and Steiple of Kirkwall, the Castell pairof, and Place of the Zairdis, the slauchter and ruiting out of þe Schereff, þe Commiffar, and sic as wald tak pairt with thame aganis zow; and for this effect, convocat to zow þe haill parochineris and cuntrie people about, pat zour felff with thame in airmes, and at tua feuerall tymes maid zour mufteris and wappone-fchawingis, and mufterit togidder the number of nynefcoir perfones, furneift and airmet, for þe maift pairt, with corflettis, hagbuttis, poulder, leid, lances, and vther weirlyk preparatioune: Quhilkis perfones, fa convocat be zow, ze brocht altogidder within the faid Hous of Birsay and vperis houffis þairabout, quhair thay war feiftit and bankettit be zow: Zour Captanes and Commanderis war than chofin, and mony promeiffes and vowis maid, that na bak-ftarting fould be, fra zour intendit Rebellioun, be ony of zow, at ony tyme thaireftir, bot to tak eafald¹ pairt with vther to² þe tyme þe lait ERLE OF ORKNAY war repoffeffit to his ancient and former government in that cuntrie. At quhilk tyme, ffor zour gritter affureance of þe faidis vowis and promeiffis, ane BAND was plottit, maid, and devyfet be zow and zour rebellious affociattis, all writtin be þe faid Andro Martenis hand; quhillk being presentit and producet to zour haill rebellious company be zow, the faid Band (eftir grit aithes maid vpoun zour fuoirdis³) was fubfcryvit be fa mony of zow and zour company as could wryte; and fa mony as could nocht wryte put to þair markis, and gaif þair folemne aithes to abyde þairat to þair lyves end; quhair in thay war bund to die and leue with zow, and to tak eafald pairt with zow, in all zour treffonabill courfes, aganis all perfones quhatfumeuir, his Maieftie, our gracious fouerane, nocht being exceptit, nor his royall authoritie fet apairt; committing thairthrow oppin and manifefit Treffone. LYK AS ze, ffor bringing to pas of zour former Rebellioun and devillifch conclufioun, about ane moneth or þairby þaireftir, vnderftanding that þe Schereff and Commiffar war in securitie within the Toun of Kirkwall, nocht expecting ony fuddane perfute, refolveing with zour felffis to haif þe Schereff in zour power, either deid or quik, ze, the faid Robert Stewart, accompaneit with the faid Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat, Thomas Layng, and vperis, zour rebellious affociattis, to the number of threttie perfones, all bodin with hagbutis, muscatis, poulder, leid, and all vther weirlyk prouifioun, vpone the xvij day of Julij laft-bypaft, come frome the faid Place of Birsay towardis þe faid Toun of Kirkwall, of intentione to haif affailzeit þe faid Schereff within his ludgeing, and haifing rankit zour companie at þe Bowa-croce, ze þair reffaut adverteifment of þe Schereffis being within the Castell; and þairthrow, finding zour felffis difapointit of zour expectatioun, ze þair difcharget zour volie of muscattis, and enterit within

¹ Literally, *one-fold*; steadfast; true, &c. ² Until. ³ An ordinary form of military oath, on such occasions; which was borrowed from times of the remotest antiquity.

the Toun, quhair 3e abaid all that nycht, quhill¹ the morne paireftir ; att quhilk tyme 3e, with Patrik Traill, Williame Paterfone, and vtheris 3our affociattis, come to the duelling hous of Bernard Stewart, within the Toun of Kirkwall, about the brek of day, in the moirning, pryfet vp his bak 3et,² enterit within his clofe, dang at his hall dur with ane garroun ;³ and nocht getting entrie, went about þe faid hous to the hall window, quhair efter vp-dinging of þe faid window, the faid Archibald Murray, in gripping of Bernardis hagbute, was hurt be him with ane rapper⁴ in the hand. Eftir the quhilk tyme, 3e, haifing reteirit 3our selffis bak agane to Birsay, and finding with 3our selffis that 3our rebellious courfes had tane bot littil or na effect ; 3e, to haif the famyn brocht to ane finall poynt, convenit 3our hail forces togidder, and eftir deliberatioun tane be 3ow, the faid Patrik Halcro, with þe faidis Thomas Blak, Archibald Murray, togidder with tuentie perfonas of 3our rebellious number, of þe speciall directioun of 3ow, þe faid Robert, past all, bodin in feir of weir, with muscattis, hagbuttis, poulder, leid, and vther weirlyk furnitour, to the faid Toun of Kirkwall, and pair, vnder nycht, furpryfet and tuik in þe Kirk and Steiple pairof, quhilk 3e furneift with men, munitioun, poulder, bullet, and vper neceffer prouifioun for halding and keiping of the faid Steiple : And vpone þe morne paireftir, 3e, þe faid Robert, vnderftanding of þe guid succes had be Halcro and his companie, in þe wyning and taking in of þe faid Kirk and Steiple, 3e, accompaneit with the faid Thomas Layng, Andro Mairtene, Alex^r Leggat, and vperis 3our rebellious affociattis, to the number of threfcoir fouldiouris and men of weir, come forwardis to þe faid Toun of Kirkwall, in oppin and arrayit battell, with founding of trumpettis, ftreking of drumis, schuiting of muscatis, in figne of triumph and victorie, and all vper weirlyk advancement ; the faid Patrik Halcro and his affociattis of 3our rebellious troupe being than within the Steiple, schuteing out pairof at all perfonas that durft kithe in 3our contrair,⁵ and founding vp þair horne to 3ow, for 3our forder incurragement to proceid in 3our trefsonabill attemptis. AND being enterit within the faid Toun, maift trefsonabillie affaget the faid Castell, and compellit þe Keiperis pairof to rander the famyn, thay being bot of a few number, and nocht able to withftand 3our violent affault ; quhilk being tane in be 3ow, 3e immediatlie paireftir cuttit the brig⁶ pairof for 3our gritter suretie : At quhilk tyme, 3e lykwayis trefsonabillie tuik, be force, þe Houfe and Place of þe 3airdis, with the Victuall-hous, and feafit vpone þe hail furnitour of meill, malt, and vther prouifioun for keiping pairof : At quhilk tyme, 3e trefsonabillie pat handis in the perfone of þe faid Mr Johnne Fynlafoun, Scheref, being than within þe faid Castell ; as also, come to the duelling hous of the faid Barnard Stewart,

¹ Until.² Forced up his back-gate by means of a lever.³ Beat at his hall or front

door with a beam, used as a battering ram, to shatter the door to pieces, or to start it from its hinges.

⁴ Rapier, ors mall sword.⁵ Come forward to take part against you.⁶ Drawbridge.

vnder filence and clud of nycht, brak vp his durris, and tuik him violentlie and aganis his will furth of his bed, led him captiue and priffoner to þe said Castell of Kirkwall, quhair he and the said Schereff war keipit in strait firmance and captiuitie be the space of fyve dayis togidder; and þaireftir war cayreit and transfportit, as captiues and priffoneris, to certane crawis or schipis, to be brocht south to sic places as 3e had appointit; thay being his Maiesteis loyall and faithfull subiectis, doing quhat in þame lay to haif stayit the course of 3our former Rebellioun. THE VERRITIE and trew repourt of the quhilkis 3our tressonabill and detestabill villaneis cuming to the eiris of HIS MAIESTIE and Lordis of his hienes PREVIE COUNSALL of this kingdome, and thay, for the mair spedie staying and repressing of the saidis enormities, haifing burdenit and imployit GEORGE ERLE OF CAITHNES, as Leutennent and Commiffioner for his Maiestie to pas over with forces to the said cuntrie of Orknay; and for that effect, ane grit number of fouldiouris and men of weir being wadget and listit, vpoun his Maiesteis charges; as also, certane peces of ordinance, poulder, bullet, and vper furnitour for battering of þe saidis strenthis and holdis surpryset and keipit be 3ow; togidder with tua schipis and ane pynnadge, being also frauchtit, alsweill for transpoirting of þe said Leutennent and his companie, with þair furnitour and vther victuallis be sea, as convoying and overtaking of þe said Ordinance, poulder, and bullet towardis the said cuntrie of Orknay, for paciefeing of 3our former Rebellioun, and trubillis raisit be 3ow þairintill: 3e, making littill or na accompt þairof, nor of þe pernicious example gevin be 3ow to vtheris his Maiesteis guid and peceable subiectis, in vtheris pairtis of his dominionis, in plane contempt of his Maiestie and of his royall authoritie, vpone knowlege gevin to 3ow of the said Leutennentis over-cuming, in maner foirsaid; 3e maist tressonabillie convenit and musterit 3our hail forces and cumpaneis togidder; and for augmenting of 3our number, drew in dyueris of þe cuntrie people, quhilkis war prest and forcet, be 3our tyrannie and oppreffioun, to tak pairt with 3ow in 3our former Rebellioun, making vp in number ane airmie of ffyve hundreth men, airmit for 3our guaird and defence, in so dampnable ane caus. With the quhilk number of airmet fouldiouris, 3e marchet furth in battel array, out of þe said Toun of Kirkwall, towardis the Carnes, dyuerse dayis of þe moneth of August last, of purposis þair to haif withstod and resistit þe said Leutennent and his schipis landing: LYK AS, eftir þe said Leutennent and his cumpanie war landit, 3e, accompaneit with the number aboue writtin, being all bodin in feir of weir, with hagbuttis, muscattis, poulder, leid, ensignes displayit, and founding of drummis, rankit 3our selffis in battell array, at the Baw-feild, ane littil fra the said Toun of Kirkwall, quhair 3e, be schuiting of 3our muscattis, maist tressonabillie maid resistance to the said Leutennent and

his companie, in pair forward-cuming to the said Toun, thay being cled with his Maiesteis autoritie and Commiffioun to repres your Rebellioun : And vpone the tuentie foure day of þe said moneth of August, *Robert Wynrahame*, ane of his Maiesteis Herauldis,¹ cled with his hienes displayit coit of airmes, accompaneit with Johnne Johnnestoun, trumpetour, Mr Williame Moffet, Gilbert Dundas, and Johnne Moffet, as witnesses, accoirding to the directioun of his Maieftie and Counfall, and of þe said Erle of Caithnes, his Maiesteis Leutennent, being repairing to the Mercat-croce of Kirkwall, thair to haif charget you, in his Maiesteis name and autoritie, be found of trumpet, to haif randerit the said Castell, Place of the Zairdis, Kirk, and Steiple, and vtheris houffis and strenthes keipit and haldin be you and your rebellious affociattis, ze, and your airmet foul-diouris and men of weir, nocht only tressonabilie stayit and maid resistance to the said Robert Wynrahame, his Maiesteis Herauld, in nocht suffering him to repair to þe said Croce, for discharge of his Message, bot maist presumptiouflie pat violent handis on his persone, tuik him, with the said trumpetour and witnessis, as captiues and prissoneris, and cayreit him to the said Place of þe Zairdis, quhair thay war keipit and detenit be you as prissoneris be þe space of nyne houris, or pairby, ane pairt of þe said Herauldis coit was revin; and efter delyuerie of the said charge be him to you, þe said Robert Stewart, for randering of the saidis Houffis, his Maiesteis letteris and charges was tane be you frome him, quhilkis ar keipit be you as zit : And nochtwithstanding pairof, þe saidis Houffis and Castell was maist tressonabilie keipit and haldin be you. VPOUN the forward-cuming of the quhilk Leutennent, with his forces, towardis the said Toun, ze finding your selfis vnhabable² to keip the feildis, or to hald him out of the Toun, ze maid your flicht and retreit to þe saidis Kirk and steiple, and to the said Castell and Place of the Zairdis : And dyuerse schotes of ordinance being schote at þe said Castell, Steiple, and vperis Houffis forteseit and keipit be you, with dyuerse messages send to you for þe peceable overgeving pairof, ze neurþeles maist rebelliouffie dissobeyit the saidis messages and charges, and tressonabilie schote furthe agane at the said Leutennent and his companie, and slew with the saidis schottis, Williame Irwing, lauchfull sone to vmq¹⁶ Williame Irwing of Saba,³ James Richesoun, Andro Adamesoun, William Robertfoun; and hurt and woundit James Kneiland, Andro Purves, Williame Flemyng, and Alexander Sudderland, thay being his Maiesteis servandis and faithfull subiectis, than in seruice with the said Leutennent; tressonabilie keipit and held the said Steiple the space of fourtie aucht houris paireftir, or pairby; and held and keipit the said Castell be the space of ffyve oulkis, or pairby; nochtwithstanding of sevin scoir schote of ordinance schote pairat, and that ane grit pairt pairof was

¹ He was 'Yla' or Islay Herald.

² Lat. *inhabilis*.

³ Elsewhere called of Cava.

batterit and dung down with the force of the said cannoun. OFF THE QUHILKIS Treffonabill crymes aboue writtin, viz. the Treffonable dissobeying of the chairge gevin be þe said Schereff, in his Maiesteis name and autoritie, ffor randering of the said Houfe and Palice of Birsay, eftir þe intaking pairof; the Treffonable convocatioun and raiseing of men of weir, and mustering of thame in airmes, to þe number foirsaid, and cuming forwardis with a pairt of thame in battell-aray to þe said Bowa-croce, for the slauchter of the said Schereff; the Treffonabill forgeing, making, and subscriveing of the foirsaid Band, for taking pairt with the said Robert, in his former treffonabill courses; and causeing the subscriveris, and vperis þair aideris and assisteris, be solemne aithes, to fueir to die and leve with him, aganis all maner of persones, his Maiestie our sacred fuerane nocht being exceptit; the Treffonabill taking and surprising of þe said Castell of Kirkwall, Kirk, and Steiple pairof, Place of the ʒairdis, and vtheris houffis, mannit and keipit as said is; the Treffonabill taking of þe said Mr Johnne Fynlafoun, Schereff, and Barnard Stewart, captiues and prissoneris, being his Maiesteis frie and faithfull subiectis; the Treffonable resisting of the said Erle of Caithnes, his Maiesteis Leutennent and Commiissioner, in vseing of his said Commiissionone, with his cumpanie and men of weir, and slauchter of his Maiesteis faithfull subiectis, being in his Maiesteis seruice; and beiring out of the said assault maid be the said Leutennent, to the saidis Castell, Kirk, and Steiple; the Treffonabill taking of þe said Robert Winrahame, his Maiesteis Herauld, being directit be his Maieftie and Counfall, with his Maiesteis displayit coit of airmes, to charge the said Robert and his companie, to rander the saidis Houffis and strenthis, be vertew of his Maiesteis Letteris direct for þat effect; and Treffonabill dissobeying of the said charge, and taking of the letteris and charges fra þe said Herauld, and keiping pairof, in maner foirsaid; ʒe, the said Robert Stewart, Andro Mairtene, Thomas Blak, Archibald Murray, Alexander Legget, and Thomas Layng, and ilk ane of ʒow, ar airt, pairt, red (*advice*), and counsell; att the leift, of ane or vther of the saidis Treffonabill crymes, committit be ʒow and ʒour rebellious affociattis aboue writtin; off the special causeing, sending, hounding out, airt, pairt, counsell and devyse of the said PATRIK, lait ERLE OF ORKNAY; quhilk is notourlie knawin. LYK AS, ʒe haif Confessit the samyn, be ʒour Depositiones.—FOR the quhilkis ʒe aucht and fould be pwneist and denuncet as Tratouris; to þe terrour and exampill of vperis to attempt the lyk Rebellioun heireftir.

MY LORD ADUOCAT producet ane WARRANT of the Counsell, direct to his Lordschip, anent the formeing of the Dittay aganes the persones on pannell, and thair perfute for the crymes contenit in the Depositiones; quhilk Warrant is daitit the 28 December, 1614. My Lord Justice and Justice Clerk producet, also, ane Warrant, direct be the Counfall to thair Lordschipis, for halding of Court,

and miniftrating of Justice vpon the perfones on pannell. My lord Aduocat producet the Dittay ; and conforme to the Counfallis Warrant, and for obedience thairrof, declairit, he was reddie to infist in the pannellis perfute, for the crymes thairin contenit ; and thairupon askit instrumentis.

The pannell being askit, Gif thai had ony prelocutouris for thame to defend ; or gif thay had ony thing to allege, quhy the Dittay producet be my lord Aduocat fould nocht pas to the knowlege of ane Affyse ? For anfuer thairto, Robert Stewart declairit, that thai wald vse na prelocutouris, bot God, in this matter.

ASSISA.

Mr Robert Henderfoun of North Rannaldfay,	Andro Anderfoun, also his fervand,	Williame Sinclair of Tullope,
Eduard Scola, fumtyme Scheref of Orknay,	Henri Sinclair, also his fervand,	Andro Purves, indueller in Edr,
George Mowat of Sewnane,	James Hammiltoun, wrycht,	Williame Robiefoun, thair,
James Irwing, fervand to my lord (Erle of Cathnes),	James Workman, paynter, burges of Edinburgh,	Clement Kincaid, thair,
	Johnne Quhyte, wricht, burges of the Cannogait,	George Redik of,
		Robert Keith, mercheand burges of Edinburgh.

It is allegit be Thomas Layng, ane of the perfones on pannell, that George Mowat, James Irwing, (and) Andro Anderfoun ar fervandis to my lord of Caithnes ; and thairfoir, hai nor nane of his lordschipis fervandis can pas vpon the pannellis Affyse ; in respect, that the said Erle and his fervandis war perfewaris of the pannell within the Toun of Kirkwall, Kirk, Steiple, and Castell thairrof ; and thay war tane and apprehendit be him (the Erle), and (thay) behavet thame felfis as pairtie, in thair perfute of thair lyves.—It is anfuerit be my lord Aduocat, that the allegiance aucht to be repellit ; in respect my lord of Caithnes and his fervandis had na particular¹ of his awin aganis the pannell ; bot only was imployit as Commiffioner and Leutennent for his Maieftie to pas to Orknay, and thair, in his Maiefteis name and authoritie, to apprehend the perfones on pannell, for thair Rebellioun, and halding and furpryfeing of his Maiefteis Castellis and Houffis thair : ffor how fall the pannellis giltines of the crymes contenit in thair Dittay be tryit,² bot be sic as best knowis the verritie of the factis mentionat thairintill ? And thairfoir, nochtwithftanding of the said allegiance maid aganis the Erle of Caithnes fervandis, they aucht to be admittit vpon this Affyse.³

THE JUSTICE Admittis THE ERLE OF CAITHNES *fervandis* vponne the Affyse, nochtwithftanding of the allegiance ; and that, in respect of my lord Aduocatis anfuer maid thairto.

¹ Quarrel ; feud.

² Proved ; established.

This forcibly illustrates the remarks which have frequently been made, in various parts of this work, regarding the anomalous character of a Juryman ; who was generally selected, as personally knowing the facts of the case ; and was therefore considered as best qualified to return a true verdict, being in fact a witness in the Trial ; and accordingly, deciding on his previous knowledge, whereby he was liable to be biassed by his prejudices.

[PRIVILEGE of his Majesty's Servants in THE CASTLE OF EDINBURGH, as being exempted from passing upon Assyses.]

James Hammiltoune, wricht, and James Workman, ffor thame selffis, and in name of the remanent ordiner servandis of his Maieftie CASTELL OF EDINBURGH, summond to pas vpone this Assyse, declairit, in respect thai war ordiner servandis to his Maieftie within the said Castell, and thairfoir war, be the Law and daylie practik, exemit¹ fra all maner of Assyses, defyret, according to thair privilege, thay fould nocht pas vpone this Assyse.—My Lord Aduocat declairit, that thair passing vpone this Assyse fould nawayis preiudge thame of thair Privilege: And thairfoir, feing this perfute is a matter that concernis his Maieftie him selff, for Rebellioun committit aganis his royall authoritie, he thairfoir defyret my Lord Justice, that thai fould be admittit vpone the said Assyse, vnder protestatioun, that thair Previilege be nawayis hurt or preiudget heireftir.

QUHILK Protestatioun maid be my Lord Aduocat, in faouris of the ordiner servandis of the Castell, the Justice Admittis; and Ordanis thame to be Assyfouris at this tyme, but² preiudice of thair Privilege.

My Lord Aduocat takis instrumentis of the fweiring of the Assyse; and eftir reiding of the Dittay, and the pannellis accusatioun, be vertew thairof, of the tressonabill crymes mentionet thairintill; ffor verificatioun thairof, producet my lord of Caithnes Commiffioun of Leutenendrie, grantit to him, to the effect thairin contenit, of the dait the saxt day of August, 1614 last; the pannellis haill Depositiones, maid be thame in presens of the lordis of his hienes Previe Counsell; and thair Confessiones, mentionet thairintill; togidder with Robert Wyne-rahame, Herauld, his Executioun³ and deforcement, with the forme and maner thairof, at lenth infert in the said Executioun, subseryuit and stampit be him; all ratifeit and approvin (be his grit aith Judicialle tane be the Justice) to be of verritie, in presens of the pannell: Quhilk Declaratioun his lordschip repeitis to the Assyse, with the Judicial Confessioun maid in thair presens be the said *Robert (Stewart)*, of his giltines of the haill Dittay; and be *Andro Martene*, of the wryting of the Band, and being within the Castell with Robert the tyme of the Assault maid thairto be my Lord of Caithnes; the Judicial Confessioun maid be *Thomas Blak*, of his taking and halding of the Steiple; the Judicial Confessioun maid be *Archibald Murray*, of his being in the said Steiple, and cuming with Robert to the Castell, at the intaking thairof, and cutting of the brig; the Judicial Confessioun maid be *Thomas Layng*, of his being with Thomas Blak

¹ *Exeemed*, exempted. ² Without. ³ An official attestation by Heralds and Messengers-at-arms, that they had *executed* the duty entrusted to them. After the rough usage of Islay Herald, already related, and his subsequent '*Execution*,' it is startling enough to the mere English reader, to be informed of his appearance before the Justice, and his making oath, and so forth.

and Patrik Halcro, at the taking of the Steiple; and the Judicial Confessioun maid be *Alexander Legget*, of his keeping of the Houfe of the Zairdis vnder the said Robert and his companeis aganis the Leutennent: And in respect of the premisses, protestis for Wilfull Errour aganis the Assyse, gif thai Acquit.

ROBERT STEWART offeris him self in his Maiesteis will, ffor the haill crymes contenit in his Dittay.—ARCHIBALD MURRAY offeris him self in his Maiesteis will, ffor being in cumpany with Robert, at the cutting of the brig of the Castell, eftir surpryng thairof.

SPECIAL VERDICT *of the Assyse.*

THE ASSYSE, all in ane voce, be pe mouth of pe said Mr Robert Henderfoun, chancellor, ffand, pronuncet, and declairit the foirnamet perfonen on pannell to be GILTIE and convict of the perticuler crymes following, to wit: THE said *Robert Stewart*, bafe sone to pe said Patrick, lait Erle of Orknay, to be Giltie, culpable, and convict of the tressonabill disobeying of the charge gevin be pe said Mr Johnne Fynlafone, Schereff Depute, in his Maiesteis name and autoritie, for randerig of pe Hous of Birsay, eftir his craftie taking and surpryng thairof: OFF the tressonabill convocating and raising of men of weir, and mustering of thame in airmes, to the number of nyne scoir perfonen, and cuming fordwardis with a pairt of thame, in battell aray, to the Bowa-croce, of intencion to haif slane the Schereff: OFF the tressonabill forgoing, making, and subcryveing of ane Band, for taking pairt with the said Robert in all his tressonabill courses, and in causing the subcryueris and vtheris pair aidaris and affisteris, be pair solemne aithes to fucir to die and leve with him aganis all maner of perfonen, his Maiesteie our sacred souerane nocht being exceptit: OFF the tressonabill taking and surpryng of pe said Castell of Kirkwall, Kirk and Steiple of pe said Toun, with the Place of the Zairdis, and vtheris Houffis pertaining to his Maiesteie within the said Toun: OFF airt and pairt of pe tressonable taking of pe said Mr Johnne Fynlafoun, Shereff depute, and of Barnard Stewart, captiues and priffoneris, thay being his Maiesteis frie and faithfull subiectis: OFF the tressonable resisting of pe Erle of Caithnes, his Maiesteis Leutennent and Commiffioner, with his companie of men of weir, in executioun of his Commiffioun; and of the slauchter of dyuerse of his Maiesteis faithfull subiectis, being in his Maiesteis seruice with the said Leutennent. AND in the tressonabill beiring out of pe said Assault maid be the Leutennent aganis pe Steiple, Castell, and vtheris strenthis keipit be him within the said Toun of Kirkwall: OFF airt, pairt, red, and counsell of the tressonable taking of Robert Wynrahame his Maiesteis Herauld, cled with his Maiesteis coit of airmes, being directit be his Maiesteie and Counsell to charge pe said Robert Stewart and his rebellious associatis to rander pe saidis Houffis and strenthis, be vertew of his Maiesteis Letteris to that effect: AND of the tressonabill disobeying of the charges, and taking fra the said Herauld of his Maiesteis Letteris and charges, and keeping pairt, in maner specifeit in his Dittay: AND that, conforme to pe said Robert and his complices Depositiones; and of his Judiciall acknowledgment of his giltines of pe saidis crymes, and of his Judiciall offer of becuming in his Maiesteis Will, as giltie and culpable pairt. THE said *Thomas Blak, alias Douglas*, to be ffylet, culpable, and convict of the tressonable surpryng and taking in of the said Kirk and Steiple of Kirkwall, and halding the samyn aganis pe Erle of Caithnes, his Maiesteis Leutennent: AND for cuming fordwardis with pe said Robert Stewart, in oppin and arrayit battell, aganis pe Leutennent at pe Baw-ley; and withstanding of him and his companie, a littill after his landing, and repairing towardis the Toun of Kirkwall for discharge of his Commiffioun: AND for the tressonabill assisting of pe said Robert Stewart, in all his tressonabill interpryses aganis pe said Leutennent and his companie, fra his intaking of pe said Kirk and Steiple, to pe tyme of pe randerig pairt to pe said Leutennent. THE said *Archibald Murray*, to be Giltie and convict of the tressonabill plotting, and being vpon the counsell with the said Robert Stewart, within the Palice of Birsay, of pe taking and surpryng of pe

Kirk and Steiple, and of pe said Castell; and paireftir, accoirding pairto, ffor pe trefsonabill cuming with Patrik Halcro, Thomas Blak, and vtheris, and taking and furpryfeing of the said Steiple: AND in the trefsonabill affifting of pe said Robert in taking and furpryfeing of the said Castell, and cutting of pe brig pairof, eftir pai war maifteris of pe fame: AND of the trefsonabill keiping of pe Houfe and Palice of Birfay vnder Robert, as Maifter pairof, to the tyme he was charget be the Leutennent to rander the famyn. THE said *Andro Martene*, to be Giltie and convict of the trefsonabill making of pe Band specifeit in the Dittay, and devyfeing pairof: AND of his trefsonabill being within the said Castell with Robert, and halding pairof aganis the Leutennent: AND of airt, pairt, red, and counfall with pe said Robert Stewart, in his haill Rebellioun in Orknay, in maner contenit in his Dittay. THE said *Thomas Layng*, to be Giltie, culpable, and convict of his trefsonabill being in companie with Robert at his cuming with displayit benner, in battell aray, to the Bowa-croce, of intentioun to haif flane pe Schereff: AND of the trefsonabill taking and fuppryfeing of pe Kirk and Steiple of Kirkwall: AND of his trefsonabill being in company with Robert, at his cuming with ffyve hundreth men in airmes to the Baw-Ley, aganis the Leutennent: AND for his cuming bak to the Place of the Zairdis, and remaning pair with Robert till a littill befoir pe randering of the Hous pairof; conforme to his Depositiones. AND the said *Alexander Legget*, to be Giltie, culpable, and convict of the trefsonabill affifting and being in companie with the said Robert, with displayit benner, at pe Bowa-croce: AND for being in companie with Robert, and affifting him aganis the Leutennent, in keiping of pe Houfe and Place of pe Zairdis: AND for the trefsonable affifting and taking pairt with the said Robert, and being in companie with him at the Carnes, in refisting pe Leutennent pair; conforme to his Deposition.

Vpone the quhilk determinatioun of the said Affyfe, my lord Aduocat askit instrumentis.

SENTENCE. In regaird of the quhilk convictioun, my Lord JUSTICE, be the mouth of Johnne Dow, dempfter of Court, Ordanit the saidis perfones on pannell to be tane to the Mercat-croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And all thair landis, heritages, takis, fteidingis, rowmes, possessiones, guidis and geir to be fforfalt and efcheit to his hienes vfe, as Giltie and Convict of the saidis trefsonabill crymes.

APPENDIX OF ORIGINAL DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ROBERT STEWART AND OTHERS.

I. MINUTES OF THE PROCEEDINGS OF THE PRIVY COUNCIL OF SCOTLAND.

(1.) Jan. 14, 1614.—ROBERT STEWART, bafe sone to THE ERLE OF ORKNAY, being brocht befoir THE COUNSELL, for giveing of fuirtie not to repair to these boundis, without HIS MA^{TIES} Licence; THE BISCHOPPE OF ORKNAY hes gevin his word and promeis for him; and the Counsell hes tane his awin aithe and promeis, that he fall not repair to the saidis boundis. And this courfe is tane be the Bifchopis advyfe and speciall procurement.

(2.) Jun. 28, 1614.—THE ERLE OF ORKNAYIS bafe sone having latlie gone to Orkney, aganis his faith and promife maid to the Counfall in the contrair; and he having tane with him some souldiouris, and furpryfit *the Place of Birfwall* (Birfay) in Orkney, THE COUNSALL, vpoun the first informatioun maid to thame thairof, directed charges aganis him for randering of the Houfe; and with that, thair wes ane Proclamatioun direct, prohibiting all his Ma^{TIES} fubiectis to fupplie him with onie necef-

fairis, or to mak payment to him of ony of the dewtyis of *Orkney* or *Zelland*. The chairges for rander of the Houfe being execute aganis him, he immediatlie caufes found his trumpet vpoun the heid of the Houfe, and difchairges xxx or xl fchote of muscat at the Officer and witnesfes, as wes this day affirmit in prefens of the Counfall be *Sir James Stewart of Killith*.¹ Whairvpoun THE COUNSALL has exped ane Commiffione to him, in ample forme, for perfute and affadginge of the Houfe, with all kynd of force and wearlyk ingyne.

(3.) Jul. 28, 1614.—THE ERLE OF ORKNAY his bafe sone, accompanyed with three or four score of perfones, doeth yett contine there foolifche courses in Orkney, and still keeps *the Houfe of Birsay*. There hes beene some conference in THE COUNSALL anent the fuppreffing of his insolenceis; and it is thocht be the most parte of the Counfale, that *Sir James Stewart*, in respect he is Schiref, Judge, and Chalmerlane of the cuntrye, should be employed in that bufynes. The question standes anent the forme, how *Sir James* shall go there, and how he shalbe accompanied? Some ar of oppinion that the forces of the cuntrye ar fufficient to fuppres this REBELLION, althocht the authoures wer ten tymes mo in number. Otheres ar of oppinion, that it is hard for *Sir James Stewarte* to hazard him self with the cuntrye people; and that it is expedient that he have three score men, vnder wages, to attend vpon him. THE COUNSALE, at there nixt meeting, ar to tak some courfe in this bufynes.

(4.) Jul. 29, 1614.—SENCE the wrytting of the Notes aboue written, there is fure aduerteifment come from ORKNAY, that the faide *Erle* his bafe sone hes fuppryfed *the Churche and Steple of Kirkwall*, and the *Girnell-houfe*, (whiche ar places of gryte strength,) and that *the Scheref-depute* hes retereed him self to *the Castle*, where he is inclofed be *the Bastarde*; and that there is a publick and oppen REBELLION professed and avowed in that cuntrye. THE COUNSALE, beeing enformed heerof, this morning airtie (the 29 of this instant) thay conveened in the Over Counfale-hous; and *Sir James Stewart* beeing at lengthe hard anent his resolution and purpose in this bufynes, he hes vnder-tane to go there in perfone, and to adventur and hazard his owne lyff in the fuppreffing of this REBELLION. He hes gotten a Commiffioun to tak vp fyve hundrethe men, vnder wages, and he is verie bufye to amaffe this companyee togidder, at the least fa mony as vpon the fuddane he may gett; and both be found of trumpett and ftryking of drwm, warning is geven to all fuche as will ferue to adreaffe thame felves to him, to inroll there names and refaue there pay. He is of oppinion that within three or four dayes he shall have iij^c shouldiours in reddynes, whome he entendes to fend away be fea with the first occasion. He is to go him felue, be land, accompanyed with fuch voluntares of his kin, frendfhip, and acquentance, as he may enduce to go with him; of whome he is of oppinion to mak vp a companyee of three or four hundrethe men. *The Lord Lovat* hes promesed him the affiftance of two or three hundreth hable footemen, well furnished in all thinges neccellar. There is a ample Commiffion of Lieutennandrie and Justiciarie exped vnto him, for the perfute of the lymmaris, with fyre and fworde. PROCLAMATIONES ar exped againes all betweene sextie and faxteine yeeres, within the boundes off *Caithnes*, *Sutherland*, and *Orkney*, to go fordward with *Sir James*, and to affift him in this feruice; and a other Proclamatioune, prohibiteing the refatt, fupplee, or furnifheing of thir Rebelles with ony thing comfortable or neccellar vnto thame; with a promefe of pardoun to fuche of thir Rebelles (who ar not cheef), that will leave *the Bastard*, adrefse thame felues to *Sir James*, and do feruice worthie of favour.

All fchippes and veshelles bowne to *Orkney* ar stayed, till *Sir James* and his company be imbarked and away.

Sir James will, God willing, have his whole forces togidder to fett fordward, him self be land, and his footemen be fea, within fyve or fax dayes; and aduerteifment shalbe fra tyme to tyme fend vpe, of the progres of his proceidinges, and of his fucceffe in his feruice.

¹ Afterwards Lord Ochiltree.

(5.) Jul. 7, 1614.—INFORMATION being maid to sume of THE COUNSALL, that ane poist-boy was cum frome *Orkney* with Lettres to the lait ERLE OF ORKNEY, and that he was to returne agane with ane anfuere to theis Lettres, directioun was gevin for the seircheing of him: Lyikas, he was apprehendit vpoun the fyft of this instant within this Burgh, and producet befor *the Counsall*, with ane number of Letteris, the most part of thame direct to *Caitnes* men. Becaus the poist-boy was to go towardis *Orkney*, that way, he was verie straitlie examinat vpoun many particularis; whois DEPOSITION, with the copie of that Letter fend be *the Erle* to his sone *Robert*,¹ is heir incloist, imediatlie vpoun his examinatioun. Thrie of *the Gaird* was directed to *Dumbartane* to mak seirche for *the Erle* his wryttis; and to bring frome thence one *Scharp*, *the Erle* his seruant, by whome his Letteris is writtin. They departed frome this Burgh vpoun Twysday the fyft of this instant, about ten of the clok at night, and come to *the Castell of Dumbartane* the morne thairefter, about fyve of the clok in the efternone, bot could not have entrie; being anfuereit be sum servandis from the wall-heid, that *the Constabill* was in *Edinburgh*, and that one *Robert Knok*, wha had the charge of the Hous vnder *the Constabill*, was in *the Toun of Dumbartane*; and whill his return the zettis could not be opined. *The Gaird*, vpoun this refusall, going to *the Toun*, they forgadered,² in the mid-way betuix *the Castell* and *the Toun*, with the said *Robert Knok*; vnto whome they haveing impairt thair Comiffioun and warrand, he tauld thame plainlie, that thair was no entrie to be had, that night, within *the Castell*; and appoynted thame the morne, at awght of the clok. They haveing preceissie keipit that tyme, and come to *the Castell-zett*, thair was many idill ceremonies vsed, befor they could haue entrie; and at last, being ressaueid within the Castell, *Sharp* was amiffing, and had eskaiped; and seirche being maid for the Letteris and wryttes, thair was ane number of comptis and wryttes gottin, bot ferring nothing to the purpois.

Thair is an ampill COMMISSION past and exped to *Sir James Stewart*, *Shereff of Orkney*, and his deputtis, for the persute and assaidgeing of *the Houfe of Birsay*, with fyre and sword, and for apprehending *Robert Stewart*, and exhibitioun of him befor THE COUNSALL.

(6.) Aug. 3, 1614.—COMMISSIONIS being past and expeid to *Sir James Stewart of Killeith*, for suppressing of THE REBELLIONE IN ORKNEY; and he being in the preparatioune of his forces to haue gone thair for that eirand; and promise being maid to him, be *the Lord Lovatt*, of sum thrie or four hundrethe *Hiland-menne*, to haue assistit him in that seruice; sum Gentlemen of the Cuntrey of *Orkney*, being heir, and feiring that suche a number of peple as wald accompany *Sir James* wald be a greit burdyn to the pure cuntrey, and that they wald appease the cuntrey people at thair pleasure, they thairfore delt with *Robert Monteith of Egleschaw* to mak ane ouerture to THE COUNSALL, for doing of this seruice, with les charges to HIS MA^{TIE} and greittare ease to the cuntrey nor possiblie could be done be *Sir James*. ROBERT MONTEITH being admittit to audience, he hes offerit and vndertane, in respect of the freindschipe and assurance whilk he will find in the cuntrey, to do this seruice, with the supplie of threescore souldiouris allanerlie,³ and ane *Herald* and *Trumpett*, at HIS MA^{TIES} charges, with ane ship to transport, he hes vndertane to recover the hail Houfes and strenthes tane and hauldin in that cuntrey aganis HIS MA^{TIE}; and outhere to apprehend the Rebellis, or then to put theme of the cuntrey: He hes vndertane, yf ony Houfes or strenthes be assaidged, to raise the seage within forty-aucht houris astir his cumming in the cuntrey. And for the performance of thir his OFFERIS, he hes offered *the Erle of Caithnes* and *James Sincler of Murchill* cautionouris.

Sir James Stewart being hard vpoun the Offeris maid be *Robert Monteith*, he hes willinglie aggreit that the charge of the seruice be committit vnto him. Whilk accordinglie is done; and he is to im-bark with his forces betuix and the tent of this instant; and he hes presentlie fend away sum of the Gentlemen of the cuntrey, to haue the hail cuntrey in reddines to attend⁴ his landing.

¹ See this Appendix, No. (20.)

² Rencountered; met with.

³ Only.

⁴ Await.

(7.) Aug. 24, 1614.—THE EARLE OF CAITHNES,¹ with two shippes well provyded with all warrelyk prouision, made faile towardes ORKNAY, vpon the xx of this instant, haveing the wynd verie fauorable; and it is looked that he wes in *Orkney* vpon the 22 of this instant, in the morning. How sone ony aduerteisment shall come from him, or ony otheres in that countrey, HIS MAIESTIE shall gett notice thereof, with all convenient diligence.

(8.) Oct. 5, 1614.—DIRECTION is geven to the Captane of the Guardes, to fend tuelf of his company to Dumbartane, and to bring frome thence, to this burghe, THE EARLE OF ORKNAY. And direction is gevin to the Shiref of Dumbartane to assist the convoy of the Earle from Duubartane to the Falkirk, where the Shireff of Linlithgow is to receane him, and to mak his convoy frome thence to this burghe.

(9.) Nov. 17, 1614.—THE ERLE OF CAITHNES, having left THE LAIRD OF RATTER, his brother, as depute for him, in the Officeis of JUSTICIARIE and SHEREFSHIP of ORKNAY; and having gevin directioun to him to demolishe *the Castell of Kirkwall*, conforme to the Warrant of *the Counfall* send to him for that effect, the said *Laird of Ratter*, by his Petitioun, gevin in this day to THE COUNSALL, meant him self,² that he wes a Gentleman of small moyene,³ having nouthur landis nor rentis in *Orkney*; and that his remaining thair vnder the burdeyne and charge of the saidis Officeis, wald draw him, in shorte tyme, to spend all his rentes, to his greit hurt and inconvenient; besydes the neglect of his awin affaires and busynes, at home. And thairfoir, his desyre was, that he might vnderstand, vpoun what conditione he sould remaue in that cuntry, and vpoun whose chargeis and expenssis the Houfe sould be dimolished? His Petitioune being hard and deulie confiderit, THE LORDES hes allowit vnto him ane hundreth markes monethlie, dureing his aboade in that cuntry, for his charges and expenssis. And tuitching the dimoleifching of the Houfe, thay haue ordanit him to do the turne, and the expenssis that he fall bestow thairvpon, according as the same salbe verified and testified be *the Bishop of Orkney*, vnder his hand, falbe repayit vnto him be *the Thefourare Depute*.⁴ And whareas, the remaning of *the Laird of Ratter* in that cuntry, wilbe chargeable to HIS MAIESTIE, the cuntry being now reasonable weele satled, without appearence of ony new commotioun or trouble; thairfoir, his Maieftie wold be pleasit to resolue vpon some course, anent the Gouvernament of that cuntry, and whom his Maieftie will putt in the trust of that charge; to the effect that, vpoun the signifiatioun of his Maiefties pleasour thairanent, *the Counfall* may tak ordour, and gif directioun thairin accordinglie.

II. DISPATCHES FROM THE EARL OF CAITHNESS, &c. TO THE KING AND SECRETARY OF STATE,⁵ &c.

(10.) LETTER, *the Earl of Caithness to Lord Binning*. (Aug. 25, 1614.)⁶

RIGHT HONORABIL MY VERIE GOODE LORD,

PLEIS your lo. We arryved at Castell Sinclair vpon the 22 of this instant; whair I stayit that night, and aduerteifed the Caithnes men to be reddie to follow me to Orkney, when I fuld command theme. I imbarked with me about threttie of theme, and cam to Selwik, within tuo myles to Kirkwall, vpoun the 23, about sex eftir none.

The 24 I sent the Herald with Notairis, Messingeris, and Witnesfes to mak proclamatioune at Kirk-

¹ The procrastinating conduct and vacillation of THE PRIVY COUNCIL, in a matter which bore such a formidable aspect at its commencement, says very little for their ability or zeal, in the discharge of their important trust. The only apology which can be framed for them, is the circumstance of their subserviency to THE KING, who was resident at so great a distance, and without whose fiat they dared not take any important step.

² Made supplication and complaint; humbly remonstrated. ³ Means; fortune. From Fr. *moyen*. ⁴ In the Books of the Accounts of the Lord High Treasurer of Scotland, Gen. Register House, the following entry occurs, under date April, 1615. 'IREM, to ane Poist passand to Edr. to my Lord Chancellor, at Dunfermling, to subscriyve ane Commissioun for Walter Richie, for demolishing of THE CASTELL OF KIRKWALL, xxiiij s.' ⁵ Thomas Lord Binning, afterwards Earl of Melrose, &c.; which last title he afterwards exchanged for the Earldom of Haddington. ⁶ From the Original in the *Denmylne Coll.* of MSS. Adv. Library.

wall; who was presentlie taikin, as he entered the Towne, most iniuriouſſie and diſpytfullie abuſed, bothe in word and deid; the Letters taikin frome him be Robert; and him ſelf, with ane Miniſter, and all otheris that accompanied him, keipit in diuerſe houſes, all that day, till the evening; to whiche they, the ſame day, did ad this alſo, that to the number of thrie hundreth menne, with diſplayed enſigne, did fort¹ out of the Towne, and maid prouocatione to me, whair I lay vpoun the ſhip-board. For that the Proclamationes (were) thus impedit, I wes forced vpoun the 25 to wreitt diuerſe Letteres, and ſend throuche the cuntrey, to aduerteis and command the Gentlemen and vtheris to reſort to me; in whome, for the moſt part, I did not find that reddie willingnes whiche I expected; ſo that I wes forcit to ſend to Caithnes, for ſupplie of my owne menne; who, cuming to me vpoun the 26, and having then aſſembled about two hundreth of the cuntrey menne, we tuik land; and at the ſame tyme, about ten houris, we landit the battering peice with hir careage, whiche, by great force of men, and ſome difficulties throuche the deipnes of the foyll, wes presentlie, and with all poſſibill diligence, drawin neir tuo myles, towardis the Towne; and the ſame day, about thrie aſtirnone, planted at Weyland, within ane half quarter of myle to the Caſtell. We merched in good ordour, with colouris diſplayed; and as we approached, the Rebellis fortod out,¹ boasting that they wold fight with ws, thought we had bein tuentie to one; and having their Ordinance in reddines to haue played vpoun ws from the Caſtell, Stepill, and Tour of the Zeardis, and diſchairgeing one or tuo of the ſame againſt ws, ſo ſoone as we cam vnder their fight, I commandit the Cannoners² to ſhute at the Caſtell; who did their part ſo weil, that be the ſecund ſchott one of the turrettis vpone the heade of the Houſe wes pearſed and almoſt beaten down, to the great terrour of the Traitouris; and other thrie being ſhott, one aſtir another, did all hit, bot not hurt ſo muche.

In the meantyme the Rebellis being provoking and braking ws vpoun the Ball-ley, to the number of ſex ſcoir men, our Captanes and ſouldiouris went directlie, and with goode courage, toward theme—and without ony reſiſtance or hurt did compel theme to retreat ſchamefullie. In whiche flight, about fyve of preſſed poore menne of the cuntrey did abandon theme.

The Captanes, ſouldiouris, and Gentlemen of the cuntrey, with thair menne, did presentlie follow theme at their heillis, entered the towne the ſame night about ſex houris, incloſed theme in their holdis, and now poſſeſſes the Towne. That night I ludged about the Ordinance, and guairdit it and our ſelfis with the reſt of our menne.

This day we ar buſie about the landing of the great Peice of Ordinance, that we may batter bothe the Caſtell and the other Houſes, which annoyes ws and our men in the Towne; and mak our ſeruice the ſchorter.

The Rebellis ar moſt obſtinate, and maliciouſſie reſolued to hold out to the deathe, thought I have ſent Miniſteris and their owne freindis to inſtruct, admoniſh, and threattin theme.

Their is heir no bread, nor drink, nor vther victuallis to be had for pryce, prayer, or command; ſo that I muſt ather ſeik preſent releif of ſome victuall from Caithnes, or ſuffer the ſouldiouris to ſtarue for want. And if they fall endure and continew in thair obſtinacie, as they haue wowed to do, thair will not be powder, leid, billettis, nor matche to ſerue for this ſeruice; in the which I ſie great dangeris, and manie more difficulties then I culd foirſie.

In reſpect whairof, I will intreat your goode lo. to acquent my Lord Theſaurer and remanent Counſallouris; and with all cair and diligence prouyde, betyme, that money, powder, pillettis, and chieffie ſum reaſonabill quantitie of victuall, whiche can not be had heir, may be ſent to be diſpenſed and ſold to the ſouldiouris and vtheris that haue neid, vpoun reaſonabill pryce; whairby our great neceſſities may be ſupplied, with litle or no hurt to his Ma^{ties} money.

As thingis fallis out, ſo fall your lo. be aduerteiſed from tyme to tyme. And now, after the trew

¹ Fr. made a *sortie*.

² Artillery-men.

narratione of our proceedingis and present estaitt, I refer the consideratione and cair of all to your lo. wifdome, and fall euer rest,

Your lo. euer to be commanded,

CAITHNES.

To the right honorabill my verie goode lord, MY LORD OF BINNING, his
Maiesteis SECRETARE OF SCOTLAND.

(11.) *The Erll of Caithnes LETTER to my Lord Thesaurar Depute.*¹

MY VERREY GUD LORD AND COUSING,

I HAUE ressaunt findrie of 3our ll. most kynd Letteris, and 3our ll. greit cair in sending all thingis necessar for ending of this seruice. I can not gif 3our l. dew thankis; bot I will account it ever to procede of pe lufe pat 3e beir to HIS MA^{TIE} and lufe 3e caryit to me as 3our kynnisman, quhome 3our l. fall ever haue pouer to command me, so long as I braith. It hes pleastit God, of his mercie, the penult of pis instant, to mak ane finale end of pis seruice in my handis. The forme, maner, and all pat hes hapnit, I haue writtin at greit lenth to my gud *Lord Secretar*. I haue directit pe Pinage home and pe Bark² pat come last; and hes dischargit the Captane, Officeris, and fouldaris, pe last of pis instant. I grant pis seruice hes bene expensue to his Ma^{TIE}; bot quhat hes bene wairit,³ I hoip at my cuming to put it all vp agane, be mvnitioun, to pe *Castell of Edr*. I hop to bring with me more then tuentie thousand merks worth of brafin ordinance.⁴ As for my panis, hazard, and travellis, I will remit that to his most sacred MA^{TIE}. This,⁵ leving to fasche⁶ 3our ll. with mony woirdis, I end, willing 3our ll. ever to esteme of me as ane kynnisman pat 3our ll. fall have ever pour to command, according to my pithe. This taking my leif, I commit 3our ll. to God, and I fall ever rest

3our ll. coufing, ever reddie to be commandit,

CAITHNES.

AT KIRKWALL CASTELL, pe last of September, 1614.

(12.) *The Erle of Cathnes LETTER to the Secretar,*¹ *ressaued 10 Oct. 1614.*

MY VERRIE SPECIALL GOOD LORD,

IN respect 3our Letter, daitit from Edr the fyfte of September, and come in my hands the fourteint of this instante, declaring 3our lo. diligence for expeding of all necessars for this seruice, quhich I haif more nor neid for daylie, I and all that is heir with me hes hote seruice with thir most bluidie and barbarous Rebeles and Traitouris. They haue killed four, and the last is ane Willeam Iruine, ane Orkney Gentleman,² one quho, since his deathe, I have hard was ane inoyenour, and ane greit freind to the Traitour. God is iust in his judgementis, for amongs ws all standing by him he is schote dead, vpoune the nyntente of this month, at twa houres in the ester none; ane cuntrie man of myne schote throughe the arme; and ane fouldiert schott behind beneth the bak; and one flaine in the Castell. All this is done this last dayis skirmishe. Thair is not one day that I am idle, except the Sabothe. My lord, I will assure 3our lo. thay ar most desperat and cruell Tratours, and (this) is ane verrie strong hould, and nothing can do to thame except the cannone.

Qubair 3our lo. hes fett doune in 3our Letter of his Ma^{TIES} advyfe, that I sould be spairing to grant pardone to notorious Rebellis and malefactoures, my lord, God forbid pat I sould tak vpone me to grante ony pardone to ony quho hes so heighlie offendit his sacred Ma^{TIE}. Befoir his Ma^{TIE} were not repairit, to his honour, be all the lyffes of thir bluidie Tratoures that is within this diuilisch Castle, I (wald) rather be buried. Heirfoir, my lord, I will be plane with 3our lo. as to ane faithefull counsellour

¹ From the Original, *Denmylne MSS.* ² Two vessels which had been sent with supplies and dispatches to this Expedition, which were known by the name of the Pinnace and the Barque. ³ Expended. ⁴ See Notice to the Trial of the Earl of Orkney. ⁵ Thus. ⁶ Fr.; trouble. ⁷ From a copy preserved in the *Denmylne Collection* of MSS. Adv. Library. ⁸ 'In this siege the Lieutenant lost four men only; namely, *William Irwyn*, son to *William Irwyn* of Saba, *James Richardson*, *Andrew Adamson*, and *William Robinson*; who were killed all by shots from the Castle. Many were wounded and hurt, but thereof recovered.'—*Spotswood's Hist.* p. 520.

to his Maieftie. I find none bot the name of *Sinclar* in all this land bot hes bene in counsell of this Rebellioun, or eles airt and pairt; for thair is ANE BAND, subferyuit be SEVIN HUNDRED of this cuntrie people, to *Robert Stewarte* and Patrik Halcro, to die and leiuie with thame. This REBELLIOUNE was devysit in Ed^r Castell in Winter last; and giue God grant me that gud fortune to get on lyue *Robert Stewart* or *Patrik Halcro*, his Maieftie will hear of good sporte. I haue *Andro Martine*, quhome I mynd, quhen I find occasioun be Sea, to fend him to be examined be your lo. of his Ma^{ties} most honourable PRUUE COUNSALL. I haue caufit him subferyue his awin Depositioun, vpoun the quhilck your lo. will get mater eneuche to gar him speak Scottis, giue he lyk to blot his maister to be the hounder out of his sone to do all that he hes done.

I cannot nor may not stop the Inhabitanes of this Toune from speiking with the Traitoures, geving of thame meit and drink, making thame advertiffit quhat I am doing, and making daylie and nightlie advertifmentes of all that thay can aither heir or sie. I will intreat your lo. to mak me advertift, with diligence, of THE COUNSELS mynd quhat I fall do to thame, both men and wemen? I have takin nyne or ten men of Birsay, quho was with *Robert*, and was platters with him in this REBELLIOUNE, and speciall keiparis of the Hous of Birsay, quhom I mynd to put to ane Assyse; and giue thay be conuict, to hang thame, for ane exemple to vthers.

My lord, this seruice is not lyk to have so haistie ane end as I would. Your lo. knowis my Commissioun grantit to me is no longer than two moneth; of the quhilckis thair is fyue weikis and more outgone: And, giue it will pleas your lo. of his Maiefties Priuie Counsell hould me heir, till it pleas God that I putt ane finall end to this mischante REBELLIOUNE, I would haue ane new Commissioun, with all priuilege neidfull, to¹ the seruice be endit; for I protest to God I neuir, nor nevir fall, cum to ane cuntrie that may be compairitt in falsett to this cuntrie people! I vse thame both with lenitie and fair formes, as *the Bischope* will informe your lo.; and for all pat I can do, thay haue thair secret moyen and traffecke with the Traitores. And as for *Mr Johne Finlaspoune*,² thair is no remaneing heir to him, giue³ I wer once oute of this cuntrie; for man, wyffe, and bairne haits him to the deathe. Thay haue myntit⁴ twyfe to kill him, since his comeing heir with me, war not I;⁵ bot now, seing thay sie me to tak plaine pairte with him, thay ar begune to behauld him.

Since the beginning of this Letter, I haue stayit to wryte to your lo., hoping evir vponne better news. The Bark and poist came heir the twentie twa or tuentie thrie,⁶ with all permissioun necessar for the seruice: And efter thair arryvall, I sent to thame in the Castell, if thay wold cum out and put thamefelffis in HIS MAIESTEIS will, *simpliciter*, I wald lett thame cum out.

The penult of this instante, it hes pleast God, of his mercie, to end this seruice in my hands. The Houfe is myne, *Robert* in my hands, and all cumed to me except *Patrik Halcro*, quhom as yit I haue not seine. All is cumd to his Ma^{ties} honour, praifit be God. I haue sex slaine to me; many hurte. The fouldier I wraite was hurte is dead. I will assure your lo. it is one of the strongest Houffes in Breitan; for I will bring with me to your lo. cannone billets, both brokkin lyk goulfe balls vpoune the Castelle, and clovin in twa halfis. I could not till now enter withe extremitie with the followars of *Robert*, till I was maister of the Houfe, for fear of making more adoë, seing the Houfe was so strong; bot now I fall not be slaw to puneifch feueirliche, to mak exemple to vthers to play the lyk. Presentlie, I am going to drink his Ma^{ties} good healthe vpoune the Castell heid. *Mr Johne Finlaspoune* would haue the Castle in keiping, bot I will not till I heir from HIS MA^{TIES} and your lo., seing it hes coste his Ma^{tie} so deare, and I and myne the dangeour of our lyffes. I will not geiue it him quho so beifflie gaiue it ouer for four schote of muscate. Always,⁷ quhat your lo^s of his Ma^{ties} Priuie Counsell will command me, vpoune your advertifment, I will follow, and geiue the Houfe to quhome your lo^s pleafis.

¹ Until. ² The Sheriff Depute, whose oppressive cruelties made him to be detested by the inhabitants of Orkney. ³ If. ⁴ Attempted; aimed. ⁵ Had it not been for me. ⁶ The 22d or 23d of September.

⁷ Nevertheless.

I am to expedit the Bark and Pinnage to your lo. with all diligence, and this day to discharge the Capitane, Officers, and foldiers, the last of this moneth.

My lord, by your lo. good caire of me, it hes pleasit his Maiestie to graunte me ane Remissionne, and, to honour me of that I am vnworthie, to prefer me to be one of his Ma^{ties} most honourable Priuie Counsell. I cannot say more bot this much, I fall preise to my deathe to stryue, with the invye, for loyaltie and obedience; and hopes in my Saviour to do his Ma^{tie} more better seruice nor this, or then to die; for I protest to God, I craue no grittar honour in this earthe then, by my death in his Ma^{ties} seruice, my treuth and loyaltie may be knawin at my end.

As to your lo. manifold good will, and prouises I haue euir had of your lo. fauour, vnmeritit be me, your lo. fall haue this assurance of me, I fall euir be your lo^s, and¹ ye fall neur speak or do any thing to me bot as ane trew and faithfull seruand to his Ma^{tie}, and one pat fall euir please, so far as lyeis in me, to be answerable to his Ma^{ties} lawis. Thus, crauing your lo. pardone that I am so longsum,² I most humblie tak my leiuie, committing your lo. to the tuitiounne of the Almychtie; and I fall euir rest and remaine

Your lo. euir bund to serue yo^r lo.

[CAITHNES.]

AT KIRKWALL CASTELL, the laste of September, 1614.

QUHAT cair and quhat panes and haifard I haue beine in since my comeing heir, I will remitt to vthers to declair; bot befor it had not procedit as it hath done, I rather I had bene buried heir. I assure your lo. the Cannonar hes don his dewtie in this seruice.

(13.) LETTER, *the Earl of Caithness* to THE KING.³

PLEIS 3OUR MOST SACARED MAIESTIE,

I HAIFE taikine this boldnes to wryt thir lynes, fins it pleisit 3our most grauius Maiestie to honour me so far as to mak schofe of me before many thousandis of 3our subiectis of grytter vourthe, and of more vailloure and visdome then I, to vndergo this seruice of THE ORCADS, quiche, praifit be to God, is endit now. This last of September, the Castell is in my handis. The REBELLIS for the most part taikin, to dispone vponne at 3our Maieftis plesoure; and all the countray maid peffabille. And now, I haif no more ado heire, bot to do vther directiouns, gifine me be directiouns and command, be 3our Maieftis most honorabile Counsell. And quhan I haife maide ane accunt to thame, conforme to my employment, I mynd, if it wille pleis 3our Maiestie that I cum to 3ow, to haife that honour as ane kife of 3our Maieftis most grauius hand; houping in God to do 3our Maieftie more exseptabille seruice then this, and⁴ euer 3our Maieftie haif ado, or thene to lose my lyfe; for I protest to God, I craife no grytter honour in this eird nor to die in 3our Maieftis seruice, that be my end 3our Maieftie may knaw my effectiounne and trouthe. Thus, most humblie taiking my liue, my seruice euer remembered, I end, committing 3our Maieftie to the tuitiounne of the Almightye. I fall euer remane

Your Maieftis most humbille and obedient deuoted seruand, to the deithe,

KIRKUALLE CASTLE, the 1 October, 1614.

CAITHNES.

(14.) LETTER, *the Bishop of Orkney* to Lord Binning, Secretary of State.

(“Reffaued 15 Oct. 1614.”)⁵

RIGHT HONOURABLE MY VERY GOOD LORD,

IT wes nather of cairelesnes, negligence, nor oblauiounne, that my lord and I did not wryte so frequentlie; bot our instante cair and diligence to bring the seruice to sum happie end, did hauld vs from wryting, till we did sie the expectit fruit of laubours, which we knewe wauld not be vnpleasing to HIS MA^{TYE} and 3our honouris. I hoip my Letters with the last poist, *James Gairdner*, and *Robert Winrame*, relatiue to the former, fall prevent thir and geiue satisfiounne to your lo. in all anent the end-

¹ If.

² Prolix; tedious.

³ From the Original, *Dennylne MS. Collections*, Adv. Lib.

⁴ If.

⁵ From Copy, preserved in *Dennylne Coll. of MSS.* Adv. Library.

ing of this actionne, quhairin thair is nothing promesit nor done, quhilk is not agreable to his Maties pleasour and your lo. desyre. *Robert (Stewart)* and *Patrick Halcro*, ar transportit this day to be exhibite to your lo. The rest ar keipit priffonars in the Castle; and my lord and I (efter that *Roberte* and *Patrik Halcro* be dispatchit with *Yung May*,¹ and ane sufficient number of hable men to guaird thame) ar presentlie going to examine euirie one; and the nixt day, God willing, thay fall suffer judgement and condigne puneishment. The winds, hailes, snaws, raines, ar so extraordinarie in thir places, that all had bene done and accomplisshed befor this day, giue² it had bene possible. *Andro Martine*, quho was sent with *Robert Winrahame*, would be weill examined be your lo. I hoipe to cum by THE BAND itself, quhair of I sent the coppie with his Depositiones. Thair is one *Margaret Bicchane*,³ spous to *Simeone Stewart*, and now Adulteres to *Patrik Halcro*, quho hes revealit and confessit to me more then any other. If your lo. think that hir Depositiones or prefence falbe necessar, direct me, and it fall be obeyit; for I purpose to put hir oute of this cuntrie, for hir Adulterie. Anent the Articles sent in my last Letters to your lo., I besek you to advyse, and advertise. And since your lo. hes geuin me assurance of the passing of my rightes, (for the quhilkes I fall euir be cairfull to expres my thankfulnes, in all dewtie and seruice,) I fall be disposed at your lo. pleasour, aither to come South with the *Earle*, or stay heir a litle efter, for my awin buffines, or ony seruice fall be committit or commandit to me. As for other things, your lo. will knaw thame be my Letters writtin to my *Lord Theasurar*. So praying God euir to fauour, prosper, and preferue your lo., I rest

Your lo. awin assured and obliged in all dewtie,

KIRKWALL, 6 Oct., 1614.

[JA. B. OF ORCADS.]

(15.) LETTER, the *Earl of Caithness* to *Lord Binning*.⁴

("Reffaued 15 Oct. 1614.")

MY MOST SPECIALL GOOD LORD,

I RESSAUIT your Letter, datit at Edinburgh the twentie, &c. and cam in my handis the fourte of October. Befoir the ressett of your lo. Letter, I wrait greit lenth of the hail proceedingis heir, and of the ending of this seruice that God of his mercy hes maid to come, vtherways nor any man expectit. My lord, war not I vsed the mater so cannelie,⁵ and maid *Patrik Halcro* to fall thame that was thair in the Castell, it wald haue bene ane longsum saidge; for I protest to God the Hous hes neur bene biggit by⁶ the consente of the Diuil; for it is one of the strongest houlds in Britane, without fellow. I sie be HIS MATIES Letter direct vnto your lo. of his intentione to *Robert Stewart*, quhilk I thank God I haue nather send to him, bot this, and vpoune that condition he cam out: Quhilk conditione was in this forme, gif he wald come furth and put himself *simpliciter* in his Maties will, to dispone vpoune him at his Maties pleasour, I fould keip and preferue him from euerie danger of my folkis, till his Maties pleasour and will wer knawin. He desyrit that I wald promise vpoune my honour to preferue him, till I brocht him to his Matie. That I plainlie refuset; for I said I could not promise that my selfe might haue acces to his Matie, without the speciall licence of the Lordis of his Maties most honourable PRIUIE COUNSELL. To conclud, he plainlie submittit him self to his Maties will. Bot befor he did this, *Patrick Halcro* had left him, and said plainlie to him, in the Castle, 'he wald geive it ouer.' Quhich maid him come out, vpoune the foirlaidis conditiones, and no vtherways. As I fall ansuer to God, *Robert Stewart* hes no farder of me; for I spak with him, and smellit that he wald neur geiv over that Hous to be Torterit, and to be compellit to reveill vpoune his father, to be his wrak. I finding this, I desyrit, gif he wald let *Patrik Halcro* cum oute and speik with me, vpoune that sam plaidge that was in for him. He plainlie refuset. I seing it so, I maid me to be weill contentit with his answeir, and said, 'I wald go fordwart with the sledge.' He past to the Castell; and in his companie I put in secret woord to *Patrik Halcro*, to sie giue the morne he wald

¹ Sinclair of May. ² If.
Denmylne MSS. Adv. Library.

³ Buchanan. See her Deposition, Nov. 1, 1614.

⁵ Had not I handled (or managed) the matter so cautiously.

⁴ From a copy in
⁶ Without.

cum out and speik with me, in the Kirk, vponne plaidges; quho grantit, and cam furth to me. And efter four houres conferens, he and I hand to hand, I maid him to zeild, that he wald giue it ouer and mak the Hous to be in my handis, vponne conditione I fould promise him his lyffe—quhilk I did. Then he willit me to caus ane *Minifer* come in and preiche to thame, quhilk he fould (vse) meanis that the rest fould be contentit to heir; and so, he fould mak the mater so that he fould be out of suspitione, to¹ the grittest pairte of thame war out of the Castell; and as they cam out, to geiue thame fair countenance. And so, be thir meanis, *Patrik Halcro* maid the Hous and all these that war thair to be in my handis.

The Proceedingis and Ceremoneis tuik mekle of aucht dayes, quhilk was the occasioun that your lo. was so long of getting word; quhairfoir I crane your guid lo. to haue me appardonit; for praisit be God, albeit the word hes bene long of comeing, it is good quhen it comes!

I luik pat my word and promeis gevin to *Patrik Halcro* fall not be fulfillit. Befoir it wer, I rather be in my grave.² As to the rest I haue in my handis, except *Robert Stewart*, (they) falbe hinged within twa dayis at the Castell yett,³ with fundrie vtheris of the cuntrie men that war ring-leaders to *Robert*, to the exemple of vtheris. The number that fall hang, that was in the Castell, is twelue. I haue sent *Robert Stewart* and *Patrick Halcro* to CASTELL SINCLAIR, to be fuirlye keipit thair, till I haue done all that your lo. hes gevin me Commissioun: For now, since the seruice is done, I haue no pleafour to byd heir, for the wedder is both euill and varient, and so is the people; for he that wald rewle heir hes both neid of wit and manneheid, and manie earis and eis. Quhair your lo. willes me to conforme all my actiones to HIS MAIESTIES mynd, I hoipe in my Sauour neur to do, say, nor think that fall be offensiu to his Ma^{tie}. Befoir, willingelie, I did any thing that war offensiu to his Ma^{tie}, I rather be buried quik. As to this peece of small seruice, I think it bot ane beginning; bot give his Ma^{tie} haue ony seruice of grittar importance, I houpe ather to die, or giue his Ma^{tie} ane grittar pruiiffe of my affectioun and luife. Thanking your guid lo. for the grit cair your lo. hes had that I fould wante nothing that fould funder this seruice, in my panes, I can render your lo. no farther than the affurance and continewance of my seruice, as I fall euir remane,

Your awin

KIRKWALL, 7 Oct., 1614.

[CAITHNES.]

(16.) *The ARTICLES sent be THE ERLE OF CAITHNES to THE SECRETAR, to be resolued be THE COUNSALL.*

(“ Resolued 10 Oct. 1614.”)

I. PLEAS your Honorable lo. to resolue and direct, quhat fall be done with the CASTELL, which is now in my custodie? Whither it falbe repaired or demolished? Thocht it be ane ornament for *the towne of Kirkwall*, and may be estemed ane place of refuge and securitie for the holl cuntrie, in tyme of forrane Invasions, if any fould happin to be, zit since it is nather necessare for any ordinarie seruice of his Ma^{tie}, nor ane Hous fit for the habitation of his Ma^{ties} Officiaris, and may be mor easilie taken be forrane foes, in cais they fould inueid, then recovered agane from them; I remit it to your lo. wifdome, to consider what falbe done with it.

II. Pleas your lo. to giue some directioun for government of thir people. The present Officer, *the Shereff-deput*,⁴ is hated, to the death, be all fortis of men; is of no sufficient qualities for such a place and office; and by his former evill demanor, is so contemned of the basest, that he fall neur, by all apparence, recouer credit, authoritie, and regaird heir; zie,⁵ iff he remane heir after me, he is in danger of his lyff, and some new broyl may arryse.

¹ Until. ² Such cold-blooded and perfidious treachery has seldom been equalled. A King's Lieutenant binding himself by the most solemn engagements to a Rebel on giving up a stronghold, without loss of blood, that a free pardon shall be granted to him—and yet, in his Dispatches, strenuously recommending that his pledge shall be recalled, and that the repentant Rebel shall be put to death, without mercy! ³ Gate. ⁴ Mr John Finlaystone. ⁵ Yea.

III. Thocht ther be great spoyll and losse of horse, cattell, scheip, boatis, and now of armour which belonged to HIS MA^{TIE}, your lo. wald be plesed to give direction quhat falbe done with that which remanis, and may be recouered from vniust detainers, that his MA^{TIE} be not defrauded and hurt.

IV. For BIRSAY, which was the place whence the trubles did spring, your lo. may be pleased to consider, whither it falbe demolished or keiped, with some allowance; and be whome?

V. The Ordinance, which is in the Castell and Zeardis, in number 8 of brafe and fax of irone, falbe, God willing, transported vpon the schippis, with all the armour whiche can be had.

VI. *Robert Stewart* and *Patrik Halcro* falbe keiped and brocht with my self.

CAITHNES.

(17.) LETTER, *Lord Binning to his brother Mr Patrick Hamilton.*¹

BROTHER,

THIS morning, *John Stewart* is arryued from *Orkney*; and hes broght in his ship, be direction of the *Erle of Caithnes*, foure of his Prisoneris, with thair Depositions; whom I have re-examined this forenone, and have send to yow the copies of thair Depositions sent from *Orknay*, and of my examination of thame this day; together with the copie of the Letter which the *Bisshop of Orknay* sent with thame. Thay ar now in the Towbuth, in the *Irne-houfe*,² becaus the Chancelar and Counfall will be in this Towne this night. I will advyse with thame, whether it be more fit to execute thame to-morrow, or to delay thair Execution for sum dayis, leaft thair suddane death might mak the detainers of the Castell of *Kirkwall* more desperat and obstinat.

THE ERLE OF CAITHNES, with great dexteritie, hes maid himself maister of the Steple and Howfe of the *Yairdis*. He has no losse, prayfed be God, bot of two of his men slayne and ane hurt. We ar perswaded, that all the prouisions which thay requyre, be thair Letter, wer in *Orknay* before thair Letter came to my handis. I have this day sent to *Leith* two hundreth bullets for the canon and batard,³ and am provyding all vther necessars, which fall be reddie this night and imbarcked to-morrow, God willing, to the effect the ship make faile the morne, if God grant thame prosperous wind.

This I have thocht fit to wryte to yow, to be signified to HIS MA^{TIE} and my Lord Chamberlane; thinking that the copie of the *Bisshop's* Letter, and the prisoneris' Depositions, ar the best information I can giue yow.

I pray yow recommend to his Ma^{tie} and my Lord Chamberlane the fauorable and spiedie expedition of the *Erle of Caithnes* and *Bisshop of Orknay's* buffnes; and vse all possible haist in the return of HIS MA^{TIES} commandments. So, in haist, I commit yow to God. ED^R, this 13. Sep. (1614.)

Your loving brother,

BINNING.

I HAVE send for the *Justice-depute* and *Justice-Clerk*, and aduerteised my *Lord Chancelar*, who came yesternight to *Pinkie*, and will be heir this efternone.

To my beloued brother, *Maister Patrik Hamilton*, at COURT.

III. (18.) BAND OF ASSOCIATION SUBSCRIVIT BY THE REBELLIS IN ORKNAY.⁴

BE IT KEND till all men by thir presentis, Vs, the GENTLEMEN OF ORKNAY, after subscrivand: Forsameikle as, by the frequent intrantis of extraniers in this countrie, the estate of the commonwealth is in danger, and like to perishe, throw the corruption of the Lawes, partialitie of Judges, the greid of Officeris, and Oppression of Magistratis; quhilk dwanger⁵ the poor ones vnder the yock of servi-

¹ Mr Patrick Hamilton was the fourth son of Thomas Hamilton of Priestfield; and was appointed Under-Secretary of State to his brother. He usually resided at Court, for dispatch of Scottish affairs; and tended, in no small measure, towards elevating his brother's fortunes to the almost unprecedented station and offices which he successively held.

² The *Iron-house*, or *Cage* as it was termed, was constructed for the safer custody of desperate offenders, in the Tolbooth of Edinburgh, whence they were easily conducted to the Court-room, and to execution, without the danger of rescue.

³ Petard; battering piece.

⁴ From a collation of two Copies, preserved amongst the *Denmylne Coll. of MSS.* Adv. Library.

⁵ *Dings*, drives.

tude and flaverie; confuming his Ma^{ties} rentis in their own adoes, but¹ vtilitie or good service to his Ma^{tie}. QUILK to prevent, by assistance of God, and favour of his most excellent Ma^{tie} our Souerane Lord, WE, be the faith and truth of our bodies, now touching the Evangel of oure Saviour Iesus Christ, Bindis and Obleiffis vs, coniunctlie and feuerallie, as neid requires, to be in readines by our persons, with oure seruantis, kin, freindis, and dependares, in armour, to repressse all oppreffions and iniquities quihilk fall happin to be intendit aganis the commonwealth of this countrie, at any tyme hereafter; swa that better order may be establisched, whereby God eternalle may be pleased, and our Souerane lord obeyed and serued, according to oure dewty, in all respectis. And that this may be the better effectuat, WEE Bind and Obleiffe vs and our afoirsaidis, to concur, attend, and depend vpon ROBERT STEWART, sone naturall to oure native Lord and Maister PATRIK ERLE OF ORKNAY, as our Heade and Commander, during the absence of his father, and to mentyne and defend him be our bodies, goodis, and geir, in execution of the premisses, and all other lawfull actions and affaires quihilkis he shall have to do at any tyme hereafter, vnder the payne of Periurie and everlasting defame: BECAUSE the said Robert Stewart is reciproquallie bundin and obleift to vs, that he shall take no weightie matter in hand, without consent and assent of vs, at least any two of vs, under the same payne, BE this present, subscryved with oure handis, as followis, At the day , the yeare of God I^m. Vj^c. fourtene yeares.²

R. STEWARD.

PAT. GORDON, with my hand.

THOMAS LOWAT, to pe dei^e.

ROBERT MOWAT, with pe hart and handis.

JOHNE REID,³

R. SALETER, to pe dethe; Belie of Birfay.

WILLAME KERKTOUNE, to the dethe.

R. I., in Gerfettar, to the dethe.

R. S., in Nissohous, in Marwick, to pe dethe.

PA. HALCRO, to the deth.

THOMAS DOUGLAS, to death.

GILBERT GRAY, to pe deithe, with my hand.

WILLAME SINCLARE, to the dethe.

O. S., in Swrne, in Marwick, to the dethe.

O. Q., in Marwick, to pe dethe.

ROBERT GRAY, to the dethe.

T. ST., in Marwick, to the dethe.

IV. EXAMINATIONS AND DEPOSITIONS OF THE REBELS, &c.

(19.) DEPOSITION of *Duncan Mitchel*, 'Poist-boy in Edinburgh.'⁴

At Edinburghe, the fyft day of July, 1614. In presence of the Lordes of Binning, Secretary, the President, Thefaurair-depute, Clerk of Register, Aduocat, Sir Alexander Drummond, and Sir Andro Ker.

DUNCANE MITCHELL, Poist in Edinburghe, sworne and examinat, deponis, that quhen the *Erll of Orknay* was caryed from this Towne towardis *Dunbartane*, the *Erll* directit the Depouner with a Letter to his sone *Robert*, who wes in ORKNAY for the tyme; and the depouner past with the Letter to *Orknay*, and delyverit the same to the said *Robert*, fra whome he ressaute ane ansuer, in wryte, to the *Erll*; and broght the same heir with him to this burgh of *Edinburghe*: And after he had stayit heir twa dayis, he past with the Letter to *Dunbartane*, and delyuerit it to the *Erll*.

Deponis, quhen he delyverit the Letter to *Robert*, the said *Robert* wes in *Birfay*; and sayis, that he had a verball directioun and message from the *Erll* to *Robert*, that yf he had the *House of Birfay* in his keeping, that he sould keepe the same to the *Erllis* vse; for the *Erll* saw litle apeirance of re-leif.⁵ And yf the *House* were not in his keeping, that he sould vse the best meanes he could to come be it; and that he sould lift frome the Tennentis so much of thair mailles and dewyteis as he could gett; and that he sould keepe the *House*, in maner foirsaid.

Deponis, when the depouner come to *Birfay*, *Barnard Steuartis* wyffe had the keeping of the

¹ Without. ² The various dates are not preserved in the copy of this Bond. It is asserted that no less than SEVEN HUNDRED persons signed it. See p. 289. ³ A rude attempt at the shape of a heart follows this person's subscription. ⁴ From a transcript preserved among the State Papers in *The Denmyne Coll. of MSS.* Adv. Library. ⁵ From imprisonment.

Houfe, and that *Robert Stewart* had onlie fyve perfones with him in the Houfe: And the yett was kept, as the depouner thought, be one of *Robertis* seruandis. And the depouner stayed in *Birfay* fouretene nightis: And in the mean tyme of his being thair, *Robert* fend to *Kirkwall*, for some ma company, and for muscattis, poulder, and leade; and sayis that xvij perfonis, or thairby, armed with muscattis, come to *Birfay*; and at thair comeing, thay then avowit the keeping of the Houfe; tooke and brocht in some of *Barnard Steuartis* goodis to victuall the Houfe, and payit not for thame.

Deponis, that afoir the depouner come away, *the Sheref-depute*, accompanyit with thre or fourescoir perfonis, come and lay aboute the Houfe, and fend in Message to *Robert Steuart*, desyryng him to come oute, and he wald gif him libertie for xiiij dayis to remayne in the cuntrey, to vplift the Takmaillis¹ whilk he alledgedit wes dew to his fader, for auld byrunis:² And that *Robert* refusit to come furthe. Quhairupoun, *the Sheref* caufit charge the Houfe to be randerit; quhilk wes refusit be *Robert*, with found of trumpett, and discharge of some muscattis out of the Houfe. Lyke as, *the Sheref-depute* schoit in at the Houfe, with the schoit quhairof one Downye Lyell wes hurte. And the depouner stayed bot ane night, after the Houfe was chargeit. And sayis, that *Robert* caufit prepar ane boit to transporte the depouner, be water, to *Caitnes*; and he fend with him a Letter to *the Erll*, and by tung bad him inquire, quhat *the Counsell* wes doing in his busynes—and quhat wes *the Erllis* will that the said *Robert* fould do in Orknay? Denyis, that he brocht ony message from *Robert*, to ony perfonis within this burgh.

Deponis, that vpoun Thurisday, the last of Junij, aboute tua of the cloke in the efter noone, the depouner come to *Dunbartane*, and fand *the Erll* walking in the cloise; and he delyuerit *Robertis* Letter to *the Erll*. And when the depouner tauld *the Erll* that the Houfe of *Birfay* wes tane, *the Erll* ansuerit, ‘The Devill stik him! He might haif tane ane better Houfe!’ And forder, deponis, that *the Erll* said, ‘The Devill stik his foollis head!’ (meaneing be *Robert*), ‘He might haif mellit with *the Scheref-depute*—and yf he had maid him quyte of him, he wald haif had lesse ado!’ And forder, deponis, that *the Erll* said to him, Yf his sone had assailzeit *the Castell of Kirkwall*, the Keeperis thairof wald haif delyuerit the same to him, becaus they wer *the Erllis* auld seruandis! And deponis, that *the Erll* desyrit the depouner to commend him to those who assistit *Robert* in the Houfe. And sayis, that vpoun the morne *the Erll* caufit his man, *Shairp*, write ane Letter to his sone; whilk wes vnsubscryuit be *the Erll*, and had no directionne on the bak. And the depouner ressaunt lykeways ane Letter from *Shairp* to *Robert Steuart*, without subscruptioun or direction on the bak, faul onlie ane corse,³ that it might be knowne frome the other Letter. And quhen the depouner come away, *the Erll* desirit him to will *Robert* ‘to keepe the Houfe; and in no caise to rander the same: And, or⁴ he war tane, it wer better for him to dee with honnour—ffor he wald be putt in perpetuall warde, yf he wer tane!’ Deponis, that *the Erll* inquirit, ‘quhat fauour *Robert* had of the Commonis, and yf thay resortit vnto him?’ And desyrit *Robert* ‘to fend him money, of that quhilk he fould gett frome the Tak-men, for auld restis.’ And sayis, that nane wer present, quhen *the Erllis* Letter wes writtin, bot *the Erll*, his man *Shairp*, and the depouner.

DUNCANE MITCHELL.

(20.) COPIE of the Erle his Letter to his Sone.

(Appended to Duncan Mitchell's Deposition.)

ROBERT,

I HAVE red and confidderit your Letter. Yow haue done verie weill in wrytting of your Letter in pe forme ze do; bot I feir it fall do littill goode. Alwayis,⁵ ze fall do the best with it, gif we haue ado with it; bot it may be we haue no thing ado with it; for thair is vper materis heir to think vpoun nor fuche thingis, as that I beleive HIS MAIESTIE thinkis littill of theis materis. Tak tent that your Holy spaper betray zow not, as he did befoir. The berar sayis, ze gaif him bot sax pundis. Trewlie

¹ Rents of possessions let upon Lease. ² Arrears. ³ Cross or mark. ⁴ Ere; rather than. ⁵ Nevertheless.

it is littill aneugh to cum and go. Gif yow cum in this cuntrie vponie onie condition, *the Tolbuith* will be your best; ffor quhat condition beis promiseit zow be onie in ORKNAY, thay bot skorne zow; ffor *the Counfall* will not kenne¹ quhat condition thay mak to zow. Seing ze haue proceidit so far as zow have done, thair is no being heir for zow. War not² *Kinlevin* and *pe Bisshop*, my Lord had not seine *Dumbartane*, at this tyme. This berar sayis, he will venture to fetche fuche money heir as yow will gif him; bot yow fend Joⁿ Prence with it; for heir he is ane honest man to zow. Tak his Band, and fend it with *pe beirar*, for that that zow delyuer vnto him; for my lord hes more than mistare³ of it. Restis, the last of Junij, 1614.

POSTSCRIPT. Caus gif the berar ane coitt,⁴ for he is wirthe⁵ it; and latt him haif his haill waidges; for I will haue nane to gif him, when he cums heir. His wadges is fyftene pundis. Haift *pe beirar* heir agane, for we will get no more silwer frome the Thesaurer. Lat him not stay xxiiij houris.

(21.) DEPOSITION of *Barnard Steuart*.⁶

AT EDINBURGHE, the xj of August, 1614. In presence of my Lordis Binning, President, Thesaurer-depute, and Aduocat.

BARNARD STEUART, sworne and examinat, deponis, that *Robert Halcro of Cava* tauld to the depouner, that he saw a Letter directit be *the Erll of Orknay* to his sone *Robert*; quhairby, *the Erll*, willit *Robert* to tak the depouneris lyffe. Demandit, yf he wes persuadit or delt with, be *the Erll*, to joyne with his sone *Robert*, in the present REBELLIOUN IN ORKNAY? Deponis, that he being informit that *the Erll* had gevin ane Commissioun to his sone *Robert*, to intromett with certane dewyteis of *Orknay*; the depouner past to *the Erll*, and demandit of him, yf he had gevin ony fuche Commissioun to *Robert*, becaus he feirit that *Robert*, vnder cullour of that Commissioun, wald mell with the depouneris geir? And that *the Erll* ansuerit, 'Yf *Robert* be gone to *Orknay*, THE KING nor yow will be able to mend it—and it is your best to beholde him!'

The said *Barnard Steuart*, for explaining his former depositioun, deponis, that he haueing said to *the Erll*, that seeing *the Duke of Lennox* and *the Erll of Marr* had intreated HIS MAIESTIE in his fauour, that thairfoir, he had done verie happellie, in directing *Robert* to *Orknay*. And *the Erll*, seameing to be in a cholere and anger at thir speechis, thraving⁷ his bearde with his hand, said to the depouner, 'Yf *Robert* be gone to *Orknay*, THE KING and yow will not mend it—and your best wilbe to beholde him!'

The said *Barnard* being demandit, at quhat tyme he gatt knowlege of the Letter directit be *the Erll* to his sone *Robert*, to take the depouneris lyffe? Deponis, that after *Robert* had bene in *Birfay* fyftene dayis, and behavit him selfe somequhat civille; and thairefter, had maid him self, publiclie and be force, maister of *Birfay*, and expellit the depouner furthe thairof, and detenit his wyffe aganis hir will, the said *Barnard* directit *Robert Halcro of Cava* to persuade *Robert* to putt his wyffe to libertie; and after conference had be *Robert Halcro* with *Robert Steuart*, for that purpois, at *Robert Halcrois* bak-cominge from *Birfa*, he declairit to the depouner, that *Robert Steuart* had showne him a Letter of *the Erll of Orknayis* to his sone, commanding him to tak the said Barnardis lyffe.

BARNARD STEUART.

(22.) DEPOSITIONS of *Thomas Black*, *Thomas Layng*, *Archibald Murray*, and *Alexander Leggatt*.

AT EDINBURGHE, the xiiij day of September, 1614. In presence of the Lord Binning, Secretar.

THOMAS BLAK, borne in the Mernis, and one of the Baillies and Chalmerlaine to *Patrik, laite Erll of Orknay*, examinat, deponis, that quhen *Robert Steuart* tooke the Castell of Kirkwall, this depouner

¹ Recognise.

² Had it not been for the interference of Kinlevin and the Bishop, &c.

³ Necessity; need.

⁴ Coat.

⁵ Worthy; deserving.

⁶ From transcript in *Denmylne Coll. of MSS.* Adv. Library.

⁷ Twisting.

wes in the Steple of Kirkwall, and xii perones with him. The said Thomas, being desirrit to declair the simple treuthe of all his pairt in THE REBELLIOUN OF ORKNAY, deponis, that, when Robert Steuart had tane the Houfe of Birfay, the Schereff past, and caufit the houfe to be randerit, quhilk wes refusit, and this depouner past with the Shereff to affist him, and broght with him twa hundreth men, and stayed ane night with the Shereff, and vpoun the morne the depouner come bak with the Shereff; and fays, that aboute tuentie dayis thairefter *Robert Steuart* fend *Patrik Halcro* and *William Paterfoun* to the depouner, to will him to come to Robert, to mak and perfyte his comptis of the restis, whilkis he was awand to his fader;¹ and the depouner, according to thair desyre, past voluntarlie to *Robert*, to the *Place of Birfay*, and stayed thair with him ane night, and come bak agane to his awne houfe, and provydit xvij lb. to pay *Robert*, quhilk he caryed bak to him the nixt day. Quhilk all wes done after that the depouner had bene present with the Shereff and forceis of the cuntrey, at the chargeing of the said Robert and his compliceis, to delyver to him, as his Ma^{ties} Commiffioner, the *Houfe of Birfay*, vnder the pane of Treffoun: And that the said *Robert* had not onlie difobeyit the charge, but schoit some muscat shoitis at the Shereff and his company.

Thairefter the depouner come to the Steple of Kirkwall, the day befor the Castell wes affedgait be *Robert*, and enterit thairin with *Patrik Halcro*, *Archibald Murray*, *Thomas Layng*, and some otheris, to the number of ten peronis. And how sone *Robert* and his company come in fight of the Toun of Kirkwall, he caufit found his trumpettis, and the depouneris company, within the Steple, blew thair horne. And sa sone as *Robert* come and tooke the Castell, *Patrik Halcro*, *Archibald Murray*, and *Thome Laing* past oute of the Steple to *Robert*; and thair stayed onlie three or foure in the Steple with the depouner ane night or twa. And howsone the Castell wes affured in *Robertis* possessioun, he fend in some otheris to the depouner, and maid his number to be tuelff peronis, with whome the depouner kept the Steple till the *Erll of Caithnes* his comeing to Orkney. The depouner grantis that *Archibald Murray* and *Alexander Leggatt* wer at the taking of the *Castell*.

Deponis, that he aggreit with the *Erll of Caithnes*, for him selff, and in name of the rest of his companie, anent the randering of the steple; and he procurit leve of the Erll to carye out of the steple his victuallis, armour, and quhat els he had in the steple pertening to him self or his company; and grantis that he wes Captane of the companie, being within the Stepill, and maid appointment with the Erll, in maner foirfaid. And declairis, that *Patrik Halcro*, *Archibald Murray*, *Gilbert Gray*, *Johnne Guild*, and *Andro Martine*, wer farrest vpoun *Robertis* counseill of ony in the hail company. Grantis, that euery man within the Steple had a muscat, and thay had onlie fax pund of poulder amang thame. Grantis, that he boght some trunfcheour plaittis,² and ane pott, with some linning cloathe for thair furnishing in the Steple. And fays, that *Robert* fend him in ane fedder bed. And the depouner had ane boy of his awne with him all this tyme.

THE SAID THOMAS BLAK, being deiplie sworne, and demandit, yf he askit of *Robert*, quhat wes his purpos or drift in this REBELLIOUN; or by what meanes he wald beare it oute? Deponis, he nevir askit any fuche questioun of him. Grantis, that the *Erll of Caithnes* had the Steple maid fuir vnto him or³ it wes renderit; and that *Johnne Guild* had delt with the Erll in that mater. And this depouner, how soone the *Erll* fend vnto him, randerit and come furthe to him; and maid appointment, for him self and his fouldiouris, to rander the steple to the said *Erll*; who, be his moyen, formarlie maid with *Johnne Guild*, had the Steple in his pouer, befor the depouner returnit vnto it.

Deponis, that thair was no bloode spilt be thame within the Steple, except that one of thame schoit *Robert Chalmers* throughe the hand, the tyme that the *Commiffair of Orknay* wes inclofit within the Place of the Yairdis: And the said *Robert Chalmers* wes affisting the *Commiffair* in defence thairof.

THOMAS LAYNG, sworne and examinat, deponis, that, at his laite being in *England*, quhen he wes comeing home, *Thomas Davettie* gaif to the depouner tua Letteris, in *Skairburgh*,⁴ to bring home to

¹ The arrears of rent, &c., which he was owing to his father.

² Trenchers.

³ Ere; before.

⁴ Scarborough.

the Erll of Orknay, quibich he delynerit to *the Erll*. And deponis, that he being one of the Keeparis of *the Castell of Kirkwall*, vnder *Sir James Stewart*, thair fell oute some difference and variance betuix the Shereff and the depouner, anent his pairt of the contentatioun¹ quihilk he sould haif had for taking of the *Pirott Schip*; wherupoun the deponar fled from *the Town of Kirkwall* to *Robert Stewart*, and stayit with him thair ten or tuelf days, befor his comeing to *Kirkwall*. And the depouner wes with *Robert* quhen he come with displayit banner and trumpett to the *Bow-Croce*, accompanied with ane hundreth men in armes, or yairby.

Grantis, that he wes one of these who surprisit the Kirk and Steple of *Kirkwall*, and that he stayed in the Steple with *Patrik Halcro* and *Thomas Blak* tua dayis.

Grantis, that he wes with the Shereff quhen he chargeit *Robert* to rander *the House of Birsay*, quihilk *Robert* dissobeyit, and shoit some shoitis oute of the House at the Shereff. And grantis, that ane moneth efter this, the depouner past to *Robert Stewart*, and joyned with him.

Deponis, quhen *the Castell* wes tane, the depouner wes in the Steple, and after *the Castell* wes randerit to *Robert*, the depouner left the Steple and went to *Robert*, and remanit with him in the Place of the Yairdis, quhill the *Erll of Caithnes* come in the cuntrey. Deponis, that he accompanyit *Robert*, quhen *Robert*, with fyve hundreth men, went to the ffeildis aganis *the Erll of Caithnes*, his Maties Lieutenant; and that *Robert* mustertit aganis *the Erll*, at the *Bal-ffeild*, and vtheris pairtis about *Kirkwall*.

ARCHIBALD MURRAY, in *Birsay*, solemnelie sworne, and demandit, quhen he spak first with *Robert Stewart* after his comeing to *Orknay*? Deponis, he spak first with him in *Kirkwall*, bot denyis that *Robert* impairted vnto him ony mater of this REBELLIOUN at that tyme.

Deponis, that the interprise of the taking of the Castle and Steple of *Kirkwall* wes maid first in *Birsay*, and that *Patrik Halcro*, *Andro Martyne*, *Thomas Blak*, *Gilbert Gray*, *Alexander Leggatt*, *Thomas Layng*, and the depouner him self, wer all vpoun the conference, counsaill, and plott of the taking of the Castell and Steple of *Kirkwall*, and the mater wes plotted tuentie dayis afoir it wes putt in executioun. And sayis, that *Robert Stewart* maid the depouner and the rest to vnderstand that his fader wes in missing, and oute of *the Castell of Dunbartane*; and that he wes to come to *Orknay*, and sitt down *Erll* agane. The beleif quhairof maid thame to follow *Robert* in his interpryiffis.

Deponis, that *Alexander Leggatt* was with *Robert Stewart* the first time quhen the depouner mett with *Robert*; and that thair wes no speecheis betuix the depouner and *Robert*, bot chopping of handis at that tyme.

Demandit, yf thair wes ony purpois amangis thame in *Birsay* aganis the Shereff? Grantis, that *Robert Stewart*, *Patrik Halcro*, and *Thomas Blak*, had speecheis and conferance in *Birsay* anent the taking of the Shereffis lyffe; and when thay come to the Steple, the mater wes commvnicat to the depouner: And then *Thomas Blak* past frome it. And deponis, thay had shoit the Shereff in the Kirk at that tyme, yf he had not beene gangand with *the Commissair*.

Deponis, that quhen the Steple wes tane, the Keeparis held thame quiet quhill *Robert* come to *the Bow-Croce*; and then *Robert* foundit his trumpett, and they within the Steple blew ane horne; and the depouner stayed bot ane nicht in the steple. And sayis, that *Patrik Halcro* was commandair of the Steple quhen *Robert Chalmers* wes hurte: And efter that, *Thomas Blak* commandit within the Steple; and that *Thomas* assistit *Robert* in all fuche thingis as he commandit. And deponis, that the Steple wes fauld² be *Johnne Guild*, twa dayis befor it wes randerit be *Thomas Blak*.

Deponis, that after he left the Steple, he addrest him self to *Robert Stewart*, and stayed with him all the tyme, till within aucht dayis afoir *the Erll of Caithnes* comeing thair.

Deponis, that he wes with *Robert* at the persute and taking of *the Castell*. And that the Shereff wes kept prisounair fyve dayes after he wes tane.

Grantis, that he was commandit be *Robert* to go to *Birsay* and to keepe *the House*, whilk he did;

¹ Remuneration; salvage.

² Sold; betrayed.

and kept the same till *the Erll of Caithnes* come and caufit charge the Houfe; quhill charge the depouner obeyit, and come to *the Erll*.

Deponis, that *Williame Guddell* come furthe of the Castell, and randerit him felf to *the Erll of Caithnes* the day befor the depouner wes fend from Orknay; and that it is commounlie reportit that the faid *Williame* affermis, that *Patrik Halcro* hes *the Erll of Orknayis* Warrant for taking the *Castell* of Kirkwall.

ALEXANDER LEGGATT, feruand to *Patrik* sometyme *Erll of Orknay*, sworne, and demandit, how soone he spak with *Robert Steuart* after his comeing to Orknay? Deponis, he spak not with him quhill tuentie dayis after he come to Orknay.

Grantis, that he wes in this cuntrey at Beltane last, and that he mett twyfe with *the Erll of Orknay*, and spak with him and his sone *Robert* in the Castell of Edinburgh. He denyis that *the Erll* or his sone *Robert* had ony conference with the depouner anent THE REBELLION IN ORKNEY.

Denyis, that he was in *Birfay* with *Robert* quhen the Houfe wes chargeit.

Grantis, that he wes with *Robert* tuentie dayis afor *Robert* tooke *the Castell*; and that he wes with *Robert* quhen he musterit at the *Bow-Croce*.

Deponis, how soone the Castell wes tane, the depouner stayit with *Robert Steuart* in *the Place of the Yairdis*, quhill he hard of *the Erle of Caithnes* comeing.

Grantis, that he wes with *Robert* quhen *Robert* musterit at the Caiones, afor *the Erll of Caithnes* landit; and that he wes in *the Yairdis* quhen *Robert* musterit at the Bal-ffeild aganis *the Erll of Caithnes*; and that the depouner had the charge of the keeping of *the Place of the Yairdis* fouretene dayis.

Deponis, that he come furthe afor the cannoun shoite, being desirrit be *the Erll of Caithnes* to come furthe afor the shoiting of the cannoun. And the depouner randerit *the Place of the Yairdis* to *the Erll*.

Deponis, that *Robert Steuart*, sone to *Alexander Steuart of Flatt*, had the principall charge of the keeping of the faid Houfe, and that thay wer aboute the number of fourty men, appointit be *Robert Steuart*, bafe son to *the Erll*, to keep the Houfe to his behoofe.

ALEXANDER LEGGATT re-examinat, and deeplie sworne, and demandit, vpoun quhat occasioun he went to *the Erll*, quhen he mett with him in the Castell of Edinburghe, about Beltane last? Deponis, that he being in warde, and haueing ane pensoun of victuall and filuer of *the Erll*, he past to *the Erll*, and desyrit of him ane precept and warrant to the Chalmerlanis or Takkismen to mak him payment of the biganes¹ of his pensoun. And that *the Erll* refusit to gif ane precept, and said, he sould 'gif directioun to his sone *Robert* to ansuer him.' And *Robert* tauld to the depouner, that he had ane directioun frome his fader in the depouneris favour.

Deponis, that *Thomas Blak*, *Archie Murray*, *Robert Sclaitter*, *Gilbert Gray*, and *Robert Mowatt of Gersfettair*, were most familiar with *Robert Steuart*, and farrest vpoune his secreitis.

Deponis, that *Duncane Mitchell*, the poist, caryed Letteris from *Robert Steuart*, efter the taking of *Birfay*, to *the Erll* his fader.

Demandit, quhat Gentilmen of the cuntrey come voluntarijie in to *Robert*, after the taking of *the Castell*? Deponis, that numberis of people of all rankis come in to him, as namelie, *the Laird of Halcro*, *Frances Mudie*, *the Laird of Grymsfayis* sone; and deponis, that *Frances Mudie* said to *Robert*, that xxiiij. Rebellis wald mak five hundreth men. The depouner knawis nocht yf thir men come in to *Robert* to assist him in his REBELLION; bot thay eate and drank with him. Deponis, that *George Traill* furneit sheep to *Robert*.

THOMAS BLAK, re-examinat, and deiplic sworne, deponis, that efter *the Shereff* had been at *Birfay*, and gevin charge to *Robert Steuart* to delyuer the Houfe, the depouner being in companie with *the Shereff*, that the depouner reformat findrie tymes to *Birfay* to *Robert*, and past and come at his pleasour.

Deponis, that he knawis no thing of *Thomas Layng* or *Alexander Leggatt*, concerning thair coun-

¹ Bygones; arrears.

faill gevin to *Robert Stewart*; bot the depouner suspectis that *Archibald Murray* wes familiar and preuie¹ with him.

THOMAS LAYNG, re-examinat, and sworne, deponis, that the tyme that he wes in *the Steple*, he wes kept aganis his will be *Thomas Blak* and his companie; and deponis, that all these who joyned *Robert*, outh²er² subscryvit, or, yf thay could not subscryve, swoir to die and leive with *Robert*. And *Thomas Blak* wes one of these who subscryvit; and the depouner hard the Roll red, wherin the subscryvaris wer contentit, whose names wer *Thomas Blak, Gilbert Gray, Johnne Reid, Andro Martine*, and some vtheris whome he remembers not.

Deponis, that after the first taking of *the Steple*, *Patrik Halcro* wes Capitane; and when *the Castell* wes tane, *Thomas Blak* wes Capitane; and that the hail company, that come from *Birfay* to tak *the Steple*, come frelie and willinglie for that earand; and that thair wes no violence or force vsit aganis ony of thame to compell thame to go to that earand; and the depouner come all the way fra *Birfay* to *the Steple*, and saw no man forceit be the way.

Deponis, that he hard that *Pettie³ Murray*, who went in the Ship with *the Shereff* and the depouner to *Orknay*, caryed ane Letter frome the Erl to his sone, *Robert*, being in *Birfay*.

Thomas Blak, re-examinat, and demandit, yf he knawis that *Robert Stewart* tooke ane Band or Oathe of these who joyned with him, that thay fould die and live with him? Deponis, that he knawis no fuche thing.

Thairefter, the said *Thomas* grantis, that he subscryvit the Band to die and live with *Robert*, and that these who could not subscryve did sweir vpoun thair swardis; and that the effect of their Band and Oathe wes, that thay fould efauldlie⁴ tak pairt with *Robert*, and die and live in the caus. And that *Patrik Halcro, Gilbert Gray, Johnne* and *Patrik Gordoun, Johnne Guild*, and the depouner, with *Andro Martine*, subscryvit the Band. And rememberis not yf *Alexander Leggat* subscryvit the Band.

The depouner knawis not quhat Gentilmen of the cuntrey assistit *Robert* with poulder, bullett, victuallis, or counsaillis.

Deponis, that *Johnne Guild* and *Patrik Traill* wer the takaris of *the Kingis Herald*, being accompanyit with a number of thair associatis; and the depouner come furthe of *the Steple* with his company to *the Place of the Yairdis*, and did freindship to *the Herald*.

ARCHIBALD MURRAY, re-examinat, and demandit, yf he wes sworne be *Robert* to assist him? Deponis, that *Robert* vrgeit no fuche Oathe of the depouner, becaus he wes his faderis auld seruand, and knew that he neidit not to tak ony fuche Oathe of him. And grantis, that he tooke the subcriptionis and oathis of vtheris, who wer not his faderis auld seruandis.

Denyis, that thair wes ony violence or force vsit aganis *Thomas Blak*, in his going to *the Steple*; bot that *Thomas* wes als fordwart, and past als willinglie thair, as ony of the companie.

THOMAS LAYNG, re-examinat, grantis that *Robert Stewart*, being informit be some who saw *the Herald* going to the Croce, that he wes to mak some Proclamatioun or chargeis, the depouner hard *Robert Stewart* gif directioun to some of the fouldiouris in *the Castell* and *Steple*, as namelie, *Johnne Guild*, to go and tak *the Herald*, and not suffer him vse his Letteris and charges; and that conforme thairto, *Johnne Guild* tooke him, and brought him in to the Place of the Yairdis; and the depouner hard that *Johnne Guild* tooke him be the Coate of Armes, and preast to haif tane it af him; bot he knawis not yf the Coat wes revin.⁵

ALEXANDER LEGGATT, re-examinat, deponis, that *Thomas Blak* and his fouldiouris wer the takaris of *the Herald*; and the depouner hard *Robert Stewart* gif directioun to the fouldiouris, to go and stay *the Herald* fra vseing of his Letteris and chargeis, and to bring him in to *the Place*; whilk directioun wes performit be *Thomas Blak* and *Johnne Guild*.

¹ Privy; in his confidence. ² Either. ³ Patie; Patrick. ⁴ Sincerely; heartily. *Efauld*, or *aefald*, literally one-fold; upright, without duplicity. A double and deceitful character was then termed *twa-fauld*. ⁵ Torn

Denys, that he subferyuit or faw the Band; bot knawis that thair wes ane Band subferyuit, and Oathis gevin to die and live with *Robert* in the caus; and fuche as could not subferyve the Band, patt thair markis to it.

(23.) ANDRO MAIRTENIS *Confessioun*.

AT KIRKWALL, the xiiij day of September, 1614, I, ANDRO MAIRTINE, being examined be my *Lord Liuetenant*,¹ and my *Lord Bischop of Orknay*,² anent my intelligenc of the causis quhy *Robert Stewart*, sone naturall to *Patrik Erle of Orknay*, come to Orknay in this last somer?—Be quhais directioun he came heir?—And for quhat purpose?—Hes anfuere as followis:

FIRST, that quhen I spak with him in Birsay, he schew to me ane Commiffioun, subferyuit be his father, to mak compt with all the Tak-men of the cuntrie, and ressaue payments of all restis,³ and debtis justlie awand to his father be thame, of the crope sex hundreth and ten (1610), and all yeiris preceding the comeing of my Lord Bischope to Orknay; with powar also to medle and intromett with all his father's bestiall and moveables, and to dispone thairon. I speirit gif he had ony vther thing ado?—and he said, 'Yis'—bot he wald not tell me. ITEM, I saw ane Letter that came frae his father to him, be *Patrik Murray*, beirar, haueand this clause in it—'That gif he sped not weill heir, that he sould addres himself to Murkle, to remane quhill tyme seruit better;' bot I remember not of the rest of the contentes. ITEM, anent any conditione betuixt him and *Patrik Halcro*, throw his fatheris directioun, I am na way vponne that secreit; bot it appeiris thair be sum wrettin conditione amangs thame; becaus I saw gritt anger, with a fear betuixt thame, for wanting of ane Letter that was a missing among hands, and *Patrik* send out ane boy to the Toune to mak inquisitione for it; bot quhither thay gat it or not, I knaw not. And I saw thame ryue⁴ my Lords subfcriptioun from ane Letter, and thay caist the body of it in the fyre, and kept the subfcriptione. ITEM, about the . . . day of September efter, as the Cannone was twyse schott in the night at the yrne yett, it patt ane greit feir in thair hartes. Then *Robert* speirit at me on the morne, quhat I thoct of it? And I said, that 'all was lyk to go wrong.'—'This is a fair matter,' said he, (speikand of his father,) 'thair was neur thing lukkit weill yit quhilk he devyfit—God gif I had neur kend his turnis!' ITEM, quhan the commounaris wer trauelland for peax, I advyfit *Robert* to offer cautione for his personal comperance befor the *Lordis of Counsell*, gif the *Lieuetenant* wald geife him libertie to go to Edinburgh. He anfuereit to me, and said, that 'he wald not do so—for the Counsell wold vse him with Tortouris, quhill he reveillit his fatheris interesse in this mater—and that wold he neur doe!' Heirvpoun, I collectit, that all quhilk this yung man hes done, wes be the counsell of his father; quhilk is a great pitie, except it pleas God and his Matie to be mercifull to him. And as for my being with him, I wold neur haue bene a nycht in his companie, giue I could haue had meit and drink any vther way, as all the cuntrie knawis quhat necessitie and miserie I was reductit vnto, be pouertie. ITEM, I remember that a great number of this cuntrie men hundit him till folies, and maid ANE BAND of Concurrence and Assistance to him, quhilk he causit me to wryte; and a gritt number subferyuit the same, quhen I was not with him; bot the contentes of the Band and subfcriptiounes ar in his awin keiping, and my memorie cannot ferue me to remember on the particulars; bot the writt will declaire.

A. MARTYNE.

(24.) DEPOSITIONS of *JOHNE BURNE*, laying feik and like to die; taikin vp by *JAMES*, BISCHOPE OF ORKNAY, in the said *Johne* his chalmer, vpon the thrid of October, 1614.

IMPRIMIS, the said *JOHNE* deponit and confest, that the EARLE OF ORKNAY sent him over with

¹ George, Earl of Caithness. ² James Law, formerly Minister of Kirkliston, was promoted to the See of Orkney, in anno 1606; where he remained till he was translated to Glasgow, 1616. ³ Arrears. ⁴ Tear.

his sone *Robert*, to assist him to collect and receave some debtis resting vnpayed by diuerse Takismen of the crop 1609 and 1610 yeares; and promised to allow him ane Thousand markis therof, for his fles. SECONDLY, when he askit of the said *Earle*, 'Why he would send the said *Robert* to ORKNAY, feing he wes ane young man who appeirandlie wald trouble the countrie?' Deponit, that *the Earle* answered, that 'it was not ane matter to him to know'—and that he wold 'heare other newes or it wes long!' THIRDLIE, being asked, yf he knew any direction given by the said *Earle* to *Robert* for taking of the Houses and intrometting with the Rentis? Deponit, that he saw ane Letter wes broght from *the Earle* be *Patrik Murray* in Kirkwall, in the quhilk the said *Earle* wrote to *Robert*, that 'yf he and *Patrik Halcro* could not at that tyme find opportunity to take the Houses, that they should go over quietlie to *Murkell*, and remayne ther vntill they fand fitt tyme and occasion, and all thingis wer made readye for taiking of the saidis Houffis. FERDLIE, being asked, why *Robert*, at his first coming to *Kirkwall*, did not take the Castle, seing, by his own confession, he might have had it deliuered vnto him be the souldiers? Aufwerit, that it was because he thought not the tyme fitt; and thingis wer not prepared.

JOHNE BURNE. JA. B. OF ORCADS.

RO. COLTART, Notar publict, witness.

(25.) DEPOSITION of ANDRO MARTINE, *servitor to the Earl of Orkney.*

AT EDINBURGHE, the tent day of October, 1614. In presence of my Lordis Secretair, *Preuie Seale*, *Thefaurair depute*, and *Aduocat*.

ANDRO MARTINE, feruitour to *Patrik*, sometyme *Erll of Orknay*, demandit, who wryte that copie of ane Band, whilk wes presentit and showne vnto him? Deponis, that he acknawlegeis the Band to be his awin hand-wryte.

Demandit, quhair and quhen the Band wes subfcryvit? Deponis, that he knowis no thing of the subfcryveing thairof.

The said *Andro*, being examinat vpoun his grite and solemne oathe, and demandit, who wryte the principall Band? Deponis, that, in his opinioun, he thinkis that he write the principall Band, quhair-of the copie wes product.

Demandit, yf he subfcryuit the Band? Denyis the subfcryveing thairof, or that he wes present quhen ony manne subfcryvit it.

Demandit, yf he saw ony mannis subfcription at the Band? Denyis, that evir he saw the Band vnfaultit, at ony tyme, sen he wryte it; and he saw no manis subfcription at it.

Grantis, that *Robert Stewart*, base sone to *the Erll*, tauld to the depouner, that *Gilbert Gray* and *Robert Mowatt* subfcryuit the Band, and that *Robert Selaitter*, *Baillie of Birsay*, markit the Band.

Denyis, that he hard or saw ony man sweir that they sould keepe the conditionis of the Band.

Demandit, quhair he saw the Letteris that *Patrik Murray* broght from *the Erll* to his sone *Robert*? Grantis, that he saw it in *Birsay*, in the hinder-end of July last.

Demandit, quhat conference he had with *Robert* anent that Letter? Deponis, he hard *Robert* say in ane anger, that he wald not go to *the Laird of Muirkill*, as he wes desirit be the Letteris, bot that he wald remane in the countrie.

Demandit, yf he saw *Robert Stewart* and *Patrik Halcro* ryve the subfcription from ane Letter of *the Erll of Orknayis*? Deponis, that he saw thame ryve it in *the Castell of Kirkwall*, the day after *the Erll of Caithnes* had tane *the Place of the Yairdis*. And grantis, that thay wer in a grite anger, for ane other Letter of *the Erlis* that wes in missing; and that thay send ane boy oute of the Castell to *Margaret Buquhannanis* house to seeke the Letter; bot the depounair knawis not yf thay gatt the Letter. And the depouner knawis not quhat wes the contentis of the Letter quhairfra the subfcriptione wes revin.

Deponis, that the boy, who wes fend for the Letter, wes towed¹ over *the Castell wall* be the deponer, and that he come back agane; bot the depouner knawis not yf he gatt the Letter.

Demandit, vpoun quhat hoipis *Robert* held *the Castell*; and by quhat meanis he thocht to worke his releiff? Deponis, that the depouner being weyreit in *the Castell*, and desyrous to be oute of it, becaus he mislykit the purpois, he write ane Letter, with² one *Paterfon*, to *William Bellenden*, craving his advyse and counsell quhat he fould do; to whome *William Bellendene* fend anfuere, desyring the depouner to come oute, by what meanis he could best. And the depouner having imported this to *Robert Stewart*, and craving libertie of him to go oute, becaus he could ferve him, for no purpois, within the Houfe; at the first, *Robert* dissuadit him to go oute, for feir of *the Erll of Caithnes* crueltie: And the depouner haiving said to *Robert*, that 'this interprise wes not lyke to frame weele;'—*Robert* anfuereit, that 'thay wald be able aneughe to halde oute, ffor mony alterationis wald occur, quhairby thay might keepe *the Castell*, as namelie, *the coming of THE SPANZEIRDIS, the practises of PAPISTS,* and the truble whairin *THE COUNT PALLATYNE* wes:' Quhilkis alterationis wald procure thame thame releif, as *Robert* said to the depouner.

Demandit, who of the cuntrey people steirit vp *Robert* and assitit him in this *Rebellion*? Depones, that *Gilbert Gray, Robert Mowatt, Robert Sclaitter, Bailie of Birsay, Williame Sinclare of Lye, Gilbert Grayis sone,* and his goode-sone *Gerfetter*,³ wer the principallis who steirit him vp.

Demandit, quhat conference he had with *Alexander Leggatt* concerning ony directioun he brocht frome *the Erll* to his sone *Robert*? Deponis, that he rememberis not quhat conference wes betuix thame thairanent.

Demandit, yf he wes in *Birsay* when *Robert Stewart* fend Letteris to his fader with *Duncane Mitchell*, the poist? Grantis, that he wes in *Birsay* at that tyme; and that the depouner, be *Robertis* directioun and informatioun, write ane Letter, in his name, to *the Erll* his fader; quhilk Letter *Robert* rave;⁴ and wryte over ane Letter him self. Deponis, that the contentis of the Letter written be the depouner wes, to tell *the Erll*, that *Robert* wes come to *Orknay* to tak vp his debtis; and that he wes troublit be *the Shereff*, and forceit to leave the *Toun of Kirkwall*—and that he had tane him self to *Birsay*—and that *the Shereff* had convenit the cuntrey, and come to *Birsay* and persewit him; and had hurte ane man, and flayn ane doig in at the windois; bot he wes myndit to hald oute aganis *the Shereff*.

The depouner denyis that he knew the contentis of the Letter written be *Robert* him self to *the Erll*.

(26.) ANDRO MARTINIS *Letter to the Secretar.*

MY LORD,

SINCE your lo. examined me so sickerlie vpoune my intelligence concerning the grund of THE REBELLIOUNE begun in ORKNAY be *Robert Stewart* and *Patrik Halcro*, and gart me swear to be plaine, your lo. will excufe me that forzet this: Quhen *Robert* and I was in conference, on a tyme, he said, that 'Gif his father had bene willing, and vfit the counsell of vtheris, quhen he was in *Edinburgh Castle*, he might haue cumd away; for thair was men anew offerit to haue cumd or sente men with him to *Orknay*; bot he wold not cum away, becaus he durste not brek waierd.' I speirit 'How many he might haue gottin to haue cumd with him?' He anfuereit, 'Four or fyue Thowsand, giue⁵ he had pleafit.' Bot he tauld me not quhat men thay war. Of this I thoct good to mak your lo. aduertiment, for saiftie of my aithe; and hopes that your lo. will interceid for me, pat, be his Ma^{ties} clemencie, I may be remittit for being with *Robert* in companie, at this vnhappie tyme of miserie; I beand aged and depauperat, able⁶ to die of hungar, giue I had not gottin helpe be him in meit and drink. Bot I nevir buire airmes, maid mufteris, nor watched against HIS MA^{ties} *Lieutenant*, efter I hard of his purpose. This I referre to your lo. gud discretioun; and gif ony vther thingis fall cum to my memorie,

¹ Let down by a tow, or rope. ² By. ³ Robert Mowatt. See p. 299, &c. ⁴ Tore. ⁵ If.

⁶ Lat. *habilis*.

quhilkis ar omittit at the present, I fall aquent your lo. thairwith. He said also, that quhen they spak with *Sir James Conneill*,¹ that *Sir James* wiffit him selffe to be at hame, and *the Erle of Orknay* to haue bein in Orknay, to do for thame felues; the ane in the West, and the vther in the North. So, confesding in HIS MA^{TIES} clemencie, and your lo. affectioun toward me, I rest, &c.

EDINBURGHE, in waird, the tent of October, 1614.

(27.) THE DEPOSITIONS of MARGARITE BUCHANAN, taken vp the first day of November, 1614, before *Johne Sincler of Ratter, James, Bishop of Orknay, and Johne Buchanan.*

FIRST, the said *Margarite* depones and confessis, that *Patrik Halcro* had ane coffer standing in his motheris chalmer, in Kirkwall. SECOUNDLIE, deponis and confessis, that, vpon the Sunday efter that *the Erle of Cathenes* come to the Yairdis in Kirkwall, the said *Patrik* sent downe to hir the key of the said coffer, and desired hir to bring vnto him the writtis and Letters whilk wer lockit vp in the same, of whilk writtis shee had ane Warrant of *the Erle of Orknay*, whereof none did knaw but him self. THIRDLIE, shee deponit and confest, that when shee had received the key of the said coffer, shee went and oppened the same, and fand two writtis only in the same, whilk shee red presentlie, and baith of them were subscribed by the Earle of Orknay. FOUTRLIE, deponit and confest, that the ane of them wes ane BAND and WARRANT for the said *Patrik*, for to take and keipe THE CASTLE OF KIRKWALL, wherfoever he might most convenientlie; allowing vnto him therefore, the double of the allowance quhilk the Constables and Keipar of the Castle had ordinarlie of before. FIFTLIE, deponit and confest, that the other writt contened the names of sic as should be affociatis and affisteris vnto him in the said interprise; as namelie, *Thomas Laing, Alexander Legatt, Helias Kneland*, and vthers whose names shee can not remember. SEXTLIE, deponit, and confest, that presentlie after shee had red and considered these two Writtis, shee broght them, hir self, to the Castell, and delivered them to *Patrik Halcro* out of hir owne hand. SEVINTLIE, deponit, that when *Patrik* had red the said BAND, he gave it in like manner to *Robert Stewart* to reid; who, after that he had red itt, rave² it with his handis in small peices, and trampitt it vnder his feitt. AUGHTLIE, deponit, that *Patrik Halcro* wes not content with the rying³ of it, as she perceaved by his countenance and gestur; and when shee fayed vnto *Robert*, 'Fye vpon yow, Sir! Why hawe yee done that? It had bene better to have keipte it!' Deponit, that baith *Robert* and *Patrik* said, 'that that BAND should not do hurte in tyme coming'—and that '*The Earle of Orknay* should not want his head for it!' NYNTLIE, Deponet, that *Patrik Halcro* was reiding the other writt, wherein the names wer contened, when *Robert* rave the Band—and that shee knawes not certanlie what became of that writt; but that, in hir iudgement, it wes riven⁴ also.

JA. B. of Orcads, J. SINCLER of Ratter, JOHNE BUCANANE.

THEIR former Depositions were writtin be me, *Robert Stewart*, Minister at Hoy, at direction of *James B. of Orknay*.

ROBERT STEWART, Minister, with my hand.

(28.) DEPOSITION of JOHN SHARPE, servant to the Earl of Orknay.

AT EDINBURGH, the first of November, 1614, in presence of my Lordes Chancellor, Secretar, Prefident, *Previe Seall, Theasaurar depute, Clerk of Register, and Aduocat.*

JOHNE SHARPE, servand to the Earle of Orknay, fworne, and demanded when he entered in seruice with the said Earle? Depones, that he entered in seruice with him in the moneth of Junij, or Julij, 1613.

Demanded, what he knowes concerning THE REBELLION in ORKNAY? Depones, that he remembers that within sex weeks after he come to the Earle, the Earle caused the deponer write a Me-

¹ *Sir James Makoneill*. See his Trial, III. 1, &c.

² Tore.

³ Tearing.

⁴ Torn.

moriall in thir tearmes; ' Yow shall go to Orkney; yow shall fett Takkes, and reule the countrey, as yow did before. Yow shall send shippes to Norroway, for such thinges as yow mister,¹ especiallie, for poulder.' And this Memoriall wes wrotten in *the Castle of Dunbartane*. Depones, that *Robert Stewart*, the Earles bafe sone, wes not in Dunbartane when this Memoriall wes wrotten, but came there within xiiijth dayes thereafter. Depones, that *the Earle* patt this Memoriall in his pocquett; and the deponer neuer saw it thereafter. And knows not what come of it. And sayes, that this Memoriall wes wrotten by my Lordes own dyteing.²

Depones, that thereafter, when my lord wes in *the Castle of Edinburgh*, the deponer, by my lordes dyteing, wrote a new Memorandum, agreeable in substance to the former; with this addition, ' Yow shall put furth of the countrey of Orknay, suchie as hes no thing to do in it.'

Demanded, yf he hard ony conference betuix *the Earle* and *Robert* anent THE REBELLION IN ORKNAY? Depones, that he hes hard *the Earle* findrye tymes invey againes *Roberte*, for geveing over the Houfe of Kirkwall to *the Bishope of Orknay*, calling him ' a feeble beast!' And he hard *Robert* say, ' Yf he had the Houfe againe, he wald keep it better!' And *the Earle* answered, that ' he trowed he wald do no better.' And he hes findrie tymes hard *the Earle* desyre *Robert* to ' prove a prettie³ manne yf the Houfe come againe in his handis; ffor it wald stand him to his lyff!'

Depones, that after *Robert* went to Orknay, the deponer wrotte a new Memorandum, by *the Earles* dytment, to *Robert*, bidding him choose new Takmen,⁴ and tak vp his restes.⁵ And the remanent of this Memorandum, in substance, wes agreeable to the former Memorandums. And this Memorandum wes wrotten in *the Castle of Edinburgh*.

Thereafter, when *Robert* wes gone to Orknay, the deponer, by *the Earles* dyteing, wrote a Missive from *the Earle* to his sone *Robert*, oute of *the Castle of Edinburgh*, willing him to follow his Memoriall, in all thinges. And depones, that *the Earle* wold not subscryue this Letter, for fear of interception by the way; and the direction, on the bak of the Letter, wes in thir wordes—' *For Robert.*'

Depones, there wes a vther Letter written by the deponer for *the Earle*, in the tyme of his beeing in *Edinburgh Castle*, bearing, ' Yow shall speak the countrey menne, and try yf thay will tak your pairte; and yf the countrey men will tak your pairte, yow shall reiteir your self to Caithnes, and stay there, and proceede no thing whill I send yow worde.' And depones, that *Duncane Mitchell*, the Poast, caryed the one of thir Letteres, and *Patrik Murray* caryed the other Letter: And that this last Letter wes not subscryued, wanted date, and had direction one the bak, ' *For Robert.*' And all thir Letters and Memorandums were dyted by my Lord him selue.

Denyes that euer he hade conference or speatche with *Robert* anent the REBELLION. Depones, that *the Earle* had copies of all the Memorandums and Letters wrotten be him, and keepd thame in his pocquett.

Depones, that *Duncane Mitchell*, the Poast, broght a Letter from *Robert* oute of Orknay to *the Earle*, beareing, ' It will please your lo. to tell *the Counsell* in my name, that I am come to Orknay, and am going thouroughe the countrey to tak vp your lo. debtes; and that I wes perfewed by *the Shiref*, and wes constrained, for faulsetye of my lyff, to tak *the Place of Birsay* for my refudge.' The deponer is of oppinion, that this Letter wes wrotten for an excuse of *Robertes* proceedings.

Depones, that *the Earle* caused wrote a Letter to *Robert*, in the deponeres owne name, showeing *Robert*, that ' yf he come in this countrey, he wold be hanged.'

Denyes that he hard ony speatche betuix *the Earle* and *Mitchell*, the Poast, when he broght *Robertis* Letteres to him.

Demanded, who wer present, at the wroeteing of *the Earles* last Letteres send with *Mitchell*, the

¹ Want; stand in need of.

² Enditing; dictation.

³ Gallant; brave.

⁴ That is, to recall the

whole of the Leases granted by the Bishop or other administrators under the new regime; and to give the Lands to new tenants, who would be subservient to the Earl.

⁵ Arrears of rent.

Poast? Depones, that none were present but *the Earle* and the deponer. And that *Mitchell*, the Poast, stode by but hard nothing.

Depones, that *Mitchell*, the Poast, tauld the deponar, that *Robert* had taken BIRSAÿ; and that one *Mudye* come from Kirkwall to Birsay with *Robert*; and that one *Gray* assisted *Robert* in keeping of the Houfe; and that *the Shiref* come and persewed the Howfe; and that there was shooteing in and shooteing oute; and that one *Downy Lyell* wes hurt, and one *Doig* slayne.

Depones fordar, that after *the Guard* come to seek the deponer, *the Earle* derected the deponer to Orknay; and bad him awaite vpon his sone, and do as he wold command him. And the deponer, asking of *the Earle*, yf he wold wrote a Letter with him, *the Earle* anfuered, that 'he wold not wrotte, for he feared the deponer wold be taken by the way;' and he saide forder to the deponer, that *Robert* wold not let him want.

JOHN SHARPE,

(29.) DEPOSITION of ROBERT STEWART, 'base sone' to the Earl of Orkney.

AT EDINBURGH, the xiiij day of Nouember, 1614. In presence of my Lord Chancellour, the Erl of Caithnes, the Lordis Secretair, Preue Seale, Thesaurair depute, and Aduocat.

ROBERT STEUART, base sone to Patrik Erl of Orknay, humblit on his knees, and deiplic sworne; and demandit, vpoun quhat occasioun, and by whose instigatioun he maid THE REBELLION IN ORKNAY? Deponis, that he being in grite neede and necessitie, and vnable to keepe this Toun for dett, he past to Orknay to tak vp some of his faderis auld restis, quhairwith he thocht to mak his furnishing oute of this cuntrey. Depones, that his fader haueing confauct ane grite offence aganis him, becaus that he, at the first taking of *the Castell of Kirkwall*, randerit the same bak agane to *the Bischop*; his fader, for that caus, wald skairlie kenne¹ him, or gif him ony maintenance. And deponis, that his fader directit him to Orknay, with Commissioun to mell² with his restis, and to intromett with his goodis in the cuntrey; and that his fader advisit and counfallit him to repair the oursight and wrang he had committit by deliuering of the Castell to *the Bischope*; and if by ony meanes he could come be this Castell, to tak it agane. And deponis, that his fader gaif him some Memoriallis, in wryte, quhilkis wer writtin be the depouner him self, to his faderis directioun; and the Memoriallis boore, that yf *the Castell* come in his handis, he sould fend a Schip to *Noroway*, for poulder, bullett, and fuche other necessar prouisioun as wer fitte for keeping of the Houfe.

Grantis, that in this tyme of his being in Orknay, he ressaunt tna or three Letteris from his fader; whairof one wes delyuerit to the depouner be *Patrik Murray*, the contentis whairof wes, that he wes informit *the Houfe of Birsay* wes tane; and he advisit the depouner, yf he wes not able to keepe the Houfe, that he sould retein him self with *Patrik Halcro* to Caithnes.

Grantis, that he ressaunt ane other Letter from his fader, fend with *Duncane Mitchell*, the Poist, and that the substance of that Letter wes, for taking and keeping of the Houffes, yf the depouner could come be thame.

Grantis, that his fader, findrie tymes, said to him, that he wald eschaip oute of warde, and come to Orknay.

Deponis, that he acquaintit not *Patrik Halcro* with his intentioun to tak *the Castell*, quhill *the Shereff* persewit the depouner at *Birsay*. And grantis, that at that tyme he commuicat to *Patrik Halcro* the contentis of his faderis Letter fend to him with *Duncane Mitchell*, the Poist; and that *Patrik* willinglie yeildit to joyne with him in this REBELLION.

Denyis, that *Patrik Halcro* ressaunt any Letteris fra the depouneris fader.

Deponis, that his fader vsed all the meenis he could to haif gottin money, to haif fend with the depouner to Orknay, to haif furneist him in thingis necessar for this interprise; bot he could gett nane.

Grantis, that he write to his fader with *Duncane Mitchell*, the Poist, schaweing how the Schereff

¹ Recognise; countenance.

² Literally, meddle; uplift the arrears of rent, &c.

had procedit aganis him in perfute of him at *Birfay*, and quhat had fallen oute amang thame in that actioun.

Demandit, what hoipis he had of affistane frome ony cuntrey people heir? Deponis, he had no hoipis of affistane from this cuntrey people.

Deponis, that his fader verie oft, in publict audience, wald invey aganis the depouner, and quarrell him for randeriug of *the Castell to the Bischop*.
R. STEWART.

(30.) DEPOSITION of PATRICK HALCRO.

PATRIK HALCRO solemnelie fworne and demandit, quhat he knawis concerning the beginning of THE REBELLIOUN IN ORKNAY? Deponis, that in Somer, bigane a year, the depouner past to *Dunbartane* to visite *the Erle of Orknay*; and that *the Erle*, in a priuat conference betuix thame twa, askit of the depouner, 'Yff, be ony meanes, he could come be his Houffis agane in Orknay?' To whome the depouner anfuert, 'Your lo. hes been over lang in starting. Your lo. had done weele, yf yow had caufit keepe thame better, quhen your lo. had thame!' And the Erll replyit, 'That can not now be mendit. Is it not yitt possibill to gett the Houffis agane?' And the depouner anfuert, 'It wilbe hard for your lo. to gett that done, vnles your lo. haif affuurance of the cuntrey people to stand be yow and assist yow.' And then the Erll said, 'Thay ar a companie of fals people, I can not lippin¹ in one of thame; bot I mynd to send my sone thair, quha wilbe your pairt. Will yow assist and tak pairt with my sone?' And the depouner at the first panielie refuist to follow his sone in that earand, saying, 'he wes over feble a Capitane to follow, in suche a purposis!' Bot the Erle haveing delt forder with him, to follow his sone at his comeing to Orknay, the depouner, in end, promiseit to follow him, and to tak parte with him at his comeing to Orknay.

Deponis, that after *Robert* come to Orknay, he shew to the depouner, in *Birfay*, the Letter writtin be *the Erll* his fader to him; willing him, yf he wes not able to keepe the Houfe of *Birfay*, to reiteir him with the depouner to *Caithnes*. And grantis, that at that same tyme he promiseit his affistane to *Robert*, and to tak pairt with him.

Grantis, that according to ane other Memoriall, directit be *the Erll* to *Robert*, for sending to *Noroway* for poulder, they send ane ship to *Noroway* for poulder, bot the *Castell* was randerit or the poulder come home: And the depounair heiris that threescoir barrellis of this poulder come in *the Erll of Cathnis* handis.

Deponis, that at the first playing of the cannoun, *Robert* being in his bed, the depouner come to him, and askit of him 'quhy he wes lyand in his bed, seing the cannoun had dischargit sax schoit?' And he demandit of *Robert*, 'How he thocht this mater wald lest?' And tauld him, 'he wald not be able to hald oute. It wer gude for him to tak him to the Sea!' To whome *Robert* anfuert, 'I will not tak me to the Sea; my fader will then say, I haif feblie gevin ouer his Houfe! I will rather hald oute quhill the Houfe be dung downe abone my heade, or² I rander my self to *the Erll of Caithnes*, or yitt to *the Counsell*, to be tortourit, quhill³ I confes aganis my fader, the thing that may be his wrack and myne!'

Deponis, that *Robert* said to the depouner, that 'his fader wald come to the cuntrey, and thay wer n expectatioun that *the Erll* wald brek warde.'
P. HALCRO.

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

Resetting of Egyptians—'Johnnie Faw.'

Jan. 25.—WILLIAME AUCHTERLONY of Cairny.

Dilaitit for contraveniug the Actis of Parliament in resetting of Egiptianis;

¹ Rely; trust.

² Before; ere.

³ Until.

speciallie of Johnne Fall,¹ ane notorious Egiptian and Chiftane of that vnhappie foirt² of people.

Mr James Oliphant, Aduocat, substitute to Sir Williame Oliphant, his father, Aduocat to our souerane lord, producet the Letteris deulie execute, &c.—Compeirit Daudid Lyndsfay of Balgaweis, *excusatorio nomine* for the said Williame, and declairit that the said Williame was lyand bedfast and deidlie feik, nocht habill to travell to keip this dyet, and offerit him selff caution for the said Williame his compeirance, befoir my Lord Justice, the thrid day of the nixt Justice-air of the Sherefdom quhairin he duellis, or soner, vpon fyftene dayis wairning.—Quhilk excuse the Justice, with consent of the perfewar, admittit, &c.

Rebellion in Orkney—Tyranny and Oppression—High Treason, &c.

[PATRICK EARL OF ORKNEY, the infatuated and ambitious individual, whose guilty life at length terminated ignominiously upon the scaffold, was nearly related to King James VI., and at one period stood high in favour with his prince. As the particulars of the crimes for which his life was forfeited to the offended Laws of his country are rehearsed in his former Trial,³ and in that of his natural son, ROBERT STEWART,⁴ reference is made to these Cases, and to the illustrative Papers appended to them. The various Histories of Scotland may also be consulted, in which the fact of THE REBELLION IN ORKNEY is very briefly noticed, owing to the want of proper materials.

Although his crimes were of a very remarkable description, and indicative of a cruel and blood-thirsty disposition, it must not be supposed that this Nobleman was a rude and unpolished barbarian, wholly unskilled in the modes of civilized life. On the contrary, much of his earlier life had been spent at Court; and his daring crimes and overweening ambition alone prevented him from rising to the highest eminence, as a Courtier. Like many other unlucky Courtiers of that age, he seems to have been obscured by the prevailing star of that corrupt and worthless favourite, Kerr or Carr, Earl of Somerset, who secretly undermined him, and embraced every opportunity of blasting his character and fame, in the King's estimation. Having thus fallen into disgrace at Court, the Earl of Orkney appears to have commenced a reckless warfare against all civilized society, and to have formed the mad project of establishing himself as an independent and despotic Prince, in his Island Kingdoms of Orkney and Shetland; and in due time he had also resolved upon entirely shaking off the yoke of allegiance to the Crown of Scotland.

Having retired to Orkney, he committed such excesses, that, within a very few years after the accession of King James VI. to the English throne, the oppressed people of Orkney presented numerous supplications for redress, and loudly complained of their intolerable grievances. These complaints were directed to the Privy Council, (who appear to have been unable to afford any formidable check to his despotic cruelty,) as well as to the King himself. Sharp remonstrances were at first used, but with little effect; and at length the Earl's oppressions became so formidable in their character and degree, that the Lord Advocate found it necessary, in order to quiet the clamours of the people, to bring him to public Trial. Still, however, it appears to have been thought possible that he might be reclaimed; and the King used every means to delay matters coming to fatal extremities. Contrary to general expectation, the effects of long imprisonment seemed only to aggravate the rancour of his cruel disposition. He employed all his time in meditating projects for his escape from confinement, so that he might wrest

¹ The celebrated Johnnie 'Faw.' ² Class; society. ³ Aug. 2, 1610, II. 81. ⁴ Jan. 5, 1615, III. 273.

his Castles out of the hands of the constituted authorities; and then boldly to defy the King and the Privy Council of Scotland, after having declared his independence of the kingdom of Great Britain.

The most effectual check which was given to these mad projects, was the sequestration of his revenues, and the withholding from the Earl all supplies, excepting such as were necessary for his bare maintenance, as a state prisoner. This rigorous step, however, appears to have been carried too far, and to have suggested to the Earl the idea of sending his 'bafe son,' Robert Stewart, to Orkney; where, after he had uplifted his 'bygone rents,' &c., he might secretly convey a considerable portion of them to him, to enable him to bribe his guards. When thus provided, he directed his son to use every endeavour to obtain possession of the Castle of Kirkwall, and of the other strengths formerly belonging to the Earl; leaving it to himself to effect his escape from Dumbarton Castle, to which he had been conveyed for greater security. So jealous were the Privy Council of the machinations of this restless and ambitious Nobleman, that after long petitioning, and causing him to endure great privations, it was not until Jan. 28, 1614, that they allowed him, out of his large revenues, the paltry alimment of '4 lib. Scotts per diem!'¹

Robert Stewart did, no doubt, succeed in his rash attempt; but in that he was mainly favoured by the accidental circumstance of the high unpopularity of the Sheriff; who, on account of his oppressive conduct and cruel exactions, was detested by the inhabitants so deeply, that, in order to get rid of his thralldom, they even consented to join 'the Bastard' in his treasonable schemes, judging, perhaps, that so long an imprisonment, and such severe discipline in the school of adversity, must necessarily have changed the temper and habits of their natural and rightful lord, whose return they were led by Robert confidently to expect. This feeling was very strongly marked in the 'Band of Affociation, subscribed by the Rebellis in Orknay,' which is given in the Appendix. In that interesting document, 'the frequent entrantis of extraniers,'² 'the corruption of the Lawes, partialitie of Judges, the greid of officeris, and oppreffion of Magiftratis,' are dwelt upon as intolerable grievances.

The expedition of GEORGE, *fifth* EARL OF CAITHNESS, the King's Lieutenant, eventually succeeded; and the ringleaders in the Rebellion, as has already been seen, were executed by that person, who, it will be remembered, had formerly rendered himself infamous by his treacherously delivering up his kinsman, *John Lord Maxwell*, to government, after having lured him to Castle-Sinclair, under the mask of friendship and protection.³ The reader will find, from Documents preserved in the Appendix, that the Earl of Caithness intruded himself into this Commission, by eagerly volunteering his services to the Privy Council, so as, if possible, to ingratiate himself with his Sovereign, by quelling a Rebellion which had excited the observation and alarm even of the Court of England.⁴ It is not a little interesting, among all his specious pretexts, to detect and expose the secret springs which appear to have actuated that selfish and cold-blooded Nobleman in undertaking so repulsive an expedition as that against the Rebels in Orkney. Under the mask of patriotism, zeal for his Majesty's honour, and his pretended desire for restoring the peace of the country, it is not difficult to discover the basest motives of hereditary and personal revenge and deadly feud against the fallen Earl of Orkney; as well as a secret design to procure the whole, or at least, a considerable portion, of his extensive territories, as a reward for his patriotic services. But a little research enables us to perceive, that a rooted hatred had long existed between the Earls of Caithness and Orkney, which had frequently broken out into open strife. As an extraordinary instance of the spirit of wanton cruelty and mischief in which these hostilities were

¹ *Balfour's Annals*, II. 50.

² The natives of Orkney, having long been accustomed to be judged by the laws of Denmark, were peculiarly offended at the introduction of *foreign* laws, judges, and settlers in their country, which was the policy too suddenly adopted by the Sheriff and other officers to *civilize* the people. So strongly did they resent these and the other aggressions of the *foreigners*, that they gladly forwarded the Bastard's views for the expulsion of their hated taskmasters.

³ See this Collection, Vol. III., 33, &c. *Gordon's Hist. of Sutherland*, p. 301.

⁴ THE EARL OF CAITHNESS got a pension of a thousand crowns for his services, and was, shortly after his return, made one of the Lords of the Privy Council of Scotland, and was in a fair way to realize all the objects of his ambition, had not his overreaching spirit led him into a train of iniquities which terminated in the ruin of himself and his family, which for many generations did not recover this shock.

carried on by the former, a quaint, but striking passage may be cited, from the graphic pen of Sir Robert Gordon;¹ who states, that in the year 1608, some of the Earl of Orkney's servants had been forced to land in the country of Caithness, 'by a contrarie wind and vehement storme of weather. First, the *Earle of Catteynes* maid them drunk; then, in a mocking jest, he caused sheave the one fyd of their beards and one fyd of their heads; last of all, he constrayned them to tak their weshell, and to goe to sea in that stormie tempest! The poor men, seareing his farther crueltie, did choyse rather to committ themselves to the mercie of the senseles elements and raging waves of the sea, then abyd his furie. So they entered the stormie Seas of *Pentlay-Firth* (a fearfull and dangerous arme of Sea between *Cat-teynes* and *Orknay*), whence they escaped the furie thereof, by the providence and assistance of God, who had compassion on them, in this lamentable and desperat case, and directed ther course; so that they landed saiffie in *Orknay*. This affront and indignitie wes highlie taken (not without just reason) by the *Earle of Orknay*, who complained therof to THE KING and his *Counsell*. His MAJESTIE did write to the *Councell of Scotland* to punish the *Earle of Catteynes* severlie, after dew tryall, as having committed a fact against his autoritie. But when both the *Earles of Catteynes* and *Orknay* came to Edinburghe, readie to informe one against another, they agreid all their privatt quarrells, by the mediation of freinds, *lest they should reveile too much of either's doings!* So this controversie was past over with silence; and some acknowledgement was maid by the *Earle of Catteynes* to the *Earle of Orknay*, as a satisfacion for abusing his servants,' &c.

The intriguing Earl of Caithness at length brought ruin upon himself and his family, by endeavouring 'to mak the Lord Forbes wearie of his landis in Catteynes.' This benevolent purpose he tried to effect by constant oppression of his tenants and servants, in virtue of his office of Sheriffship, which he had obtained from the Earl of Huntlie, on his marriage with Lady Jean Gordon, his sister. He secretly caused incendiaries burn all the corns standing in the corn yards of Sansett, in November 1615; and, to remove suspicion from himself, industriously rumoured abroad, that the Fire-raising had been done by Mackay's tenants, with whom the Forbeses were then at feud. The matter, however, having soon been disclosed by the actual perpetrators, the Earl was closely prosecuted; and he only obtained his Remission² after a long interval, 1st, By engaging to satisfy his numerous creditors; 2dly, by resigning into the King's hands the Sheriffship and Justiciary of Caithness; 3dly, by engaging to present to justice the malefactors whom he had employed to burn the corns; and, lastly, to resign to the Bishop of Caithness the House of Strabister, with certain Feu-lands of that Bishopric, amounting to the yearly value of 2000 merkis Scots, in augmentation of the Bishop's scanty revenues. His son, *Lord Berriedale*, was imprisoned for these debts for above five years; but the Earl himself obtained a '*superse-dere*,' or protection from legal 'diligence,' from the Privy Council. The creditors, however, 'apprized,' or sequestrated, all his lands. He was denounced Rebel in 1621, and his own son, Lord Berriedale, applied for and obtained a Commission to pursue his father! After five years' imprisonment, he was released for that purpose, on finding due caution to return to ward after having executed his Commission. In September 1623, Lord Berriedale and Sir Robert Gordon, the King's Commissioners, having taken the field against the Earl of Caithness, he precipitately fled to Orkney, intending to go thence to Norway and Denmark. Castle Sinclair, and his other Castles of Aerigell and Keasse, were immediately taken possession of in the King's name; and the Commissioners succeeded in pacifying the country of Caithness.

George, *fifth* Earl of Caithness, after having passed a miserable life, died, a victim of disappointed ambition, and in comparative obscurity, in Caithness, in the month of February, 1643, at the advanced age of 78.

¹ *Hist. of the Family of Sutherland*, p. 258. ² The author of the *History of King James the Sext*, p. 391, says he became in the King's will, who decerned thus: to pay to the party offended 2000 merks; to renounce his pension of 1000 crowns; to renounce his Sheriffship; and that he 'sould caus the Bishop be answert of his spirituall dewtles ther; and sould redres all quarrells and faultis to peax.'

But to return from this digression, the only person among the Rebels, whose life was saved, was PATRICK HALCRO. He had been instrumental in bringing about a surrender of the Castle of Kirkwall, and had proved the means of preventing much bloodshed, which otherwise must have been occasioned, had the Rebels persisted in their Treason.¹ The advisers of the Crown, therefore, recommended him as a fit object of mercy; and more especially on account of the terms which he had proposed to the King's Lieutenant, at the time of the surrender.

It has formerly been observed, in reference to THE EARL OF ORKNEY, that he had originally been in high favour with the King; and that, in point of exterior, he was a person of courtly manners and polished address. So anxious was the King for his release, that certain Lords of the Secret Council were empowered to offer him the keepership and profits of either of the Royal Palaces of Holyroodhouse, Linlithgow, Stirling, or Falkland, with Ten Thousand pounds of rent, on condition that he should renounce all right to the Earldom of Orkney, and resign the same in the King's hands. But so infatuated and blindly perverse was the Earl, and so intent was he on accomplishing the objects of his visionary ambition, that he absolutely refused these conditions; having, previously to that time, instructed his son to hazard the mad attempt for which they both forfeited their lives. An anonymous author,² already quoted, has given a most faithful and remarkable portrait of the princely habits and lavish expenditure of *Patrick Earl of Orkney*, when he resided in his own territories, surrounded by his vassals and dependents. His sketch cannot fail to be generally interesting. "He had a princelie and royall reuenu; and indeid behavit himself ther with sik foueraintie, and geve³ I durst say the playne veritie, rather tyranicallie, be the fhaddow of Dence Lawis,⁴ different and more rigorous nor⁵ the Municipall or Criminall Lawis of the rest of Scotland; wherby, no man of rent or purfe mycht enjoy his propertie in Orknay, without his speciall favour; and the fame deir boght. Wherby it followit, that fitchit and forgeit faultis was fo devyfit aganis manie of them, that they wer compellit, be emprefonment and small reuaird, to resigne ther heritable tytllis unto him; and geve he had a steve⁶ purfe and no rent, then was fum cryme devyfit aganis him, wherby he was compellit to lose ather half or haill therof, geve not lyff and all beyd I. And his pomp was fo great ther, as he went never from his Castell to the Kirk, nor abroad utherwayis, without the convoy of fiftie muscaters and uthir gentlemen of convoy and gaird. And siclyk, before denner and supper, ther wer thrie trumpetters that foundit still till the meat of the furst seruice was fet at table; and siclyk, at the second seruice; and consequentlie, efter the grace. He had also his ships directit to the Sea, to intercep Pirats, and collect tribut of uncouth fishers,⁷ that came yearlie to thes Seyis. Wherby he maid sik collection of gret gunnis and uther weapons for weare, as no Hous, Palice, or Castell, yea all in Scotland wer not furneist with the lyk; and yit all this provisioun was spulzeit, in his awen tyme, be the violent hand of the Erle of Caithnes."

It only remains to the Editor to state, that this haughty Earl, according to *Archbishop Spotswood*,⁸ 'took his Sentence impatiently;' on which account, 'some Preachers were desired to confer with him, and to dispose his minde towards death. But they, finding him irresolute, intreated for a delay of the Execution; which was granted to the sixth day of February. At which time, he was brought unto the Scaffold, guarded by the Magistrates of the City, and in the sight of many people beheaded.' *Calderwood*⁹ gives a fuller account of his death, in these terms. (Feb. 1, 1615.) 'PATRIK EARLE OF ORKNEY was arraigned in the Tolbooth of Edinburgh; and be ane Inqueist of the Nobles and Barrones, was convict of Treafone, for the late REBELLION IN ORKNAY. It was thought, that if he had not,

¹ *Sir Robert Gordon* says, 'This Patrik Hacro was afterward in great favour with Earle George (Caithness), and well interteyned by him for this service.'—*Hist. of Sutherland*, p. 301. ² 'THE HISTORIE AND LIFE OF KING JAMES THE SEXT,' printed for the *Bannatyne Club*, 1825, Quarto, p. 386.

³ If. ⁴ Orkney was then governed by Danish Law, which was most iniquitously applied by the Earl and his deputies. ⁵ Than. ⁶ Stiff; well fed. ⁷ Fishers who came from Holland and other foreign countries. ⁸ *Spotswood's Hist.* Fol. Lond. 1668, p. 520. ⁹ *Cald. MS. Church Hist.* Advocate's Library.

20 dayes before, confessed, that he was the author of the said Rebellion, and come in the King's Will for the same, that hardly he could have been convicted, be any Law. The wiser and elder sort of the Nobilitie with-drew themselves from his Affise. He had sent to the Court to obtaine favour; but no appearance of returning ane answer. The Ministers, finding him soe ignorant, that he could skarse rehearse the Lord's prayer, intreated the Counsell to delay his Executione some few dayes, till he were better informed, and received the Lord's Supper. Their Petitione was assited with the requiest of some Noblemen, and granted. Soe he communicate upon the Lord's day, the 5th of February; and was beheaded, at the Market-crosse of Edinburgh, upon Monday the 6 of Februar; when Sir Robert Ker, Earle of Rochester, was decourted. The King laid the blame of his death on him; but late, as his custome was, when matters was past remedie! It was observed that this moneth is fatal to the King's blood.'

The reader is once more referred, for details, to the Appendix of ILLUSTRATIVE DOCUMENTS annexed to the Trial of ROBERT STEWART and others, Jan. 5, 1615; and to the Papers annexed to the present Trial.]

[*Dominus Willielmus Heart de Prestoun, miles Justiciarius.*]

ASSESSOURIS TO THE JUSTICE.

ALEX ^a ERLE OF DUNFERMELING, Chancellor,	SIR JOHNNE COKBURNE of Ormestoun,
THOMAS LORD OF BYNNING, Secretar,	SIR ALEXANDER HAY of Quhitburgh,
MR JOHNNE PRESTOUN of Pennycuik, President,	SIR WILLIAME LEVINGSTOUN of Kilfithe,
SIR GEDIONE MURRAY of Elibank, Thefaurer-depute,	SIR ALEXANDER DRUMMOND of Meidhope;
SIR RICHARD COKBURNE of Clerkingtoun,	all SENATOURIS OF THE COLLEGE OF JUSTICE.

Feb. 1.—PATRIK ERLE of Orknay, &c.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord for his hienes intereis, of the seuerall crymes of Treafone and Lese-Maieftie, at lenth specifeit and set down in the Dittay following.

DITTAY *against the Earl of Orkney.*

PATRIK ERLE OF ORKNAY, &c. 3e ar Indytit and accuset, fforfamekill as, certane and sure informatioun being gevin to our souerane lord, the Kingis most excellent Maieftie, and to þe Lordis of his hienes Previe Counfall of this Kingdome, of the manyfold Iniureis, Tyranneis, and haynous Oppressiones, practizet be 3ow vpon dyuerse his Maiefteis peceable and guid subiectis, duelland within the boundis of Orknay and Zeitland: Lyk as, for the better stay of the quhilkis, 3our former Tirranie and Oppressioun fra haifing forder course, and for the mair exact and substantious tryell of 3our giltines pairof, 3e, be his Maiefteis speciall directioun, being committit to waird, within the Castell of Dumbarten, to haif remanit pairin, quhill ordour had bene tane with 3ow, as appertenit: IT is of verritie, that 3e, vpone occasioun of the restrante of 3our former libertie, freitting in 3our awin mynd pairat, nocht only during the tyme of 3our wairding, devyset all indirect and vnlawful meanis and moyane for 3our brek and escaipe furth of þe said waird, albeit skarrit and hindreit, throw the fidelitie of 3our keiperis fra doing pairof; bot lykwayis, maift treffoneabillie and vndewtfullie schaikand af 3our allegiance and dew obedience to our said souerane lord,

to quhais bountiefull clemencie ze war fa gritlie bund, ze maist tressonabillie plottit, devyset, and concludit the lait tressonabill Rebellioun, Vproir, and Infurrectionioun, profecute and followit furth be zour devyfe and directioun within the said cuntrie of Orknay; in suafar as vmq^{le} Robert Stewart, zour base sone, eftir mony thraitningis and minatorie speiches vtterit be zow aganis him, for his simplicitie in randerung and overgeving of his Maiesteis Castell of Kirkwall to James Bischope of Orknay, quha than had Commiffioun of his Maiestie to command all Castellis, Houffis, and strenthis within the boundis of Orknay and Zeitland, and quha, be vertew of the same Commiffioun, acqyret possessioun of the said Castell of Kirkwall and remanent Houffis and Palices within the bounds aboue writtin: AS ALSO, eftir þe said Robert his reconfiliatioun with zow agane, vpone conditioun that he fould vndertak quhatsoeur desperat course ze fould command him to follow, off zour speciall causeing, sending, hounding out, command, counsell, devyfe, and only directioun, quhome ze also furneist with perticuler iniunctiones, set down be zow in writ, how he fould carie and behave him selff in that zour tressonabill intendit interpryse, he, in the moneth of Maij, or þairby, last-bypast, past furth of þir pairtis to þe cuntrie of Orknay, and þair, haifing forgaderit with Patrik Halcro, quha also was speciallie imployit and directit be zow, to aid and assist him in that vnhappie buffines, and to quhome ze gaif ane securitie, in writ, of certane landis, rowmes, and steidingis, vpone conditioun that he fould tak pairt with the said Robert, zour sone, þairintill: FIRST, accoirding to zour directioun with the assistance of vmq^{le} Thomas Blak, Archibald Murray, Andro Mairtene, Thomas Layng, Alexander Legget, and dyuerse vtheris þair rebellious associatis, the Houfe and Place of Birsay was tressonabillie surpryset and tane in be thame, &c.¹ THE making of the quhilk tressonabill Vproir and Rebellioun within the said cuntrie of Orknay; the Tressonabill Surpryseing and taking in of the said Place of Birsay, Place of the Zairdis, Castell of Kirkwall, Kirk and Steiple pairrof, and remanent his Maiesteis Houffis within þe said cuntrie of Orknay, keiping and halding of the samyn, in maner foirsaid, and haill tressonable practizes following þairupone, war haillilie plottit, devyset, forget, and concludit be zow, and the samyn war maist tressonabillie put in executioun be the said vmq^{le} Robert, zour base sone, and his rebellious companie; off zour speciall causeing, sending, hounding out, airt, pairt-taking, counfall, devyfe, and only directioun: LYK AS, dyuerse Letteris and messages past betuix zow and þe said Robert, zour sone, eftir zour tressonabill taking of þe said Place of Birsay, incurrageing him þairby to keip the saidis Houffis, and to follow furth þe rest of your iniunctiones gevin to him in that zour tressonable interpryse: LYK AS, þe said vmq^{le} Robert,

¹ Here the whole particulars of the treasonable transactions detailed in Robert Stewart's Trial are rehearsed, which it is unnecessary to repeat in this place. *Vid.* Jan. 5, 1615.

your sone, and dyuerse vtheris his associatis, being examinat vpoun þe verritie of þe premisses, in presens of the Lordis of his Maiesteis Previe Counfall, be pair Depositiones, hes grantit and confessit, that þe said Rebellioun was first intendit¹ be your sone, and profecute and followit furth be your speciall directioun and command, gevin to the said Robert, your sone, and Patrik Halcro, to aid and assist him pairintill: AND siclyk, be the Depositiones of James Lyoun, Johnne Scherp, Duncane Mitchell, the said Patrik Halcro, and dyuerse vtheris persones examinat in that matter, your giltines of the said Rebellioun is cleirly verifeit and provin: LYK AS, the said vmq^{le} Robert, your sone, the day that he was accuset and persewit for the tressonabill crymes aboue writtin, befor he was presentit vpone pannell, being re-examinat, of new, in presens of dyuerse Lordis of his Maiesteis Previe Counfall, nocht only maist constantlie abaid at all his former Depositiones maid be him, concerning that Rebellioun, bot also eikit² pairto, that ze gaif to him selff ane perticuler Warrant, in writt, to pas to the said interpryse, and to recover the said Castell agane vnder his power; as also, that ze delyucrit to the said Patrik Halcro ane securitie, in writt, of certane landis and rowmes, vpone conditioun that he sould interpryse the recoverie of the said Castell, and assist Robert pairintill: Quhilkis Confessiones and Declarationes was also ratifeit and renewit be the said Robert, vpone pannell, in presens of the Justice and Assysouris afoir his Convictioun, and vpone the scaffold, in presens of the haill people, immediatlie befor his executioun. LYK AS, the said Robert, your sone, and his associattis, was convict and execute to the daith, for the haill tressonable crymes aboue specifeit, as done and committit of your speciall causeing, counsell, and directioun; as the proces of pair convictioun, heirwith producet, beiris. AND FINALLIE, your lordschipis selff being presentit, vpone the tuelff day of Januar last, in presens of dyuerse Lordis of his Maiesteis maist honourabill Previe Counfall of this kingdome, ze pair, be your Deposition, subscryuit with your hand, acknowlegit and confessit the geving of the directioun be your sone to your vmq^{le} sone Robert, and vtheris his associattis, for þe surpryseing, taking, and detening of the said Castell of Kirkwall, craveing God and his Maiesties pardoun for that your offence, and in all humilitie and submissioun offerit your selff in his Maiesteis Will for þe samyn: As your Deposition, heirwith producet, mair cleirly testifeis: QUHAIRIN, ze, as the principall devyser, fortifiear, and steirar vp of þe said vmq^{le} Robert, your sone, to the practizeing of the former Rebellioun, hes committit oppin and manifest Tressone aganis our souerane lord, the Kingis most sacred Maiestie, and his royall authoritie: AND ze ar airt, pairt, red, and counsalour of the haill tressonabill practizes aboue writtin: ffor the quhilk, ze aucht

¹ Contrived; purposed; set on foot.

² Added.

and fould be demanit¹ and puneift as ane *Tratour*; to the terrour and example of vtheris to abstene fra the lyk heireftir.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intereis.

PRELOCOUTOURIS in defence,

Mr Alexander King, Mr Thomas Nicolfoun, Mr Alexander Peiblis, James King, Aduocattis.

Mr Alexander King, Aduocat, producet ane *WARRANT* of the Lordis of Secret Counfell, for himself and the remanent prelocoutouris, to compeir this day, in defence of the Erle of Orknay, for the crymes contenit in his *Dittay*.—The foirsaidis *ASSESSOURIS*, nominat to concur with the Justice in this proces, war fuorne: Aganis quhome na oppositioun was maid be the pannell: Quhairupoun my Lord Aduocat askit instrumentis.

My Lord Aduocat producet the *DITTAY*, and defyret proces aganis the pannell for the tressonable crymes thairin contenit.

The *Dittay*, be command of my Lord Justice and his *Affessouris*, being red, and the pannell accuset, be vertew thairof, of the feuerall poyntis of *Tressone* and *Lese-Maieftie* thairintill, it is allegit, be my Lord of Orknay and his prelocoutouris, that feing thair ar mony grit and haynous poyntis contenit in the *Dittay*, and that the samyn war nocht knawin quhill² now to the pannell, and na coppie thairof was gevin to him, quhairvpoune the pannell and his prelocoutouris mycht haif consultit, quhilk aucht to haif bene done; defyret, thairfoir, ane tyme to be grantit to the saidis Prelocoutouris, that thay mycht advyse with my Lord of Orknay thairupoun.—It is anfuerit, be my Lord Aduocat, that the pannell is brocht fra the Kingis *Waird* to the bar, and accuset of crymes committit aganis his *Maieftie*s authoritie, quhairof he is nawayis ignorant: Na coppie of his *Dittay* fould haif bene gevin to him, nor na delay fould be grantit, in *Tryell* thairof; bot, conforme to the daylie practik of this Judgement, quhair ane persone challenget and committit to waird for *Tressone*, and brocht to his *Tryell*, the *Dittay* quhairupoun he is accuset is fummerlie discuffit, without delay or continuatioune.—It is allegit be the pannell, that he was nocht wairdit for this cryme, specifeit in his *Dittay*, bot for vther crymes; and this *Tressone*, quhairupoun he is now dilait and accuset, is committit during the tyme of his impriffonement: And feing, the only caus quhy his prelocoutouris craves this delay to be grantit, is allanerlie³ to confer with his lordschip, anent the veritie of the factis lybellit; quhidder he may plead giltie or innocent thairof: Defyres, as ofbefoir, ane convenient tyme to be grantit to thame to confer with the Erle thairupoune.

My Lord Aduocat takis instrumentis of the pannellis declaratioune, that he was wairdit for vther crymes; and that the crymes lybellit was committit sen his wairding: And as to the continuatioun cravet be his prelocoutouris for ane

¹ Treated.

² Until.

³ Alone; only.

convenient space, na delay fould be grantit, in respect his lordschip can pretend na ignorance of the crymes contenit in his Dittay, feing he hes bene dyuerse tymes examinat thairupoun be the Lordis of Secretit Counfall, vpon the verritie thair of.

THE JUSTICE, with advyse of the Assessoris, Repellis the pannellis allegiance bot, *ex gratia*, Grantis ane half hour to the pannel and his prelocutouris to be advyfit thairupoun.—Quhairupoun my Lord Aduocat askit instrumentis.

The pannel, with his prelocutouris, haifing resfaut vp the Dittay, and removet thame selfis apairt to the Counfall-hous to be advyfet thairupoun, returnet within the space grantit to thame for that effect; and Declairit, that thai wald nawayis impunge or dispute aganis the relevancie of the Dittay: And as to the verritie of the crymes contenit thairintill, speciallie the directiones allegit gevin to hes vmq^{le} sone, Robert, to practize the Rebellioun lybellit, denyis any sic directioun: And gif any command may be inferrit gevin to his sone, it was nawayis to commit any fact or deid to the offence of his Maiestie, or his heines autoritie; bot to pas over to Orknay, and to tak intromiffioun with his Houffis, guidis, and geir being thairintill, vpon mere ignorance and simplicitie; nawayes thinking that ony sic command fould infer Treffone, or ony vther cryme or offence aganis his gracious Souerane. And, thairfoir, fleing fra all forder defence of his awin innocencie, hes his refudge to his Maiefties grace and mercie: And, as of befoir, craves God and his Maieftie pardoun for his oversight and negligence on this poynt; and in all humilitie and submissioun cumis in (his) hienes Will for the samyn: And ratifeis his former Deposition, in everie point.

THE JUSTICE referrit the said Dittay to the tryell of the honourabill perfones of Affyse vnder writtin, quha war lauchfullie summond to that effect.

ASSISA.

JAMES, ERLE OF GLENCAIRNE,
GEORGE, ERLE OF WENTOUN,
JOHNE, ERLE OF PERTHE,
ROBERT, ERLE OF LOUTHIANE,
WILLIAME, ERLE OF TILLIEBARDIN,

DAVID, LORD SCONE,
WILLIAME, LORD SINCLAIR,
JOHNE, LORD HEREIS,
JAMES, LORD TORPICHENE,
HEW, LORD SENPILL,

WILLIAME, LORD KILMAWERIS,
JOHNE GRANT of Freuchie,
SIR PATRIK HEPBURNE of Wrauchtounne,
ROBERT ARNOTE of Fairny,
SIR HARIE LYNSAY, elder of Kynfawnes.

My Lord Aduocat takis instrumentis of the sueiring of the Affyse: And for verificatioun of the Dittay, vses the haill Depositiones of the Witnessses productet; partlie subferyuit be the parteis, and partlie be the Lordis Examinatouris; speciallie, the Depositiones of the Witnessses mentionat in the Dittay: Produces the Letter of Tak¹ grantit be his Maieftie to Sir James Stewart, contening the Commissioun of Schereffschip: Repeitis the notorietie of Mr Johnne Fynlafones office of Schereff deputrie: Repeitis the Commissioun productet, grantit to my Lord Bischope of Orknay; and lykwayis, my Lord of Caithnes Commissioun;

¹ Lease.

with the thre feuerall Letteris direct to Robert Wynrahame, Yla Herauld, and executiones thairof: Repeitis the Criminall proces led and deducet aganis v^mq^{le} Robert Stewart, and remanent perfones his complices; with the Sentence and dome pronouncet aganis thame, beirand that the haill crymes thairin contenit war done and committit be thame and thair complices, of my Lord Orknayis speciall directioun and command: Repeittis the tua Miffiues, writtin be Johnne Scherp, at my lordis command, as he affirmes, quhilkes war gottin vponne Duncane Mitchell: Repeittis the Warrant direct be my lord, to establishe the keiping of the Castell of Kirkwall in the perfone of Patrik Halcro: Repeitis the Depofitioun of Patrik Halcro and the said v^mq^{le} Robert thairanent: Produces the Band fufcryuit be the cuntrie people, for taking eafald pairt with Robert, in the former Rebellioun practizet be him in Orknay: Produces ane Charter, grantit be my lord (Earl of Orknay) in fauoures of Patrik Halcro, fufcryuit at the Castell of Dumbarten, of certane landis in Orknay, for taking pairt with the said Robert Stewart in the said Rebellioun, albeit that caufe be nocht expreffit in the said Charter: Repeitis the Judiciall Confeffioun maid be my lord, vponne the tuelf day of Januar laft, quhairin he hes Confeffit, that the Castell was fufpryfit be Robert, his fone, be his directioun: And the said Erles cuming in (his Majefty's) will for the famyn: Repeittis the haill Depofitiones maid be Robert, befor he was pannellit; his Depofitioun maid the famyn day that he was pannellit; his Judiciall Declaratioun vponne pannell; and his Declaratioun vponne the Scaffold: With the Depofitiones of Patrik Halcro, James Lyoun, Johnne Scherp, Duncane Mitchell, Duncane M^cclaren, Barnard Stewart, Mr Michell Mair: And in speciall, thair Depofitiones maid to the Lordis of Secretit Counfell, being confrontit with the Erle: Repeitis his lordfchipis cuming in Will, this day; and speciallie, his ratificatioun of his former cuming in Will, vponne the tuelf of Januar. And thairupoun askit instrumentis: And Protestis for Wilfull Errour aganis the perfones of Affyfe; and that thai fall incur the lyk cryme and punifchment of Treafone quhairvpoun the pannell is accuset, gif thai acquit him thairof.

VERDICT. The Affyfe, all in ane voce, be the mouth of James, Erle of Glencairne, chancellor, ffand, pronouncet, and declairit the said PATRIK, ERLE OF ORKNAY to be GILTIE, culpable, and convict of the treflonable Rebellioun committit be v^mq^{le} Robert Stewart, his bafe fone, and his rebellious affociattis, with in the cuntrie of Orknay: Quhilk was done and committit be the said Robert and his complices, of the speciall caufing, command, devyfe, and directioun of the said Patrik, Erle of Orknay, his ffather; in forme and maner fpecificit in the Dittay and Depofitiones producet be our said fouerane lordis Aduocat, for verificatioun thairof; speciallie, conforme to the said Erle of Orknay his awin Depo-

fitioun producet and subfcriuit with his awin hand, and this day ratifeit and renewit be him in judgement; ffor the quhilk he is cum in his Maiefteis will.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Ordanit the faid Patrik, Erle of Orknay, to be tane to the Mercat-croce of the burgh of Ed', and thair, vpon Fryday nixt, the thrid of this instant, betuix tua and thre houris eftir none, his heid to be ftrukkin from his body: And all his landis, lordfchipis, leving, heritages, takis, fteidingis, rowmes, poffeffiones, offices, digniteis, rentis, guidis, and geir, to be fforfalt and efcheit to our fouerane lordis vsê, as culpable and convict of the faidis treffonabill crymes.

[It has been thought proper to preserve the following entries. The absence of so many ASSISORS, on such an important occasion, must doubtless have been occasioned by the "grit storme and feafone of the zeir." It is proper, however, to remind the reader, that Calderwood asserts that they '*withdrew themselves from his Assise.*'¹]

COMPEIRIT Hew Dunbar, wryter, *excusatorio nomine* for HEW LORD LOWDOWN, and declairit to pe Justice, that pe said Lord of Lowdown was past pe age of thre scoir zeiris, visseit with dyuerse bodielie infirmiteis, speciallie ane grit dollour,² and fairnes in his richt leg; quhairthrow, in pis grit storme and feafone of the zeir, he is nocht hable to travell to the keiping of this Justice Court, to haif past vpon pe Erle of Orknayis Assyse, conforme to charge gevin to him for pat effect, without the grit haizaird of his lyfe: And producet ane Testimoniall pairupoun, subfcriuet be James Greg, Minister at Lowdown, Mr George Walker, Minister at the Kirk of Auchinlek, and Mr Alexander Wallace, Minister at Galtoun. Quhilk Testimoniall, and excufe mentionat pairintill, the Justice admittit. Qubairupoun the said Hew Dunbar askit instrumentis; and protestit that pe said Lord of Lowdown could be fted and releuit of his vnlaw.

Compeirit lykwayis Mr James Oliphant, Aduocat, *excusatorio nomine* for THOMAS ABERCROMBY OF THAT ILK, and declairit, that he was hevelie diseasit of ane fall; and pairthrow vnable to travell to this dyet, to pas vpon the Erle of Orknayis Assyse, without grit hazard; and producet, for cleiring pe veritie pairof, ane Testimoniall subfcriuit be Mr Williame Glas, Minister at Dunkeld, and be dyuerse of the Elderis of that parochin. Quhilk Testimoniall and excufe pe Justice admittit, &c.

Compeirit pe said day, Thomas Fallafdaill, Proveist of Dumbarten, *excusatorio nomine* for ALEXANDER COLQUHOUN OF LUSE, and declairit that he was visseit with ane grit seiknes, and nocht hable to travell to the keiping of this dyet, being fummond to pas vpon the said Erle of Orknayis Assyse; and pairuponne producet ane Testimoniall, subfcrivit be Mr Walter Stewart, Minister at Kilpatrik. Quhilk the Justice admittit, &c.

The quhilk day JAMES MARQUEIS OF HAMMILTOUN, WILLIAME ERLE OF ANGUS, JOHNNE ERLE OF MONTROIS, JAMES ERLE OF MURRAY, PATRIK ERLE OF KINGHORNE, ALEXANDER ERLE OF HOME, ALEXANDER GORDOUN of *Clwnie*, SIR ALEXANDER FALCONER of *Halkertoun*, SIR ROBERT BRUCE of *Clackmannanè*, JAMES HADDENE of *Glennageis*, SIR WILLIAME STEWART of *Gairnetullie*, JOHNNE BUCHANNANE of *that Ilk*, SIR ROBERT GORDOUN of *Lochinvar*, and WILLIAME DOUGLAS *appeirand of Drumlanrig*, being oft tymes callit, &c. and nocht compeirand, thay, and ilk ane of thame, for pair non-compeirance, war unlawit, and americiat in the panes content in the Actis of Parliament.

¹ See this Coll. III. 312, &c.

² Pain; trouble; disease.

APPENDIX OF ORIGINAL DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF PATRICK, EARL OF ORKNAY.¹(1.) LETTER, THE KING to the *Privy Council of Scotland*, 'anent the oppressed People of Orknay.'²

RIGHT trustie and weilbeloveitt cofines and counfallouris, We greitt 3ow weell. HAVEING red that 3our Lettre, sent with pe COMMISSIOUNE desyreit by those oppreffit peopill, complemantis vponne THE ERLL OF ORKNAY; houfoevir, the same is groundit only vponne civil Horningis, and that the Commissiounne conteanes leveying of menne, befeiging of houffis, reassing of ffyre, and dispenfatiounne for Slaughter in the vseing of it, togidder with a WARRANT of concurrence for the country peopill of CAITHNES, which is thocht man³ breid a farther wnquetnes; and that the lyk Commissiounnes hes not bene grantit, except quhair the REBELLIOUN wes for a criminall caus: 3IT, haveing dewlie considerit the miserie of the poore distressit peopill, whose hard fameishing estait is worfe than death; the nomberis of thame, whiche is a great presumptiounne that fume of thame hes over iust caus; thair continowall outcryis and exclamatiounnes heir, to the gritt scandell of our kingdome and COUNSELL thair, as if Oppressioun wer tollerated thairin, and that the Counfall wer cairles to remedy it: And then, THE ERLL OF ORKNAY is awin contempteous Rebelliounne, nevir preassing aither to fatisfie the partie, or relax him self fra the horne: The contenance of whiche disobediante, albeit for a civeill caus, can have na better constructione of ws, than that it is becum of the natur of a criminall. WE, vponne the respectis foirfaidis, being loath that the distressid fould not have the benefeit of our releiff, and the proud and rebellious not feill the weight of our iust wreath and indignatioun, have concludit to grant the said Commissioun, in forme as it is desyrit, and hes signed and sent heirwith wnto 3ow: Bot, as We have evir bene unwilling to condem ony partie wnhard, and pairwith loth to cut aff a member quhair pair is any hope of recoverie pairof, We heve thocht meit to will 3ow, by oppin Proclamatioun, charge THE ERLL OF ORKNAY to compeir befoir 3ow the secund day of Marche nixtocum, for to give all dew and ressonable satisfioun that may be iustlie demandit of him be ony who presently ar complemantis one him, so as We be no farder troubleid and importuned with thair Petitiones;⁴ with certificatioun to him and⁵ he fail of his appeirance that day, that not only the foirfaid Commissiounne falbe grantit to those quho presentlie desyres the same, in suche form^e as it is socht, bot thay, in the executiounne pairof, falbe assistit with our power and authoritie, boith be sea and land, for the punishing of his Rebelliounne. AND if he do cum pair, at the day foirfaid, 3ow fall tak sum good ordour that he may be furthcummand,⁶ wntill such tyme that he have aither cleirit or satisfeit all compleaneres aganes him. AND in cais of his not compeirance, 3ow fall thane expeid this present Commissiounne, and delyver it to the pairteis futtareis;⁷ and 3ow fall give wntill thame suche Warrands for concurrence of the cuntry, or quhatevir ellis may furder the prosequiting of the Commissiounne. For doeing quhairof, thir presentis falbe 3our sufficient Warrant. And willing 3ow to be cairfull in the spedie directiounne of this Proclamatiounne, as 3ow wald eschew our reprooff, ffor ony neglect of tyme pairin, WE bid 3ow fairwell. FROME OUR COURT AT CHETFOORDE, the 6 of December, 1608.

[JAMES R.]

To our rycht trustie and weilbeloveit cofines and counfallouris, the Erll of Dumfermling, our Chancellor, and remanent lordis and wtheris of our PRIVIE COUNSALL OF SCOTLAND.

¹ Reference is particularly made to the large COLLECTION OF PAPERS appended to the Trial of *Robert Stewart* and others, for their Rebellion in Orkney, which all relate to this present Case. See this Collection, Vol. III. p. 283, &c.

² From a Copy preserved by *Lord Haddington* in his MS. Collection of State Papers. ³ Must. ⁴ The number of Supplications and complaints from THE PEOPLE OF ORKNEY to THE KING himself was very great: but he delayed taking any step until importuned to grant this Commission; which, though at length he subscribed, was clogged with the additional delay of ordering the *Privy Council* to charge the *Earl of Orkney*, of new, to appear before them; so as, if possible, to divert the *Earl* from his criminal courses. But he had long contemned the Proclamations and charges of the *Council*; and this new charge would merely appear to him as a fresh proof of their imbecility; and as he could 'call the King his cousin,' so he hoped that the *Council* would not dare to molest him in his Island Kingdom. ⁵ If. ⁶ Forthcoming. ⁷ Suiters; petitioners.

(2.) NOTE OF THE CONFERENCE *had be the Secretare and Aduocat¹ with the Erle of Orknay.*²

My Lord Aduocat and I repaired to the Castell of Ed^r to THE ERLE OF ORKNAY, and declaired to him that We had commandement from HIS MA^{TIES} to examine him, vpon the caufes of THE REBELLION OF ORKNAY. He declaired, that he wes innocent and ignorant thairof. That *Sir James Stewart*³ came to the Castell of Ed^r to him, and schew that his sone *Robert* wes gone to Orknay, whoes actiones thair might breid offence to HIS MA^{TIES} and danger to *the Erle*; who answered, that want of meanes had forced *Robert* to gang thair, to vplift sum reftis⁴ of the Tennantis dewties auchtand to *the Erle*, to help to supplie *the Erles* wantis and his owne. That since it wes evill tane, he wald wryte to *Robert*, that he might retire furth of Orknay, desyring that *Sir James* wald caufe convoy his Letter to his sone, and command his doaris to giue ouersight to *Robert* to transport him self to *Caitnes*. That he neuer wrait any vther Letter to *Robert* since he went to Orknay.

It being replied be ws, that efter *Robert* had tane *BIRSA*, and disobeyed the chaarge vsed be *the Sheref-depute* to rander that Houfe, vnder the payne of Treason, he had writtin to *the Erle*, who, having reffaued his Letter from *Duncane Mitchell*, Poist, he had writtin bak to him with the said Poist. He denyed the wryting of any fuch Letter to his sone; and when he saw his seruand, *John Schairp*, of mynd to wryte to *Robert* with that Poist, he had dischairged him to wryte; and that *Schairp* had desyred him not to find fault, that he might fend his owne privat Letter, ansuering to that which he had reffaued from *Robert*; bot that nather *Schairp* nor *Mitchell*, being broght to his presence, wald fay any thing to the contrarie of this his declaration: Which is the substance of all that he wald fay to ws in that poynt; adding, that no thing proceeding from him had occasioned THE REBELLION; bot that the extreame rigour vsed be *Mr John Finlason* to the cuntrie people, and the wrong intended be *Mr John* to the cuntriemen, who, with great haifard of thair lyves, had forced THE PIRATES,⁵ and tane thame and thair schip, had disposed thame to REBELLION. And that thay had perswaded *Robert* to assist thame aganis *Mr John Finlason*, and to be head to thame in thair interpryses.

Being demanded, what condicion he had made to *Patrik Halcro*, for his joyning in this Rebellion? Denyed that he knew him familiarlie, or even had to do with him; and that no thing had moved *Halcro* to mell in these turnes bot his great affection borne to *Robert*, his sone. Farder, we could not induce him to grant, in ony circumstance, of the proceedingis of his sone in his Rebellioun. We declaired to him, that what he concealed of the cairiage of this interpryse wald be detected be his sone *Robert*, *John Schairp*, and *Mitchell*, who wer all in handis. He answered, that he wes confident that thay could fay no farder nor he had declaired to ws.

(3.) EXAMINATION of *Patrick Earl of Orkney*, and Re-Examination of *John Schairp* and *Duncan Mitchell*.

AT EDINBURGH, the *secund day of Nouember*, 1614. In presence of my Lord Chancellor, ecretair, *President*, *Previe Seale*, *Thefsaurair-depute*, *Clerk of Register*, *Aduocat*, and *Medope*.

PATRIK, ERLE OF ORKNAY, sworne and demandit, yf he knawis *Thomas Layng*? Deponis that he knawis him, and that he wes some tyme his seruand; and rememberis not yf *Thomas Layng* broght ony Letteris to him oute of England.

Demandit, yf euer he had ony purposis or intentionn to haif brokin warde? Deponis that he had nevir ony fuche purpose or intentionn to haif brokin warde.

Demandit, yf he gaif ony directionn or warrand to his bafe sone *Robert*, anent this REBELLION IN

¹ Sir William Oliphant of Newton.

² From the Original, in the *Denmylne Coll. of MSS.* Adv. Library, holograph of Lord Binning, afterwards Earl of Haddington, &c.

³ Of Killeith, afterwards Lord Ochiltree.

⁴ Arrear of rent and duties, &c.

⁵ See this Collection, Vol. III. &c.

ORKNAY, and for taking of *the Houffis of Birsay and Kirkwall*? Deponis, he never gaif ony fuche directioun to his sone.

Demandit, yf he write ane Letter to his sone with *Patrik Murray*? Grantis, that he write fuche ane Letter, and that the contentis thair of wes onlie to desire his sone to leave the cuntrey of Orkney, and to reiteir him self to Caithnes to *the Laird of Murkill*.

Demandit, yf he write ane Letter to his sone *Robert*, with *Duncane Mitchell*, poist, and what wes the contentis of the Letter? Deponis, that he rememberis that he caufit wryte ane Letter to *Robert* with the said *Duncane Mitchell*, when the Depouner wes caryed fra *the Castell of Edinburgh to Dunbartane*, bot he rememberis not of the contentis of the Letter; nather knawis he yf he subscriuit the Letter, or how it wes directit on the bak.

Demandit, quhat verball directioun he gaif to *Duncane Mitchell*, the poist, to cary to his sone *Robert* at that tyme? Denyis that he gaif him ony verball directioun, bot onlie to defyre his sone to gett him money.

Grantis, that *Duncane Mitchell* broght him ane anfuere fra *Robert*, bearing, that he had tane *the Houfe of Birsay*, becaus *the Schereff* perfewit him. And that he had no other place of refudge to keepe him in; and that his man *Downy Lyell* wes hurt.

Denyis, that he fend ony directioun to his sone with *Duncane Mitchell* anent the taking of *Birsay*, or that he had ony conference with *Mitchell* at his bak-comeing fra Orkney, anent *Robertis* taking of *Birsay*, or anent the perfute of *the Schereff*.

Demandit, yf he wryte to *Patrik Halcro* to tak *Barnard Steuartis*¹ lyffe? Denyis the same.

Grantis, that *Patrik Halcro* come to *Dunbartane*, and the Depounair mett with him thair. And denyis, that thair wes ony speeche or conference with thame, bot generall woirdis; and sayis, that he nevir spak fax wordis to *Patrik Halcro*.

Demandit, yf he had ony conference with *Barnard Steuarte*, anent his sone *Robertis* going to Orkney? Deponis, he neuir conferrit with him vpoun that subiect.

Demandit, yf he caufit his man *Johnne Schairp* wryte ony Memorialis to his sone *Robert*? or yf the Memorialis contenit a directioun to his sone to send to *Norroway* for poulder? Denyis, that ony fuch Memorialis wer writtin be him, or at his directioun; and the depouner rememberis not of ony Memorialis writtin be him to *Robert*.

Demandit, yf he had ony conference with his sone *Robert*, at ony tyme, for geving ouer of *the Castell of Kirkwall to the Bischope*? Deponis, that he fand fault with his sone that he had gevin ouer the Houfe, without taking Inventair, vnder *the Bischopis* hand, of the goodis within the Houfe. And he had no other caus of offence aganis his sone, for that earand.

Denyis, that euir he had ony conference with his sone, after the geving ouer of this Houfe to *the Bischope*, anent the taking of the Houfe agane; or that he bad his sone prove any prettye man, yf the Houfe come in his handis agane.

Demandit, yf he gaif ony directioun to *Johnne Schairp* to wryte ane Letter to his sone *Robert*, willing him to follow his Memorialis? The depouner rememberis not of ony fuche Letter.

Demandit, yf he wryte ane Letter to his sone *Robert*, willing him to trye the cuntrey people, yf thay wald tak his parte? Denyis the writting of ony fuche Letter.

Demandit, quhat directioun he gaif to *Johnne Schairp* to carye to Orkney? Deponis, that he directit him not to Orkney, bot fend and directit him heir to *his Maigsteis Counsell*, with Letteris to *the Erll of Glencairne*, to do² for him at *the Counsellis* handis. And sayis, planelie, that the said *Johnne Schairp* had no directioun from the depounair to go to *Orkney*; and that the said *Johnne* being comeing to this burgh, and getting informatioun at *the Cowde-bridge* that *Duncane Mitchell* wes

¹ Keeper of the Castle of Birsay, who had been appointed by Sir James Stewart of Killeith, the new Chamberlain and Sheriff-principal of Orkney, under the King.

² To act or procure for him.

tane, and that the said *Johnne* wald be tortourit yf he come to *the Counsell*, the said *Johnne* thairvpoun tooke occasioun to eschew.¹

Demandit, yf he causit mak ane bed for his sone *Robert*, in his awne chalmer, within *the Castell of Edinburgh*, tua nightis afore his going to Orkney? Deponis, that he causit to mak his bed in his chalmer, becaus the wyfe of the Houfe quhair he lay, in the Castell, wes grite with childe and at the poynte of hir delyuerye.

Denyis, that he gais directioun to *Johnne Schairp* to write ane Letter in his awin name to *Robert Stewart*, to shaw him, yf he come heir that he wald be hangit.

Demandit, quhat he meand be that pairt of his Letter writin to his sone *Robert*, quhilk Letter wes gottin vpoun *Duncane Mitchell*, quhairby he allowit of the forme and tennour of *Robertis* Letter writin to him? Deponis, that he meand no thing, bot allowit that *Robert* had writin the simple treuthe.

Demandit, quhat wes his meaneing in the other poynte of the Letter, bearing, 'thair is other materis heir to think vpoun nor fuche thinges as thay. I beleve HIS MAIESTIE thinkis litle of these materis?' Deponis, that the deathe of the Prince,² and the trouble quhairin the Counte Palatyne³ wes lyke to be, through the invasioun of the Spaniard, maid the depouner to beleve that his Maiestie had other thingis to think vpoun nor⁴ Orkney. And tuicheing that poynte of the Letter, beareing, that 'yf his sone come heir, the Tolbuthe wald be his best,' the depouner meand no thing, bot that he wald be wardit, bothe for his debt and taking of the Houfe. And grantis, that the Letter bearing thir headis wes all writtin be the depouneris directioun.

Denyis, that euer he had conference with *Patrik Halcro*, or send ony worde or message to him countenayng a promeis of rewarde, yf he wald assist *Robert*, his bafe sone, in his REBELLION.

JOHNNE SCHAIRP, re-examinat, deponis, that afore he come oute of *Dunbartane*, he knew that *the Gaird* wes seikand him; and *the Erll of Orkney* tauld to the depouner, that *the Gaird* wes seikand him. And deponis, that *the Erll*, in plane termes, directit him to go to Orkney; and sayis, that *the Erll* gais to the depouner ane Letter, directit to *the Erll of Glencairne*, purposilie to haif showne the fame to the fouldiouris of *the Castell of Dunbartane*, yf he had beene stayit be thame, and to mak thame to vnderstand that *the Erll of Orkney* had directit him heir to the Counsell. And sayis, that *the Erll of Orkney* forbad the depouner, in ony cause, to gang to *Edinburghe*; bot to gang to *Dundee*, and swa to *Orkney*.

THE ERL OF ORKNAY, being confrontit with *Johnne Schairp*, vpoun that poynte of his Deposition, tuicheing the directioun gevin to *Schairp* to go to Orkney, and tuicheing the occasioun of the Letter writin to *the Erll of Glencairne*, *the Erll* is direct contrair to *Schairp*, in that poynte; and *Schairp* abydis constantlie be his Deposition.

The said JOHNNE SCHAIRP his formair Deposition, maid in prefence of *the Counsell* yisterday, the first of this instant, being red in the audience of the said *Erll of Orkney*, the said *Johnne Schairp* abydis constantlie be it, as a trew Deposition; and the said *Erll* denyis the same, except in so far as he hes confest be his awne Deposition.

DUNCANE MITCHELL, poist, his Deposition, maid in prefence of *the Counsell* vpoun the fyft day of Julij 1614, being red, in the audience of *the Erll of Orkney*, the said *Duncane Mitchell* stooode to it, as ane trew Deposition; and the said *Erll* denyis the fame.

(4.) EXAMINATION of the Earl of Orkney, Patrik Halcro, and Robert Stewart.

AT EDINBURGHE, the xv day of November, 1614. In prefence of my Lord Chancellour, the Erllis of *Cassillis* and *Caithnes*, the Lordis Secretair, President, Previe Seale, Thefaurair-depute, Justice Clerk, Clerk of Register, Aduocat, Sir Andro Ker, and Sir Alexander Drummond.

PATRIK ERLE OF ORKNAY examinat and demandit, yf he gais ony directioun to his sone *Robert*

¹ Escape. ² Henry, Prince of Wales, who died in November, 1612, at Saint James's. ³ The Palsgrave, or Count Palatine, whose marriage with Princess Elizabeth had been delayed, on account of Prince Henry's death, till the month of February following, 1613. ⁴ Than.

anent THE REBELLION IN ORKNAY, or for taking of *the Houffis of Kirkwall and Birfay*? Deponis, that he nevir gaif ony fuch directioun to his fone.

Demandit, yf he had ony conference with *Patrik Halcro*, at his being in *Dunbartane*, anent the taking of *the Houffis of Kirkwall and Birfay*? Deponis, he had no fuche conference with *Patrik*; and that he nevir delt with *Patrik* to affist his fone, yf he come to Orknay. Denyis alsua, that he fend ony directioun to his fone *Robert* or to *Patrik Halcro* for fending to *Norroway* for poulder.

(5.) PATRIK HALCRO, re-examinat, humblit on his knees, and deipleie fworne; and his Depofitioun, maid yifternight, being red vnto him, and he demandit vpoun the veritie thairof, he, vpoun his grite and folemne oathe declairit, that his Depofitioun wes trew; and he ratifeit the fame, and wald ftand to it.

(6.) PATRIK ERL OF ORKNAY, deipleie fworne, and confrontit with *Patrik Halcro*, vpoun the contentis of his Depofitioun, maid yifternight, in prefence of *the Counfall*; the faid *Erll* denyit the haill contentis of that Depofitioun. And the faid *Patrik Halcro* constantlie affermed and avowit, in the *Erllis* prefence, that the *Erll* directit him to tak *the Caffell of Kirkwall*, and to affist his fone *Robert* in that earand; and that his haill Depofitioun wes trew. Quhilk being red, in *the Erllis* audience, wes denyit be him, faying, he rememberit not that evir he had ony fuche conference with *Patrik Halcro*, vpoun that fubiect.

(7.) ROBERT STEUART being of new presentit befor the Counfaill, and his Depofitioun, made yifternight, being red vnto him, and he demandit of new vpoun the treuthe and veritie thairof, he deponit and declairit, vpoun his grite oathe, that the fame wes of veritie.

(8.) PATRIK ERL OF ORKNAY, confrontit with his fone *Robert*, vpoun the contentis of *Robertis* Depofitioun, maid yifternight, as faid is, the faid *Erll* denyit the fame: And the faid *Robert*, in *the Erllis* audience and prefence, affermed and avowit the fame to be of trewth and veritie, as it wes writtin and red in the *Erllis* audience.

(9.) DEPOSITIONS of *James Lyoun, bafe fone to the Master of Glammis, Mr Michael Mair, and Duncan M^cClellane.*

AT EDINBURGH, *the nyntene day of Nouember, 1614. In prefence of my Lordis Chancellour, Secretair, Clerk of Register, and Aduocat.*

JAMES LYOUN, bafe fone to the late Mr of Glammis,¹ folemmelie fworne and demandit, Yf at ony tyme he pait to *Dunbartane* to vifite *the Erll of Orknay*? Deponis, that in fommer bigane two yeir, *the Erll of Orknay* fend *Mr Michael Mair*, then his Secretarie, to the depouner, he being in the heade of the Cannogait for the tyme, with a commiffioun, defyryng the depouner to come to him to *Dunbartane*. Wherupoun the depouner raid with him to *Dunbartane*. And at his comeing thair, *the Erll* layed to his charge, yf he wald affist him to brek warde oute of *the Caffell of Dunbartane*? And at the firft, the depouner refufit to haif ony dealing in that mater. Bot being earniftlie delt with be *the Erll*, and mony fair promiffes maid by *the Erll* to him, in end the depouner yeildit to do his beft endevoiris to help *the Erll* to efchaip, and to convoy him to *Orknay*. And deponis, that the faid *Mr Michael Mair* wes vpoun *the Erllis* counfaill, in this mater; and proponit the fame to the depouner, in the way, as they wer ryding to *Dunbartane*. And after the depouner had imbraceit this condition, he and the faid *Mr Michael* had diuers conferences and fpeecheis, anent the meanes and poffibillityis to effectuat thair interprife. And deponis, that the faid *Mr Michael* was employit be *the Erll* to deale with *the Laird of Cluny*, to imbarck him in this interprife. And the faid *Mr Michael*, with the depouner, had fpeiches with *Cluny* vpoun that fubiect, at *the Toun of Leithe*, on the Linkis; and the

¹ This person was probably son of the Hon. Sir Thomas Lyon of Auldbar, second son of John, seventh Lord Glammis. He was styled the Master of Glammis, and enjoyed the important office of Lord High Treasurer about the period of ten yeirs, from 1586 to 1595.

Laird promeift to gif his affiftance and furtherance in that mater. And for this effect, they appointit a tryift and meeting to be at Striuling, vpoun the Satterday thairefter, and the depouner and *Mr Michaell* mett vpoun Satterday, at night, at *Striuling*; and *Cluny* came not quhill Sunday, in the moirning, bot fend his man *David Gairdin* thair, vpoun the Satterday, to excufe his abfence. And when thay mett altogidder vpoun the Sunday, thay reafouned vpoun the meanes how to gett *the Earll* out of the Caftell; and refolued to tak him ouer the wall by a cord, and ane instrument of irne,¹ whiche the depouner caufit mak. And *Mr Michaell* promeift to prepare the tow.² And it wes aggreit that when all thingis wer in reddynes for *the Erllis* efchaip, he fould proceid as yf he had fome earand ado in the Houfe, and fend his three Keeperis, one efter another, for difpatche of his earandis; and then he fould come away. And thay aggreit to bring fome horffis to *Dunbuk-Hill*, to haif convoyit *the Erll* and his companie away; and ane horfe fould haif bene broght to the Caftell-wall, for *the Erll* him felf; and *Cluny* fould haif broght thir horffis to *Glasgow*, bot *Cluny* broght not the horffes with him. And the depouner raid to *Dunbartane*, and the faid *Mr Michaell* tauld *the Erll* that the depouner was come, and all thingis wer preparit and in reddynes for his efchaiping. And then *the Erll* began to fant; and maid choife, rather to fuborne *the Portair* nor³ to haifard to come over the wall; and fo delt with *the Portair* vpoun that fubiect; who reveillit the fame to *the Laird of Buchannane*, who had the charge of the Houfe for the tyme.

Deponis, that at Martymes, in the yeir foirfaid, the faid *Mr Michaell Mair* come of new to the depouner, he being in the heade of *the Cannogait* for the tyme, with a commiffioun from *the Erll* to come West to him agane to *Dunbartane*. And the depouner refuift to go West, faying, that ' he wald mell no forder with the Erll, nor in nane of his courfes.' To whome *Maifter Michaell* anfuerit, ' I fee this man (meaneing he *the Earle*) hes not the grace of God in him; I will lykewayis haif no forder dealling with him!'

Deponis, that after *Robert Steuart*, bafe fone to *the Erll of Orknay*, wes come out of *Orknay*, and fred of warde for keeping of *the Caftell of Kirkwall* aganis *the Bifchop of Orknay*, the depouner, in deling with *Robert* in this Toun, delt with him that he wald mak his addrefse to Courte; and thair vfe his credite to gett his Maiefteis fauour: And fays, that *Robert* wes willing to haif gone to Courte, bot maid his excufe vpoun the want of money, and his faderis offence againis him for geving ouer of the Houfe of Kirkwall; and *Robert* intreated the depouner to ryde with him to *Dunbartane*, and to interceid for him with his fader, bothe for his fauour and fome money: And the depouner yeildit to ryde with him, and thay raid togidder to *Dunbartane*, and ftayed thair bot ane night. And the depouner knawis not yf the Erll fpak with *Robert* that night. And vpoun the morne, the Erll directit the depouner with a Letter to *the Erll of Caffillis*,⁴ being in *Carrik* for the tyme, for fome money. And *Robert Steuart* raid with the depouner to *Carrik*. And when thay come bak agane to *Dunbartane*, *the Erll*⁵ wald not looke vpoun *Robert*, calling him ' Feble vnworthie beaft! ' vfeing mony impreca-tionis and curffes aganis him for geving over of the Houfe, faying, he ' wes the wraick of him and his eftate! ' And the depouner being reddy to come away frome *Dunbartane*, the faid *Robert* come to him to *the Toun of Dunbartane*, defiring him to go againe and fpeeke his fader in his fauouris, and to tell him that he wald tak fome difperat courfe, and go oute of the cuntrey, yf he could not procure his fauour. Wherupoun, the depouner went bak agane to *the Caftell*, and eirnistlie delt with the Erll in *Robertis* fauour; bot the Erll could not with patience heir of him, bot gaif oute mony invec-tiue and difpytefull fpeecheis aganis him, calling him ' Fals, feble beaft,' for geving ouer of his Houfe. And in

¹ Probably a pulley, having a strong iron to fasten or hook upon the battlements of the Castle, so as to save the necessity of driving in a staple, which would necessarily occasion noise. ² Rope. ³ Than. ⁴ John, fifth Earl of Cassillis, who married Jean, only daughter of James, fourth Lord Fleming, and relict of John Lord Maitland of Thirlestane, Chancellor of Scotland. Through her intrigues, he procured the office of Lord High Treasurer, in 1599, for which he was utterly incapable; and retired from it in disgrace, with the loss of 40,000 merks, &c. See *History of the Kennedies*, Quarto, Edin. 1830. ⁵ Of Orkney.

end, the depouner haueing promiseit in Robertis name, that Robert wald do ony thing the Erll wald command him, the Erll thairvpoune become to be more calme, and to gif eare to the depouneris speeches in Robertis fauour. Wherupoun, the depouner broghte Robert to the Erle, and tauld to the Erll, that Robert wald do ony thing that the Erll wald bid him; to whome the Erll anfuert, that Robert had not a spirite nor courage to follow ony interprise; and Robert haueing craved of the Erll his fader, that he might haif a ryght of the landis of Westraue or Steanehouse, the Earll wald yeild to gif him no thing, quhill first he had repairit the wrang he had done, in giving ouer of his Houfe; and by recouering of the same agane, to play the pairt of a man. And the Erll haueing desirit the depouner that he wold gif him his worde and promiseis, in Robertis name, that Robert sould go to Orknay and recouer the Houffis agane, the depouner refusit to gif his promiseis or word, saying, 'Robert wald speke and promiseis for him self!' Whairupoun Robert, in the depouneris audience, promiseit to the Erll to go to Orknay, and to tak in the Houffis agane. And then the Erll acceptit of him, saying, he 'sould want no thing, and that he wald aduance him so far as he might. And so, the depouner haueing aggreit *the Erll with Robert*, the depouner left thame. And as he wes comeing away, *Duncane M^cClellane*, the Erllis poist, followit the Depouner to the Toun of Dunbartane, willing him to go bak agane to my Lord; and the depouner refusit to go bak, because he vnderstoode that the purposis of his bak-calling wes to haif delt with him to haif gone with Robert to Orknay. And the depouner meeting at that tyme with *James Annand*, sometyme the Erllis seruand, in Dunbartane Towne, the said James askit of the depouner, 'yf he had aggreit the fader and the sone?' And the depouner anfuert, 'thay wer aggreit,' and that '*Robert* must neidis go to Orknay, or thair wilbe no lyffe for him!' To whom *James* replyit, '*The Erll* is ane vnhappie man! He knawis *Robert* can do no goode in Orknay. His purposis is to bring him to the scaffolde, and to bring the sclander of his bloode vpoun the King!' And vpoun the morne, the depounair raid fra Dunbartane towards Edinburghe; and *M^cClellane*, the poist, come to Edinburghe with him. And within tuentie dayis thairefter, *Robert Stewart* come to Edinburghe, and lichtit at *Henry Raes* house, and askit of him whair the depouner wes? And *Henry Rae* broght *Robert* to the depouner in *George Lafonis* house in the heade of *Pebliis-wynd*, quhair the depouner ludget; and *Robert* tauld to the depouner that he had vndirtane the interprise of Orknay, and wes resolut to go thair. And the depouner asking of him, how he wald be prouydit and furneist with money? *Robert* tauld him, that he had a Letter frome his fader to one *Johnne Smithe*, his fader's mercheant in S^t Androis, to aduance him iij^s merkis of siluer. Whairupon *Robert* and the depouner past to S^t Androis to haif gevin the money, and haueing stayed thair aucht dayis, *Johnne Smith* refusit to gif the money, vnles he had a Band vnder *the Erllis* hand, for the bail moneyis he was awand him afoir, including thairin the siluer now to be gevin, with the annuell¹ of the hail. And deponis, that thay onlie ressaunt at that tyme fra *Johnne Smithe* xx lib. to defray thair chargeis. Deponis forder, that at thair comeing oute of S^t Androis, *M^cclellane*, the poist, come to *Robert* with Letteris fra *the Erll* his fader; and the depouner saw and red ane of the Letteris, whilk wes a lang Memorandum, full of iniunciounes how *Robert* sould carye him self in Orknay, bothe anent the taking of the Houffis, the intromissioun with the Erllis rentis, and what men he sould putt oute of the cuntrey. And the depouner rememberis weele of ane speciall poynte of the Memorandum, to witt, that *Robert* sould send the Erllis creare,² laidnit with beare and salt goodis, to Brein, in *Noroway*, and thair sell the same, and by poulder³ and bullett with the money that sould be gottin thairfoir. And that, aboue all thingis, *Robert* sould see that the Houffis wer weele furneist. And *M^cclellane* come bak with thame to Leithe. And deponis, that then thay raid to Dunbartane, and *Robert* stayed at the smithis house outwith the Toun, and the depouner raid fordwart towardis *the Castell*. And *the Erll*, being aduerteist that thay wer come to the smithis house, he send *Johnne Burne*, his seruand, to haif stayit thame at the smithis house. And the depouner forgaddering with *Johnne Burne*, in the way betuix the smithis house and *the Castell*,

¹ Annualrent; interest.² A sort of vessel.³ Purchase gunpowder.

Johnne Burne delt with the depouner to go bak, saying they had done evill to come, for *the Counfall* wald be in suspicioun that thay had some purposis for thair going to Orknay. And he tauld the depouner, that they wald not gett accesse to the Erll, yitt the depouner wald not be stayed, bot come fordwart to *the Casfell-yett*, and craveing entrie, he wes anfuert ower the wall be one *Robert Knox*, who had the charge of the Houfe, that he wald not gett entree. Whairupoun, the depouner come bak, and being in ane grite anger, because he could not gett entrie, he said to *Johnne Burne*, that he sould reveill all thair practizeis to *the Counsell*, seeing he could not get payment of the moneyis addebit be *the Erll* to him. Deponis, that *Johnne Burne* askit of the depouner, yf he had prouidit ony men, in Angus, to tak with him to Orknay? And the depouner maid him to beleve, that he had prouidit some men in Angus, who wer goode fellowis, to haif gone thair. And the depouner named some of their names: And he did this purpoissie, to haif gottin payment of his moneyis.

Deponit, that *Johnne Burne* haveing showne to *the Erll* the depouneris discontentment for the want of his moneyis, and that he had avowit to reveill thair interprise, the Erll, fearing the reveilling and discouerie thairof, fend to the depouner with the said *Johnne Burne* xx s. Sterling; quhilk being refusit be the depouner, *the Erll* fend vther xx s. to him.

Deponis, that when he come bak to the smithis houfe, he said to *Robert*, ' he persavit that the Erll had no vther course bot to bring him to the scaffold!' And *Robert*, waging his head, with a grite fighe, anfuert, ' I feare it falbe swa!'

(10.) MAISTER MICHAELL MAIR, feruand to *Mr Johnne Scott*, Directour of the Chancellarie, sworne, and demandit, ' yf he knawis of ony purposis that *the Erll of Orknay* had to brek warde? Deponis, he knawis that thair wes some speeches betuix *the Erll*, *the Laird of Cluny*, and *James Lyoun*, vpoun that subiect.

THE DEPOSITIOUN maid be *James Lyoun*, in that pairt thairof concerning *the Erll of Orknay* his purposis to brek warde, and the conferenceis, meetingis, and resolutionis tane thairanent, betuix *the Laird of Clunye*, *James Lyoun*, and the depouner, being red to the said *Mr Michael*; and he being demandit, yf the same wes trew? Deponis, that he acknowledgeit the Depositioun to be trew, as it wes writtin, except in that parte thairof concerning the suborning of *the Portair*, whairof the depouner knawis no thing. *In ceteris conformis.*

(11.) DUNCANE M^cCLELLANE, poist to *the Erll of Orknay*, sworne, and demandit yf he knawis ony thing of *the Erll of Orknay* his purpoissis anent THE REBELLIOUN IN ORKNAY? Deponis, he knawis na thing thairof, and denyis that euir he hard ony conference or speeche betuix *the Erll*, *Johnne Burne*, *James Lyoun*, and *Robert Stewart*, or ony of thame, anent *the Erll* his purposis to brek warde, or anent the sending of *Robert* to Orknay.

Grantis, that the Erll of Orknay fend the depouner with tua Letteris to *Robert Stewart* and *James Lyoun*, and the depouner come to this toun to haif gottin thame heir; and missing thame heir, he pait to S^t Androis, and forgadderit with thame comeing oute of the Toun, and delyuerit the Letteris to thame. And sayis, that *Robert Stewart* and *James Lyoun* tauld to the depouner, ' yf thay had gottin filuer in S^t Androis, that thay wald haif gone to Orknay; bot seeing thay gatt not filuer, thay could not go.' And the depouner, haueing gone bak to *Dunbartane* with this anfuert, the Erll fell oute in bitter speecheis aganis *Robert*, calling him ' Fals, feble knaife!' ' Villaine!' and ' Pultrone!' And ' he sould hang him with his awne hand!'

Deponis, that he hard the conference betuix *Robert Stewart* and *James Lyoun* be the way, as thay come frome S^t Androis, to witt, yf thay had gottin filuer in S^t Androis, that thay wald haif gone to Orknay and tane the Erlls Houffis. And the depouner tauld thir speecheis to the Erll, when he come bak to *Dunbartane*; wherent the Erll wes heichlie commovit, saying, ' *Robert* was ane feble beast,— and ' Or¹ he wer not hangit, he sould hang him with his awne hand; becaus vnworthelie he had left his Houffis, and had not grace to win thame agane!'

¹ Ere; rather than.

Deponis, that at this same tyme, *James Lyoun* said to the depouner, ' Yff we go to Orkney, no man fall haif the credite¹ of carying our Letteris to and fra, bot yow.'

(12.) DEPOSITIOUN, *Robert Stewart, the Earl of Orkney, James Lyoun, and Mr Michael Mair.*

AT EDINBURGHE, the xxij of Nouember, 1614. In presence of my lordis Chancellair, the Erll of Caihnes, the Secretair, Thefaurair-depute, Clerk of Register, and Aduocat.

ROBERT STEUART, bafe sone to the Erll of Orkney, sworne, and demandit yf he knawis *James Lyoun*, sone to the lait *Mr of Glamis*? Depones, he knawes him very weele.

The DEPOSITIOUN maid be *James Lyoun*, vpoun the xix day of Nouember instant, in that poynte thair of tuitcheing the said *James* his interceiding with the Erll of Orkney, in fauouris of his sone *Robert*, the Erllis refusaill to accept of him quhill he yeildit and promiseit to go to Orkney; and tuitcheing all the speecheis past betuix thame in that mater, being red to the said *Robert Stewart*, and being demandit, yf the same wes trew? The said *Robert* acknowledgedit the Depositioun to be trew, as it is writtin and sett doun.

The hail Depositioun foirsaid, maid be the said JAMES LYOUN, being red to the said ERLL OF ORKNEY, and he being demandit, yf the same wes trew? The said Erll deponit, that the same wes most vntrew. And deponit, that the said *James Lyoun* delt with him findrie tymes to haif brokin warde, becaus his lyffe wes in danger; and that he ever refusit to harken to *James*, in that mater. And deponis, that he wes ever in ane anger with his sone *Robert*, becaus he hantit *James Lyonis* company. And sayis, confidently, that he had neuir conference nor speeche with *James Lyoun*, anent *Robertis* going to Orkney.

(13.) The ERLL OF ORKNEY, JAMES LYOUN, and MR MICHAELL MAIR, being confrontit, vpoun that point tuitcheing the said Erll his purposis of breking of warde, and the conferenceis, speecheis, and messageis past in that mater, conforme to the Depositiounis maid thairanent, the said Erll, vpoun his oathe, denyit the same: And the saidis Maister Michael Mair and *James Lyoun*, vpoun thair grite oathe, avowit and affermed the same to be trew.

(14.) The said ERLL OF ORKNEY, ROBERT STEUART, and JAMES LYOUN, being confrontit, vpoun the vther poynte of the said *James Lyonis* Depositioun, tuitcheing the Speecheis and Conferenceis betuix thame anent THE REBELLIOUN IN ORKNEY, and how *Robert* wes imployit and directit in that earand? The said Erll, vpoun his oathe, denyit the same; And the said *James Lyoun* and *Robert Stewart*, vpoun thair oathe, avowit the same to be trew.

Slaughter.

Feb. 14.—JOHNNE MAXWALL, callit *Achilles Johnne*, in Dumfreis.

Dilaitit of airt and pairt of the crewall Slauchter of vmq¹⁶ Johnne Makculloche, mercheand burges of Kirkculdbrycht; committit be the said Johnne Maxwell and be vmq¹⁶ Johnne Maxwell, sone natural to vmq¹⁶ Williame Maxwell of Auchinlarie, vpone the landis of the Kirkhous, within ane quarter of a myle to the said burgh of Kirkculdbrycht, in the moneth of Nouember, the zeir of God I^m. sex hundreth and threttene zeiris, be geving to him of tua deidlie fraikis in

¹ Trust. We shall confide in no one but you, to carry our Letters to and fro.

the heid, togidder with fyftene bludie woundis in his breift and bellie, and vther fyftene bludie and deidlie fraikis vpon the bak and fydis ; quhairof he immediatlie deceiffit.

PERSEWARIS, Thomas McCulloche of Barholme, Sir Williame Oliphant of Newtown, kny^t.

PRELOCOUTOUR in defence, Mr Thomas Wilfone, Aduocat.

Eftir reiding of the DITTAY, it was allegit be my lord Aduocat, that na prelocoutour can compeir for defence of the pannell, for the cryme aboue writtin, fpecificit in the Dittay ; becaus, immediatlie eftir the committing thairof, Letteris war direct, at the instance of the kyn and freindis of the defunct, aganis the pannell, be the quhilk he was charget to find caution for his compeirance befor the Justice or his deputis, at the day thairin contenit, of lang tyme bygane, to haif vnderlyne the law for the faid cryme ; quhilk charge, nocht only he difobeyit and maist contemptiouflie paf to the horne, bot also hes remanit fugitiue fra his hienes lawis continuallie fenfyne, for the faid fact : And producet the Hoirning, deulie regiftrat, for verifeing thairof.—To the quhilk it is anfuerit, be the pannell and his prelocoutour, that, nochtwithftanding of the faid allegeance, he aucht to haif prelocoutouris to defend, becaus he is relaxt fra the faid proces of horne ; and producet his Relaxatioun for verificatioun thairof : Quhilk the Justice admittit ; and ordanit his prelocoutouris to be admittit to defend : Quhairupoun the pannell askit instrumentis.

It is allegit be the pannell and his prelocoutour, that the DITTAY producet aganis him come nevir to his knowlege ; and thairfoir, befor ony forder proces be grantit in that matter, he aucht to haif a fyftene dayis grantit to him, to be advyfet thairupoun.—It is anfuerit, that the allegeance aucht to be repellit, in respect he haifing committit the fact, vpon the notorietie quhairof, and for tryell of the pannellis giltines, Letteris war direct, be the quhilk he was charget, vpon a fyftene dayis wairning, to find caution for his compeirance, as faid is, befor my lord Justice, at a day contenit in the faidis Letteris ; and for his difobedience was denuncet and put to the horne : And for cleiring thairof, repeitis the faidis Letteris of Hoirning producet.

THE Justice Repellit the allegeance, and Ordanis the matter to pafs to the tryell of ane Affyse, vnles the pannell fay forder.

ASSISA.

Robert Vans of Campfurd,	Airhour Kennydie, fervand to	Johnne Turnour, Schereff-Clerk
Patrik Vans of Lybrek,	my Lord of Caffillis,	of Wigtoun,
Peter McDowell of Machirmoir,	Patrik Murdoch of that Ilk,	James Hair, indueller in Ed ^r ,
Patrik Edzer, burges of Wigtoun,	Hew Gordoun of Grange,	Gilbert Agnew of Mureifhaith,
Pat. Hammiltoun, burges of Ed ^r ,	Alexander Gordoun of Littill	Alexander Agnew of Trong,
Archibald Stewart of Fintillache,	Mondurk,	R ^t Makknab, burges, Quithorne.

My lord Aduocat takis instrumentis of the fweiring of the Affyse ; and for

cleiring to thame of the pannellis giltines of the crymes contenit in the Dittay, repeittis the Hoirning product, beiring him to be fugitiue for the cryme : As also, defyret Mr Robert Glendonyng, Minister at Kirkcudbrycht, and Eduard Forrester, Commiffar, thair, thair aithes and declaratioun to be tane, quhat thay knaw anent the pannellis giltines or innocencie, in the said matter, for the Assyse forder informatioun.

It was affirmet be the pannell and his prelocutour, that the matter now being put in thair handis, thay fould nocht respect the perfewaris informatioun and assertioun in this perfute ; bot altogidder denyit the fact lybellit to be committit be him ; in respect he, at the allegit tyme of the committing thairof, was *alibi*, viz. in the Place of Teilling in Angus, lying deidlie feik, quhilk is ane hundreth myles distant fra Kirkcudbrycht, quhair the Slauchter was committit ; quhilk he wald verifie, be sufficient and famous Witnesses, gif tyme war grantit to him to produce thame.

MR ROBERT GLENDONING, being suorne, Declairit, he could nocht remember that he knew Johnne Maxwell vpon pannell ofbefoir ; bot as to the veritie of the fact lybellit, it is of treuth, that vpon ane Fryday, at evin, in the moneth of November and zeir lybellit, thair come tua litill men to the Toun of Kirkcudbrycht, with Letteris of Captioun, of purpois, as the deponer was informit, to truble vmq^{le} Johnne M^cculloche, quhair of he was maid foirfene be ane of the honest nyctbouris of the Toun : And the deponer, vnderstanding quhair Johnne M^cculloche was, adverteit him thairof, and defyret him to hald him self out of the way ; quhairvpon M^cculloche eschewit that nyct : And vpon the morne thaireftir, being Setterday, the day of his studie,¹ he, heiring of the Slauchter of Johnne M^cculloche, come to the boundis quhair it was committit, quhair he saw tua deid men, Johnne M^cculloche being maist crewallie strukin with ane quhinger, baith on his breist and bellie, and vpon his bak. And forder knawis nocht.

EDUARD FORRESTER, Commiffar, suorne, and demandit, quhat he knawis anent the verritie of the premisses ? Declairit, that he saw Johnne Maxwell, presentlie vpon pannell, within the toun of Kirkcudbrycht, the day of the Slauchter, immediatlie befor the committing thairof ; quha, togidder with vmq^{le} Johnne Maxwell, his affociat, come vp to the deponeris chalmer, and offerit to agrie with him anent the Confirmatioun of ane Testament ; and within ane schorte space thaireftir, hard of the committing of the said slauchter. And forder knawis nocht.

My lord Aduocat repeittis the Minister and Commiffaris Declaratioun ; and Protestis, in respect thairof, for Wilfull Errour aganis the perfones of Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said Peter M^ddowell of Machirmoir, chancellor, ffand, pronuncet, and declairit the said Johnne Maxwell to be Giltie, culpable, and convict of airt and pairt of the said slauchter, &c.—SENTENCE. To be tane to the ordiner place of executioun, within the burgh of Ed^f, and thair his heid to be strukin frome his body : And all his moveabill guidis to be escheit, &c.

¹ Viz. the day he studied or prepared his sermons for the following Sabbath.

Treason—Declining the King's Authority—Alleging the Supremacy of the Pope—Hearing and Saying Mass, &c.

Feb. 28.—TRIAL OF JOHN OGILVIE, JESUITE.

[THE proceedings adopted against the ROMAN CATHOLICS and JESUITS, at different periods, after the time of the Reformation of Religion in Scotland, form a prominent part of the Ecclesiastical and Political History of the Country. Owing to the obscure and repulsive appearance of the Criminal Records, much valuable information has necessarily escaped the observation of the historian; but although the subject is one long since forgotten, it appears to the Editor to belong to the duty he imposed upon himself when he undertook the present Collection, to rescue from oblivion all those Trials which have preserved entire the memory of such events.

Among the most remarkable of those persecutions may be reckoned the Case of JOHN OGILVIE, *a Jesuit*, of Scottish extraction, who was a son of Walter Ogilvie of Drum. After an absence of twenty-two years in foreign countries, he returned to Scotland, in the month of May 1615, for the purpose of promoting the growth of the Roman Catholic Religion. There is little doubt that he was one of those enthusiastic individuals, who, at the imminent risk of fortune, and of life itself, scrupled not to lend himself a willing instrument for the accomplishment of some daring, dangerous, and destructive plot, which at that time characterised the whole of the ever-restless and ambitious proceedings of the followers of the Church of Rome, from the date of the formidable, but presumptuous, attempt of the Spanish Armada, and of the Gunpowder Plot, downwards. During the reign of KING JAMES, both before and after his accession to the English throne, seldom did a year pass over without some rumours of fresh attempts of the Jesuits against his life, or against the Religion, as by Law established, in England. There can be no doubt, from a perusal of the State Papers and Histories of this period, that some new attempt on the part of *Spain* and her auxiliaries was about to ripen into action, when the early detection and execution of numerous emissaries of the *Society of Jesus* frustrated its execution.

Without occupying more space, the Editor has merely to mention, that a Special Commission having been granted to THE PROVOST AND BAILIES OF GLASGOW, within whose jurisdiction Ogilvie was taken, his Trial is not recorded in the Books of Adjournal, but was reported by the Commissioners and their Assessors to the Privy Council, from whom their powers directly emanated. There cannot be a doubt that the Report of this Case was drawn up for publication, with the view of being extensively circulated in England. The phraseology is carefully revised, so as to be perfectly intelligible to an English reader; and though imprinted at Edinburgh by Andro Hart, immediately after the Trial took place, it must have been revised by some person skilled in the English Law, and familiar with its technicalities and practice.

The present reprint has been taken from a copy of the valuable Original Edition, in the Library of the Faculty of Advocates, Edinburgh.

Calderswood, a determined enemy to Episcopacy, has preserved the following curious memorials of these events, in his *MS. History of the Church of Scotland*,¹ which the Editor has thought worthy of being inserted in this place:—

Oct. 1614. ' ABOUT the beginning of October, MR JOHN OGILBIE, *the Jesuit*, was apprehendit in Glasgou. He had seduced sundry young men, and of the better sort of the people; and said Masse, in sundry places, within Toun. When the (ARCH) BISCHOP (OF GLASGOW)² challenged him for his hardneffe,³ he answered, that " he hoped to have more freedome, ere it were long." Wherupon, *the Bishop* buffeted him!

' About the beginning of November, THE (ARCH) BISHOP OF ST ANDREWS⁴ sone, *Mr Alexander*

¹ From the Adv. Library MS.

² John Spotswood, the well-known writer of the Church History. He was translated to the See of St Andrews on the demise of *Archbishop Gladstones*. ³ Hardihood; effrontery. ⁴ ' MR GEORGE GLADSTAINS, BISHOP OF ST ANDREWS, departed this life, in the Castle of St Andrews, on the 2d day of

Gledftanes, apprehended *Moffett*, a Messe-Preift, at St Andrewes; who was presented before the *Lords of Secret Counsell* upon the 10 of December, and was wairded in the *Caftle of Edinburgh*. Some things the *Bifhops* behoved to doe againft PAPISTS, for honefties fake, leaft they fhould feeme to be advanced to perfecute Minifters profefling purity of Difcipline and God's worfhip.

' Upon the 6 of December, 13 or 14 of the Inhabitants of *Glaſgow* were convicted for hearing of *Maffe*, and Refetting a *Maffe-Preift*, in Court holden be the *Bifhops* and thrie of the (Council), who hed gotten Commiffione, at the King's directione, to try. The brute¹ went, that they were to be beaded, drawin, and quartered; but they were in no danger. *OGILBIE*, the *Jefuit*, was brought in to *Edinburg*, and examined be the *Bifhop* and fome of the *Lords of Secret Counsell*, to move to confeffe where he had been refett, where he had faid *Meffe*, &c. He was not fuffered to take fleep fome nights and dayes together! His braines being lightfome, fecrets were drawn out of him, but came not to the knowledge of the people. *Moffett*, the *Preift*, was examined be the *Bifhop of St Andrewes* and his affociats.

' About the middt of *Januare* (1615), a Warrant was fent from THE KING to fine fome of the receipters of *OGILBIE* the *Jefuit*, and hearers of *Meffes*, in *Glaſgow*; and to banifhe fome others of them out of the King's dominiones. About the end of *Januar*, THE KING fent doun a courfe to be vfed in trying of *JESUITS*, their refetters, and hearers of *Meffe*. This feemed rather a hindrance to the execution of juftice upon the perfones prefently guiltie, then to mean in earnest the repreffing of *Papifts*.

' Upon the laft of *February*, *OGILBIE* the *Jefuit*, one of the *Ogilbies* of the *Houfe of Drummure*, was arraigned and pannalled before the *Proveift and Bailiffes of Glaſgow*, the King's Judges in that part. At his Examination, before fome of the *Counsell* and the *Bifhop*, he being asked, whether THE KING, being excommunicat be THE POPE, the Pope might depofe him, and loofe his fubjects from the Oathe of allegiance? Answered, and fubfcribed his answers with his hand, that he thought THE KING and his *Counsell* no competent Judges to him, in that matter; and therfor, would not directly anfwere them tuiching it, but before THE POPE, his ordinar Judge, and his fubftitutes! For this his declinator, he was convicted, in prefence of findry Noblemen, appointed be THE KING to be prefent. He avouched, boldly, that he regarded not the Acts of Parliament nor THE KING's authority, foe farre as they were repugnant to THE POPES authority! Yett had he fmall courage when he come to the Scaffold—died heartlefse and comfortlefse—could not commend himfelfe to God, at the Minifters desire—but did it after the desire of the hangman.

' Some interpreted this Executione to have proceeded rather of a care to bless THE KING's Governement, then of any fincere hatred of the Popifh Religione. Some denied that it was done to be a terrour to the fincerer fort of the Miniftry, not to decline THE KING's authority, in ony caufe whatsoever.² He was the firft *Preift* or *Jefuit* that was executed, fince the *Baftard Bifhop of St Andrewes* was hanged.³

May. Many times before, because his face was diffigured, he had his night-bonnet drawn down to his nose, when the minifters of St Andrewes enquired, "If they ſhould pray for him publickly?" he answered, "It was not yet time!" Soe he was never prayed for publickly, but the ſame day that he departed; and that was done without his knowledge. Unwilling was he to die, or to ſuffer any honeft man of the Miniftry near him, either to waken his confcience, or comfort him. At the deſire of his wife and children, he ſubſcribed ſome few lines, wherein he approved the preſent courſe, to procure the King's favour to them. His fleſh fell off him in lumps. Notwithſtanding of the great rent of his Biſhoprick, he died in the debt of twentie thouſand pounds. This man was both ambitious and covetous. *Papifts* and hainous offenders were winked at, for bribes given to his ſervants and dependers. In his firſt dioceſian Synod of Fife he ſat in pomp with his velvet cuſhion before him, and his Clerk, Mr John Mitchellſonne, beſide him.—Mr *George Gladſtains*, BISHOP OF ST ANDREWES, was buried, upon the ſeventh of June, in St Andrewes. A cannabe (canopy) of blacke velvet was caried above the coffine, be foure men, and yett the corpes was not in the coffin, but buried ſome after his death. Mr *William Cowper* (BISHOP OF GALLOWAY) made his funerall-ſermone, full of vile flattery and lyes, and knowne to be ſae be the people, and therfor was he derided. It was reported that THE KING beſtowed ten thouſand merkes upon his buriell.—*Calderwood's Church Hiſt. MS. Adv. Lib.*

¹ Report; Fr. *bruit*.

² This had frequently taken place, as may be ſeen by referring to the former portions of this work.

³ Referring to the celebrated ARCHBISHOP JOHN HAMILTON, natural ſon of James, firſt Earl of

The anonymous author of 'THE HISTORIE OF KING JAMES THE SEXT'¹ shortly, but forcibly, narates these transactions, in the following terms:—'DURING this same time and year, in the citie of *Glasgow*, ther hapnit a man, callit MR JOHNNE OGILBIE, *Jesuit*, to be apprehendit ther, be the *Archebischop* and his men, becaus he was tryit² sufficentlie to have sayed Mess^e ther, to sum inhabitants and citizents of that toun; and samonie as wer tryit, wer all empreafonit in the *Castell of Dumbartane*, ther to remayne upoun ther awin expensis; and thereftir relaxit, and confynit for a pecuniall soume, for contravening the Act of Parliament; and fand caution, under great sowmes of money, ather³ of them, not to commit the lyk fault or cryme agayne. The *Jesuit*, in the meyne tyme, was convoyit to *Edinburgh*, and ther keapit in strait waird, and a gaird of men, be the space of eight dayis, with small sustentatioun; and compellit and withhaldin, perforce, from sleep, to the great perturbatioun of his brayne, and to compell him *ad delirium*!⁴ And being convoyit therfra to *Glasgow* agane, certen temporall questions wer objected unto him, as naymlie, geve⁵ THE KING was heid of THE KIRK, within his awin dominions, or nocht? To the whilk he answered, "No," &c., and so, consequently, to uther thrie. For the whilks, he was put to the cognitioun of a juré, and be them fund giltye of Treasoun and Leze-Majestie; and so was condemnit to be hangit to the death; whilk was also accomplisht.'

The enquiring reader is referred, for farther particulars, illustrative of this singular subject, to the various Collections of State Papers, and to the Histories of Scotland, especially *Spotswood's History*, where the matter is fully discussed by the Archbishop, who, it may be kept in mind, was one of the Assessors, and the leading examiner, in *Ogilvie's Trial*. The Editor appends to this remarkable TRACT the Examinations of all the persons suspected of having joined *Ogilvie*, in the celebration of Mass, &c., including the declinator of the *Jesuit* himself, which he has taken from an attested copy, preserved in the *Denmylne Collection of MSS.*, Advocates' Library.]

A TRUE RELATION OF THE PROCEEDINGS AGAINST
JOHN OGILVIE, A JESUIT,

EXECUTED AT GLASGOW, THE LAST OF FEBRUARIE, ANNO 1615.

Containing fundrie SPEECHES vttered by him at his Arraignment,
and others, that assisted the Commissioners deputed for his
Triall: with all that passed at his Execution.

2 Pet. 2. 10. "Audaces, et sibi placentes, dominatum despiciunt, et non horrent dignitates convitiis inceslere."—*Tertul. adversus Hermo.* "Hermogenes hæreticus loquacitatem, facundiam existimat, et impudentiam constantiam deputat, et maledicere singulis officium bonæ conscientiæ indicat."—*Cyprian de duplici martyrio.* "Non statim martyr est qui occiditur, occiduntur piratæ, et ficarii, supplicium non faciunt martyrem, sed causa."

EDINBURGH, printed by Andro Hart, anno 1615.

TO THE READER.

IT hath beene thought needfull, that a true and perfect Relation of the whole proceedings against John Ogilvie, a Jesuit, lately executed at Glasgow, should be published; as well for satisfaction of

Arran, who was hanged in Stirling, Apr. 1, 1570. See *Reliquiæ Divæ Andreae*; *Keith's Catalogue of the Bishops*; the works of the *Rev Dr M' Crie*, &c.

¹ Printed for THE BANNATYNE CLUB, Edinburgh, 1825. ² Proved. ³ Either; each. ⁴ This barbarous mode of extorting Confession had been prevalent in cases of *Witchcraft*, where the criminals were supposed to be under the direct dominion of Satan. Human nature could not long stand so exquisite a torture. The suspected parties were often driven into a state of *delirium*; and in many instances, they must have been glad to confess any thing which may have been proposed by their examiners, to escape from a life held by such a miserable tenure. ⁵ If.

those, who desire to be informed of his behaviour, during the time of his imprisonment, and at his arraignment and execution, as to obviate the misreportes of the enemies of true Religion, who wrest and draw all things, without respect of truth, to their owne aduantage. It is knowne within these few yeeres, Henry Garnet and Edward Oldcorne, English Jesuites, being called in question, for that prodigious and damnable Powder-treason; although it was proved by cleare evidences and their own confessions, vnder their owne handes, that they were speciall authors and actors in it, and for the same were executed by publicke justice, not in a corner, but in the open cities of London and Worcester; yet (such is the shamelesse impudencie of that sect) by printed apologies they haue bene iustified; and, which is more, inserted in a Catalogue of their Martyrs, set fourth at Rome, anno 1608, by the licence and permission of their superiours. By which maner of doing, what may be expected, in this particular, at their handes, any man may easilie perceiue. Euery thing they are about to doe, (bee it neuer so great a mischief,) they cloake with the mantle of Religion: and if the statutes of the kingdome ouer-take any of them, either for practises against the King, or sowing the seed of rebellion amongst the subiectes, it must bee supposed (forsoothe) they suffer all for religion. Now were it so, and that, according to the law, for Masse saying they were punished to the death, they could not glorie in it, nor rightly challenge the crowne of martyrdome, their Masse beeing a vile and idolatrous seruice, flatly disagreeing with the faith of Christ, and truth of the Gospell. But it is not so; albeit wee haue such statutes, for the restraint of Masse abomination within this kingdome, they are not able to instance any one, who, for the transgressing thereof, to this houre hath suffered. His Majesties proceedings with them haue bene more gentle: where death might haue bene inflicted, milder courses haue bene taken: imprisonment for some short time, and banishment fourth of the realme, haue bene the sharpest punishments; so vnwilling was his Highnesse to force, or once to seeme to force, the consciences of any men whatsoever. And to say that which truth is, if this vnhappy miscreant, who nowe hath his reward, had not discovered his traiterous minde, openly disauowing his Majesties authoritie, and stood to the maintaining of the Popes power, for dethroning kings, and freeing subjects from their oathes of alleageance, hee had felt no harder measure then others, although the circumstances of his fault were much greater; but his peruerse speaches, and insolent cariage beyond all credite, his sowing of doctrines tending to open rebellion, the hande of Iustice could not forbear. What was it, in the hearing of multitudes of people to affirme, 'that he would returne or abide in the kingdome, contrary to the lawes, and his Maiesteis commandements? to value his Highnesse authoritie with his old hatte, and the Acts of our Parliament with a rotten figge? to say, it was treason to sweare with the oath of alleageance to the King, and that his Maiestie, by vsurping the Popes power, had lost the right of the kingdome?' Yet these, and diuers other more treasonable speaches, he vttered at his arraignment, which are set down in the processe, so far as could be remembered; for all could not be kept in mind. I am perswaded, the honeste minded of those of his own profession will in their hearts condemne, and judge him justly to haue suffered; for, praised be God, the Jesuits arte hath not so farre preuailed, in planting such opinions in the hearts of people, but euen amongst the aduersaries themselues, they are many that doe no wise approue their seditious and proditorie doctrines. And here, to all our Catholikes (they will be so called) in this kingdome, if nothing further may be obtained, and that still they wil lye in that superstition, wherein they haue bene nuzled, I wish at least so much wisdom, as to beware of Jesuites policies, and not to thinke their practises the cause of the Catholicke Church. It is not religion, as one hath well obserued, they striue for, but foueraignitie. It will not content them to haue the Romish faith and ceremonies embraced; the crownes of kings, their scepters and subjects, must all be at the Popes deuotion. This is their speciall worke, and the effect of their blinde obedience, that speciall vowe, I meane, which they, besides the three voves common to other orders, vov and sweare at their receptions. To this point runs all their seruice, to make the Pope the lord of all the earth; emperours, kings, and princes his dependants; to be removed, altered, changed, depofed,

and killed, when it pleaseth his holines to giue commiffion. Mariana, a Jefuit, counteth it a whole meditation for Kings, to think they may be killed, not only lawfully, but with glory and commendation to the doers. And Cæſar Baronivs, in his *Annales*,¹ recites a brieue of Pope Vrban the Second, ſent to Godfrede, Biſhop of Luca, wherein hee declares, that they are not to be eſteemed murderers, who, burning with the zeale of their Catholicke mother, kills excommunicates. The words of the Reſcript are theſe: *Non illos homicidas arbitramur, qui aduerſus excommunicatos, zelo catholice matris ardentibus, eorum quoslibet trucidaffe contigerit.* Bellarmine, that great Doctor, in his con-trouerſie, *De Romano Pontifice*,² hath theſe expreſſe words, *Papa poteſt mutare regna, et uni auferre atq. alteri conferre, tanquam ſummus princeps ſpiritualis ſi id neceſſarium fuerit ad animarum ſolutem.* That is, the Pope, as chiefe ſpiritual prince, may change kingdomes, and take them away from one, and giue them to another, if it be neceſſarie for the ſauing of ſoules. But Franciſcus Suarius, in his late booke intituled, *Deſenſio Fidei Catholice*, goes beyond all this, ſaying, that any, to whom the Pope permits the doing, may kill or expell the King, who is by ſentence depriued, or, which is all one, if he be declared to haue committed the crime, which by law deſerues that penaltie; and if the Pope neglect to giue power, the lawfull ſucceſſour may take the execution to himſelfe; and if he faile, the communitie of the kingdome ſuccedes in that right; to wit, to kill and expell him. His wordes are theſe: *Post ſententiam condemnatoriam regis, de regni privatione, latam per legitimam poteſtatem, vel quod perinde eſt, poſt ſententiam declaratoriam criminis habentis talem pœnam ipſo iure impoſitam, poteſt ille qui ſententiam tulit, vel cui ipſe commiſerit, regem privare regno, etiam illum interficiendo, ſi aliter non potuerit.* In the ſame place:³ *Si Papa regem deponat, ab illis tantum poterit expelli, vel interfici quibus ipſe id commiſerit. Quod ſi nulli executionem imperet, pertinebit ad legitimum in regno ſucceſſorem, vel ſi nullus inventus fuerit, ad regnum ipſum ſpectabit.* And that no man ſhould thinke this his priuate opinion, amongſt the approbations prefixed to the worke, yee haue, in *cenſura Academia Complutenſis*, this ſaide: *Nihil eſt in toto hoc opere à noſtro omnium ſenſu diſcordans, quum de hac re ſit omnium noſtrum eadem vox, idem animus, eademque ſententia.* That is, there is nothing in all this worke, which is not agreeable with our mind, ſeeing herein we haue all one voice, one opinion, and one iudgement. Nowe if this bee the minde of all, it is high time they were all met with, and that *celeri pœna*, by a preſent diſpatch. The knightes templars, erected, as is thought, by the princes of France, to preferue their conqueſt in the Holy Land, when, by keeping the rules of their inſtitution in the firſt yeeres, they had purchaſed a great reputation of holynesse, and thereby drawne to themſelues an infinite wealth, became at laſt intolerable to kinges, and by one uniforme conſent, in the Councell of Vienna, were condemned, and the order aboliſhed. The order was of a longer ſtanding by much then our Jefuites, but to kinges nothing ſo dangerous. The writers that mention them, do not agree vpon the cauſes of their generall hatred, and leaue the reader in ſuſpenſe, whether iuſtly they merited extermination or not: But poſteritie ſhall haue an aduantage in vnderſtanding the doctrine of Jefuites by their printed bookes, and their ſeditious practiſes, by the attempts they haue made againſt the eſtates and liues of princes. *Secta hæc rebellis eſt, et nocens regibus.* A rebellious ſect they are, and hurtfull enemies to kinges, cruel aſſafins, teaching diſloyaltie, and plotting the deaths of princes, which all Evrope, and thou, France, by the reſt, can teſtifie. O kinges, when ſhall ye awake, and take it in your harts to fulfil Gods decree? When ſhall yee vindicate your crownes from the vniuſt uſurpations of the prieſt of Rome? Shal the diſgrace and violence done to ſome of your ſacred perſons for euer thus lye vnauenged? We know it ſhall not: But God hath his day, who will patiently attend. In the meane time, I ſhall wiſh the Catholikes of this kingdome to conſider and looke more deeply in their profeſſion, then they yet haue done. The myſteries of the Romiſh Religion are not ſeene at the firſt. Surely, ſome of our Papiſtes doe not know them, eſpecially that principle, which biades

¹ Tomo 11. page 802.² De Pont. lib. 5. cap. 6.³ Lib. 6. cap. 4. num. 18.

them to obey the Pope against al the world. Suarius¹ hath taught them, that it is to be held as an article of faith, that the Pope hath power to depose kings; and that hee who denyes this power to the Pope, denyes the Catholicke faith. By this is there no meane left to bee a Catholike, and remaine the Kings loyall subiect. To beleene the Popes power is such, is vndenyable treason: To refuse it, is to renounce Catholick religion; which last, I perswade myfelfe all true and naturall Scots will choose, and of the choise shall it neuer repent them. I beseech God to open their eyes that are closed, and giue vs all to be contented with the Scriptures of God, which, by themselues, are able to perfect vs vnto euery good worke. Farewell.

A TRUE RELATION of the *Proceedings against IOHN OGILVIE, a Iesuit, especially at his Arraignement and Execution, which was at Glasgow, the last of Februarie, being on Tuesday, 1615.*

IOHN OGILVIE, alias WATSON, (for, according to the maners of his sect, he was *multinominis*, a man of diuers names,) came into Scotland at Martimes 1613; and making his residence for the most part of that winter in the north parts of Scotland, tooke his journey to England a litle before Easter. Where, giuing out to some of his countrey-men, that he had a supplication for some wrongs to present to his Majestie, hee attended the Court some two moneths; and falling in acquaintance with a gentleman of the West countrey, after his pretended businesse was done, or the occasion disappointed, he returned into Scotland with the saide gentleman, in the beginning of Iune thereafter. Vpon this familiaritie, and other intelligences giuen him, he came to Glasgow in August following; and finding a kinder receipt by certaine persons in that citie, (who for that crime haue since bene justly condemned,) then either he expected, or became them to haue granted, he made some haunt and resort thither at fundry times, till at last he was detected, and, by the direction of the Archbishop of Glasgow, who at that time kept his residence within the citie, apprehended and committed to prison. It was the fourth of October, a litle after foure of the clocke in the afternoone, when perceaued to bee ouertaken somewhat in company, his examination was differred to the morrow after. There was found with him two or three litle bookes, containing directions for confessioun; his budget being in the house where he kept at night, was conuoyed out of the way by one of his familiars, and presented the next day after, search beeing made by the magistrates of the citie, therein was found his Masse garments, chalice, altar, and the rest of that stufte, with letters not fit at this time to bee divulgate. Amongst others, a warrant to dispense with those who possesse church-liuings, after this tenor, *quo ad dispensationem de bonis ecclesiasticis poteris dispensare ut retineant quæ possident, dummodo in pios usus aliquid impendant pro iudicio Confessarii dispensan-*

¹ *Propositio hæc, Papa potestatem habet ad deponendos reges hereticos et pertinaces, inter dogmata fidei tenenda et credenda est. Infra: Si abjuratur hæc potestas, abjuratur catholica fides. Lib. 6, cap. 8, num. 8.*

tis. Hee had in the famin maile diuerse Reliques, peeces of wood, bones, and a tuſte of Ignatiſ hair, the founder of the Ieſuites order, which I thinke was his chiefeſt iewell.

In his examination, which was the next morning, before the Archbiſhop of Glaſgow, the Biſhop of Argyle, the Lords Fleming, Boyde, and Kilfyth, the Proueſt of the citie of Glaſgow, S. Walter Stewart and S. George Elphingſton, knights, he confeſſed his true name to be Iohn Ogilvie; that he was borne in the North of Scotland, and had bene foorth of the countrey 21 yeeres; that hee liued at Grats, in a colledge of the Ieſuites, and was receiued in their order; that he returned into Scotland by the command of his ſuperiour, and was to ſtay there vntill hee were recalled, if no other impediment ſhould offer. Being required to giue his oath, that he ſhould declare nothing but trueth, in ſuch things as ſhould be demanded; he answered, ‘that he would take oath, but with ſome exceptions, namely, if hee were demanded in any thing that touched his eſtate and life, or that might endanger theſe or any of them, he would not anſwere, likewiſe if the ſame tended to the preiudice of others.’ And when it was replied, that, his exceptions being admitted, his oath was as good as no oath, ſeeing any queſtions that could be propoſed, would concerne ſome of theſe, he was induced at laſt to giue a ſimple oath, which he did vpon his knees; and riſing vp from the ground, ſaid, ‘I will neither lie nor æquiucate, but what I ſay ſhalbe truth; and what I am asked, if I find it impertinent for me to anſwere, I will ſay nothing, or declare plainly I will not tel.’

Then being inquired of his comming in Scotland, the time and buſines he came to do, answered, ‘his buſines was to ſaue ſoules.’ Touching the time when he came into Scotland, answered, ‘In the Iune before:’ where hee was deprehended to æquiucate, notwithstanding of his proteſtation; for he meant of his laſt comming, and was asked concerning the firſt. But the time at that examination was not vnderſtood. Being inquired of the places where he had bene receiued, denied to tel; and if he had ſaid Maſſe in any place, he answered, ‘hee would not ſay any thing that might worke preiudice to himſelfe or others:’ and becauſe he had profeſſed that hee would not lie, the reply he commonly made to ſuch queſtions, was, ‘I will not tell you.’

The Lordes, finding him thus obſtinate, returned him to a chamber in the Caſtle, which was prepared for him, nothing lacking that was requiſite for one of his qualitie; and there hee was kept to the 8 of December. Now and then conference was giuen him by diuers of the Miniſters, in all which, heate and choler was eſpyed much to ouer-rule him. The ſchole diſtinctions he had in readineſſe, and thereby, when hee could not ſhift the argument, made ſemblance to euade. But of Holy Scripture (as he ſeemed not to be well acquainted there-

with), he made little reckoning, denying it still, after the Iesuites maner, to bee the onely rule of faith.

The 12 of December, he was presented at Edinburgh, before the Lords Commissioners, appointed by his Maiesties Miffiue for his examination and tryall; namely, the Lord of Binning, Secretary, the Lord of Kilfyth, Sir Gidion Murray, Thesaurer-deputie, and Sir William Oliphant, his Maiesteis Attorney-Generall; to whom he answered in al that was proponed, as of before at Glasgow. There, the letters intercepted with him were presented, which he acknowledged to be his; yet beeing demanded, touching certain particulars contained in them, he denied to giue ther lordships any fatisfaction: And howbeit there was no perswasion omitted, that might haue induced any good nature to a better resolution, it auailed not. So as their lordships, perceiuing nothing but a pertinacious refusing in him to answer to points most reasonable, and withall apprehending his stay at Court, in the last summer, to haue bene for some worse seruice then he could speede in, determined, according to the power giuen them, to extort by torments another confession: which being intimated to him, and he replying that he was ready to suffer what they pleased, it was thought fit to proue him with the most easiest forme of tryall that could be used. And here, it being remembered, that in the tryal of some criminal persons, it was found that nothing helped more to find out the trueth of the faults wherewith they were charged, than the with-holding of their naturall rest; it was aduised, that he should be kept without sleepe for some nights, which was accordingly done: and during which time it was perceiued, that hee remitted much of his former obstinacie, and falling to discouer certaine of his receauers in Edinburgh, gaue hope, that, by gentle usage, hee would bee drawne to giue their lordships contentment.

In the meane time, Christmasse approaching, at which time there is an ordinarie cessation from the affaires of Counsell and Sessioun, the Archbishop of Glasgow, beeing to repaire homewards, and vnwilling to discharge himselfe of that prisoner, till hee might at leasure worke him to a better minde, obtained the fauour of their L. to retaine him, in his companie, for a fourth-night after, or till hee shoulde returne himselfe to Edinburgh.

It pleased his Ma. in this time, whilest he was remaining at Glasgow, to send a Commission to the Archbishop of Glasgow, the Lord Bishop of Argyle, the Lord Fleming, S^r George Elphingston, and Iames Hammilton, Prouest of the citie of Glasgow, for trying the said Iesuit his opinion, touching his Highnesse royal power, and the Popes claimed iurisdiction, maintained by Bellarmine, Suarius, and others of that sort. The questions were these:

1. Whether the Pope be iudge, and haue power, *in spiritualibus*, ouer his Ma-

iestie, and whether that power will reach ouer his Maiestie, euen *in temporalibus*, if it be *in ordine ad spiritualia*, as Bellarmine affirmeth ?

2. Whether the Pope haue power to excommunicate Kings, (especially such as are not of his church,) as his Maiestie ?

3. Whether the Pope haue power to depose Kings, by him excommunicated ; and in particular, Whether he haue power to depose the King his Maiesty ?

4. Whether it be no murther to slay his Maiesty, being so excommunicated and deposed by the Pope ?

5. Whether the Pope haue power to assoyle subiects from the oath of their borne and natural allegiance to his Maiestie ?

Vpon the 18 day of Ianuarie, the foresaid questions being red distinctly vnto him, and he required to declare his opinion thereanent, answered as followeth :

To the first, ' That hee thought the Pope of Rome Iudge to his Maiestie, and to haue power ouer him, *in spiritualibus*, if the King be a Christian : ' and where it is asked, if that power will reach ouer his Maiestie, *in temporalibus* ? hee sayes, ' hee is not obliged to declare his opinion therein, except to him that is Iudge in controversies of religion, which hee acknowledges to be the Pope, or some one hauing authoritie of him.'

To the second hee answereth, ' that the Pope hath power to excommunicate his Maiestie : ' and where it is said, that the King is not of the Pope his church, hee saith, ' that all who are baptized, are vnder the Popes power.'

To the third, where it is asked, if the Pope haue power to depose his Maiestie, being excommunicated ? Answereth, ' that hee will not declare his mind, except to him that is Iudge, in controuerfies of religion.'

To the fourth, whether it bee lawfull to slay his Maiestie, being excommunicated and deposed by the Pope ? Answereth, *ut supra*.

To the fift, whether the Pope hath power to assoile subiects from their borne and naturall allegiance to his Maiestie ? Answereth, *ut supra*.

In all these Articles, he was particularly resoned with by the Archbishop of Glasgow, Mr Robert Boyd, Principal of the College, a man of rare erudition, and Mr Robert Scot, one of the Ministers of the citie ; where it was also signified vnto him, that it concerned him in no lesse then his life, what answere he should make ; if he should stand obstinate in these he had giuen, he might know what fauour was to be expected for his other crimes. Not the lesse, ratifying all that formerly was said, hee added this further, ' that he condemned the oathes of supremacie and allegiance proponed to be sworne in England,' and would needes haue the writer to insert those wordes ; to all which hee put his hand, subscribing thus,

IOHANNES OGILVEUS, *Societatis Iesu*.

These answeres beeing sent to his Majestie, vnder the testification of the fore-

saide Commiſſioners, his highneſſe gaue order to the Lordes of the Priuie Counſell, for his triall; which was appointed to be at Glaſgow, the laſt of Februarie. Immediately after, the Archbiſhop of Glaſgow directed the Proueſt and Baylies of the citie vnto him, to ſignifie that Tueſday following was appointed for his arraignment; and that hee would not bee accuſed for Maſſe ſaying, or any thing elſe that concerned his profeſſion, but for the anſwers that hee had made to the demands propoſed to him by his Maieſties Commiſſioners. They declared alſo, that if hee ſhould, vpon better reſolution, recall thoſe anſweres, and apply himſelfe to giue his Maieſtie ſatiſfaction, in other points, which of deutie hee was obliſhed vnto, the ſaid Archbiſhop would vſe his credite with his highneſſe and the Lordes of the Priuie Counſell, for his ſafetie. His anſwere was, ‘ that he thanked his lordſhip, for the good will and kindneſſe offered; but he was ſo little minded to recall any thing hee had ſaid, as when hee came to the place, hee would make a commentarie vpon his anſweres.’

The Miniſters of Glaſgow, accompanied with Maſter Williame Struthers, one of the Miniſters of Edinburgh, did alſo viſite him, ſome two dayes before, aduiſing him to the ſame purpoſe, and offering him their beſt counſell and comfort. His anſwere was, ‘ That he had reſolved what to doe; and if hee ſtoode in neede of their comfort, hee ſhoulde advertiſe.’

The Earle of Lowthiane, truſting by conference to bring him to a better minde, went vnto him at diuers tymes, uſing many perſuaſions to draw him from his obſtinate courſe: but nothing could preuaile with him, as in the proceedings ye ſhall perceiue.

THE ARAIGNMENT of JOHN OGILVIE, on Tueſday the laſt of Februarie, in the town-houſe of GLASGOW, before Iames Hammilton, Proueſt of Glaſgow, Iames Bell, Coline Campbell, and Iames Bradwood, Baylies of the citie, Juſtices appointed by ſpeciall commiſſion for that buſines, by the Lordes of Priuie Counſell. The foreſaid IUDGES being aſſiſted by the honourable LORDS there preſent:—John Archbiſhop of Glaſgow, James Marques of Hammilton, Robert Earle of Lowthiane, William Lord Sanquhar, Iohn Lord Fleming, Robert Lord Boyde, and Sir Walter Stewart, Baylie deputie of the regalitie of Glaſgow.

ON Tueſday, the laſt of Februarie, a litle after 11 of the clocke, in the forenoone, the Court beeing ſet, Mr William Hay of Baro, Commiſſar of Glaſgow, deputed by ſpeciall commiſſion from Sir William Oliphant of Newtoun, his Maieſties Atturney Generall, produced the Inditement following: together with the citation vſed againſt thoſe who were to paſſe vpon the iurie, and the roll of their particular names, ſubſcribed with his hand, according to the cuſtome obſerued in thoſe caſes.

THE INDITEMENT of JOHN OGILVIE, IESUIT, after the forme of the law of Scotland.—JOHN OGILVIE, by your subscription, a Priest of the late execrable order of IESUITS, you are indited and accused, That, forasmuch as God, the author of all righteous gouvernement, hauing established Kings and Magistrats his lieutenants vpon earth, for repressing of violence, oppression, and vice, and the promoting of pietie and justice, hath, in his particular grace and fauor, blessed this cuntry with a more ancient, iust, and permanent descent of lawfull Kings, than any other nation of the world; and extended our felicitie beyond the happines of our antecessors, by the justice, wisdom, and clemencie of his Maiesties prosperous reigne; and hath not onely rewarded his Maiesties zeale and righteoufnes with wealth and peace, but also honoured and strengthened him with the accession of the most mightie and flourishing kingdomes of England, France, and Ireland. Which visible fauours, proceeding directly from Gods most bountifull hand, moued the whole Estates of this kingdome, assembled in the Parliament holden at Perth, the 9 of Iulie, 1606, To acknowledge his Maiesties soveraigne authoritie, princely power, royall prerogatiue, and priuilege of his crowne, ouer all estates, persons, and causes whatsoeuer, within the kingdome: And all in one voice, faithfully promise to maintaine, defend, obey, and aduance the life, safetie, honour, dignitie, soueraigne authoritie, and prerogatiue royall of his sacred Maiestie, and priuiledges of his crowne: And to withstand all persons, powers, and estates, who should presume, preasse, or intend any wayes to impugne, hurt, or impair, the same: As also, his Maiestie, with aduise of the whole estates of this kingdome, in the Parliament holden at Edinburgh, the 22 day of May, anno 1584, ratified, approued, and perpetually confirmed, his Majesties royall power and authoritie ouer all estates, as well spiritual as temporall, within this realme: And statuted and ordained, that his Highnesse, his heyres and successouris, by themselves and their Counselles, were, and in all times comming should bee, Iudges, competent to all persons, his Highnesse subjectes, of whatsoeuer estate, degree, function, or condition that euer they be of, spiritual or temporall, in all matters wherein they or any of them should be apprehended, summoned, or charged to answere vnto such things as should be inquired of them, by our said soueraign Lord and his Counsell: And that none of them, who should be apprehended, called, or summoned, to the effect foresaid, should presume or take in hand to decline the iudgement of his Highnesse, his hayres and successours, or their Counsell, in the premisses, vnder the paine of treason: And likewise, by the 48 Act of King James the First his Parliament, and diuers other Parliaments thereafter, it is ordained, that all the King his lieges liue and be gouerned vnder the Kings lawes and statutes, and vnder no lawes of other countries and realmes, vnder the paines of treason, and others; (as is) particularly expressed in the Acts before mentioned,

and other lawes of this kingdome. Notwithstanding whereof, it is of trueth and veritie, that you, hauing renounced your naturall allegiance and deutie to your natie and righteous King, and cast off all reuerence, respect, and obedience to his foueraigne authoritie and lawes, and dedicated your mind and actions to the vnlawfull obedience of forraine powers, aduerfaries to his Majestie; and resolving, so farre as in you lieth, to seduce his Majesties subjectes from the faith and allegiance due to his Majestie, repaired to his countrey, in the moneth of Iune last past, or thereabout, and by your conferences, intisements, auricular confessions, Masse-saying, and other subtle and craftie meanes, indeuoured your selfe, not onely to corrupt many of his Maiesties lieges, in religion, but also to peruert them from their duetifull obedience due to his Majestie, till you were discovered and apprehended by the Archbishop of Glasgou; who, with diuers his Maiesties Counsellors, and others his good subjectes, used all Christian and charitable meanes to bring you to the sense of your hainous offences, and desire of amendment thereof: But they, losing all their well-intended labours, were (in respect of your peruerse obstinacie) commanded by his Majestie, to enter to your examination, and the tryall of your hainous crimes and transgressions. And especially, the saide Archbishop of Glasgou, and many others of good ranke and qualitie adjoined to him, by his Majestie, for your examination, hauing, vpon the 18 day of Ianuarie last, called you before them, to examine you vpon some particular interrogatories, prescribed by his Majestie to be demanded of you, as directly concerning his Majesties moſte sacred person, life, crowne, and estate. And chiefly, you being demanded by them, whether the Pope hath power to depose Kinges, being excommunicated? And in particular, if he haue power to depose the Kings Majestie, our foueraigne, being excommunicated by him? You answered, treasonably, that you woulde not declare your mind, except to him that is iudge in the controuersies of religion, whom (by your answere made to the latter part of the first interrogatorie, demanded of you that day) you declared to be the Pope, or any hauing authoritie from him: Albeit, by the Acts of Parliament, and lawes of this Realme, made in the yeeres of God 1560 and 1567, it is statuted and ordained, that the Bishop of Rome (called the Pope) shall haue no iurisdiction nor authoritie within this Realme, in any time comming: And thereby, not onely declined treasonably his Maiesties iurisdiction, allowing of the Popes iurisdiction, which is discharged by Acts of Parliament, as said is; but hath committed most damnable and high treason, in not acknowledging that the Pope hath no power to depose his Maiestie, who, holding his crowne and authoritie absolutely, foueraignly, and immediatly of God, may not be deposed by any earthly person, power, or authoritie. And thereafter, being demanded, If it be lawfull to slay his Majesty, being excommunicated and deposed by the Pope?

you answered, *ut supra*; which was, that you woulde not declare your mind till you were before the Pope, or others hauing authoritie from him: Thereby, not onely declining, treasonably, his Maiesties iurisdiction and authoritie royall; but by your not answering clearely, that it is altogether vnlawfull, damnable, and diabolicall, once to thinke that it is lawfull to slay his most sacred Majestie, you haue committed most hainous, pernicious, and vnpardonable treason. And lastly, being demanded, If the Pope had power to assoile his Majesties borne subjectes from their naturall allegiance? you answered, *ut supra*: and thereby, both declined, treasonably, his Highnes iurisdiction and authoritie royall, in refusing to answeere before his Maiesties Counsellors and Commissioners foresaid, in one matter, meerey concerning his royal power ouer his people, and their subiection to his Maiestie: and also committed wilfull and detestable treason, in not acknowledging, professedly and presently, that none on earth had power to assoile his Maiesties subiects from their naturall subiection and allegiance to him. But that it may bee knowne that your treason proceeded of forethought felonie and obstinate resolution, you freely and vnrequiredly did adde to your foresaid answeres, this damnable conclusion, that you condemned the oathes of supremaeie and allegiance giuen to his Maiestie, by his subiects, in his Dominions; wherby it is apparent, that your erand to this Countrie hath beene, to infect his Highnesse subiects with the poison of your pestilent and treasonable opinion foresaid, to the subuersion of Religion, ouerthrow of his Maiesties authoritie and crown, and destruction of his most sacred person. And albeit, the course of all his Maiesties life and reigne, hath manifested how vnwilling hee hath euer beene to use the seueritie of his Lawes against those who hath said and heard Masse, and otherwise controuened the Acts of Parliament made against idolatrous papistrie, and practisers thereof, within this Kingdome; desiring rather to reclaime them, by instruction, from their errours, to the knowledge and profession of the trueth: And when he found them obdurat, and of desperate resolution, relieuing the countrie of the dangerous progresse of their courses, by their imprisonment and banishment, whereof you had such experience, in the persones of your owne complices, condemned for their manifest crymes, as might verie probablie haue made you to haue expected the like; if anie memorie of your natiue duetie and borne allegiance had possessed your mind: But you, beeing altogether destitute thereof, by the three last articles of your Depositions aboue written, you haue so plainly discouered, that you professedly approue the meanes, and wish the effect, of the ouer-throwe of his Maiesties estate, the destruction of his Highnesse person, and seduction of his natiue subiectes from their subiection and duetifull obedience; that thereby, and by euery one of your foresaid answeres, you haue committed moste hainous, detestable, and vnpardonable treason, and deseruedly

incurred the most rigorous paines therof to be executed vpon your body, lands, and goods, with all extremities, to the terrour of others.

THE Inditement being read, Maister William Hay, substitute for his Maiesties Attorney, opened the same, to the effect following.—Albeit the Inditement of it selfe be cleare enough, and representeth sufficiently to my Lordes Iustices, their honourable Lordships heere assisting, and to your selfe, Iohn Ogilvie, who standes there accused, the weight and gravitie of the crime by you committed, yet I shall resume it to you in few words, that your answeres may be the more distinct, and without mistaking.

You are not accused of saying Masse, nor of seducing his Maiesteis subjectes to a contrarie religion, nor of any point touching you in conscience, properly; but for declining his Maiesties authoritie, against the lawes and statutes of the land, and for maintaining treasonable opinions; such as we, of this Realme, haue not heard by any auowed. The statutes, mentioned in your Inditement, make it treason not to answer the Kings Maiestie, or his Counsell, in any matter which shall be demanded: You beeing examined by my Lord Archbishop of Glasgow, and other honourable persons adioyned to him, by his Maiesties special Commission, refused to answer vnto diuers interrogatories proponed to you by their Lordships; and, at the same time, professedly auouched the Pope of Rome his iurisdiction, which, by the Lawes of the countrie, is many yeeres since plainly discharged: Therefore, haue you incurred the penaltie contained in the statutes, and the same ought and should be executed vpon you.

It is further laid vnto your charge, that you, being demanded in the particulars, namely, Whether the Pope hath power to depose the Kings Maiestie, our soueraigne? Secondly, Whether it be lawfull to slay his Maiestie, being deposed by the Pope? Thirdly, Whether the Pope hath power to assoile his Maiesties subjects from their naturall allegiance, or not? You denied to giue any answer, touching any of these points, except yee were inquired thereof by the Pope, or others hauing authoritie from him; and so not acknowledging that his Maiesties crowne and authoritie is held immediatly and souerainely of God, the author of all gouernement; that it is detestable, once to thinke, that his sacred Maiestie may bee lawfully killed; and that no man hath power to assoile his Maiesties subjectes from their naturall allegiance to his Highness: You haue, in these points, and euery one of them, committed most hainous treason; for the which, what you say in your own defense, I see not. And yet further, that it may be seene, how desperate your resolution is, in al these points, although you were not required concerning the oaths of supremacy and allegiance giuen to his Maiestie by his subjectes, ye freely, and out of your owne motiues, condemned these oaths,

as impious and vnlawfull. Thereby hath it appeared, what a wicked and treasonable mind you foster against his Maiestie, our soueraigne. If you should deny it, heere are your answeres, subscribed with your owne hand, which ye cannot but acknowledge; them I desire to bee read, as likewise the seuerall statutes of Parliament, which you are alledged to haue transgressed; and thereafter, since his Maiestie is pleased that the ordinarie course of tryall be kept vnto you, you shall haue libertie to say for your selfe, either against the relevancie of the Inditement, or verification produced, what you thinke best.

Then were read the statutes of Parliament, mentioned in the Inditement, and the said Iohn Ogilvies answeres to the demands proponed vnto him; which he acknowledged for his owne, and the subscription thereto subioyned: after which, hauing licence of the Court to say what he coulde for himselfe, he spake to this effect:—‘ First, vnder protestation that I doe no way acknowledge this iudgement, nor receiue you, that haue that Commission there produced, for my iudges, I deny any point laid against me to be treason: for if it were treason, it would bee treason in all places, and in all kingdomes; but that,’ saith he, ‘ is knowne not to be so. As for your Actes of Parliament, they are made by a number of partiall men, the best of the land not agreeing with them, and of matters not subiect to their forum, or iudicatorie, for which I will not giue a rotten figge!’

‘ Where I am thought an enemy to the Kings Maiesties authoritie, I knowe none other authoritie he hath, but that which he received from his predecessors, who acknowledged the Pope of Rome his iurisdiction. If the King,’ saith he, ‘ will be to me as his predecessors were to mine, I will obey and acknowledge him for my King; but if he doe otherwise and play the runnegate from God, as he and you all doe, I will not acknowledge him, more than this old hatte!’

Heere the Archbishop of Glasgow interrupted his speech, desiring him to deliuer his mind in a greater calme, and with more reuerent speeches of his Maiestie (for he vttered those things in a vehement passion, and as one transported with fury); hee remembered him, that hee was accused vpon his life, before iudges that were authorized by his Maiesties Commission: to decline the iudgement, or raile against his Maiesties authoritie, was bootlesse, and in a man of his profession, being an Ecclesiasticke, very scandalous. He should rather take another course to amend what he had offended in, and recall his former answeres, if they had not proceeded from a deliberate purpose; or if hee were resolute to maintaine them, to doe it with reason, and in a moderate sort; that this were his best, either for iustifying himselfe, and the opinions he held, or for mouing the Iudges, and their Lordships that were assisting, to commiserat his case: he aduertised him withall, to be more temperate in his speeches concerning his Majestie, otherwise he would not be licenced thus to offend.

To this, Ogilvie made some little answer, 'That hee would take the advertisement, and speake more coldly:' howbeit, hee would neuer acknowledge the iudgement, nor thinke they had power to sit on his life, but said, 'And for the reuerence I doe you, to stand bare-headed before you, I let you know it is, *ad redemptionem vexationis, et non ad agnitionem Iudicii*.

The Aduocate here insisted, that seeing all his answeres tended to decline the iudgement, and that hee brought no reason why the Inditement should not goe to a tryall, that the Iurie should be chosen and sworne at the Barre, according to the custome.

THE NAMES OF THE IURIE.

Sir Geo. Elphinston of Blythwood,	Hew Crawford of Iordane-hill,	John Dunlop of Powmilne,
Sir Thomas Boyd of Boneshaw,	John Carshore of that Ilk,	John Stewart, burges of Aire,
Sir J ^s Edmeston of Duntraith, elder,	Hew Kennedy, prouest of Aire,	John Dumbar, burges there,
James Murehead of Lachope,	William Makarrel of Hill-houfe,	James Iohnston, burges there,
James Robertson of Ernock,	James Blaie, baylie of Aire,	John Cunningham of Rawes.

It was allowed the prisoner to challenge any of the fore-named persons, and to oppose vnto their admiffion: who said, 'He had but one exception for them all: they were either enemies to his cause, or friendes; if enemies, they could not bee admitted vpon his triall, and if they were his friends, they should stand prisoners at the Barre with him.'

The Iurie, being knowne to be all discrete and substantiall persons, were instantly sworne and admitted.

Then was the Inditement read againe, in the hearing of the Iurie, and the evidences shewed them for verification thereof, which ofbefore were produced. And the prisoner, beeing of new remembered to say what hee would for himselfe, for the better information of the Iurie, spake these things following:

'I wish these Gentlemen to consider well what they doe. I cannot bee tried nor iudged by them; and whatsoever I suffer here, it is by way of iniurie, and not of iudgment. *Iniuria est, non iudicium*. I am accused of treason, but haue done none offence, neither will I begge mercy.'

'This is strange,' sayeth the Archbishop, 'you haue done none offence, and yet you are come in his Maiesties kingdome, and hath laboured to peruert his Highnesse subjects; both of these are against the law: In this haue ye not offended?'

'Not,' he answereth; 'I came by commandement, and if I were even now fourth of the kingdome, I should returne: neither doe I repent any thing, but that I haue not been so busie as I should, in that which yee call peruerting. I hope to come to Glasgow againe, and to doe more good in it. If all the haire of mine head were priestes, they should all come into the kingdome.'

'And doe you not,' sayeth the Archbishop, 'esteeme it a fault to goe against the King his commandement, especially in this point of discharging you his king-

dom. If a King haue any power within his kingdome, it seemes hee may rid himselfe and his countrey of those with whom he is offended; and it fauoures of great rebellion to say otherwise.'

To this Ogilvie replied, 'I am a subiect as free, as the King is a King: he cannot discharge me, if I be not an offender, which I am not.' And being asked, for what offences he might be discharged by the King? Answered, 'in the cafes of theft and murther.'

'All this while,' said the Archbishop, 'you come not to answere any thing to the points of your Inditement. Why did you decline his Maiesties authoritie, and refused to shew your opinion anent the Pope his power in deposing Kings, and loosing subiects from their oath of allegiance? And when it was asked you, if it were lawfull to slay the King, being deposed and excommunicated by the Pope, which any loyall hearted subiect will abhorre to think of, why did you not simply condemne it as vnlawfull? For in that you doe not condemne it, you shewe your selfe of the opinion of the rest of your sect, who in their bookes maintaine, that it is both lawfull and commendable to slay Kings, if the Popes commission goe foorth once for it.'

'For the declining of the Kings authoritie,' sayeth he, 'I will doe it still in matters of religion, for with such matters hee hath nothing to doe; neither haue I done any other thing, but that which the Ministers did at Dundie; they would not acknowledge his Maiesties authoritie, in spirituall matters, more than I; and the best Ministers of the land are still of that minde, and if they be wise, will continue so.'

The Archbishop replied, 'that he was mistaken, both in the place and matter; for it was not at Dundie, but Aberdein, where eight Ministers, meeting to a General Assemblie, contended not against the Kinges authoritie, but that the Assemblie called to that place and time, could not be discharged by his Maiesties Commissioner: Neither should the fact of a few, taken at the worst, be esteemed the deed of the whole. These haue bene punished for their offences, and some of them haue confessed their error, and bene graciously pardoned by his Maiestie: All good Ministers professe otherwise, and our religion teacheth us to acknowledge his Maiestie, our onely supream iudge, in all causes. The King is keeper of both Tables, and his place beares him not onely to the ruling of his subiects in iustice, and preferuing equitie amongst them; but euen to maintaine religion and Gods pure worship, of which he should haue principal care. Your lord, the Pope, hath not onely denied this authoritie to Kings, which God giueth them, but usurpeth to himselfe a power of deposing and killing, when he is displeas'd; and it were the lesse to be regarded, if this his usurpation had gone no further then your pennes; but you haue entred, by this pretended right, the throats of the

greatest Kings, as your practise vpon the two last Henries of France beares witness. You are not able to lay such imputation vpon vs, nor our profession, which teaches, that, next vnto God Almighty, all men are bound to feare, serue, and honour their Kinges. But what answere you, touching these demandes? Hath the Pope power to depose the King? Or is it not murther to kill him, being deposed by the Pope?

‘ I refused of before,’ said hee, ‘ to answere such questions, because in answering, I should acknowledge you iudges in controuersies of religion, which I do not. I will not cast holy things to dogges.’

‘ And is it,’ said the Archbishop, ‘ a point of faith, that the Pope may depose his Maiestie? Or do you think it a controuersie in religion, Whether his Maiestie (whom God saue) may be lawfully killed or not?’

To this Ogilvie replied, ‘ It is a question amongst the Doctors of the Church, and many hold the affirmatiue, not improbably: A Councill hath not yet determined the point; and if it shall be concluded by the Church, that the Pope hath such power, I will giue my life in defence of it, and if I had a thousand liues, I would bestowe them that way, if they will make an article of faith of it.’ Being vrged to declare his owne opinion, especially in that point, whether it were murther to kill his Maiestie, being deposed by the Pope, he answered, ‘ that he would not say it were vnlawfull, though he should saue his life by it.’ Then going on with a long speech of the Pope his power, affirmed the King to be subject to him, by the vertue of Christes saying to Peter, *Pasce oves meas.* ‘ That if the King offended against the Catholicke Church, the Pope might punish him aswell as a shepheard or the poorest fellow in the countrey. That in abrogating the Popes authoritie, the estates of Parliament had gone beyond their limites, and that the King, in vsurping the Popes right, had lost his owne. *Nam qui rapit jus alienum,* sayeth hee, ‘ *perdit jus ad suum.*’

Being asked touching the oath of allegiance, why he did condemne it, and the same being read vnto him, he said, ‘ It was a damnable oath, against God and his trueth, and that it was treason to sweare it; because it brought the Kings person and state in danger; since this kingdome,’ sayeth he, ‘ was Christian, the Popes supreme power was alwayes acknowledged; this being cast off, (as we see in the Act of your Parliament,) against all reason and conscience, and subiectes forced to swear to a matter so vnlawfull, what maruell that attemptes and dangerous courses be taken against him? *Iustissima lex est, ut quæ agit aliquis, talia patiatur.* But would the King leaue off his vsurping vpon the Pope, hee might liue without feare, aswell as the King of Spaine, or any other Christian prince:’ And with this hee intermixed some speeches, of his owne seruice, and the seruice of other Iesuits done to his Maiestie, whereof hee saide, ‘ Neither Bishop, nor

Minifter, nor all the Bifhops and Minifters in his Maiefties kingdomes, had done or could doe the like.'

The further hee proceeded in fpeaking, his fpeeches ftill grew to bee the more intollerable; therefore the Archbifhop of Glafgow, willing him to make an end, did clofe all with fome wordes to the Iurie, to this effect. Gentlemen, and others, who are named vpon this Affife, though I minded to haue faide nothing, but fitten heere a witneffe of the proceeding, I haue beene forced, by his proud and impudent fpeeches, fomewhat to replie; and muft, with your patience, fay a little more. It is this fame day, two and twentie weekes paf, that this prifoner fell into mine handes; fince that time hee hath had leifure to thinke enough what courfe was fitteft for himfelf to take, for fatisfying his Maieftie, whome he had offended: neither hath he lacked counfel and aduife, the beft that we could giue him. Befides, hee hath found on our parte nothing but courteous dealing, and better intertainment then (I muft now fay it) hee hath deferued. Mine owne hopes were, that hee would have followed another courfe then I fee hee hath taken, and not ftande to the answeres which hee made to thofe demandes, which were moued vnto him by his Maiefties Commiffioners, and you haue feene: But if his answeres at the firft were treasonable, they are nowe fo little bettered, as in all your hearinges, hee hath vttered fpeeches moft deteftable, made a commentarie worfe then the text was, and fhewed himfelfe to carrie the minde of an arrant and desperate tratour. You perceiue, he obfcures not his affection towards the Kinges Majeftie, our foueraigne, in all his fpeeches; preferring the Pope to his Majeftie: And, which is more intollerable, affirmeth the Kinges Maieftie to haue loft the right of his kingdome, by vſurping vpon the Pope. Hee will not fay it is vnlawfull to kill his Maieftie; hee fayeth, it is treason for fubietes to ſweare the oath of allegiance; and meaneth fo much, in his laft wordes, as the Kinges Maiefties life and eftate cannot bee affured, except hee render himfelfe the Popes vaffall.

Thus hath hee left you little to doe: except that his Majefties pleaſure is, the ordinarie forme bee kept with him, you ſhoulde neuer neede once to remoue: all his fpeeches haue beene fo ſtuffed with treason, that I am ſure the patience of the Noble-men, and others heere preſent, hath beene much prouoked.

In al that he hath ſaid, I can marke but two things alledged by him, for the Popes authoritie ouer Kinges: the wordes of our Sauour to Saint Peter, *Paſce oues meas*, Feede my ſheepe; and the ſubjection of Kinges, eſpecially of our Kinges, ſince the kingdome became Chriſtian, to the Pope. For the wordes of our Sauour, howe little they ſerue his purpoſe, I haue no neede to tell you. To feed the ſheepe of Chriſt, is not, I hope, to depoſe Kinges from their eſtates, nor to inflame the heartes of ſubietes againſt princes: much leſſe to kill and diſpatch

them : Wee are better taught then to bee deceiued with fuch glosses. Saint Peter made neuer that sence of those wordes, and teacheth vs a farre other doctrine, in his first Epistle, fift chapter, and second and third verse.

I will not spende time with fuch purpose, onely this I muste saye, that whatsoever was Saint Peters prerogatiue, the Pope of Rome hath nothing to doe with it : for hee cannot bee Saint Peters successour, that hath forsaken his doctrine, and gone against his practise directly, both in that and other points of Christian faith. And for the antiquitie of his usurped power, I may justly say, that Master Ogilvie is not well seene in antiquitie, or then speaketh against his knowledge, when he saith, that this power of the Pope was euer acknowledged by Christian Kinges : The Bishops of Rome, for many yeeres, made no such claime, neither did Emperours or Kinges euer dreame of such subjection : Long it was ere the Pope of Rome came to the height of commanding Kinges, and not till hee had oppressed the church, vnder the pretext of Saint Peters keyes, bearing downe all the Bishops within Christendome : which hauing done, then hee made his inuasion vpon princes, and that by degrees. The histories of all ages make this plaine, and the resisting hee found by Kinges in their kingdomes, testifieth that they neuer acknowledged his superioritie. Of our owne, howbeit, as wee lye farre from his seat, so had wee lesse businesse, and fewer occasions of contradiction ; yet can I make it seene, in diuers particulars, when any question fell out anent the prouision of Bishops and Archbishops to their places, the Bulles of Rome were so little respected, as the Kinges predecessors haue always preferred and borne out their owne choice, and the interdictions made upon the realme, by these occasions, not without some imputation of weaknesse to the Sea Apostolicke, haue bene recalled. The superstitions of Rome were amongst vs last embraced, and with the first, by the mercies of God, shaken off : Whatsoever you bragge of your antiquitie, it is false, both in this and all the pointes of your profession else, which I could cleare, if this time or place were fitting. But to you of this Iurie, I haue this only more to say, you are to inquire vpon the veritie of the Inditement, whether such and such things as are alledged to be committed by him, haue bene so or not ? You haue his subscription, which hee acknowledgeth ; you heare him selfe, and how hee hath moste treasonably disauowed his Majesties authoritie : It concernes you onely to pronounce, as you shall find verified by the speeches that you haue heard, and the testimonies produced. For the rest, the Iustices knowe sufficiently what to doe, and will serue God and his Majestie, according to the Commission giuen them.

Maister William Hay, Aduocate for his Majestie, asked instrumentes vpon the prisoners treasonable speeches vttered in the hearing of the Iurie, and his ratification of the former answeres made to his Maiesties Commissioners : Likewise, for

the further clearing of the Inditement, repeated the Actes of Parliament mentioned in the said Inditement, with the Act of Priuie Counsell, made anent his Maiesties supremacie, and the oath of allegiance: And desired the Iurie deeply to weigh and consider the peruerse and diuelish disposition of the partie accused, to the effect they might, without scruple, proceede in his conuiction. And according to his place, protested for Wilfull Errour, if they should acquite him of any point contained in the saide Inditement.

[VERDICT.] The persons named vpon the Iurie remoued to the higher house, which was prepared for them; and hauing elected Sir George Elphingstone chancellor, all in one voice, found the prisoner GUILTY of the whole Treasonable crimes contained in the Inditement.—[SENTENCE.] Which being reported by the saide Sir George Elphingston, and confirmed by the whole Iurie, then returned into the Court, Judgement was giuen, by direction of the Iustices, That the saide John Ogilvie, for the Treasons by him committed, should be HANGED and QUARTERED.

THE Archbishop of Glasgou demanded, if Ogilvie would say any thing else?

Ogilvie answered, 'No, my lord, but I giue your lordship thanks for your kinnesse, and will desire your hand.'

The Archbishop said, 'If you shall acknowledge your faulte done to his Maiestie, and craue God and his Highnesse pardon, I will giue you both hand and heart, for I wish you to die a good Christian.'

Then Ogilvie asked, 'If he should be licensed to speake vnto the people?'

The Archbishop answered, 'If you will declare, that you suffer according to the Law, justly for your offence, and craue his Maiestie pardon for your treasonable speeches, you shall be licensed to say what you please; otherwise you ought not to be permitted.'

Then saide hee, 'God haue mercie vpon mee!' And cryed alowd, 'If there be heere anie hidden Catholickes, let them pray for me; but the prayers of hereticks I will not haue.' And so the Court arose.

[OGILVIE'S *conduct at the time of his EXECUTION.*]

AFTER iudgement was giuen, by the space of some three houres, he remained in the place where he was conuicted, hauing leasure graunted him to prepare himselfe for death. Hee continued a while vpon his knees at prayer, with a colde devotion; and when the houre of execution approached, his handes being tied by the executioner, his spirits were perceiued much to faile him. In going towards the scaffold, the throng of people was great, and he seemed much amazed; and when he was vp, Master Robert Scot and Master William Struthers, Ministers, very grauely and christianly exhorted him to a humble acknowledge-

ment of his offence, and if any thing troubled his mind, to disburthen his conscience. In matters of religion, they saide, they would not then enter, but prayed him to resolue and fettle his minde, and seeke mercie and grace from God, through Iesvs Christ, in whom onely saluation is to bee found. Ogilvie answered, ' That he was prepared and resolued.' Once he said, ' That he died for religion;' but vttered this so weakly, as scarce he was heard by them that stood by vpon the scaffold. Then addressing himselfe to execution, he kneeled at the ladder foot, and prayed. Master Robert Scot, in that while, declaring to the people, that his suffering was not for any matter of religion, but for haynous treason against his Maiestie, which hee prayed God to forgiue him. Ogilvie, hearing this, saide, ' He doeth me wrong.' One called Iohn Abircrvmbie, a man of little wit, replied, ' No matter, Iohn, the moe wrongs the better.' This man was seene to attend him carefully, and was euer heard asking of Ogilvie some token before his death; for which, and other businesse he made with him, he was put off the scaffold.

Ogilvie ending his prayer, arose to goe vp the ladder, but strength and courage, to the admiration of those who had seene him before, did quite forsake him; he trembled and shaked, sayng, he would fall, and could hardly bee helped vp on the top of the ladder: He kissed the hang-man, and said, *Maria, Mater gratiæ, ora pro me; Omnes Angeli, orate pro me; Omnes Sancti, Sanctæque, orate pro me*: but with so low a voice, that they which stood at the ladder foote, had some difficultie to heare him.

The executioner willed him to commende his soule to God, pronouncing these wordes vnto him, ' Say, Iohn, Lord haue mercy on mee! Lord receiue my soule!' which he did, with such feebleness of voice, that scarcely hee could be heard: Then was hee turned off, (his left foot for a space taking holde of the ladder, as a man vnwilling to die,) and hung till hee was dead. His quartering, according to the iudgement giuen, was for some respectes not used, and his body buried in a place that is kept for male-factors.

THIS was the ende of that unhappie man, in whose death, any man that had eyes might see what a gracelesse and comfortlesse religion Poperie is: The power of religion manifesteth it selfe chiefly in the houre of death: The sight of a reconciled God, the assurance and perswasion of fauour through Christ, furnisheth spirite and boldnesse, and maketh a man willing to depart and quite this life: But Popish religion teacheth vncertainetie of saluation, and leadeth a man to other fauours, who can neither helpe nor comfort, in the houre of death. What maruaile, that men, who leane to such rotten and vnprofitable helps, lacking and disappointed of the assistance they hoped for, shewe a faint and cowardly minde at their last!

This onely I haue further to aduertise, that since his execution, wee haue vnderstood, by some persons who visited him, at times, during his imprisonment, that, amongst other his speeches with them, hee said this, ' That if hee had escaped his apprehension at this time, and liued till Whitsonday next, hee should haue done that which all the Bishops and Ministers, both in England and Scotland, shoulde neuer haue helped ! And, if hee might haue liued at libertie vnto that time, hee woulde willingly haue beene drawne in peeces with horses, and haue giuen his bodie to haue beene tormented !' Whereof, what shall any man collect, but that this villane was about some desperate enterprife ?

God, that in mercie hitherto detected and disapointed the malicious devices of the wicked against his Church, continue with vs his fauour, and giue vs to depend stedfastly on his prouidence. And to all the enemies of God and the King, let it befall, which wee haue seene vpon this wicked and accursed person. Amen.

FINIS.

DEPOSITIONS of the JESUITE and Papists examined at Glasgo, 5 Oct. 1614.¹

APUD GLASGOW, the fift day of October, 1614. THIR personis, vnderwryttin, wer examineit, in presens of my Lordis of Glasgow and Argyle ; my Lord Flemyng, my Lord Kilfythe, my Lord Boyde ; the Laird of Mynto, Sir George Elphinstoune ; James Hammiltoune, Provest ; James Bell, James Braidwood, Colin Campbell, Baillies.

ROBERT HEYGAIT, being inquyrit, how lang he hes bene acquent with this *Preist* ? Anwerit, that he neuer saw him nor spak with him bot within pir twa moneths syne, or pairby ; and pat he come down to him to his awin buithe, and gat sum paper fra him ; and pairefter zeid with him to *Mr William Stewartis* hous, to get ane chopein of wine, quha callit him self ane hors-cowper, and wes going to *Kyntyre* to by hors ;² and imployit him to by ane hors. And pairefter, callit him self ane *Preist*. Bot of his name he is ignorant ; and neuer speirit for it. And being inquyrit, gif he enterit withe him in RELIGIOUN ? So confest ; and pat he brocht him to *Mareoun Walkeris* hous ; and saw his buikis : And beleivit that he spak to him ; and pat he contentit him of pe Sacrament of pe body of Christ ; and pat he is ane Catholik. And being inquyrit, gif he desyrit him to geive him ane Mefs ? Confest he desyrit pe samyn ; and hard pe samyn at pe said tyme : And pat pair (wes) with him *Mareoun Walker, William Menteithe, Mathow Adam, Thomas Forret, James Forret*. And being speirit, gif pis Preist wes gone to *Sir James Clelandis* hous or not ? Hard *Williame Menteithe* say, pat he wes gone pair. And being inquyrit, gif pe *Lady Maxwell* wes at ony Mefs heir, within pis schort space, or at ony Mefs ? Denyit pat he euer saw hir. Bot he knawis pat pis *Preist* spak with hir, pe last tyme scho wes heir, and pat pe said *Preist* said to him, pat he wes ane of THE SOCIETIE OF JESUS. And being inquyrit, how pat pe freindschip and acquentance of pe said *Preist* wes maid with *James Stewart* ²³ Confest, pat he wes pe bringer of pame togidder to confer ; and pat pe said *James* standis still in his former Religioun ; and pat pe said *James* wes desyryus to speik with pe said *Preist*, and he wes ernist to haif pe said *James* of his Religioun, bot he wald not giue his name pairto. And also confest, pat pair wes ane wper Mefs said in pe said *Mareoun Walkeris* hous, be pe said *Preist*, within tua dayis pairefter ; and

¹ From the Original attested copy, in the *Denmylne Coll. of MSS.*, Adv. Library.
² Styled *James of Jerusalem*, who figures in this Collection, Vol. III. &c.

³ To purchase horses.

pat pair wes present þe said *William Menteith*, *Mareoun Walker*, *David Maxwell*, brother to *New-Wark*; and pat pair wes ane wper *Preiſt* in þis Toun, quha stayit ane day heir, and went Eist-throw.¹ And knew not his name; bot he callit him ſelf *Ogilbie*. And being inquiryt, gif pair wes ane wper Meſs ſaid be þis *Preiſt*, in his awin hous, or nocht? Confest pat pair wes ane ſaid pair; and pat he wes Clerk to þe maiſt of þir Meſſis him ſelf; and pat his wyf knew not þairof, bot ſuſpectit þe ſamyn. And at þat tyme, quhen he ſould haue gone to haue bocht þe hors, he raid to *Sir James Clelandis* hous. And þis he declairit be his great ayth.

ROBERT HEIGAIT.

ANDRO SYMMER, declarit, pat he drank with þis *Preiſt* in *James Stewartis* companie, quha intyft him to his Religioun; bot he wald not grant to him: And þat þai reſſonit wpon Religioun togidder.

ANDRO SYMMER.

THE PREIST being inquiryt, quhat his name wes, he nameit him ſelf *JOHNE OGILBIE*, ſone to *Waltir Ogilbie of Drum*: and pat he hes bein out of þis cuntraye þir twentye twa zeiris: And pat he studiet in þe *Colledgis of Olmis and Graitis*; and remanit in *Olmis* twa zeir, and in *Gratis* fyve zeir; and pat he hes reſſaut þe *Ordour of Preiſthuid* in *Paris*; and come hame in *Scotland* befor now, and remanit ſex oukis, or þairby: And pat he now come hame about May laſt, or þairby: And confest pat þe budget,² productit on þe buird befor him, wes his awin. And pat he wes ane of þe ordinar *Jeuittis*: And being aſkit, quhidder THE POPIS Jurifdictioun extendit our THE KINGIS dominiounis, in ſpreitwall matteris? Affermit constantlie þe ſamyn; and wald dye for it.

JOHANNES OGILBEUS, Societatis Jeſu.

JAMES FORRET, confeſſis, be his great ayth, pat he knew not þis *Preiſt* all þe tyme pat þe *Erle of Eglington* wes heir. And wes ſend for be him, be, ſervitrix to *Mareoun Walker*, quho delt with him to come and heir þe Meſs: And for þat effect appointit wper morne; at quhat tyme he keipit: And þe Meſs wes ſaid be þe ſaid *Preiſt*; being present, *Robert Heygait*, *Mathow Adam*, *William Menteithe*, *Mareoun Walker*, *Thomas Forret*, his brother. And declairit, pat he wes neuer at ony Meſs befor or eftir. And pat pair wes ane wper man, quha callit him ſelf *Dawnie*, ſeducit him to pat Religioun, quhairinto he þan in ane manir agreit: And ſupponis, pat þe ſaid *Dawnie* had directit þis *Preiſt* to him, to draw him forder on: quha perſwadit him to leive THE KIRK—quhilk he did ſen ſyne; quhairof he cravit God forgewnes. And confeſſit, pat, befor he reſſaut þe Meſſe, pat morning, he maid a Confeſſioun to þe ſaid *Preiſt*, quha gaue him ane abſolutioun, and tuik þe Sacrament.

J. FORRET.

JAMES STEWART, being inquiryt, quhen he knew þis *Preiſt*? Be his great ayth, declarit, pat he knew him tventie dayis ſyne, or þairby; and pat *Robert Heygait* maid his acquaintance with þe ſaid *Preiſt*. And eftir þe drinking of ane choppine of wyne, he went with þe ſaid *Preiſt* to þe Zaird of *Mareoun Walker*, quhair he conferrit with him anent his Religioun, and wald nawayis zeild to him. Bot he had ane guid expectatioun of him, and maid him acquent pat he had ane Meſs to ſay; bot he wald not go to it. As to his name, he knawis not þe ſam.

J. STEWART.

WILLIAME MENTEITH, being inquiryt, gif he knew þis *Preiſt* or not? Anſwerit, pat he ſaw him in þis Toun ane monethe ſyne, or þairby; and pat he wes in his companie, in the hous of *Mareoun Walkeris*; and pair hard þis *Preiſt* ſay ae Meſs; and denyit ony mae. And paireſtir, being confrontit with *Robert Heygait*, confest þan he hard thrie Meſſis, twa þairof in *Mareoun Walkeris*, and ane wper in *Robert Heygaitis*; and pat he tuik þe Sacrament. And being inquiryt, quhair he gat his beginning of pat Religioun? He anſwerit, pat he firſt wes inſtructit thairin, being ſervand to þe *Laird Kers*, 3ounger, be þe *Lady Angus*, and *Archibald Douglas*, in þe *Place of Moungtoun*, beſyde *Air*, ten or twelf zeiris ſyne, or þairby. And declairit, pat *Thomas Forret* tauld him of þis *Preiſt*; and pat *Robert Heygait* informit him pat þe ſaid *Thomas* was of pat Religioun. As als, declairit, pat he ſaw *Johne Wallace of Corſflat* at þe Meſs, in *Robert Heygaitis* hous, ſaid be þe foirſaid *Preiſt*.

WM MENTEITHE, w^t my hand.

¹ Probably to Edinburgh; he went through the town to the eastward.

² Portmanteau, or small trunk.

THOMAS FORRET, being inquyrit, quhair he had first acquaintance with pis *Preist*? Declairit, he saw him first in *Mareoun Walkeris* hous, being fetchit in to him be *Robert Heygat*, and efter lytill conferene with him anent pe Religioun, he defyrit him to cum to Mefs, quhilk he did; and befoir pe ressaung pairof, he maid his Confessioun, and ressaunt absolutioun; and pairefter tuik pe Sacrament. And pat pair wes present at pe said Mefs, *Mr Johnne Mayne, Mareoun Walker, Mathow Adam, Robert Heygat, James Forret, William Menteith*; and wes at na Mefs sene syne, seing be pe sycht pairof he despyfit pat Religioun. And pat pe remanent lykwayis ressaunt pe Sacrament.

THOMAS FORRET.

MATHOW ADAM, being inquyrit, how long he had embracit pe Popisch Religioun? Declairit, pat, about fyve zeiris syne, or pairby, he had his entrie pairto in *Dan/skin*; and hes sence ressaunt pe Communioun. And pat he had acquaintance with pis *Preist* four oukis syne, or pairby, be pe moyen of *Robert Heygat*. And siclyk, in somer last, wes acquent with ane *Dawnie*, ane *Preist*, in *Mareoun Walkeris* hous; and pat he wes at thrie Messis; pat pis *Preist* said ane in *Robert Heygaitis*, and twa in *Mareoun Walkeris* hous. And being askit, quhat his professioun is presentlie? Answerit, pat he wes of pe Religioun, be pe lawis of pis realme.

MATHOW ADAM.

MR JOHNNE MAYNE, being inquyret, gif he knew pis *Preist* or not? Declairit, be his ayth, he knew him in *Mareoun Walkeris* hous, to pe quhilk he wes brocht be *Robert Heygat*; quhair he confessit him self to pe *Preist*, ressaunt absolutioun, befoir he hard pe Mefs and ressaunt pe Sacrament. And pat pair wes present *Mareoun Walker, James Forret, Thomas Forret, Robert Heygat, Mathow Adam, William Menteithe*. And pat, as zit, he awowis pat Religioun, and professis pe samyn, quhill he be better ressoluit.

MR J. MAYNE.

JOHNNE WALLACE of *Corsflat*, being inquyrit, gif he wes at a Mefs said be pis *Preist*, or not, in *Robert Heygaitis* hous? Confessit, pat he wes present pairat, and brocht pairto be pe said *Robert Heygat*.

JOHNNE WALLACE.

THIS is the true copie of pair CONFESSIOUNIS.

GLASGOW.

Suborning of Witnesses—Perjury—Slaughter, &c.

MAR. 8.—ROBERT GRAHAM, callit of Langboddome; Robert Dunlope and George Wat, wobsteris¹ in Edin^r; Adame Blaiklok, duell-and at the West-poirt of Ed^r; James Boyle, wobster in Edin^r; Johnne Hammiltoun, tailzeour thair; Adame Moffet, chopman;² Williame Tok, beltmaker at the Waft-poirt; James Or, flescheour in Crawmound.

Dilaitit, accuset, and perfewit, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord, for his hienes intreis, off the seuerall crymes vnder-writtin, contenit in thair Dittayis, eftir specifreit, viz.

DITTAY against Robert Grahame for Suborning of Witnesses and Perjury.

THE said ROBERT GRAHAME: Forfamekill as it is expresse provydit, statute, and ordanit, be dynerse Actis of Parliament, speciallie, be the 80 Act of the sext Parliament of our souerane lordis darrest guidfchir, King James the Fyft, of famous memorie; and be the 22 Act of the fyft Parliament, and 48 Act of the saxt Parliament of our souerane lordis darrest mother, Quene Marie, of worthie memorie, that all sic perfonas as induces ony man to beir ffals Witnes, or ar seducearis or corrupteris of Witnessis, induceing pame pairby to depone ffalslie, that all sic perfonas fall be pwneifchet in thair perfonas and guidis, with all rigour, according to the dispositioun of the Cowmone Law, baithe Canone,

¹ Weavers.

² It does not seem clear whether this denotes shopman, or chapman (*pedlar*), a dealer in small wares. The latter, however, is thought most likely.

Ciuite, and Statutes of this realme, that is to say, ather be peirfing and boiring of pair tungis, confiscatioun of pair moveable guidis, and sic vther pwneifchment to be inflictit vpon thame, accordring to the discretioun of the Lordis: Nochtwithftanding quhairof, it is of veritie, that pe said Robert Grahame, being ane fraudulent and fals man, ftudeing and imploying his witis thir mony zeiris bygane, how, be craft and diffait, to fuborne and feduce dyuerse perfones to be Witneffes in findrie actiones, alfwieill depending befor the Lordis of Sessioun as vther Judicatories of this realme: And making vp to him self a plane tred and professioun pairof, He, for pe manifestatioun of his forder skill and knowlege in the said professioun, vpon hoip and esperance of his expectit gayne, vnderftanding laitle, that pair was ane Actioun of Spuilzie intentit and perfewit befor the Lordis of Sessioun, at the instance of Mark Gledftanes, indueller in Ed^r, aganis James Guidlet and vtheris, his complices; the said Robert Grahame, as ane oppin and manifest coofiner and diffaver, with wonderfull peartnes and double deilling, first adressit him self to the said Mark Gledftanes, and discoverit to him the hail secrettis of his actioun; declairing to pe said Mark, how he had bene in Mussilburgh, and had conferrit with sum folkis pair, quha had reffet sum of pe said Markis guidis and geir, that was spuilzeit frome him be pe said James Guidlet; and that pai war in grit feir leift pe said Markie sould prevaill in his said actioun: At quhilk tyme, lykwayis, the said Robert Grahame, maift falslie and craftillie, declairit to the said Mark, that he wald find out dyuerse men to be Witneffes, quha vnderftuid of the spoliatioun of his guidis; and offerit frelie to him, for gayne and commoditie, to bring thame to him, and to cause thame be Witneffes for preving of his actioun: Lyk as, accoirding pairto, the said Robert Grahame, vpon hope of gayne and commoditie, in the letter end of Januar lastbypast, or pairby, convenit to himself Adame Moffet, chopman in Ed^r, Robert Dunlop, wobster pair, George Wat, wobster pair, and Williame Tok, beltmaker pair; quhilkis foure perfones he maift fraudulentlie persuadit and inducet to vndertak to be Witneffis, to depone in the said cause, in fauouris of the said Markie Gledftanes, aganisthe said James Guidlet, albeit pai knew nathing of the veritie pairof. LYK AS, pe said Robert, immediatlie estir his induceing and suborning of the saidis Witneffis, to pe effect foirfaisdis, for acqyreing of his forder gayne, past and reveillit pe hail premiffes to the said James Guidlet, and put him vpon the counsell pairof: The veritie of the quhilk knaverie and diffaitfull deilling of the said Robert Graham being detectit to the Lordis of Counsell and Sessioun, and pai, vpon diligent examinatioun of pe said Robert, and pe Witneffes foirfaisdis, haifng ryppit vp the hail secreit of all pair proceidingis; and in end, finding pe said Robert Grahame to be bot ane false and leying lymmer, the saidis Lordis brocht him to this poynt; and, of his awin consent, maid him to bind him self and to be content, that in caice it sould be fund be the saidis Lordis, that he ony wayis vareit in his Depositiones paireftir, *that he sould be content to be HANGIT but fauour!* Lyk as, pe said Robert, being dyuerse tymes paireftir solemnie fuorne, in presens of the hail Lordis, to declair pe veritie, vpon ane only poynt, viz. quhidder or nocht pe said Robert first proponit pe purpois to the said Mark Gledftanes him self, anent the bringing to him of pe saidis Witneffes, for preving to him of his caus, or gif pe said Markie socht him first to that effect; the said Robert, estir dyuerse examinationes and solemne aithes maid be him, haifng constantlie declairit pat the said Mark first come to him and proponit pat matter; in end, pe said Robert, as ane manifest periuret and lieing lymmer, be his posterieur Deposition, acknowlegit and confessit, that he first adressit him self to Mark, and maid the first motioun of pe said matter to him: In the cairfull and exact tryell of the quhilk matter, be the saidis Lordis of Sessioun, thair lordschipis, be pair sentence and decret, nocht only hes ffund and declairit the said Robert Grahame to be ane fraudulent and fals suborner of the saidis Witneffis, seduceing, be craft and diffait, vpon hoip of gayne, thame to depone in the said caus betuix Gledftanes and Guidlet, quha vnderftuid nathing pairintill: Bot lykwayis, be the same sentence, he is fund and declairit to be ane fraudulent and fals suborner of Witneffes, be craft and diffait, in dyuerse vtheris actiones and causses; speciallie, in the fraudulent suborning and seduceing of Witneffes in the caus of spuilzie perfewit be Quintene Braidfute aganis Coupland; and lykwayis, in the caus of Divorcement perfewit be the Lady Torthorrell aganis my lord hir husband, and in dyuerse vperis

actiones and cauffis, moveing the saidis Witnesfes, be his intyfeing and fals Subornatioun, to vndertak vpon thame to beir testimonie, and to preve and affirme for treuthe, that, quhairof thay of thame selffis war altogidder ignorant. And be the said Sentence, he is ffund be pe saidis Lordis to haif frequentlie hantit that damnable tred of lyfe, with wonderfull peartnes and double deilling, betuix pairteis, so fynelie proveing pe difflaver, chopping, changeing, and triking at his humour, fra hand to hand, that quhairas pe said Robert was evin now, be his inventiones and forgereis of his brane, about pe on-drawing of fum one partie to his designes, quhilk he wald promeis and avow to mak guid, so incontinent paireftir he wald difcover and detect all to the vther partie, quhome lykwayis, be his falsse fufmises, he wald induce to fum contrarie motioun; in baith, intending nathing bot double and fals deilling, to the preiudice of aither¹ partie. And in end, in the said Robert his tryell and examinatioun, in prefens of the saidis Lordis, he is ffund, be pair said Decreit, to be dyuerfed,² and many tymes menfuorne, and periuret; as the said Decreit beiris. AND pairfoir, the said Robert, as ane manifest seducer and Corrupter of Witnesfes, induceing and intyfeing thame, for his awin lucre and gayne, falllie, aganis pair knowlege and conscience, to depone in dyuerse cauffis, speciallie in the cauffis aboue writtin; quhairof he is declairit giltie, be the saidis lordis Decreit, and also conforme to his volunter offer aboue specifeit, quhairby he, of his awin consent, was content to be hangit, in caice he war ffund to varie in his Depositiones, and pairthrow menfuorne; and as a false and periuret difflaver, aucht and fould vnderly the pwneifchment of death, in maift exemplarie mauer, to pe terrour of vtheris.

DITTAY against Robert Dunlop, &c. for Perjury and False-witnessing.

THE saidis ROBERT DUNLOPE, GEORGE WAT, and ADAME BLAIKLOK; fforfamekill as, by dyuerse Actis of Parliament, it is expreflie provydit, flatute, and ordanit, that all sic perfones as beiris fals Testimonie and Witnessing, in ony caus quhatfoeir, falbe pwneifched to the death, according to pe Disposition of pe Cowmone Law, baith Canon, Ciuile, and Statutes of this realme: And trew it is, that the foirmamet perfones, nochtwithftanding of the saidis Actis, haifing moift wilfullie plunget and fetterit thame selffis in matteris of damnable ffalfetis, and iniuft beiring of Witnessing, with sic evidence of precogitat Periurie, that albeit thay war conscius of pair awin malicious and false intentiones, zit wald thay fwrne heidlongis, and combine and vniformelie agrie togidder to mak merchandice of pair consciences, refolveing with thame selffis, to beir testimonie, and effrontedlie for veritie to avow, that (howfoeur in it selff) zit to thame vnkawin, thay being inducet pairto, nocht famekill vpon the hoipis and promiseis of expected gayne, as out of thair continual hant and consuetude of leying, quhilk, throw custome in thame, did turne to nature; quhairin be degrees, thay haifing attynit to sic fynes,³ that gif pair course pairin had nocht happelie bene interruptit, the estait of ony quhatfoeir, without exceptioun, mycht haif bene generallie endangerit: And namelie, the foirsaidis perfones, and everie ane of tham, be the convoy and craftie dealling of pe said *Robert Grahame*, callit of *Langboddome*, pair pylet⁴ and leader in pis pair vnconfcionable tred of lyfe, haifing fauld thame selffis to all maner of mischief, and making schipwrack of all ffait and honestie, nocht only vpon reffautit commodie and gayne be thame and everie ane of thame, laitlie fra Mark Gledftanes, indueller in Edr, offerit thame selffis to depone, as Witnessis, in ane caus perfewit be him aganis James Guidlet, befoir the Lordis of Seffion, quhairof thay war altogidder ignorant; and quhairin the saidis *Robert Dunlope* and *George Watt* war maift deiple sworne to geve trew Testimonie; albeit, in pair examinatioun, pair fals and damnable proceiding, by pe vigilant panes tane be the saidis Lordis, was maift happilie brocht to licht: Bot lykwayis, the saidis Robert Dunlope and George Watt, nocht as rafche and rekles liearis be officious testimoenis, bot as Witnessis deliberately ffals, haifing quyte banifched the feir of God, quha is pe witnes of conscience, ze⁵ aganis⁶ pair knowledge and conscience, being corruptit and seducet be

¹ Each. ² Contradictory; varying in his evidence. It is probable, however, that this infers that he was a dyvour or bankrupt, which was considered most infamous. ³ Refinement. Fr. *finesse*. ⁴ Pilot. ⁵ Ye. ⁶ Against, or contradictory to.

greid of gayne and guid deid, hes gevin fals and vntrew Testimonie, in ane actione and caus perfewit be Williame Cant aganis Thomas Gray, in the quhilk Marioun Crufurd, spous to the said Williame Cant, in absence of hir husband, was speciall doar: And the said *Adame Blaklok* gaif the lyk ffalfe and vntrew Testimonie, in the actioun and caus perfewit be pe said Quintene Braidfute aganis Coupland. As everie ane of pair Depositiones, tane in presens of the haill lordis, testifeing pair acknowledgement of the foirfaisdis ffalfettis, in pe selff beiris. AND pairfoir, the saidis persones, and ilk ane of thame, as fals and periuret Witnesfes, of certane knowlege, and aganis the licht of pair awin consciences, deponeing in the saidis cauffis, as said is, cleirlye tryit by the saidis Lordis, aucht and fould reffaue pair dew and deseruit pwneifchment, to the terrour and example of vtheris.

DITTAY against Johnne Hammiltone, &c. for Perjury and False-witnessing.

AS ALSO, the saidis JOHNNE HAMMILTOUN, ADAME MOFFET, and WILLIAME TOK: fforamekill as, albeit, be the foirfaisdis Actis of Parliament, it be expresse provydit, statute, and ordanit, that all fals Witnesfes, and faules¹ persones, offering thame selffis, for greid and perticuler gayne, to beir ffals Witnessing in ony matter; and all sic as conduces with ony persone, to that end and effect, ar Ordanit to be pwneifchet be Banifchment, peirfing of pair tungis, difmembring of pair hand, and be vther panes and pwneifchmentis provydit be dispositioun of the Cowmone Law; and forder pwneifchment to be inflicted vpon thame, according to the discretioun of the Lordis of Sessioun: Nochtwithstanding quhairof, it is of verritie, that the saidis *Johnne Hammiltoun, Adame Moffet, and Williame Tok*, being corruptit with promeiffes of rewarid, and be reffait of guid deid and vtherwayis, war seducet and intyfet to be ffals Witnessis, willinglie and wittinglie offering thame selffis, vpon hoip of rewarid, to geve ffals Testimonie, in preving of certain actiounes, altogidder vnknawin to thame; namelie, the said *Adame Moffet* and *Williame Tok*, conforme to pair Depositiones maid be thame in presens of the haill Lordis of Sessioun, fauld and conducet thame selffis for rewarid, to be ffals Witnessis in the Actioun of Divorcement, perfewit be THE LADY TORTHORRELL aganis THE LORD OF TORTHORRELL, hir husband; as also, in ane actioun of Spuilzie, perfewit befoir the saidis Lordis, at the instance of *Mark Gledstanes* aganis *Guidlet*: And siclyk, the said *Johnne Hammiltoun*, conforme to his Deposition, maid in presens of the saidis Lordis, fauld and conducet him selff, as ane ffals Witnes, to haif deponit in the said actioun of Devorcement, perfewit be the said Lady Torthorrell aganis hir husband: And albeit the saidis actiones war altogidder vnknawin to thame, zit the foirnameit persones, and ilk ane of thame, aganis thair knowledge and conscience, maif forwardlie and malapairtlie, vnderuik to verifie and preve the famyn; quhilk wikket intentioun thay had nocht failzet, wittinglie and wilfullie, to haif put in practize, gif thay had nocht bene lattin,² be the intervening tryell tane be the saidis Lordis of Sessioun, alweill be pair Confessiounes, as vther cleir and evident probatioun tane pairintill: And pairfoir, thay, and ilk ane of thame, as persones seducet and intyfet to beir ffals Testimonie, anent the probatioun of the foirfaisdis cauffes, quhairof thay war altogidder ignorant, aucht to reffaue pair dew and deserued pwneifchment, to the terrour and example of vtheris.

DITTAY against James Boyle, &c. for Suborning of Witnesses.

IN lyk maner, the said JAMES BOYLE, &c. in the lait tryell and examinatioun, taine of him in presens of the Lordis of Sessioun, he, conforme to his awin Confessioun and Deposition, and vther probatioun had aganis him, is fund to haif delt with dyuerse Witnesfes, Suborning and induceing thame to Depone in dyuerse actiones, quhairof the saidis Witnesfes war altogidder ignorant; speciallie, in the said actioun and caus perfewit be pe said *Williame Cant* aganis the said *Thomas Gray*, quhairin, be pe saidis Lordis Sentence and Decreit, he is ffund to haif past the boundis of deutie, and nocht a littil to haif oversene him selff, haifing sa heichlie transgressit pairintill, that his offence, in that behalfe, requyres

¹ *Saulless*, void of soul and conscience.

² *'Let'*, hindered, prevented.

heichlie to be pwneist : And pairfoir, as ane manifest Suborner and seducer of Witneffis, aucht and fould reffauē his dew and deserued pwneischment, to pe terrour and example of vperis to abstene fra the yk heirefter.

DITTAY against James Or, for Slaughter.

AND last, the said JAMES OR: sforamekill as, vponē the saxt day of Marche instant, the said James, in his passing furth of pe burgh of Ed^r to Crawmond, haifing forgadderit with *Johnne Chirritie* in Crawmond, vponē the Grene pairof, thay haifing past in to the duelling hous of Thomas Mathiesone pair, quhair thay drank togidder ane hour or pairby : And the said James and Johnne haifing paireftir come furth of pe said hous, certane speiches haifing fallin out betnix thame, and be occasioun of a lie gevin be pe said Johnne Chirritie to the said James Or ; he, in his beiftlie rage and furie, drew ane knyfe or braig, with the quhilk he strak pe said vmq^{le} Johnne Chirritie ane crewall and deidlie straik aboue his left pape;¹ off the quhilk straik, he immediatlie, within ane hour paireftir, departit pis lyfe ; and sa, was crewallie and vnmerciefullie flane, vnder nycht, be pe said Jame Or : ffor the quhilk, he was tane *in flagrante crimine*, and being examinat pairapoun, hes confessit the premisses to be of verritie.

My lord Aduocat producet the DITTAY ; and eftir reiding thairof, in respect the persones on pannell could allege nathing aganis the relevancie thairof, to stay proces, desyret the samyn to pas to the knowlege of ane Assyse ; and producet ane roll of the persones lauchfullie summond to that effect. Quhilkis persones of Assyse being chosin, suorne, and admittit, eftir accusatioun of the saidis persones, be Dittay, of the crymes *respectiue* aboue writtin, quhilkis war verifeit be productioun of the saidis Lordis Decreit, and thair awin Depositiones, maid in presens of the haill Lordis of Sessiou : As also, the said Slauchter was verifeit be the said James Or his awin Confessioun, maid in Judgement, in presens of the Justice and Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of James Raulstoun, mercheand burges of Edinburgh, sstand, pronuncet, and declairit, conforme to the Depositiones and Decreit producet, and the said Judicial Confessioun maid be the said James Or, the foirnameit haill nyne persones vponē pannell to be fyllet, culpable, and convict of the feuerall crymes and pointis of Dittay aboue mentionet.

SENTENCE. The said *James Or* to be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin fra his body ; and all his guidis and gear to be escheit, &c. : AND siclyk, the saidis *Robert Grahame, Robert Dunlop, George Wat,* and *Adame Blaikklok,* to be tane to the said Mercat-croce of Edinburgh, and thair to be Hangit, quhill thay be deid ; and all thair moveable guidis to be escheit to his Maiesteis vse : THE saidis *James Boyle, Johnne Hammiltoun,* and *Adame Moffet,* to be first Scourget throw the burgh of Edinburgh, fra the Castell-hill to the Nether-boll thairof, and Brunt with ane hett irne vponē the cheik, and thaireftir Banischet this realme of Scotland ; and nevir to be fund agane within the samyn, without his Maiesteis Licence, vnder the pane of deid :

¹ Breast.

AND last, that the said *Williame Tok* be lykways Scourget throw the said burgh, and thairefter Banischet this realme; and nevir ffund agane within the samyn, without his Maiesteis Licence, as said is, vnder the pane foirsaid.

**Uttering “Tressonable, Blasphemous, and Damnable Speiches”
against the King.**

[THE Trial of JOHN FLEMING, elder, in Cockburnspath, which follows, is so remarkable in its nature, and the Sentence of death pronounced upon the unfortunate pannel, is so frightfully disproportioned to the pretended *crime* for which he stood charged, that, did it not occur in the authentic Records of a Supreme Tribunal, and were it otherwise unvouched, no honourable mind could for an instant admit the probability of its truth. Had mention been made of this fact in any private correspondence of the period, or in contemporary Memoirs or Annals, it would have been at once discredited by all, as an unprincipled libel on the character of our *British Solomon!* Unhappily, however, for the character of King James VI, the event here recorded is too true, and there can be no doubt that it did actually occur. The names of other victims to the same insane ideas of justice, are inscribed, in characters of blood, on the pages of our Criminal Records. It is unnecessary to recapitulate such instances, at any length, in this place. It is enough merely to refer the reader to the Cases of *Dik-soun*, Aug. 3, 1596;¹ *Tennent*, Oct. 10, 1600;² *Cornuall*, Apr. 25, 1601;³ and *Ross*, executed Sep. 10, 1618.⁴]

May 17.—JOHNE FLEMYNG, elder, in Cokburnespeth.

Dilaitit of dyuerse tressonable, blasphemous, and damnable speiches vtterit be him to Johnne Lawder, Minister, aganis our fouerane lordis most sacred persone, &c. viz. FORSAMEKILL as, Johnne Lauder, Minister at Cokburnespeth, haifing laitlie reprehendit and fund falt with the said Johnne Flemyng, becaus his sone repairit nocht to the Communioun; saying to the said Johnne, that ‘albeit he contemnit be ordour and discipline of the Kirk, zit the Kingis most gracious Maieftie, quho is a most religious and godlie Prince, and vnder whois bliffet government the trew Religioun and discipline of the Kirk is establischet and advancet, wald nocht suffer fuche contempt and disobedience pas over vnpwneifched:’ the said Johnne Flemyng, vpone delyuerie of the saidis speiches, schaiking af all feir of God, and that reverent respect, quhilk in conscience, befoir God, and in his deutie and allegeance, he aucht⁵ to HIS MAIESTIE, most tressonabillie, blasphemoullie, and mischantlie⁶ replyit to þe said Minister, in thir woirdis: ‘ffeind nor THE KING schoote to deid or þe morne—and that he die of þe falling feiknes!’ And it being demandit of the said Johnne, quhat movet him to vtter fuche blasphemous and horrible speiches aganis his Maieftie?—maid this scornefull and disdainfull ansuer: ‘War nocht⁷ THE KING and his lawis, he had nocht wantit his landis—and þairfoir, he cairt nocht for þe King—for hanging wald be þe worst of it!’ Be the vttering of the quhilkis damnable and blasphemous

¹ See this Collection, I. 385. ² *Ibid.* II. 332. ³ *Ibid.* II. 349. ⁴ *Ibid.* III. under the above date. ⁵ Owed. ⁶ Wickedly. O. Fr. *meschantment*. ⁷ Had it not been for the King, &c.

speiches aganis his Maieftie, he had committit moft haynous and vnpardoneable Treffone. Lyk as, he being conuenit and presentit befor the Lordis of his Maiefteis PREVIE COUNSELL for the faidis speiches, the faidis Lordis of Secreit Counfell hes tryit the famyn to be of verritie; and thairfoir, Ordanit him to be pwneift *exemplarie*, to the terrour of vtheris.

The Dittay being red to the pannell, (he) maift humblie offerit him felf in his Maiefteis Will, for the faid crymes: Quhairupoun my lord Aduocat askit instrumentis. Quhilk Dittay was verifeit, be productioun of the Counfellis Decreit.

VERDICT. The Affyfe, all in ane voce, be the mouth of Cuthbert Mure, furriour in Edinburgh, chancellor, ffand, pronuncet, and declairit the faid Johnne Flemyng to be Giltie and convict of the faidis Treffonable Speiches vtterit be him, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit quhill he be deid: And all his moveable guidis to be efcheit, &c.

Slaughter.

May 30.—JOHNNE BRAND, Student in the Colledge of Philofophie of Ed^r, fone to vmq^{le} Johnne Brand, Minifter at Halyrudhous.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq^{le} Williame King, fone naturall to James King, Aduocat; committit vpon the xxvij day of Maij infant, vpon St Leonardis Craigis, neir to the faid burgh, befyde the Park-dyke of Halyrudhous, be ftreking of him with ane drawin knyfe, vnder the left pape; quhairof he immediatlie deceiffit.

PERSEWARIS, James King, Aduocat, as fader; Mr Alexander King, Aduocat; Mr Adame King, ane of the Commiffaris of Edinburgh, as fader-brether.

The pannell acknowledges the Dittay to be of verritie, and craves God, and our Souerane lord, and the pairtie, maift humblie, pardoun for the fact: And gif any meanis of fatisfacioun (refervand his lyfe) may be acceptit, accoirding to his habilitie, is maift willing to fulfill the famyn, accoirding to the perfewaris iniunctioun: Bot gif na vther thing bot his bluid will mitigat the perfewaris wraith, offeris the famyn to be pwneift accoirding to the Law; defyreing the Lord, throw the mereitis of the precious bluid of his Sauour Chryft Jefus, to be mercifull vnto his faull!

VERDICT. The Affyfe, all in ane voce, be the mouth of Johnne Mafoun, mercheand in Ed^r, chancellor, ffand, pronuncet, and declairit the faid Johnne Brand, accoirding to his awin Confessioun, to be ffylet, culpable, and convict of the Slauchter of the faid vmq^{le} Williame King.—SENTENCE. To be tane to the mercat croce of Ed^r, and thair his heid to be ftrukin frome his body: And all his moveabill guidis to be efcheit, &c.



