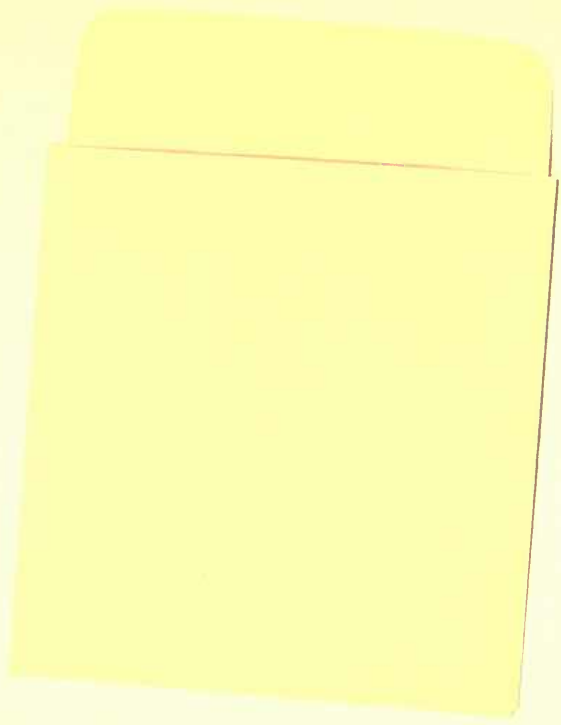



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ANCIENT
CRIMINAL TRIALS
IN SCOTLAND.

VOL. III.—PART II.

1615—1624.

REPORT OF THE

COMMISSIONERS

OF THE

LAND OFFICE

FOR THE YEAR

ENDING

1880

AND

FOR THE YEAR

ENDING

1881

ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;

COMPILED

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

BY

ROBERT PITCAIRN, ESQ.

VOL. III.

PART SECOND.

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

Treasonable Fire-raising in Coal-pits.

Jun. 10.—**JOHNNE HENRIE** in Littill Fauſide.

Dilaitit, accuſet, and perſewet, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord, for his hienes intereis, of the crymes vnderwrittin, viz.

FORSAMEKILL AS, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed^r vpon the fyft day of Junij, 1592 3eiris, makand mentioun that his Maieſtie and eſtattis, for þe better pwneſchment of the wiked cryme of ſetting ffyre in coil-heuches¹ be ſum vngodlie perſones, vpon privat revenge and diſpyte, haif þairfoir Statute and Ordanit, be vertew of the ſaid Act of Parliament, that þe committing of the ſaid cryme, in ony tyme þaireſtir, ſhall be Trefſone; and that the committeris of þe ſaid haynous and deteſtable cryme, being ordourlie convict þairof, ſhall ſuffer and vnderly ſic pwneſchment in þair bodeyis, landis, and guidis, as is dew be the law in cauſes of Trefſone: As in the ſaid Act of Parliament at lenth is contenit. Nochtwithſtanding quhairfoir, it is of verritie, that þe ſaid John Henrie, being a ſervand and workman within the Coil-heuch of Littill Fauſyde, and þairthrow beſt acquentit with the hail ſecreit paſſages and pairtis of the ſaid heuche, haifing confauet ane deidlie rancour and evil will aganis Mungo M^ccall, now of Littill Fauſyde, becaus þe ſaid Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingſtoun, his prediceffour; in a devillifch diſpyte, and to þe wrak and diſtructioun, nocht only of the ſaid Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of ffbruar, March, and Apryle, in the 3eir of God I^m.Vj^e. and fourtene 3eiris, at the leiſt, in ane or vther of the ſaidis monethis, immediatlie eſtir þe ſaid Mungo M^ccall acqyret the rycht and poſſeffioun of the ſaid coilheuch, come, vnder ſilence and clud of nycht, to þe ſaid Coilheuch of Littill Fauſyde, and enterit þairintill be ane previe hoill and paſſadge of his awin, and maift trefſonable pat ffyre within the ſaid heuche, of purpois and intioun to burne and diſtroy þe ſamyn and hail coillis being þairintill: Lyk as, for the gritter ſecrecie and doun-halding of the ſaid ffyre, he nychtlie, be þe ſpace of tuentie dayis togidder, refoirtit to the ſaid heuche in ſecreit maner, ffed, and nureifchet þe ſaid ffyre, ſtoppit þe hail air and vent hoillis with ſtray,² quhairthrow þe ſaid ffyre ſould nocht be diſcoverit: Be reaſone of the quhilk ffyre, and ſtopping of the hail air and vent hoillis, thair arraife ſic ane peſtiferous and foule air within the heuche, that nane of þe workmen war able to work þairintill; quhairvpon, and be þe pulling furth of ane bottell of ſtray furth of ane hoill in the ſaid heuche, quhilk hoill was callit þe ſaid Johnne Henreis vue,³

¹ Coal-pits.

² Straw.

³ Perhaps for view, prospect.

the vehemence of þe said fyre was discoverit. Be þe committing of þe quihilk detestable fact, he hes committed maift haynous and vnpardoneable Treffone.

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

Thomas Cocherane, greif¹ at Littill Faufyde, being fuorne vpon the verritie of the Dittay product be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit pairintill, bot he wald nawayis follow nor perfew him for the samyn, in respect he had na intereis; quhairvpoun my lord Aduocat askit instrumentis.

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

VERDICT. The Assyfe, being ryplie and at lenth advyfet thairwith, togidder with the taikynis² and Depositiones product for instructing thair of, be pluralitie of voitis, stand, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Faufyde, chancellor, the said pannell, to be ffylet, culpable, and convict of the tresonable cryme specifit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^l, and thair to be hangit vpon ane gibbet, quhill he be deid; and his heid thaireftir to be strukin frome his body, and put vpon ane prik, fixt and fet vp vpon the landis of Littill Faufyde, besyde the said Coil-heuche: And all his moveable guidis, gif he ony hes, to be escheit, &c.

Namesucken—Slaughter.

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

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

PERSEWARIS, Patrik Suoird and Johnne Suoird, as brether.

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

¹ Grieve; overseer.

² Proofs; tokens; evidence.

Mutilation and Demembration.

Jun. 30.—JOHNNE PITSCOTTIE of Loncardie, Colene Pitfcottie, his eldest sone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, spous to Thomas M^cduff of Glenelwart, of hir richt airme ; committit vpon the xxix day of August, 1613.

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

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

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

High Treason—Taking and Detaining the Castle of Dunnywaig —Resisting King’s Lieutenant, &c.

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

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

¹ See Vol. III. p. 1.

² Advocates’ Library.

³ Each other.

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

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

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

Dilaitit of the tressonable taking, keiping, and detening of his Maiesteis Castell of Donyvage, in Yla, and resisting of the Laird of Caddell, his hienes Leutenent and Commiffioner, &c. ; as in THE DITTAY following :—FORSAMEKILI AS, thay, accompaneit with *Coill M'gillespich* and vperis, pair complices, all rebellis and brokin men,² to the number of ffyftie perfones or pairby, in the moneth of November last, maist tressonabillie convocat thame selfis in airmes, come forwardis in oppin and arrayit battell to his Maiesteis Castell and strentth of Dynniewaig, in Yla ; and pair, be craft and policie, tuik in the said Castell, whilk thay stuffit³ and furneisit with muscattis, hagbuttis, poulder, leid, and vper weirlyk furnitour,⁴ for halding pair of : Quhilkis tressonable practizes, sa interpryset be thame and thair complices, being maid knawin to the Lordis of his Maiesteis Secreit Counsell ; and thay, for redres of the saidis rebellis enormiteis, haifing directit the Laird of Caddell,⁵ with compancis of wageit men of weir, as Leutenent to his Maiestie, with ane Herald,⁶ and trumpettar, to charge thame, in his hienes name and authoritie, to rander the said Castell, and to recover the samyn fyrth of pair handis. LYK AS, the said Leutenent with his forces, togidder with the said Herald and trumpeter, haifing cum to the said cuntrie of Ilay, to the effect foirsaid, the foirnamet perfones, with pair rebellious affociattis, vnderstanding pair of, directit furth ane grit number of pair rebellious cumpany aganis the said Herald and trumpeter, and maist tressonabillie stayit and interruptit thame fra cuming forwardis to be said Castell, for geving of the said charge ; quhairthrow, for feir of pair lyfes, thay durst nocht cum forwardis to the said hous : Lyk as, eftir his Maiesteis Leutenent had plantit him self with his forces round about the said Castell, and had salutet the saidis rebellis,

¹ See May 13, 1609, &c., and Note to the Introduction to *Sir James Makconell's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makconell*, his father, occurs. ² Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise.

³ Provisioned. ⁴ Furnishing ; provision.

⁵ Campbell of Calder, or Caddell.

⁶ Robert Wynrahame, Albany (Ylay) Herald.

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

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

ASSISA.

Mr Rannald Bayne, burges of Ed^r, Hucheoun Frazer of Kilboig, James Sprewle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.¹

The Aduocat, for verificatioune of the Dittay, productet the pannellis Depositiones, and takis instrumentis vpon the production thairof, &c. And protestis for Wilfull Errou, gif thay acquit.

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

APPENDIX OF DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ANGUS OIG M^cDONALD, &c.

I. OFFERIS to be presentit to our maist gracious fouerane and his hienes honorabill Counfall, in the name of Angus M^cDonald of Dicuuaig, his freindis and followeris.

FIRST, with all humelite, I adheir to my former OFFERIS, maid and subseryuit with my hand, in prefens of THE COUNSALL, at *Glasco*, in the yeir of God I^m. Vj^o. and fyf yeir, and delyuerit to my Lord of *Skone* to haif bene schawin to HIS MAIESTIE; promeing to performe euery heid of the famin.

Secondlie, I offer my self to abyid the tryell of the lawis of this HIS MA^{TES} realme, twiching my obediens to his hienes and *Confallis* derectiounes, in all poyntis; and keiping of all dewateis appertenyng to a loyall subiect, ewir fen HIS M^{TES} past to mak refidens within his hienes kingdom of ENGLAND.

¹ The remainder 'burgesses of Ed^r.'

Thridlie, feing I haif compleitlie payit all hygane males¹ of his hienes propper landis, within IYLA and KYNTYIR, pofeffit be me, heirtofoir, and hes obtenit HIS MA^{TIES} *Controllerris* difcharge thairof, I offir, in lyk manir, in all tym cuming, during my lyftym, to mak thankfull payment of the full Rentall of the faidis landis, wnto the quhilkis I and my foirbeiris hes bene kyndlie tenentis;² and that termelé and yerlé,³ wnder the pane of tynfall⁴ of all kyndis of rycht, tytill, or poffeffioun that I can cleame to ony landis within ony pairt of HIS MA^{TIES} dominionis; his hienes refpecting for the prefent *the Waff landis* of IYLA, quhill thai be pleneifehit and manwrit.⁵

Ferdlé, I offir fufficient cautione, within *the Law-landis*, that I falbe obedient to the lawes of this HIS MA^{TIES} cuntré of SCOTLAND; and to that effect, fall compeir befoir *the Councfall* of the faid realme, vpon lauchfull premonitione, quhairfoewir the famin fall fit.

Fyftlé, I offir to concur with thais quhomvnto it fall feme guid to (his) hines to gif Commiffiounne, with my haill freindis and followaris, and to fet fordwart and aifit sic reformatiounne of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MA^{TIES} kingdome of SCOTLAND, as it fall pleas his hienes beft to dewyfe, be thir prefentis, fubfcryvith with my hand, AT KILNACHTANE, IN IYLA, the acht of September, 1606. ANGUS M^CDONALL of Dwnvaig.

II. LETTER, *Angus M^cdonall of Dwnvaig* to THE KING. Sep. 10, 1606.

PLEIS 3OUR EXCELLENT MA^{TIES},

IT is knawin to 3our MA^{TIES} honorabill *Counfaile*, within 3our hienes realme of *North Britane*, quhat hes bene my behaviour evir fen 3our hienes past out of thir the North pairtis of 3our MA^{TIES} dominion; how many futtis, and how many offeris of all dewiteis that it become a loyall fubiect to his dreed fouerane, I haif maid to pair Lo.; and how that, efter I haid fullie fatisfeit and compleitlie payit all byrun maillis addebit be me to 3our MA^{TIES} *Comptroller*, I obtenit his difcharge pairpoun. I fend with his lo. to haif bene prefentit to 3our MA^{TIES} certane fpeciall OFFERIS, fubfcryvith with my hand, befoir 3our hienes COUNSALE in *Glefwye*, in the moneth of Junij, 1605, of the quhill I haif as 3it receavit na anfuer nor⁶ quhat 3our MA^{TIES} refoluis and dederetis me to do; and being refufit of Licence to haif cum and prefentit my felf perfonalie befoir 3our hienes, to haif maid my awin fupplicatioun out of my awin mowth, I am enforceit to mak the famyn be a mediat perfone, *my Lord Bifchop of the Iyles*,⁷ quhome-by I haif gewin credeit to offer, in my name, to 3our MA^{TIES} my lyfe and all þat I may command, to be vfit as it fall pleife 3our hienes direct; befeking 3our MA^{TIES}, for the caufe of God, to refpect my aige and pair eftait, and to lat me knaw 3our hienes awin mynd, fignet with 3our MA^{TIES} awin hand; and gif it mycht pleife 3our MA^{TIES} to continew me the poffeffioun of thais kyndlie rowmes,⁸ quhilkis my forbearis⁹ and I hes haid of 3our MA^{TIES} and 3our hienes royall progenituris, I fall nocht onlie paye the dewiteis and maillis vfit and wounnt pairfoir, bot also fall find fufficient fouertie for obedience to 3our MA^{TIES} lawis, in all poyntis, and in all tyme cuming; or vpirways, that it mycht feim guid to 3our MA^{TIES} to let me kend,¹⁰ how and quhairpoun I fall leive; for it falbe knawin, I fall feik na vther refuge bot onlie 3our MA^{TIES} clemencie, nor na vther leiving bot that quhill of 3our MA^{TIES} princelie liberalitie it fall pleis 3our hines beftow vpon me; as at mair lenth the beair will informe 3our MA^{TIES}. And fua, I befek God to blifs 3our hienes with a long and prosperous ring.

3our Ma^{ties} maift humbill and obedient fubiect,

IYLAIE, the tent of September, 1606.

ANGUS M^CDONALL of Dwnvaig.

¹ *Maills*, rents, feu-duties, &c. ² Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters. ³ Termly and yearly. ⁴ Loss; forfeiture. ⁵ Stocked and manured. ⁶ Than. ⁷ ANDREW KNOX, of the family of Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackenzie, *Appendix*. ⁸ Possessions held by him as 'kyndlie Tenant.' ⁹ Ancestors. ¹⁰ Know; understand.

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

MOST SACRED AND SOUERANE,

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

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

TO THE KINGIS most excellent MA^{TIES}.IV. LETTER, *Lord Wchiltrie to THE KING.* May 27, 1608.

MOST SACRED AND GRATIOUS SOUERAN,

I RESSAVID your MA^{TIES} Lettir, with *Alifser Ogis* Remissionne, and falbe cairfull to gif vnto your MA^{TIES} full contentment and satisfacioun in everie particular of the Letter. I haif reteinit the Remissionne in my handis, quhill I haiff ane certaintie of *Alifseris* conformitie; quhairin I expect to find him anferuabler, in some meafour, to that great favour quhill it hes pleist your MA^{TIES} to bestow vpon him. In all wtheris your MA^{TIES} directionis, quhairin it fall pleis your sacred MA^{TIES} to burdene me, I fall haif ane special cair and regard to approve my self worthie of that trust quhill your hienes repois in me; having na wthir thing sit to acquyt your heines inestimable favouris, bot ane hart disposit, in all sinceritie, to discharge that dewtie quhill your MA^{TIES} expectis, and quhill to my awin credit appeten, and to sacrifice my lyffe and all that I haiff, in the executioun of all your MA^{TIES} royall directionis. And sua, recommending your sacred MA^{TIES}, with your royall progenie, to the protectioun of God, I rest

30^r MA^{TIES} moift humbill and obedient seruitour,

EDINBURGH, the xxvij of Maij, 1608.

AL. WCHELTRE.

TO THE KYNGIS moift excellent MA^{TIES}.

V. 'COPY of THE LIEUTENENTIS LETTER to the Counfall, to be send to Courte with Sir Alexander Hayis Letter, &c.' Aug. 18, 1608.

PLEIS YOUR LORDSCHIPIS,

I CAUSIT wey oure ankeris and departit from YLA the 14 of this instant, at efter none, and arryved at *Douart*, in MULE, the 15 of the same monethe; and that with gryte difficultie, in respect of the greatest tempest of wedder and contrarie tyddis, quhairby we wer put in great dangear all pat nycht; quhairthrow I faillit downe ane of the mastis of my awne schippe. Ait oure out-coming from YLA, we mett *the Inglish gally*, with ane vther shipp, that carrys the munition and ordinance, the quhill gally, yf it had not pleast God to haif givin hir that luke¹ to anker in *the Sound of YLA*, tho could not haif eschaipit saiff, in respect of the gryte tyddis heir, and hid gait to pas throw, the quhill ho appeiris to be verie vnmeit: And finding hir nawife sufficientlie furneit with victuall, to remane heir to await on this seruice, yf it war bot for the space of aucht dayis; and not being certane of ony victuallis to come heir to furneish hir, bot onlie, at my speciall requeist, *Sir Williame St Johnne*, HIS MAIESTEIS Admirall heir, hes tane vpon him, out of his awne furnitour,² to supplie hir with viveris, quhill bak advertement come from your ll.; and feing we have no seruice in thir *Ylandis* that sho is meit for, and knowing hir to be gryte expensis to HIS MA^{TIES}, vpon the avisement with *the Admirall*

¹ Luck; good fortune.² Provision.

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

This thingis I haif thocht good to communicat vnto your ll., imparting vnto your ll. oure opinioun heir, and craving your ll. forder resolution in the premisses, quhilk I think, God willing, to follow furth. Vpon the 16 of this instant, I directit Commissionaris to the *Houfe of Dowart*, quhairin M^CCLAYNE haueing his residence for the tyme, promeit to delyuere the Houfe; the quhilk he did vpon the 17 of this instant. I ressaueing the fame, hes furneift with men and viveris that Houfe to be keipt during HIS MA^{TIES} and your ll. pleasour. I haif proclamit Courte to be halidin, the xxij of this instant, in *Arrofe* of MULL, when I think, be Godis grace, to tak ordour with pat Yland, in executioun of pat pairt of my Commission, in distroying of lumfaddis,¹ birlingis,² and Hieland gallayis.

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

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

Be your ll. alwise to be commandit,

DOWART, in Mull, 18 August, 1608.

A. VCHILTRE.

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

MOST SACRED SOUERAYNE,

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

Your Maiesteis most humble and obeydent subiectis and seruitouris,

AL. CANCELL. ARGYLL. CRAWFORD. BUKCLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

¹ Lymphads.

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

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

MOST SACRED SOUERANE,

THE beirar, *the Bischop of the Yllis*, having the occasioun to repair towardis your sacred MAIESTIE, we haif thought meit to accompany him with this our testimonie and approbatioun of his dewtiful cariage and behaviour in your MAIESTIES seruice, in THE YLLIS, wherin he hes caryed him selff with verie goode credite and reputatioun; and is able, be his counfall and advyse, (in respect of his awne credite and freindshippe amang the Yllifinen,) to do vnto your MAIESTIE goode seruice thair. And sua, recommending him vnto your sacred MAIESTIE, and most humelie beseking your heynes to heir him, in sache thingis as he will proponne, anent the prosequitioun of this seruice, We pray God to blisse your sacred Maieftie with all happynes and felicitie, and restis for ever,

Your Maiefties most humble and obedyent subiectis and seruitouris,

AL. CANCELL^r. ROSS. TORPHECHIN. BUKCLUGHE. HALYRUDDHOS.
CL^r. REG^{nt}. A. ELPHINSTON. S. T. HAMILTON. JO. PRESTOUN.

EDINBURGH, 13 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

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

MY HONORABIL GOOD LORD,

I HAVE receavet your Letter, and hes vnderstand be your meaning, that se wuld hawe me to rander this Hous to yow into THE KYNGS name. My Lord, as to that, if I had not receavit ane better Warrand from *my Lord Chancellor and Counsell of Scotland* to rander thame this Hous of DUNYWEGE, I wald obey your lo. or any wper subiect, hawing his MAIESTIES Warrand. My lord, if se doubt of this, send me your awin Secretar, or anie wper pat can reid, and I shall let him sie my Warrand from *the Counsell*, desyring me to keip this *Castell*, wnto the tyme that his MA^{ties} wilbe¹ declairit to me. The quhillk my Warrand fall testefie. And if yow will trouble me, efter I hawe obeyit his highnes will, be yow assurt that I fall complayne to his MA^{ties} *Counsell*. Not troubling your lo. any forder, comitts yow to God. FROME DUNYWEGE, the 14 of this instant month. And if se will send any of your awin men, se fall hawe frie passage to pas and repas to and fro.

Your friend, to your deserwing,

ANGUS OG MA^{donall}.IX. EXTRACT from MINUTES of *Privy Council Proceedings.* Apr. 1614.

THE HOUSE of DVNYVEG, in YLA, being possessed and kepted be THE BISCHOP of THE YLES his brother, and two or three fervandes, the same Houfe hes bene of late surpryfed and tane be one *Ronnald Oig*, alegaand to be Bastard sone to vmq^{le} *Angus M^cconneill of Dvnyveg*, whom the said *Angus* did neuer, in his tyme, acknowlege to be his sone. This *Ronnald*, being a vagabound fellow, without ony certane residence, come latelie to YLA, and finding the Houfe to be but slenderlie kepted, resolued to surpryfe and tak the same: And for this effect, he and his complices, being four or fyue in number, retered thame selues to ane wood, neare by the Houfe, whair thay made some laderes, and with thame, one day, airtie in the morning, thay clam the vtter wall, kepted thame selues obscure whill the yettes were opined; and then they took the Houfe, and put the *Bishopes* folkes oute thereof. The reporte whereof coming to young *Angus M^cconneill*, lausfull brother to *Sir James*, who wes within sex myles of the Houfe for the tyme, he immediatlie, according to the cuntrie fassioun, send the *Fyrecrofe*² athorte the countrey, warning all the countrey people, who wer affected to HIS MAIESTIES obedience, to ryfe, and concur with him in the recoverie of the Houfe. And so he, with such assistance as come to him, inclosed the Houfe. Thay within held good for sex dayes, being weel prouyded

¹ Probably this should be read, "wnto the tyme that his MA^{ties} will salbe." ² The Fiery Cross. See the *Lady of the Lake*, and other works of Sir Walter Scott, for illustrations of this remarkable custom.

with pulder, lunt,¹ and bullet, whereof thay fand good flore in the Houfe; and thay wer prodigall enough in befowing the fame vpon the befengares; bot in end, perceauing that thay war not able to keepe the Houfe, thay in the night efhued² at a bak yett, in a litle boat with fex oares, which lay at the Caftell; and took with them fuch goodes as thay fand in the Houfe.

Angus followed thame, bot what farder has fallen oute, is not as yitt come to *the Counfelles* knowledge. *Sir James M'concell* is the *Counfelles* informar of all this bufynes; and as he fayes his brother hes offered to deluyer the Houfe bak againe to *the Bifhops* feruandes, who refufed to reffauze the fame. *The Counfell* having hard at lenth *Sir James* difcourfe, made in this carand, and looking fhortlie to heere from *the Erle of Ergyle*, or els from *the Bifhope*, the conftant and certane truthe of all this mater, thay haue referued all deliberation hearin, till thay heere from *the Bifhope* or *Erle*.

X. SIR JAMES M'DONALD HIS OFFERS.

FIRST, I offer, if it might pleafe HIS MA^{TIE} of his clemencie to give me ILAY, I would pay eight thowfand merkis yearlie thairfoir; and find fufficient caution of Lordis and Barrounes for good payment and obedience, be my felfe, and all THE CLANNIS that fhall dwell there: And craves but a fevin yeare Tak, to try me.

Secondlie, I offer, if HIS MA^{TIE} pleafe to hold ILAY in his awin hand, to mak it worth Ten Thowfand merkis yearlie to HIS MA^{TIE}; and to transport my felfe, my brethir, and my kin to IRELAND, or to whatfumewir other place HIS MA^{TIE} will appoynt ws; and his highnes to give ws one yearis duetie or rent of ILAY, to by land with; and in the mein tyme, I fhall go with *the Bifhop* of THE ILES, and fhall, God willing, ather get the Houfe and his pledgis, without any chaigis to HIS MA^{TIE}, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue affurance of HIS MA^{TIE} and COUNSALL, that my felf and my brothir fhall get leave to go, prefentlie thereafter, with my lord *Bifhop* to Courte, and get a kifs of HIS MA^{TIE} hand; and my cautionaris fhall remaine bound for me, that I and my brother fhall returne bak heir to HIS MA^{TIES} COUNSALL, to abyid fuch order as it fhall pleas his highnes to inioyne to ws. And I fhall leive my fone heir, as pledge for my performance in all, and for fatisfactioun to HIS MA^{TIE} and COUNSALL. I fhall bring *Rannald M'allafter*, who firft took the Houfe, and *Ronnald M'donald Vallich*, to fuffer for their fault; and *Coll M'gillafpie* to be kept in Irnes, during HIS MA^{TIES} pleafour. My cautioneris falbe *the Erle of Tullibairne*, *Lord Burlie*, *Sir Ronnald M'Sorle*, *Johne Campbell of Cadell*, *Malcum Tofhe*,³ and *the Laird of Grant*; every one for Fyve Thowfand merkis—and my fone to die if I fail.

And laft, I offer, without any condition of land or money, that if it pleafe HIS MA^{TIE} to give me libertie, vpon fuch furetie by cautioneris as I am able to performe, or pledgis, I fhall transport my felf and my brothir and kin out of all HIS MA^{TIES} dominionnes, having HIS MA^{TIES} Letter of Recommendation to THE ESTAITTIS of HOLLAND; and libertie to tak vp nen, if we be employit; with HIS MA^{TIES} frie pardoun for all byganis.

Fire-raising—Theft—Reset of Theft.

Jul. 14.—JOHNE M'ALLASTER M'JAMES, in Daill of Rothiemurchus; Andro M'allafter M'James, in Kynveachie; Johnne Dow M'kay, in Duchill.

Dilaitit of airt and pairt of the treffonable Raifeing of fyre, Burneing and destructioun of the Houffis and bigingis pertening to vmq^o George Dunbar in

¹ Match.

² Escaped; *eschewed*.

³ Probably meaning the *Laird of MacIntosh*.

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

PERSEWAR, Mr Robert Dumbar, fone to the said vni^o George Dumbar.

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

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

[*Sir Williame Heart, Justice-Depute.*

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

Treasonable Resetting of Jesuits and Trafficking Papists, &c.

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

⁴ William Sinclair, Robert Wilkie, (and) Cruikshanks were convicted, upon the fourteen of August, for Resetting the *Jesuits* above named, and bearing of Massé. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, sett up beside the Crosse, and a gallows in it, according to the custome of Executione. While a great multitude of the people was gazing to see the Executione, there was a Warrant presented to the Magistrates of Edinburgh, to stay the Execution; for they were carried back again to their wards. The people thought this forme of dealing rather mockery than punishment!']

Jul. 14.—WILLIAME SINCLAIR, agent in Edinburgh; Robert Wilkie, browdinster³ in the Cannogait; and Robert Cruikshank, staibler in Ed^t.

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

DITTAY against the Pannel.

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

¹ See his Trial, Vol. III., p. 330, &c.

² Church Hist. MS., Adv. Library.

³ Embroiderer, a lucrative

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

be his Maieſtie to þe maintenance of the trew RELIGIOUN, preſentlie (to the honour and praife of Almychtie God) profeſſit and eſtabliſchet within this Kingdome, and for the ruting out of all Papiſtical and Idolatrus Religioun, with the blinded profeſſouris pairof, furth of the ſamyn; be mony godlie lawis and Actis of Parliament, deulie maid and publiſht, allweill in his hienes minoritie, as ſince his acceptatioun of the government in his awin perſone, hes nocht onlie expreſſie ſtatute and ordanit, that na profeſſit JESUITE, SEMINARIE PREIſTIS, nor TRAFFIQUEING PAPIſTIS (being all ſuorne ennemeis to his ſacred Maieſties croun and eſtate) be fund within this his hienes realme, or any part of the ſamyn, vnder dyuerſe capitall panes mentionat pairiatill; bot lykwayis, be dyuerſe vtheris guid and godlie Lawis, Actis, and conſtitutions of Parliament, ſpeciallie, be the 120 Act of his hienes tuelf Parliament, baldin at Ed^r vpon the fyft day of Junij, 1592 3eiris, his Maieſtie and Eſtatis than convenit, hes, be vertew of the ſaid Act, decernit and declairit, that in tyme paireſtir following, the RESETTING of the ſaidis JESUITIS, SEMINARIE PREIſTIS, and TRAFFIQUEING PAPIſTIS, aganis the Kingis Maieſtie and Religioun, preſentlie profeſſit within this realme, is and ſhall be ane juſt caus to infer the cryme and payne of TRESSONE aganis the ſaid receperis:¹ As the ſaid Act of Parliament, ratifeit and approvin in dyuerſe his Maieſteis Parliamentis, baldin ſenſyne, in the ſelf proportis. AND albeit it be of veritie, that vmq^{le} *Mr Johanne Ogilvie*, alias *Watſone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johanne Campbell*, alias *Sinclair*, all profeſſit JESUITES and MESS-PREIſTIS, with dyuerſe vtheris of that vnhappie and curfet ſect, war directit from ROME, this laſt 3eir, 1614, be THE POPE and his CARDINALIS, to cum to this cuntrie and vtheris pairtis of his Maieſteis dominiones, to put in executioun, na dout, ſum feirfull and treſſonabill concluſioun, as perſones maiſt meit for ſic ane dangerous employment; and haifing, according to pair commiſſioun, cum to this cuntrie, in the monethis of Junij or Julij, the 3eir of God ſoifaid; quhair, eſtir pair cumming pairto, in all pairtis and companeis quhair thay reſoirtit, ſpeciallie, the ſaid *Mr Johanne Ogilvie*, ane vylde and abhominable Tratur, quha inſtille reſſaut his deſerent pwnſchment, be pair perverſe ſpeiches and inſolent cariages, maiſt treſſonabillie and oppinlie condampned and diſfavovit his Maieſteis ſouerane authoritie, ſetting vp and mainteining, in place pairof, THE POPE OF ROME his vſurpet power for excommunicatting, depoſeing, and dethroneing KINGIS, and abſolueing ſubiectis from the othe² of pair naturall allegiance; intending na les, be thais pair treſſonabill ſpeiches and informations, nor³ to haif waknit and ſteirit vp ane oppin and feirfull REBELLIOUN. THIR pernicious and vnhappie miſcreantis, ſchlakin louſe be þe authoritie of pair Generallis, to put in executioun ſic treſſonabill attemptis, nochtwithſtanding of his Maieſteis Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of pair devillifche ſect, war, in the monethis of Julij, Auguſt, September, and October laſtbypaſt, at the leiſt, in ane or vther of the ſaidis monethis, maiſt treſſonabillie reſſett, harbourit, and interteneit be 3ow, and everie ane of 3ow, viz. the ſaidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikſhank*, within pair (3our) duelling houſes, in maner as followis; that is to ſay: THE ſaid *Mr James Moffett*, alias *Halyburtoun*, ane profeſſit JESUITE, a PREIſT, and TRAFFIQUEING PAPIſT, haifing cum to this burgh of Ed^r, to pervert, be his erroneous doctrine, our ſouerane lordis ſubiectis fra þe trew RELIGIOUN preſentlie profeſſit, was, for that effect, maiſt treſſonabillie reſſett, harbouret, and interteneit be the ſaid *Williame Sinclair*, in ane or vther of the ſaidis monethis of Julij, Auguſt, September, and October laſtbypaſt, dyuerſe dayis and nichtis, within his duelling hous in Ed^r; and all neceſſar comforte, releif, and intertenement miniſtrat to him, at all occaſions, as gif he had bene (ane of) his Maieſteis faithfull and loyall ſubiectis and profeſſouris of þe trew RELIGIOUN; eſtir he was knawin to þe ſaid *Williame Sinclair* and his wyfe to be of the contrair⁴ RELIGIOUN, be þe informationn of ane James Colt, he keptit daylie ſocietate and companie with þe ſaid JESUITE, vpon the ſtretis, keptit tryftis and meittings with him and with the ſaid vmq^{le} *Johanne Ogilvie*, ane notorious Tratur, within the duelling houſe of *Robert Wilkie*, in the Cannogait, and duelling hous and ſtable of *Robert Cruikſhank*, and within the Abbay

¹ Receivers; reseters.² Oath.³ Than.⁴ Opposite; adverse.

5airdis, and in dyuerse vtheris pairtis of this burgh of Ed^e and suburbis pairf; committing pairthrow, maist oppin and vnpardonable Tressone, and according to the said Act of Parliament, incurring pairthrow the panes and pñneichment expressit pairintill. LYK AS, the saidis *Mr James Moffet*, *Mr Johnne Campbell*, and *Mr Johnne Ogilvie*, all professit and avowed JESUITES, war, in ane vther of the saidis monethis, tressonabillie resset, hurdit,¹ keipit close, with thair horffis and provisioun, be the said *Robert Cruikshank*, staibler, within his duelling hous and stable in Ed^e; be the space of dyuerse dayis and nychtis, war interteneit be him pairintill, and furneist with all maner of conforte, help, and releif, according to his habitie, committing pairthrow, oppin and manifest TRESSONE, conforme to the said Act of Parliament. AND siclyk, the saidis *Mr James Moffet* and vmq¹⁰ *Mr Johnne Ogilvie* war maist tressonabillie resset, harbouret, and interteneit, in ane or vther of the saidis monethis, be the said *Robert Wilkie*, within his duelling hous in the Cannogait, of certane knowlege that thay war JESUITES, insofar as three feuerall MESSIS² war said be the said *Johnne Ogilvie*, within 3our chalmer, of 3our speciall knowlege; to the quhilkis MESSIS, dyuerse perfones maid pair resoirt, and the said Robert keipit the dur, and was quhyles within and quhyles without. BE the wilfall and tressonable Ressetting of the quhilkis JESUITES, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, professit and avowed enemeis to his Maiesteis persone, Cronn, and estait, and trew RELIGIOUN prefentie professit, and that within thair duelling bouffis, and vtherways, as is aboue declairit, the foirsaidis perfones, and ilk ane of thame, according to the tennour of the said Act of Parliament, hes incurret the pane and pñneichment of TRESSONE, viz. to be pñneist and demanit³ as Traturis, and pair haill landis and guidis florfall and escheit to his Maiesteis vfe; to the terror of vtheris to abstene fra the lyk heireftir.

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

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

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

³ Used; treated.

⁴ Goodnature; without any treasonable intent.

him self, in his awin Depofitioun, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the faittie of faules that war in danger; and fa, was fufficientlie knawin to the faid Williame, that he was ane Jefuite and traffikeing Papift aganis his Maieftie and Religioun: Be recepiting of the quhilk Jefuite thaireftir, he has fallin vnder the danger of the faid Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Affyfe for the Recepiting of Jefuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had reffet thame, *fcienter et prudenter*, be the fpace of three nychtis togidder, or three nychtis at feuerall tymes; be the quhilk Act, it is provydit, that gif it be fa tryit,¹ that the perfone convict for the *firft* falt, his efcheit fall fall; ffor the *fecund* falt, fall amit² his Lyfrent; and (ffor) the *thrid* falt, fall incur the crymes of Treffone. And thairfore, except the faid Recept be fa tryit, the Dittay is nocht relevant.—It is anfuert, that the allegiance aucht to be repellit, in refpec the faid Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit: And thairfoir, nochtwithftanding of the faid allegiance, fould pas to ane Affyfe.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 5eiris, cap. 18, thair can be na forder exactit of the Recepteris of Jefuites, bot ane pecuniall payne; quhilk he is content to pay, according to the Lordis modificatioune: And thairfoir, the Dittay for Treffone can nocht pas to an Affyfe.—It is anfuert, that the allegiance aucht to be repellit, nochtwithftanding of the faid Act quhairupoun the famyn is foundit, in refpect the famyn nawayis derogatis the Act of Parliament maid be his Maieftie and Estaittis, in anno 1592, bot ratifies the faid Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Affyfe for Reffetting of the faidis Jefuites, nather is the Dittay relevant aganis him, in refpect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid ofbefoir aganis the Reffetteris of Jefuites, &c. haif full force, and be put to dew executioun aganis the faid Reffetteris, fa fone as intimatioun and denunciatioun beis maid of the faidis Jefuites, Seminarie Priettis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the fchyre quhair thay duell, and Mercat-croce of Edinburgh;³ bot fa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the faid *Mr James Moffet* his name, befoir his Reffetting within the pannellis hous, to be ather a Jefuite, Seminarie Preift, or of ony vther ordour: And thairfoir, the faid Dittay for his Recept can nocht pas to ane Affyfe.—It is anfuert be my lord Aduocat, that the explanatioun repetit be the pan-

¹ If it so turns out upon Trial.

² Lose.

³ As the *commune forum*.

nell, fet doun in the said laft Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Reffetteris, quhairupoun the Dittay is confaet; bot be the contrair, the said Act is Ratifeit, and ordanit to haif frie strenth, effect, and executioun, accoirding to the tennour thairof; and the explanatioun of the said Act, in anno 1609, is only in fauouris of sic as Reffettis Papiftis ignorantlie, nocht knowing thame to be Papiftes, or of ane contrair Religiou: Bot it was fufficientlie vnderftuid to the pannell, befoir *Moffettis* Reffet, that he was ane Catholik father, and was cum to venter his body for the Catholik Faith, as is confeffit be his Depofitioun: And thairfoir, the said allegiance aucht to be repellit, and the pannell pas to ane Affyfe.

INTERLOCUTOR *of Relevancy.*

THE JUSTICE, with advyfe of the Affeffouris present, Repellis the hail allegiances proponit be the pannell; and findis the Dittay relevant: And Ordanis the famyn to be put to the knowlege of ane Affyfe.

ASSISA.

Thomas Fifer, mercheand burges of Edinburgh,	Robert Halybrntoun, merchand thair,	Dauid Williamefone, elder, mercheand thair,
Eduard Johnestoun of Ryhill,	Johne Inglis, fkyenner thair,	Capitane James Hunter, burges
Williame Cocherane, mercheand burges of Edinburgh,	Nicoll Vduard, mercheand thair,	thair,
Dauid Mitchell, merchand thair,	Williame Nemok, tailgeour thair,	Alexander Broun, elder, mercheand thair,
Alexander Speir, mercheand thair,	Thomas Weir, penderer thair,	Jo. Fairlie, younger, burges thair.

My lord Aduocat takis instrumentis of the fuering of the Affyfe: And for VERIFICATIOUN of the Dittay, producet the pannellis Depofitiones, viz. the said William Sinclairis Depofitioun, all writtin and fubferyuit with his hand; and the vther tua Depofitiones maid in prefens of dyuerfe Lordis of his Maieftis Secret Counsell, confeffing thair particular Reffetting of the Jefuites, in maner fpecificit in thair Dittay, and thairupoun afkit instrumentis; and proteftis for Wilfull Error, gif thay Acquit.

VERDICT. The Affyfe, all in ane voce, be the mouth of Dauid Williamefone elder, chancellor, ffind, pronuncet, and declairit the saidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikshank* to be flyet, culpable, and convict of the treffonable Reffetting of the saidis Jefuites, in maner fpecificit in thair Dittay; accoirding to thair awin Depofitiones, producet for verificatioun thairof.

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

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

JAMES R.

TO our trustie and weilbelouit SIR WILLIAME HEART, kny^t, deputy Justice generall, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikshank, a flabiler, ar convicted and condemned of Treaffone, for the Wilfull Receipt and supplying of Moffet the Jesuite: It is our plesour, that 3e proceed to the finall pronunceatioun of the Sentence and Execution of the pwneichment provydit by our Lawis in the lyk caices against thame, with all convenient expedition: For doing quhairof, these presentis fall be 3our sufficient Warrant. GEVIN at Sarisburrie, the 26th of Julie, 1615.

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

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

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

JAMES R.

WHEARAS, We ar credible informet, that Williame Sinclair, ane Aduocat before 3e Sessioun, Robert Wilkie, browdinstler, and on Cruikshank, ane flabiler, is convict of Treafone, for Resetting of Moffet and Ogilvie the Jesuite: It is our plesour, that Williame Sinclair and Robert Wilkie, be Banischet our dominiones during our plesour: And that 3e said Cruikshank be Banischet the tonn of Edinburghe during our plesour. GEVIN at Sallberrie, the xxvij day of Julij, 1615.

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

[CURIA *Judicialis*, *s. d. n. regis tenta in Pretorio civitatis Glasgwen. per D. Will. Heart.*]

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

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny^t, Williame Maxwell of Cowglene,¹ Robert Vrie, wryter, burges of Paislay.

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

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

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

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fonerane lord.

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

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

The perfones on pannell offeris thame selfis to the Tryell of the Law for the faid cryme, difaffenting to the faid continewatioun ; and thairupoun afkit inftrumētis : And for obedience of the faid Justice Ordinance, the faid Sir James Kneilland ffand Sir Johnne Home of Huttonehall cautioner for him ; the faid Williame Maxwell ffand Sir Johnne Maxwell of Pollok, kny^t, cautioner for him ; and the faid Robert Vrie ffand Alexander Cocherane of that Ilk, cautioner for him, that thai fall compeir befor the Justice and his Deputis, in the Tolbuth of Edinburghe, the faid faxt day of December nixt, in the hour of caus, and vnderly the Law for the faidis crymes, vnder the feveral panes aboue writtin.

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

JUSTICE, Justice-clerk, and 3our deputis : 3e fall, vpon the ficht heirof, desert the dyet appointit for Tryell of Sir James Kneilland of Moukland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Paislay, the faxt day of December nixtocum, ffor the Refetting of v^mq^{le} Mr Johnne Ogilvie, Jefuite : Anent the quhilk, thir presentis falbe 3our Warrant. Subferyuit AT ED^a, þe xxiiij day of November, 1615. SANCTANDROIS. S^a J. MURRAY. ALEX^a HAY. S^a J. OLIPHANT. KILSYTH.

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

Hearing of Mass, &c.

Sep. 13.—MR JAMES MOFFET, alias HALYBURTOUN, ane Jefuite Preift.

Dilaitit of the Treflonable Hearing of Mafs within this cuntrie, specialle within the place of Auchindoun, a tuentie yeir fyne or thairby : And for con-

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

DITTAY against Mr James Moffet.

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

“THAT 3e, being tranet vp at scoles and Colledges within this Kingdom, and haifing accomplischet your courfe in the College of St Androis, quhair 3e was laureat; and haifing paireftir applyit your mynd to the studie of Theologie, and dyuerfe tymes maid your privat exercieffis within pe New Colledge pairof, 3e, in your awin fulfiche opinioun, playing the rwnigait¹ frome the trew Religiou, first studeit and professit be 3ow within this Kingdome, adreffit your self to the place of Auchindoun, quhair 3e, aganis the saidis Actis of Parliament, hard ane Mels, and was present at pe Celebratioun pairof, the Auld Laird of Auchindoun and Mr James Gordoun being present with 3ow, at the heiring of pe faym: LYK AS, 3e, haifing schortlie paireftir past furth of this cuntrie to ROME, in Italie, and haifing pair reffaut the ordour of a Jesuite Preift, and haifing remanit furth of jis cuntrie be the space of twentie yeiris togidder, studieing to pe said Roman Religiou, 3e being ane professit Jesuite, expres contrair the tenour of the soirfaid Act of Parliament, and in manifest contempt pairof, and of his Maiefteis royall authoritie, in the moneth of Julij, 1614, returnet to this realme, be direction of CLAUDIUS AQUAVIVA, your Generall, off plane purpois and intentionn to pervert and seduce his Maiefteis subiectis frome the trew Religiou presentlie professit; refoirit in dyuerse pairtis of this cuntrie, specialle, within the burgh of Edinburge, Cannongate, and Citie of St Androis, quhair 3e was tane, apprehendit, and brocht to this burgh of Edinburge, and Tolbath pairof, quhairin 3e haif bene detenit priffoner, as ane Jesuite Preift, and a perverter of pe Kingis Maiefteis subiectis frome the trew Religiou, presentlie professit,” &c.

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

JUSTICE, Justice-clerk, and your deputis: 3ow fall appoint a Justice Court to be baldin in the Tolbath of Ed^l at fuche convenient day as 3ou think goode; and pairin 3ou fall put Mr James Moffet, Preift, to the knowlege of ane Adyfe for fuche crymes as fall be gevin in Dittay againes him, be his Maiefteis Aduocat, and proceed and minister Justice vpone him, conforme to pe lawis of this realme; Bot yf the said Mr James fall happin to cum in his Maiefteis will, 3ow fall pronounce his Maiefteis will as followis, to wit: That the said Mr James fall be Banischet his Maiefteis dominiones, and nevir return agane within the famyn, vnder the pane of deid: And that he act him self, judiciaillie, to depairt and pas away betuix and fuche a day as 3ow fall appoint, and nocht to returne vnder the said payne: And forder, that he find cautionn actit in the Buiks of Secret Counfall to this same effect, vnder the pane of Thre thousand merkis, to be incurrit be his cautioner, besyde the pane of deid to be execute vpone him self, in caice he failzie in the premisses. And this Dome being pronuncet, and he having actit him self, that 3ow fend him bak agane to his waird, quhill the said caution be fund, and quhill a schip be in reddines quhairin he may be tranfpoirit. Quhairanent pir presentis fall be your Warrant. AT EDINBUR^g, the xxijj day of August, 1615.

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

¹ Runagate; renegado.

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

Slaughter.

Nov. 29.—JAMES KING, fumtyme of Barro; Alexander Lummifdene of Clova; Mr Gilbert Arnauld, indueller in Aberdene; and David King in Hoy, in Orknay.

Dilaitit, accufet, and perfewit at the instance of Elizabeth Seatoun, only dochter to vmq^{le} Alexander Seatoun, than ffiar of Meldrum, Johnne Vrquhart of Craig-Fintrie, hir fþous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and part of the Slauchter of the faid vmq^{le} Alexander Seatoun, with fchottis of hagbuttis and mufcattis; committit vpone the landis of Barro, in the hie-way betuix Meldrum and the Kirktown of Bourtie, vpone the xxviij day of Auguft, 1590: And ficyk, ffor beiring and fchuitting of Hagbuttis, mufcattis, and piftolettis, &c.

Mr Robert Fairlie, feruitour to Mr Alex. King, Aduocat, produceit ane War-rand of his Maieftie, daitit at Newmarket, the fixtenth of November, 1615, anent deferting this dyet. The Diet was deferted accordingly.

Letters of Exemption

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

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

JAMES, be the grace of God, King of Scottis: To all and findrie our fchereffis, fþewartis, Justice, Justice Clerkis, Thefaurer, Aduocat, and all vtheris Judges and minifteris of our Lawis, thair deputis and officeris, prefent and to cum, legis, and fubiectis, quhome it effeis, to quabais knawlege thir our Letteris fall cum, Grating. Wit 3e ws, vnderftanding that the Provost, bailleis, counfall, and community of our burgh of ABERDENE, ar oft tymes atteichet and fummondit to pas vpone Inqueiftis and Affyfis to our burgh of Ed^r and utheris pairtis outwith pair boundis and Jurifdictiones, in crymes committit far diftant fra thame, quhair of thay ar altogidder ignorant; and that thay had ane Exemption to the effect vnderwrittin gevin and grantit to thame be ws, with advyfis of vmq^{le} our rycht tref coufing James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the famym Exemption, of the dait at Aberdene, the thrid day of September, the 3eir of God I^mV^o threfcoir fourtene 3eiris, deulie and ordourlie pafit and admitit in the Justice Court haldin at our faid burgh of Aberdene, immediatlle pairefter, be vmq^{le} Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. AS ALSO, confidering, how vpone the occafion of Commiffiones of Leutenendries and Justiciareis, grantit in faouris of the Noblemen of the cuntrie, or to vtheris, for adminiftration of Justice paffing vpone our Rebellis, and diforderit perfones for revenge of privat

quarrellis and contraverfeis betwix pairtie and pairtie; the saidis Proveift, bailleis, counfall, and communitie ar oft tymes drawin furth of pair awin Tonn to vtheris parteis of the cuntrie, to the grit hazard of pair lyves and wrak of pair guidis; albeit, that according to the libertie of frie Burgh, quhair with thay and pair prediceffouris ar infest and foundit, thay aucht only to attend vpon our selff, being in the ffeildis in proper perfone, or with our Leutennent, in defence of our realme aganis forane nationes. AND haifing consideration, that our said Burgh of Aberdene lvis within the North partis of our realme, far diftant fra ws, and of the guid, trow, and thankfull fervice done to ws and our prediceffouris be the Proveift, bailleis, counfall and communitie of our said Burgh, altwell in tyme of weir as of peace; and of pair reddie and dentiefull obedience towards ws, quhair of we haif daylie pruf and experience, and respecting pair guid mind to continew pairin hereftir: THAIRFOIR, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveift, bailzeis, counfall, communitie, burgefis, craftifmen, and induelleris of our said Burgh of Aberdene, present and to cum, special LICENCE to remane and abyde at hame fra all Raidis, Conventionis, Oiftis, Affemblis, Airmeis, Gatheringis, Wappon-fchawingis or Weiris, to be maid be ony our Justices, be Commissioun of Leutenendrie, Justiciarie, or vther Commissioun quhatfumeur, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except jat either our selff be present in proper perfone, or that our Leutennent, accompaneit with the remanent of our realme, be vpon the defence of the cuntrie, aganis forane nationes, or that our selff pas for repressing of Rebellis and Traitouris, aganis our perfone within the cuntrie: And fra all compeirance or passing vpon ony Assyffis or Inqueffis, in quhatfumeur crymes or actiones, (except sic crymes as ar committit within our said burgh, friedome thairof, and tua myles about the samyn,) Exemis¹ and discharges thame and ilk ane of thame pairfra, during all the dayis of pair lyftymes. And willis and grantis jat pay in doing pair of fall incur na payne, ikayth, cryme, nor danger in pair perfones, landis, or guidis, nor be callet nor accuset pairfoir criminalle nor civille, be ony maner of way, in tyme cuming, nochtwithstanding ony our Actis, statutis, ordinances, Letteris, proclamations, or charges quhatfumeur, special or general, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit pairintill, We haif dispensit, and be thir our Letteris dispensis with the Proveift, bailleis, counfall, communitie, burgefes, craftifmen, and induelleris of our said burgh, present and to cum, for euir. DISCHARGEING heirfoir, 30w, all and findrie our Schereffis, Stewartis, Justices, Justice clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our lawis, 30ur Deputis and officeris, present and to cum, off all calling, acuseing, atteiching, arreiffing, summond- ing, wairning, poynding, trubilling, or ony wayis intronetting with the saidis Proveift, bailleis, counfall, communitie, burgefis, craftifmen, and induelleris of our said Burgh, present or to cum, pair landis or guidis, in ony wayis, in tyme cuming, for pair said remaning and abyding at hame fra our saidis Raidis, Airmeis, and vtheris foirfaidis, and fra all and findrie Inqueffis and Assyffis, to be committit, as said is; and of 30ur offices in jat pairt, be thir our Letteris. GEVIN vnder our Previe Seill, At Dalkeithe, the faxtene day of Majj, the 3eir of God I^m. ffve hundreth fourfoir twelff 3eiris, and of our regne the tuentie ffve 3eir.

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

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

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

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

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

¹ Exemptis.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an esate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession¹ of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, the *Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from ‘plenishing,’ or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

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

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

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

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

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

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

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

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of several honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Histories, and Traditions of our Fathers, by *Capt. Walter Scot*. EDINBURGH, printed by the Heir of *Andrew Anderson*, Printer to his most sacred *Majesty*, City, and Colledge, 1688.' It was composed by the author at the very advanced age of *Eighty-eight*! He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne, or Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoje*.'

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

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

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

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

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

FORSAMEKILL AS, albeit be dyuerse loveabill lawis and Actis of Parliament, it be expreflie provydit, flatute, and ordanit, that all Slayers of Horffis, oxin, or vther cattell and guidis,¹ fall be estemit and pwneit as Thevis; as the saidis Lawis and Actis of Parliament in tham selfis proportis: Nochtwithstanding quhairof, it is of verritie, that sic is the perverfe dispoition of dyuerse perfonen, quaha, preferring pair awin privat grudge, and revenge arryng pairupoun, to

¹ Stock; sheep.

the dew reuerance and obedience of his Maiesteis authoritie and lawis, ceiffis nocht to profecute and follow furthe all godles and indirect meanis to effectuat pair malice, be sic monstuous and vnhard of crewaltie, as the lyk quhair of hes nocht bene hard amangist the *wyld Irish* and savadge people, let be within any reformat and ciuile pairt of his Maiesteis dominionis : And namelie, the perfones perticulerlie aboue writtin, be the instigatioun, na dout, of sun perfones of gritter qualitie and conditioun nor thame selffis, vpon confideratioun, that þe landis and leving of *Howpaslet* war deulie and lawfullie conqueift and acyuret be vmq¹⁰ SIR JAMES DOUGLAS of *Drumlangrig*, *knycht*, and he þairby setlet in possessioun þair of, be pleniffing of the samyn with his bestiall and guidis ; thay and vtheris of þair vnhappy socieatie, altogidder disdaneing that þe said *Laird of Drumlangrig* sould inioy or possesse ony landis or possessiounes within that pairt of this kingdome ; and þairfoir, plotting and devysing all godles and vnlauchfull meanis how to interupt his peceable possessioun of the saidis Landis, and to lay the samyn waift, and þairby to mak thame vnprofitable to him and his posteritie—in the moneth of Apryle lastþypast, the saidis *George Scott*, *Walter Scott*, *Ingrems Scott*, and *Jok Scott*, callit the *Suckler*, haifing assemblit and convocat to thame selffis *Williame Scott*, callit in *Satchellis*, and vtheris, þair complices, ffirft keipit ane generall meitting within þe *Toun of Hawik*, quhair, in þair devillische counsell, it was concludit and aggreit vnto amangis thame, that, within a fyve or sex dayis þairefter, they sould all meit togidder, vnder nycht, vpon the saidis landis of *Howpaslet*, and þair to slay and distroy the said *Laird of Drumlangrigis* hail bestiall and guidis being þairupoun : LYK AS, according to the foirsaid damnable conclusioun, the said *George Scott*, accompaneit with the said *Williame Scott*, callit of *Satscheillis*, vpon the . . . day of þe said moneth of Apryle lastþypast, come, vnder silence and clud of nycht, fra the said *Toun of Hawik*, to *Eilrig-burne-fute*, and the said *Williame Scott* being than muffellit ;¹ at the quhilk place, the said *Jok Scott*, callit the *Suckler*, met with thame ; and þairfra, thay thre past vp the watter, be the space of thre quarteris of ane myle, to ane Cleuch,² callit *Birny-cleuche*, betuix *Eilrig* and *Howpaslet* ; quhair, according to þe former appointment, the saidis *Wattie* and *Ingrems Scottis* met with thame : ffra the quhilk place thay foure, accompaneit with the said *Williame Scott*, callit of *Satschellis*, come to the saidis landis of *Howpaslet* ; and þair, being bodin³ with fuordis, bandit stalfis, and vtheris wappones, provydit be thame for þe purpois, in ane Cleuch-fyde, quhair þe said *Laird of Drumlangrig* his scheip war lying in þair lairis,⁴ maist barbarufflie and inhumanelie, as savadge and crewall beiftis, destitute of naturale

¹ Disguised ; *muffled*. Old Fr. *emmuselé*.
hollow between precipitous banks, &c.

² A rocky ascent, or cliff. It also signifies a cleft or
³ Furnished.

⁴ Beds ; folds.

reafone, with pair drawin fuordis and vtheris wappones foirfaidis, ran throw þe hail flok of fcheip, flew, lamet, and menzet¹ to the number of threfcoir of the faid fcheip, quhair of fouretie or þairby war flane, be streking of² þair heidis, and cutting thame in tua throw þair bakis ; and the rest of thame, þair fpaldis³ and legis wer strukin away fra thame in maift barbarous maner, and war fa left fpreuleing in pair deid-thrawis⁴ vpone the grund of the faidis landis ; committing pairthrow maift haynous and vnhard of Crewaltie and Oppreffiou : And the faidis perfones aboue complenit vpone, and ilk ane of thame, ar airt and pairt of the faidis crewall, monftrous, and vnhard of crymes : ffor the quhilk, thay aucht and fould be pwneift be ane exemplarie pwneifchment, to the terrour and example of vtheris to commit the lyk heireftir.

THE VERITIE of pair giltines of the quilkis haynous crymes is cleirlye provin, be the TAIKINIS⁵ following, viz. I. BE the Depofitioun maid be þe faid *Jok Scott*, callit *the Suckler*, quha was fend for be THE LADY HOWPASLET to cum to þe *Toun of Hawik* ; and at his cuning, haifing met with þe LADY, and with *Jean Scott*, callit of *Sutfchellis*, and with þe faid *George Scott*, callit *Mariones Geordie*, at þe *Croce of Hawik*, it was þair concludit amangis thame, that *the Laird of Drumlangrigis* fcheip fould be all flane : AND for that effect, according to þe appointment than maid, a thre dayis þaireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,⁶ he mett with the faid *Mariones Geordie*, and with *Williame Scott*, callit in *Sutfchellis*, quha was with þame in companie ; quhilk *Williame Scott* was than muffellit. Lyk as, at þe faid *George Scottis* defyre, the faid *Jok the Suckler* paf with zow and the faid *Willie Scott* vp the watter, the fpace of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaslett*, quhair þe faid *Wattie Scott* and *Ingrem Scott* met with thame, the faid *Wattie* and *Ingrem* haifing plaidis and blew bonnettis : fra the quhilk place thay paf togidder to *the lands of Howpaslett*, quhair the faid *Laird of Drumlangrigis* fcheip lay, and pair flew þame, in maner fpecifeit in þe Dittay and þe faid *Jok the Suckleris* Depofitioun.—2. To the taikin lykwayis, the faid *George Scott* perfaveing þat *the Suckler* wald nocht pas forwardis to the committing of the fact, he pairfoir drew his fuord, and pairwith thraitnet *the Suckler*, that gif he paf nocht with him and thair complices to þe deid, he fould hew *the Suckler* pairwith in peces.—3. LYK AS, in regard of the former Depofitioun fa maid be *the Suckler*, the faid *George Scott* being presentit befor my *Lord Justice Clerk*, my *Lord Aduocat*, and my *Lord Justice*, and examinat pairupoun ; the faid *George* was content to tak the giltines of þe faid cryme vpon him, gif *the Suckler* wald affirme the vereitie þairof, in his face :

¹ Maimed.
death.

² Off.

³ Shoulders. O. Fr. *espaule*.

⁴ Struggling in the agonies of

⁵ Tokens ; proofs.

⁶ Twilight ; after sunset.

Lyk as, the said *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Deposition and haill circumstances pair of in the said *George* face; and offerit to haif fochin þe Singular Combat with the said *George*, vpon the verritie pair of.—4. To the taikin lyk wayis, þe said *George*, haifing ane dog named *Hyde-the-bastard*, he being convenit at dyuerse tymes with his companieonis, brak out in thir woirdis, saying, ‘ Sa lang as I and my Bastard brother levis (meaning be his dog), *Howpaset* fall nocht plenifche.’—5. To the taikin also, eftir þe slauchter of the said schein, the said *George* being susceit pair of, and vrget be *James Douglas* to geve ane test,² quhair he was þat nycht of þe barbarous slaying of thame; becaus he could nocht geve þe said test and cleir him self pair of, he querrellit the said *James Douglas* pairupoun, within the *Towne of Hawik*, and presentit ane bendit³ pistolet to him, of purposis to haif slane him pair with; quhilk he wuld half schote, gif he had nocht bene stayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,⁴ and *James Lechen*, quha tuik þe pistolett frome him.—6. To the taikin lyk wayis, the said *George*, being examinat in þe premisses be þe saidis Lordis Examinatouris, vpon the xxviij of December last, and being demandit, quhair he was the tyme of the keiping of the Justice Court of Jedburgh? Declairit, that he come the day of the halding of the said Justice Court to the Toun of Jedburgh, quhilk was vpon ane Thurisday; and vpon the Tyfday and Wedinfday of befor, was also in Jedburgh, in maner specifit in his Deposition: Lyk as, the said *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Deposition, declairing, þat vpon the Sondag, Monondag, Tyfday, and Wedinfday befor the Court, and vpon the Thurisday, the day of halding pair of, he was within the *Town of Hawik*, accompaneit with the perones fet down in his posterioir Depositione.—7. To the taikin also, the said *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the said *Jok the Suckler*, haifing refuset to pas forwardis with him to þe slaying of þe said schein, the said *Walter*, nochtwithstanding his refuseall, earnestlie delt with him to cum fordwardis, saying to him, ‘ *Jok*, thow art als giltie alreddie as thow canst be, cum fordwardis pairfoir with ws to the deid; and pair estir, thou fall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our ressett.’⁵—8. To the taikin lyk wayis, the saidis *Walter* and *Ingrems Scottis*, the tyme of pair lait apprehending in þe *Northe*, being inquyret, gif ony of thame knew *Jok the Suckler*? Thay denyit to pair takeris⁶ that evir thay knew him: Bot being brocht to waird to þe *Tolbuth of Ed*, quhair þe said *Jok* being presentit to

¹ Shall not be stocked.

² Proof or testimonial.

³ Cocked.

⁴ *Bonny*, or handsome,

⁵ Reception and concealment.

⁶ Examinators.

thame, thay nocht only knew, bot be his name askit him faying, ' Quidat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit¹ in this hous?' SA that be þe taikinis aboue written, þe saidis perfones giltines of the said fact is cleirlye provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtown, kny^t, Aduocat.

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

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

Efter reiding of the DITTAY fet down in the sunmondis, at command of my Lord Justice and Assessoris, it is declairit be Mr Thomas Nicolfoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme fet down in the Dittay to be haynous and worthie of condigne puneishment; bot as to the Dittay it selff (nocht granting the cryme thairin mentionet to be of veritie) agaisn the pannell, alledgis the samyn is nawayis relevant to pas to the knowlege of ane Assyse; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thairof is vpon tua Actis of Parliament, the first quhairof is the 100 Act of his Maiesteis sevint Parliament, haldin in October 1581, quhilk is only extendit agaisn the slayeris and hocheris² of horffis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpon the xxix of July 1587, quhilk is only ane Ratificatioun of the first: Bot the Dittay beiris only the Slauchter and Hocheing of scheip, quhilk is nawayis expreffit nor prohibeit be the saidis Actis: And, thairfoir, the Dittay and Actis of Parliament being difconforme, the samyn can nawayis pas to ane Assyse; speciallie, in respect na penall Statute may be forder extendit nor³ the samyn is fet down *per expressum*: quhilkis Actis he defyret to be red.

It is ansuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thairof, man⁴ be advertit vnto, quhilk is the puneishment of all haynous and detestable crymes, committit be quhatsumeuir way and be quhatsumeuir persone: ffor, als it is estemit ane haynous cryme, be the saidis Lawis, to hoche ane ox or ane horse, sa the cryme is far moir haynous to slay and cut af ane haill flock of four or fyve scoir scheip, and thairby to displenische and lay waist ane gentilmannis possessioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of ' vther cattell,' expresselie forbidis, and concludis puneishment agaisn the committeris: In respect quhairof, the Dittay is maist relevant to pas to ane Assyse, nochtwithstanding of the allegeance aboue writtin.

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

¹ Imprisoned.

² Hamstringers.

³ Than.

⁴ Must.

ASSISA.

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

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

Adame Trumble in Lyntlawis,
 Peter Broun in Durifdeir,
 Johne Mcmorrane of Glaspene,
 James Williamefone in Craufurd-
 toune.

OBJECTIONS *againſt certain Affifors paſſing upon the Inqueſt.*

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

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

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

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

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

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

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

THE *Laird of Drumlanerig*, being suorne, and his aithe tane thair of, gif¹ he hes just cause to persue the pannell for the crymes contenit in the Dittay, as giltie and culpable thair of? Declairit, that this Dittay is suorne to him to be of veritie, be honest and credible men, viz. that *George, Walter*, and *Ingrem* war thre of thame that was at the slauchter of his scheip, in maner specifieit in the Dittay : And thairfor, be his ayth, declairit that he hes just caus to persue thame, as doaris of sic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes also hard of his meitting and keiping tryftis with thame in that matter ; bot, in respect he is nocht certanelie informet that he was at the doing of the deid, he can nocht persue him as ane principall committer : And finallie, declairit, that gif he war nocht persuaidit, in his conscience, that the saidis *George, Wattie*, and *Ingrem Scottis* war the special slayeris of the scheip, (be quhais directioun the samyn was done, remittis that to thame selfis,) he wald nocht haif followit thame thairfor.—Quhairvpone my lord Aduocat askit instrumentis.

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

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

¹ If.² When confronted with them.

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

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

APPENDIX ILLUSTRATIVE OF THE PRECEDING TRIAL.

I. LETTER, *the Laird of Drumlanrig to Murray of Lochmaben.*²

RIGHT WORTHIE AND LOWING BROTHER,

SE remember, in on of my former Letteres, I schew 3ow, þat I had gotin sum tryall³ of that uylde and barbarous uillanie quibilk was comitit, in þe slaying of my scheip, quhen I was laft at Court; quhairn I did than write þe more spairingly, being lothe (in respect of 3owr griter affaires) to trubill 3ow with it, till I had brocht it till sum further cleirnes; quhilk now I have done, and hes tuo fallows presentlie in hand þat war actoris in it; þe on callit *Jok Scott the Suckler*, quho hes confessit þe simpell treuth, in all poyntis, both of his ain parte, and þe rest þat war with him at þat filthie actioun; to wit, *Geordie Scott the Souter*, callit *Marioumes Geordie*, *Watt Scott*, callit *Braidis Wattie*, *Willie Scott*, callit of *Satchelis*, and *Ingram Scott*. This *Suckler*, in his Confessioun, he condifendis cleirlye both vpoun þe tyme, place, and forme of thair meiting and pairting, with all uther takinis and circumstances þat past amongst thame, quhen they war togidder (as his Depofitioun beiris.) Nochtwithstanding this vther, callit *Geordie Scott the Souter*, (quhom I have also in handis,) standis 3it in his denyall, altho they be many grit prefumptiounis of his guiltinefs; aluayis⁴ *the Suckler*, being fundry tymes examinat and confrontit with him befor THE LORDIS OF COUNSALL, he abydis constantly at everye poynt of his first Confessioun; and offeris, nocht only to fecht *the Souter* on it, bot all þe rest, everie on of thame efter another, quhensoeuer they can be had, gif it will pleis HIS MA^{TIE} AND THE COUNSALL to suffer him. The vther thrie ar fugitiues for that and uther crymes of Thift and Slaachter; and, as I wnderstand, ar all out of the countray, sum in *Irland*, and sum ellis quhair; vtherways, befor this tyme, I think I had fund meanis to haue gotin thame in handis, (3it according till our auld Scottis proverb, 'Ane 3ule feist may be quat at Pafe!' Quhen perhaps they may imagin it be forgot.) In the meintyme, let me intreit 3ow, þat 3e will do me that fauour to motioun this maiter to HIS MA^{TIE}, quhairby I may have it, by his Letter, recommended to þe Counfall, nocht only for þe exact tryall and punifchment thair of to þe daithe, for þe wrang that is alredie done, bot also to terrife all uther malefactoris from attempting þe lyk heirefter; quhilk, I protest to God, I ponder more in respect of þe preparatiue and consequens þat may follow thairvpoun to þe preiudice of þe commonweill of þe countray, in cais it be lichtlie passit over vnpunifcht, than for any particular of my awin. Now, gif 3e find it expedient, it war nocht amis, seing the *Shanjer*⁵ and *Secretar*⁶ (quba knawis þe

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

² From the Original, preserved among the *Dennymne MSS.* Adv. Library. ³ Proof; evidence. ⁴ Nevertheless.

⁵ The Lord Chancellor, Alexander Earl of Dunfermline. ⁶ Thomas Earl of Haddington.

hail eſtate and progrefs of this buſines) ar to be with HIS MA^{TIE} at Court, that 3e ſould haue thame neir-hand by, quhen 3e propoun it to HIS MA^{TIE} at Court, in cais he hapin to deſyre thair opinioun in it. And this, I wald beſeik 3ow to do with all 3e conuenient haift 3ow can, 3at I may haue 3owr anſwer with HIS MA^{TIES} Letter befor 3e ſeuinth or aucht of 3e nixt month, becaus I do intend, God willing, at 3at tyme, to haue thir tuo fallowis, at leiſt on of thame, put to the tryall of ane Aſſyſe; at quhilk tyme (if nocht befor thane) I do affuir my ſelf 3at God fall mowe 3e hart of him quho ſtandis moſt obſtinatlie to his denyall, euin to confeſs the treuth, as 3e other hes done: albeit thair be fun buſſie-headit men heir, quhom I will nocht name at this tyme, 3at wald wis 3e contrair; and ar deiling, be all meanis poſſibill, ſo far as in thame lysis, to 3at effect; bot be 3e grace of God, and HIS MA^{TIE} fauowr, with 3owr help, I howp to diſapoynt 3ame. As for the reſt of my particularis, I truſt 3ow will nocht be forgetfull of thame; and when 3ow find 3owr auin tyme, will let me knaw, 3at I may luik for in 3ame. So I hawe no more to fay, bot alwayis efter on¹ I reſt,

3owris in quhat I can to ſerue 3ow,

EDINBURG, the vi day of
Januar, 1616.

DRUMLANGRIG.

3ow will do me 3e fauowr to preſent my humbill ſerueice to 3owr lady.
To his muche honoured and worthie broper **JOHNE MURRAY** of Lochmaben, Grume of his Ma.
Bed-chamber, Theſ.

II. "CONTRACT BETUIX THE SCOTTIS AND THE KERRIS."

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

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

AT EDINBURGHE, 3e xxij day of Marche, the 3eir of God I^m.V^o.lxxiij 3eiris. It is appointit, aggreit, and finalc concordit, betuix rycht honorabill menne, SIR WALTER KER OF CESFURDE, KNY^t,³ for him self, and takand 3e burding vpon him for his barnis,⁴ and for his bruder *Mark Commedatour of Newbottle*, and his barnis; *Johne Hume of Coldenknowis*, and his barnis; *Andro Ker of Fawdounſyde*, his barnis and breder;⁵ *Thomas Ker of Marſington*, his fader-bruder,⁶ and 3air barnis; *George Ker of Lyntoune*, his barnis, his ovis,⁷ and bruder-bairnis;⁸ *Richard Ker of Gailſchaw*, his barnis and breder; *Andro, Williame, and Johne Kerris*, brether to *Sir Thomas Ker of Pharynhirſt, kny^t*; *Mark Ker of Kippesſchaw*, and his ſone *Robert Ker of Bothtowr*; *Robert Ker* elder, burges of Edinburgh; and all vperis 3air barnis, brether, kynne, freindis, menne, tennentis and ſervandis, except 3e freindis vnder ſpecifeit, nocht comprehendit vnder 3is appoyntment, one 3at ane pairt; AND WALTER SCOTT OF BRANXHOELME AND BUCKLEUCH,⁹ with conſent and aſſent of ane rycht nichte

¹ Always after one; steady; unchangeable. ² General Register House, Vol. V11. fol. 131. ³ Ancestor of the Ducal Family of Roxburgh. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*. ⁴ Children. ⁵ Brothers. ⁶ Uncle. ⁷ Grandchildren. ⁸ Nephews and Nieces. ⁹ He married *Lady Margaret Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kimmont Will*, Apr. 13, 1596, from the Castle of Carlisle, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duike of Chattaularault, Erle of Arane, Lord Hamphiltoune, &c.*; *Sir Johnne Maxwell of Terreglis, kny¹*; *Sir Johane Bellendene of Auchnole, kny*, Justice Clerk; *Majfler Johanne Spens of Condé, Advocaot to our fonerane Lady*; *Andro Murray of Blah-Barony, Michell Balfour of Burlhy, Thomas Scott of Haning, and Robert Scott of Thirfstone*, Curatouris to þe said WALTER, for þair interes, for him self, and takand þe burding vponne him for HIS HAILL SURNAME, and þe Relict and bairnis of vmq¹⁰ *Sir Walter Scott of Branzholme, kny²*, his gudfehir,¹ and als for *William Cranstoune of that ilk*, his bairnis and breder, the brether of vmq¹⁰ *hile þe Laird of Chifholme*; *Johne Glaidfanis of that ilk*, and his bairnis; *James Langlandis of that ilk*, and his bairnis; *Walter Vache of Syntoun*, and his bairnis; and for *James Ormsfoun of that ilk*, conditionally, as followis; and als, for all vperis his kynne, freindis, servandis, menne, tennentis, and pairtakeris, one þat vper pairt; in maner, forme, and effect, as efter followis. THAT IS TO SAY, þe said LARD OF BUKCLEUCHT, nor na vper for quhome he takis burding, as said is, fall ony way perfew þe said LARD OF CESFURDE, nor na vper comprehendit vnder þis present appointment, crimiñalé nor civile, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit pairfra, *per pactum de non petendo*; and fall never move actioun, beir hatrent, grudge, or displesour pairfor, bot bury and put þe samyn vnder perpetuallie silence and obliuione; and to leif in perfitte amité, lufe, and Cristiane nychtburheid, in all tymes cuming. PROVIDING always, þat heirby þat þe said LARD OF BUKCLEUCHT, and all vperis quhome he takis burding, be na wayis preiugit anent þair actionis quhatfumeir þat þai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirf, kny²*, *Sir Andro Ker of Hirfell, kny²*, *Robert Ker of Woidheid, Johne Haldane of that ilk, Gilbert Ker of Prynnyaloch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoune*, þair bairnis, brether, and seruandis, and all vperis þat ar nochit comprehendit vnder þis appointment; bot þat þai may perfew and obtene þe samyn as þai think maist expedient, be þe law; and þat becaus þe saidis personis, being requirit be þe said LARD OF CESFURDE to cum with him, and to do þair devore, for þair pairt of þis appointment, hes refusit to do þe samyn; and als, becaus þat in þis present appointment, þair is na proffett nowther gevin nor takin, quhairby þe said LARD OF BUKCLEUCHT, and his freindis and vperis soifraidis, ar preiugit anent þair saidis actionis; and þat it is þe expres mynd of all þe pairteis presentlie contractaris, þat þe samyn be fullie refervit: AND siclyk, vponne þe vper pairt, þe said LARD OF CESFURDE, nor na vperis quhome-for he takis þe burding, fall in ony wyife perfew þe said LARD OF BUKCLEUCHT, nor na vperis his kynne, freindis, servandes, menne, tennentes, assistaris, or pairt-takarís, crimiñalé or civilé, for ony slauchter or blude committit in ony tyme bipast; and is content to be perpetuallie secludet pairfra, *per pactum de non petendo*; and fall never move actioun, beir hatrent, grudge, or displesour pairfoir, bot bury and put þe samyn vnder perpetuallie silence and obliuione, and to leif in perfitte amité, lufe, and Cristiane nychtbourheid, in all tyme heirfter. ATTOW, it is heirby expresse and faythfullie contractit, þat for maif suir removeing, ftenching,² and away-putting of all inymité, hatrent, and grudge, standand and consavet betuix þe saidis pairteis, throw þe vnhappie slauchter of þe said vmq¹⁰ *Sir Walter Scott of Branzholme, kny²*,³ and for þe better continuance of amité, favour, and freindship amangis þame in tyme cuming, the said SIR WALTER KER of *Cesfurde, kny²*, fall, vponne the xxiiij day of Marche instant, cum to THE PARROCHE KIRK of EDINBURCHT, now commonelie callit SANCT GEILLIS KIRK, and þair, befoir none, in sycht of þe pepill present for þe tyme, reuerently vponne his kneis ask God mercy of þe slauchter soifraid; and siclyk, ask forvegenes of þe same fra þe said LARD OF BUKCLEUCHT, and his freindis, quhilkis salhappin be þair present; and þairefter promise, in þe name and feir of God, þat he and his freindis fall trewlé keip þair pairt of þis present Contract, and fall stand trew freindis to þe said LARD OF BUKCLEUCHT and his freindis, according heirvnto, in all tyme cuming. THE quhillk þe said LARD

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

OF BUCKLEUCHT fall reuerentle accept and ressaue, and promise, in þe feir of God, to remit his grudge, and neuer remember þe same; bot fall observe and fulfill his pairt of þis present Contract to þe said LARD OF CESFURDE, according to þe tennour þair of, siclyk, in tyme cuming. AND als, *Thomas Ker*, secund sone to þe said LARD OF CESFURDE, fall, God willing, solempnizate and compleit þe band of matrimony, in face of Christis Congregationne, with *Scott*,¹ sifter to þe said LARD OF BUCKLEUCHT, betuix þis and þe last day of Maij nixt tocum, but ony tocher² to be payit be hir said bruder, or ony vþer freindis with hir: And þe said LARD OF CESFURDE fall provide þame ane honest and reffonable sustentatioun and leving, efferand³ to þair estait and conditione; and als, fall caüs þe said be infest in her virginité, in coniuict-fee or lifent, with hir said future spon, and þair airis lauchfullie gottin or to be gottin betuix þame, quhilk failzeing, þe said *Thomas* airis quhatfumeur, in all and haill landis or annualret of þe avall of ane hundreth merkis be zeir, to be haldin of þe Superior be Resignatioun or Confirmatione, at þe pleour of hir said bruper; and þairestir, þe said to be infest in coniuict-fee or lyfrent with hir said future husband, at his and his said faderis gude will and pleafour, in sik landis and leving as þai pleis mak hir; quhilk is referrit in þair will. AND siclyk, *George Ker*, eldest sone and apperand air to þe said *Andro Ker of Fawdounfyd*, fall, God willing, solempnizate and compleit þe band of matrimony, in face of Christis Congregationne, with *Jonett Scott*, fader-sifter to þe said LARD OF BUCKLEUCHT, sa sone as þai fall be of perfyte age and habilitie for mariage, but payment of ony tocher to be payit be him, or vþer hir freindis with hir. AND gif it fall happin þe said *George* to deceis, befoir þe completing of þe said mariage, þan and in þat cais, his nixt bruper þat falhappin to appeir or succeid air to his said fader or him, fall marie the said *Jonett*, tocher-fré; and siclyk, failzeing of hir be deceis, befoir þe said mariage, þan and (in) þat caise þe said *George*, and failzeing of him be deceis, his nixt bruper soirsaid, fall solempnizate and end mariage with hir nixt sifter þat falhappin þan be alyve, tocher-fré; and sua, salang as þe said *Andro* fall haif ane sone, and the said *Jonett* ane sifter, þe ane to marie þe vþer tocher-fré, as said is; ay and quhill mariage be anis complete amangis þame: AND gif (it) falhappin þe said mariage to failzie in þe saidis *Georgis* or ony vþer his brederis defalt, þan and in þat cais, þe said LARD OF CESFURDE, be the tennour heirof, oblißis him and his airis to pay and deliuer the fowme of ane thousand merkis to þe said *Jonett*, or to hir vþer sifter to quhome þe said mariage fall failze, within XL dayis nixt estir þe said failze be kuawin. ATTOURE, becaus þe said LARD OF CESFURD hes of befoir requyrit and desyrit, vnder þe forme of instrument, *Sir Thomas Ker of Pharnyhirst, kny*, *Sir Andro Ker of Hirsell, kny*, and *Gilbert Ker of Prynsfydloch*, for þame and þair freindis to adheir, concur, and assist to him in þis present agreeance, and þat þai haif refusit þe famin, as is aboue writtin, thairfoir þe said LARD OF BUCKLEUCHT, nor his airis, fall nocht agré with þame, or ony of þame, by⁴ þe awyfe of þe said LARD OF CESFURD and his airis; and gif it falhappin þe said LARD OF BUCKLEUCHT, or his airis, to agré with þe saidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of þame, by⁴ þe awyfe of þe said LARD OF CESFURD, befoir þe completing of mariage betuix þe said *George* or ane of his brethir with the said *Jonett* or ane of hir sifteris, as said is, without þe said LARD OF CESFURDE be previe and consent þairto, than and in þat cais, þe said *George*, nor nane of his brethir, salbe haldin or astrictit to compleit þe said mariage, bot salbe fré þair of; nochtwithstanding þis present Contract, and siclyk as gif the samyn had neur bene maid. AND lik wyife, gif it falhappin þe said LARD OF BUCKLEUCHT to agré with þe saidis personis, or ony of þame, estir þe completing of þe said mariage betuix ony of þe said *Androis* sonis and þe said *Jonett*, or ony hir sifteris, by⁴ þe awyfe of þe said LARD OF CESFURDE, than and in þat caise, þe said LARD OF BUCKLEUCHT oblißis him, with auise of his Curatouris soirsaidis, to content

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

and pay to þe said LARD OF CEFURDE þe soume of ane thowfand merkis, as for þe tocher of þe said *Jonet*, or ony vper her sifter þat happnis to be nearest, within XL dayis nixt eftir þe said aggreance, gif it happynnis to be maid, as said is; but¹ ony exceptionne or remeid be vertew of þis present Contract, quhairby þe said mariage suld be tocher-fré, as is aboue specifeit, to be proponit or alleigit in þe contrar. PROVIDING alwayis, þat gef þe said LARD OF BUKCLEUCHT aggré with þe saidis *Sir Thomas, Sir Andro, and Gilbert*, or ony of þame, with auise of þe said LARD OF CEFURDE, than and (in) þat cais þe said LARD OF CEFURDE fall not laubour nor desyre þat pair offeris, ellis² offerit, be diminifit, bot rather þat þai be augmentit. AND zit, mairouer, becaus pair is particularelie deidlie Feid and actionis betuix þe said WALTER KER OF CEFURDE, knycht, and þe said *James Ormsfoune of that ilk*, thairfoir þai salbe compromittit³ in *David Spotifwod of that ilk*, and *Thomas Hoppringill of that ilk*, to be chofin for þe pairt of þe said LARD OF CEFURDE; and in *James Langlandis of that ilk*, and *Nicholace Ruperfurde of Hundley, knycht*, to be chofin for þe pairt of þe said *Lard of Ormsfoune*; and in odmanne and ouermanne,⁴ in caise of vareance or discord betuix þe saidis Jugis, to be commonel⁵ chofin be bayth þe saidis LARDIS OF CEFURDE and BUKCLEUCHT, anent þe taking, be þe said *Lard of Ormsfoune*, of þe landis of *Nether Aucrome* and *Bailleie* pairrof, in Tak, our þe said LARD OF CEFURDE heid, it being his kyndlie rowme⁶ of befoir, as he allegis; and anent þe slauchter of vmq¹⁰ . . . *Best*, servand to þe said LARD OF CEFURDE: AND als, anent als vper materis, actiones, querrellis, and debeittis betuix þame; and þai to be bund to abyde at þe decret and sentence of þe saidis Juges and ouermanne, or maist pairt of þame, deliuerand in þe saidis materis, quhilkis salbe haldin to deliuer pairin, betuix þis and þe first day of August nixtocum; and ane compromit⁷ to be maid pairupone, and extendit in ampill forme, as vse is in sic caissis. AND gif it falhappin þe said *Lard of Ormsfoune* to reclame fra þe Decreit to be gevin be þe saidis Jugis and ouermanne, or maist pairt of þame, and nocht to abyde pairat, and fulfil his pairt pairrof, as he fall be ordanit be þe same, than and in þat caise, þe said LARD OF BUKCLEUCHT fall refuse him, and fall nowther manteine, fortifé, nor assit him pairrester, in ony tyme cuming; bot fall tak pairt and fortifé, in honest and lesum⁸ maner, with þe said LARD OF CEFURDE, in his contrar. AND gif þe said LARD OF CEFURDE falhappin to reclame fra þe said Decreit to be gevin as said is, than and in þat caise, þe said LARD OF BUKCLEUCHT fall tak pairt with þe said *Lard of Ormsfoune*. AND finalé, þe saidis pairteis, be þe tennour beifor, bindis and obblifis þame and pair airis, þat þai and personis abouewrittioe, for quhame þai haue takin burding, respectiue, for pair awin pairtis as said is, fall in all tyme cuming keip and retene amité, freindschip, lufe, favour, and kyndnes, ilkane to vperis,⁹ without ony grudge, or occasioun to be mouit in þe contrar, be þame or ony of þame, to vperis,¹⁰ be ony maner of way, in tyme cuming. AND gif it falhappin ony contraverfé or pley to fall betuix ony of þe freindis abouewrittin, comprehendit vnder þis present Contract, for taking of vperis fteding or rowme,¹¹ owther in tyme bigane or tocum, thanne and in þat caise, þe mater salbe first schawin to þe saidis LAIRDIS OF CEFURDE and BUKCLEUCHT, be quhais auise þe saidis pairteis sal cheis¹² soure frendis, with ane ouermanne as þai can aggré one, for ending and deciding of þe said contraverfé; and gif þe pairteis can nocht aggré one þe said ouerman, þan and (in) þat cais þe saidis LARDIS OF CEFURDE and BUKCLEUCHT fall cheis ane ouermanne quhame þai can aggré one; quhilik ouermanne being chofin be þame, it fall nocht (be) lesum to þe pairteis to refuse him, bot to approve and chufe him; and gef þe saidis LARDIS can nocht aggré one þe said ouerman, than and in þat cais, þai fall huimlé fwrte¹³ and desyre þe QUENIS MAJESTIE and COUNSALE to cheis ane ouermanne; quha being chofin, þe pairteis salbe haldin and bund to stand content with him, and to abyd at his and þe Arbitratouris delyuerance, or maist pairt of þame delyuerand; vpon þe contra-

¹ Without, &c.² Already.³ Compromised; referred to the arbitration of.⁴ Umpire and

Oversman.

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

Decreit Arbitral.

⁸ Lawful.⁹ To each other; each party to the other.¹⁰ Each other.¹¹ For

taking each other's farm-standing or possession.

¹² Elect; choose.¹³ Make suit; petition.

verfé pat fallhappin to be debatabill for þe tyme, but¹ ony declaratioune to be maid in þe contrar. AND for obferuing, keeping, and fulfilling of all and fíndré þe premisses, aper of þe fíaidis pairteis bindis and oblißis þame faithfullie to vþeris,² in þe maift strait forme and ficker file of obligatioune can be dewifit, but³ fraud or gyle, na remeid nor exceptiounne of law quhatfumeuir to be proponit or allegeit in þe contrar; renounceand þe famin, for þame, þair airis, executouris, and assignais, for now and evir, be þir preferis. AND for þe maír securité, þai ar content þir þis present Contract be infert and regíßtrat in þe Bukis of Counsale, and decernit to haue þe strengþ of ane Act and Decreit of þe Lordis þairof; and þat Letteris and executoriallis to be direct þairvþone, for compelling of aper of þe fíaidis pairteis to fulfill þe famyn, for þair pairteis, to vþeris, in forme as effiris: AND for acting and regíßtrating heirof, þe fíaidis pairteis makis and constitutis, be þir preferis,⁴ [*Maifter David Borthuik*] thair vndowit and irrevocabill procuraturis, gevand and committand to þame, coniuñctlé and feueralé, þair full power, expres bidding, and charge, to compeir befoir þe Lordis of our fouerane Ladeis Counsale, quhatfumeuir dayis and place lauchfull; and þair defyir þis present Contract to be regíßtrat in þe fíaidis Bukis of Counsale, and þe fíaidis Lordis to interpone þair auctorité þairto; promittand⁵ to abyd ferme and stabill, &c. IN WITNES of þe qubilk thing, bayth þe fíaidis pairteis and Curaturis abouewrittin, for þair intereis, hes subfcriuit þis present Contract with þair handis; and als DAME JONET BETOUNE,⁶ þe relict of þe fíaid vmq^{le} *Sir Walter*, hes, in signe of hir consent to þe premisses, subfcriuit þe famin with hir hand, day, zeir, and place foirlaides, befoir þir Witneßis, *Sir James Douglas of Drumlanrig, knycht, Johne Stewart of Trocquair, Patrik Murray of Fallowhill, Murray of Cokpule, and Thomas Sinclair*, Writter to þe Previe Seall, with vþeris diuerfe.

[*Sic subscribitur*] WALTER KER OF CESFURD. WALTER SCOT OF BUKCLEWCH. JANET BETOUNE, LADY OF BUKCLEWCH. JAMES,⁷ THOMAS SCOT OF HANYNG. M. JOHNE SPENS, Curatour aboue writtin. JOHNE MAXVELL. J. BELLEN-DENE, as Curatour. ROBERT SCOT OF THIRLSTANE,⁸ with my hand at þe pen, led be *David Lauté*, Notare Publict.⁹

III. BAND *subfcriuit at KELSO, be THE BARONIS, &c. of the Scherefdomes of BERWIK, &c. 6th April, 1569.*

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

BE IT KEND till all men be þir present letteres, WE THE BARONIS, landit men, Gentilmen, Inhabitantis of THE SCHEREFDOMES of BERWIK, ROXBURGH, SELKIRK, PEBLIS, and Provestis and Baillies of Burrowis and Townis within þe faids boundis, in name of þe Inhabitantis of þe famyn, vnder-subfcriuand, to be bundin and obleift, and be þe tennour heirof, bindis and obließis ws to þe KINGIS MAIESTIE,oure fouerane lord, and his dearest coußing JAMES ERLI OF MURRAY, Lord Abernethie, REGENT to his hienes his realme and lieges, as followis: THAT IS TO SAY, floramekill as my faid

¹ Without. ² Each other. ³ Without. ⁴ In all deeds where a clause for Registration is inserted, a blank is left to insert the name of the Procurators. In the present instance, all the parties appeared personally, with the exception of the Duke, who had granted a procuration to the person whose name is filled up, according to custom, in the Register. ⁵ Promising. ⁶ This able Lady has been rendered immortal by *Sir Walter Scott*, in his Lay of the Last Minstrel. She was daughter of *John Beaton of Creech*, and possessed the hereditary abilities of her family to such a degree, that the superstition of the vulgar attributed them to magic. After her husband's murder, she rode at the head of her Clan. ⁷ James Duke of Chastelherault, who uniformly adopted this princely mode of subscribing his name. ⁸ Ancestor of Lord Napier; a better swordsman than an expert clerk. ⁹ It was by no means unusual, at that period, that persons of considerable rank were but indifferently skilled in scholarship. All business of importance was of old transacted by churchmen or notaries; the office of which last was frequently performed by priests, who thereby added considerable emoluments to the revenues of their monastery.

lord Regentis grace hes at all tymes, and specialie sen his acceptatioun of þe regiment of þis realme, takin greit and paynefull travellis in þe quieting of þe bordouris þairouf, and namelie of þe rebellious people Inhabitantis of þe cuntrie of LIDDSDAILL, and vtheris Thevis, AND we having regard to the innumerabil slauchteris, fyre-rafigis, heirschippis, and detestabil enormities, dalie committit be þame vpon þe peceabill and trew subiectis of þis realme, in tymes bipast, quhairin þai ar nocht abill to execute þair crueltie, gif we, in þe feir and obedience of God and our souerane lord, ansauldie¹ concur togidder to resifit þame, THAIRFOIR we, and enerie ane of ws, underscrivand, be thir present letteres, avowis and declairis our selfis obedient subiectis to THE KINGIS MAIESTIE, oure onelie souerane lord and his authoritie, and professit inymeis to all Thevis, Inhabitantis of THE CUNTRIE OF LIDDSDAILL, ESKDAILL, EWISDAILL, and ANNANDERDAILL; and in special, to all persons of þe fairnames of ARMESTRANG, ELLOT, NIKSOUN, CROSER, LITTILL, BATESOUN, THOMSOUN, IRWING, BELL, JOHNNESTOUN, GLENDONYNG, ROUTLAIGE, HENDERSOUN, and SCOTTIS OF EWISDAILL, and wperis notorious Thevis, quhair euir þai dwell, and to þair wyffis, bairnis, tennentis, and seruandis: Obliffand ws, þat we nor name of ws at ony tyme hereftir, fall ressit, supplé, or intercommoun with ony of þe saidis Thevis, þair wyffis, bairnis, or seruandis, or gif þame meit, drink, hous, or herbry; or suffer ony meit, drink, or victuallis to be bocht, had, or cairit to þame, furth or throw our landis, baillieries, townis and boundis, quhair we may lett:² Nor zit fall we tryft or haue intelligence with þame, in previe or apairt, without knowlege and leif of THE WARDANE obetit to þat effect: Or suffer þame to resort to Marcattis or tryftis, throw oure boundis: Nor zit permit þame, þair wyffis, bairnis, tenentis, or seruandis, to dwell, remane, or abyde, or to pasture þair gudis³ vpon ony landis outwith LIDDSDAILL, except sic⁴ as within viij dayis estir þe dait heirof, fall siud sufficient and responfall fouerteis⁵ to THE WARDENIS OF THE MARCHES and thir clerkis, that þai fall reforme all enormities committit be þame in tyme bipast, and keip gude rewle in tyme cumming, and be obedient to þe Lawis, quhen þai salbe callit vpon: AND all vtheris not findand þe said fouertie, within þe said space, we fall persew to þe deid with fyre, siverd, and all vther kynd of hostilitie, and expone⁶ þame, and all þing in þair possessioun, in pray to þe men of weir, as oppin and knawin inymeis to God, THE KING oure souerane, and this Common-weill, without fauour, assurance, or freindschip, Renunceand all kyndnes, Bandis, promiseiss, assurances, and conditionis, þat we or ony of ws hes enterit in with þame, in ony tyme bigane, befor þe dait heirof, as we will ansuer to God, and vpon our dewitie and allegiance to our souerane lord his authoritie, and Regent foirlaid. AND in caife we fail;ie in ony pairt of þe premissis, or revelis not þe contravenaris of þis BAND, gif we knaw þame, we ar content to be pvneist þairfoir, according to THE GENERALL BAND, and panis contenit þairin. AS ALSUA, in caife in þe resistence or perstue of ony of þe said Thevis, it salhappin ony of þame to be flane and brint, or ony of ws and our freindis to be harmit be þame, we fall euir esteme þe qwerrell and deidlie Feid equal to ws all, and fall neur aggré with þe same Thevis, bot togidder, with ane consent and avyfe: And in þe menetyme fall tak afauld, trew, and plane part, ilk ane with vther, and specialie, fall assist THE LARD OF BUKLEWCH, and vtheris LARDIS maist ewest⁷ to þe saidis Thevis, at all occasionis convenient. THIS our present BAND quhill þe first day of August nixtocum in full effect and force inviolabile to endure, to þe effect a perpetuale

¹ Sincerely; heartily; literally, *one-folily*, without duplicity. Even to this day, *two-fold*, *two-faced*, &c. are employed to denote *double* or *deceitful* persons. ² Hinder. ³ Flocks of sheep, or cattle. ⁴ Such persons. ⁵ Cautioners. ⁶ Expose; give them up. ⁷ Nearest in point of local situation. It must be confessed, that this very remarkable Document gives rather an unfavourable view of the state of the *Borders* at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott, Redpath's Border History*, and similar sources of information, prove the picture to be correct and unexaggerated. The influence of THE KING and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as *WARDENS OF THE MARCHES*, the most stirring spirits of the time; who, vain of their 'brief authority,' were cajoled into the measures of the King and Council, and thus preserved 'guld rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.

and perfyte ordour anent þe preffing of þe saidis Thevis may be takin in þe menetyne. IN WITNES QUHAIROF, we baif subfcryuit þe samyn with our handis, as followis, AT KELSO, þe feist day of Aprile, the zeir of God Im.Vc. three feoir nyne zeris.

S^r NICHOLAS RUTHERFURD of Hundoley, ANDRO KER.

Knyt.

JHONE RUTHERFURD of Hunthill.

JHONE Mow of yt Ilk.

RICHARD RUTHERFURD, Provost of Jedburt.

JAMES SCOTT, Baillie of Selkirk.

JAMES GLESTANES of Cokbrw.

WATT SCOTT in Beilhauch.

WATT SCOTT of Tschelaw.

HECTOR TURNBULL, Tutor of Myrto.

CUTHBERT CRANSTOUN of Thirlstanemanis.

ROBERT SCOTT, Baillie of Hawyke.

GILBERT KER of Prinsydlouch.

JHONE EDMESTOUNE of yrt Ilk, knyt.

WILLIAME DOWGLAS of Cavers.

JHONE HALDANE.

THOMAS TRUMBUEL of Bederowll.

RICHART RUTHERFURD of Edzerstode.

ALEXANDER COKBURN.

ROBERT SCOT off Edilstane.

THOMAS MANDOWELL.

ALEX^r L. HOME.¹

WALTER KER of Cefurd.

BUKLEWTH, knyt.

THOMAS KER of Feruhirst.

WILLIAME KER.

PATRIE MURRAY of Feulahill.

WALTER KER of Dolphiustone.

ANDW.

ANDRO KER of fla

T. CRANSTOUNE of yt Ilk.

THOMAS KER of Nether Howdane.

Sheep-Stealing—Common Theft and Reset of Theft.

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

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almouse, ane of the Laird of Chifholmes tennentis, furth of that pairt of the landis of Chifholme callit Mouflie, occupyt be the said Adame, ffoure scheip pertening to him; committit in the moneth of October, 1612. ITEM, off tua scheip, viz. ane zow² and ane hog,³ pertening to George Scott, callit of Dering-ftoun, furth of his landis of Castell-hill; in the moneth of Februar, 1613. ITEM, off ane blak zow, pertening to Rowie Scott, callit *Rowie of Huttikill*, furth of the Lyn beyde Eilrig; at Mertimes, 1614. ITEM, off sevin zow scheip, pertening to James Rowie in Raeburne, ffurth of the landis of Raeburne, in Efkdailmure; in the moneth of October, 1613 yeiris. ITEM, ffor cowmone Thift, and cowmone Reset of Thift.

PERSEWARIS, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterfyde; Walter Scott, his sone; informeris to his Maiesteis Advoocat: Sir Williame Oliphant of Newtoun, kay⁴.

PRELOCUTOR in defence, Mr Vmphra Blindschellis, Advoocat.

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

ASSISA.

Frances Airmefrang, callit of Andro Airmefrang of the Kirk-	Walter Gleditanes of Quhytelaw,
Kynmonthe, ⁴ toun,	Robert Wauch of Hoip,
Williame Airmefrang, his sone, Williame Airmefrang in Nether	Robert Scott in Schellifwoid,
in Gryftail, Wrae,	Robert Airmefrang, callit <i>Rattas</i> ,
Alexander Airmefrang in Wallis, George Langlandis of that Ilk,	Williame Airmefrang, callit
Johane Ellote of Fallin-afche, Lencie Airmefrang in Quhit-	<i>Bald</i> , ⁵
Thomas Airmefrang in Giogillis, hauch,	Hectour Trumbill of Clarielaw.

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

¹ The two principal columns contain autograph subscriptions, the third is all written in the same hand.

² Ewe.

³ A year-old sheep.

⁴ A descendant of *Kimmont Will*, famous in History and

Border Ballad.

⁵ *Bald*, bold; intrepid.

Bald-headed was uniformly written and pronounced *beld*.

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

Egyptians or Gipsies contemptuously repairing and abiding within the Realm.

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

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

Jul. 19.—JOHNNE FAA, Egiptiane¹; James Faa, his sone; Moyfes Bailzie, Egiptiane; and Helene Broun, spous to Williame Bailzie, Egiptiane.

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

DITTAY *against Johnne Faa, &c.*

FORSAMEKILL AS, be Act of Parliament, haldin at Edinburgh, vpon the xxiiij day of Junij, I^m.Vj^c. and nyne zeiris, it is expreflie provydit, statute, and ordanit, that all Vagabundis, Soirneris, and cowmone Thevis, cowmonlie callit EGIPTIANIS, fould depairt furth of þe kingdome, and remane perpetuallie furth pairrof; and nevir to haif returnet agane within the samyn, nor be fund pairintill, eftir þe first day of Auguft þaireftir, in the foirsaid zeir of God I^m.Vj^c. and nyne zeiris, vnder the pane of deid; and that it fould be liefum to all his Maiefteis

¹ See Jul. 31, 1611.

guid subiectis, or ony ane of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cowmoun, notorious, and condampned Thevis; only, to be tryit be ane Assyfe that thai ar callit, knawin, repute, and haldin Egiptianis: As the said Act of Parliament at lenth proportis. NOCHTHELES, it is of verritie, that the foirfaidis perfonnes, being Egiptianis, sua callit, knawin, repute, and haldin, in contempt of þe said Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, sen þe making and publicatioun of the said Act, and nawayis hes past away furth þairof: At þe leift, aganis þe tennour of þe said Act, hes, sen þe said first day of August, 1609 ʒeiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maisterles lymmeris¹ and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe said Act of Parliament, and incurrit þe panes and pwneschment mentionet þairintill; quhilk aucht and fould be inflictit vpone thame, with all rigour, to þe example of vþeris of þair race and vnhappie Companie to eschew þe lyk heireftir.

PERSEWER, Sir Williame Oliphant, kny^t. PRELOCUTOR in defence, Mr Thomas Wilfoun, Aduocat.

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

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

VERDICT. The Assyfe, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chancellor, stand, pronuncet, and declairit the faidis *Johnne Faa*, *James Faa*, his sone, *Moyfes Baikie* and *Helene Broun*, all Vagabundis, and repute and haldin to be Egiptianis, to be flylet, culpable, and convict of contravening the tennour of the said Act of Parliament.

THE Justice Continewit the prounceatioun of Dome vpone the perfonnes foirfaidis, quhill he be advyset with the Lordis of Secreit Counfall: And ordanit thame to be returnit to ward, to the Tolbuth of Edinburgh, in the meyne tyme.

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

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

be thame, for thair departour furth of his Maiesteis dominionis, and that thair fould never returne agane within the samyn during thair lyftymes, ilk ane of thame vnder the pane of ane thowfeand merkis money; accoirding¹ to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancellieris subfcription, daitit the xxiiij day of Julij instant; be the mouth of Johnne Dow, dempfter of Court, Ordanit the saidis Johnne Faa, James Faa, his sone, Moyfes Bailzie, and Helene Broun, Egipitianis, and fa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and all thair moveabill guidis to be efcheit, &c.

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

Slaughter.

Jul. 31.—ALEXANDER DUMBAR of Kilboyak, and others.¹

Dilaitit for the Slauchter of vmq^{lo} Alexander Dumbar of Waftfield.

PERSEWARIS, James and Thomas Dumbaris, as brether.

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

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

[THE particulars of this very remarkable and keenly contested Case² are so fully narrated in the proceedings which follow, and in the various Histories of *Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. ‘THIS day being appointit to THE LAIRD OF GEICHT, *Johanne Gordon*, *Sherif-depute of Aberdein*, and the rest of thair complices, for thair compeirance before the Justice and his deputis, in the Tolbuth of Edinburgh, to vnderly the lawis for the slaughter of vmq^{lo} *Frances Hay*; the Sherif-depute, accompanied with sum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde show, and apperance to have presented himself to his tryell; and by his Petition, gewin in this day to the *Counsell*, he craved Licence to sum Gentilmen of his name to accompany and assist him at the Bar: Which was grantit to sex perfonse selected and maid choise of be himself. *The Erle of Erroll* came lykwayes heir, for perfute of that mater, he havinge procurit ane Licence from the *Counsell*, convenit at *Aberdene*, for his cuming heir; with condition that he fould keep his lodging, and not come furth thairof, without the *Counsellis* Warrant. He, be Petition gewin in this day to the *Counsell*, cravit Licence that he might go to the bar, to assist the perfute of that mater; bot, in regard he was excommunicat, it was not thought expedient that he fould go in perfone to the bar, becaus it was suspectit

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

that the excommunication would be obiectit aganist him, to debar him from proces: And als, becaus HIS MA^{TIES} *Advocat* was pairtlie persewar in the Letteris, who wald profecute that mater, als weill as if the *Erle* war present. The Court being fenit, *the Justice, Justice Clerk*, with the hail memberis of the Court, and the pairteis persewaris being all present, and *the Sheref-depute* being constantlie looked for to compeir, he notwithstanding absentit him self; and is thairfoir declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubisgoule, Scherref-depute of Aberdene.¹

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

¹ See Feb. 26, 1617, &c.

Laird of Geicht; and for nocht admitting and suffering prelocoutouris to compeir and defend the said vmq^{le} Frances, the tyme of the said perfute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat*, quha was reddie to compeir in his defence, and quha had mony guid and sufficient exceptiones to haif pronomit, to haif stayit¹ his puting to the knowlege of ane Assyse, for the said allegit cryme; be sending of *George Leslie of Kinragie*, with ane commissioun to the said Mr Williame, discharging him, vpon the perrell of his lyfe, to compeir in the said Frances defence; and affureing him, gif he sa did, fra he war anes down the stair,² thair fould be tuentie quingeris put intil him: And sua, for debarring of the said vmq^{le} Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: AND for the maist partiall proceeding aganis the said vmq^{le} Frances, nochtwithstanding of the premises, in putting him to the knowlege of ane Assyse of ane number of perfones selectit and inaid chose of be the said *Laird of Geicht*, perfewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoirding thairto, convictit him of the said allegit Slauchter: AND for the partiall and wilfull pronouncing vpon the said convictioun, of the Dome and Sentence of daithe aganis the said vmq^{le} Frances, to loife his heid: AND for that effect, maist partiallie and vndentifullie, aganis the office of ane Judge, delynering of the said Frances bak agane to the said *Laird of Geicht* and his complices, the partie perfewaris, quha tuik him to thair awin privat prissone; and vpon the morne thairefter, caryeit him furth at ane bak zet, to ane hole betuix tua mottis,³ quhair they crowned thair tragidie with fo butcherlie mangling and demaning⁴ the puir gentill-man, be geving to him sex feneral fraikis vpon his schoulderis, heid, and nek, as the lyk hes nevir or seldome bene hard or sene: AND sa, vnder the pretext and cullour of law, and scandall of Justice, ffor the crewall and barbarus maffacaring and slauchter of the said vmq^{le} Frances, be the said Johnne Gordoun, scheref-depute, his pretendit vsurpeing Judge; quha thairthrow in a heich degrie hes contemptit and abusit his Maiesteis royall name and authoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him selff and his freindis. In maner specifeit and sett down in the criminall Letteris direct aganis him thairupoun.

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

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

Murder under Colour of Law, &c.

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

Dilaitit for the ufurpation of our fouerane lordis autoritie, &c.² at the instance of Mariorie Keith the relict of vmq^{le} *George Hay of Ardlethame*, as mother; George Hay, as brother to vmq^{le} Frances Hay, sone to the said vmq^{le} George Hay of Ardlethame; and of Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intreis. The said Mariorie, &c. productet the Letteris deulie execute and indorfate; vpon the production quhairof, the saidis persewaris afkit instrumentis, and protestit for releif of thair cautioneris.

Murder under Colour of Law, &c.

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

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

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

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

Dilaitit of violent Rape and Raveifching,⁵ taking, and detening of Adame Frenche of Thornydykis, ane young bairne scarce past xiiij seiris of age, furth of the Toun of Hadingtoun; and thairfra tranfpoirting him to Rymmiltoun-law,

¹ See Feb. 26, 1617.

² As in the previous case.

⁴ Alone; solely.

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

⁵ These terms, in the Ancient Criminal Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveifching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nisbet; and thairfra to Beruik, quhair, but (*without*) confent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirneyde, dochter to the said Sir Patrik; committit in the moneth of November, 1615 3eiris.

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

PRELOCOUTOURIS in perfute, Sir George Home of Manderstoun, Sir Williame Oliphant of Newtoun.

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

The Aduocat, with Sir Johnne Home of North Beruik, kny^t, as perfewaris, produces the summondis. Eftir reiding thair of, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the said Waird and Mariage of Adame Frenche of Thornydykis.

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

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

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

It is allegit be my lord Aduocat, that the difassenting of Adame Frenche fould nocht be respectit, becaus he is nather perfewar nor defender in the caus; and the Aduocat, with the perfewar, haifing sufficient entreis for the King, may perfew.—It is anfuert, that my Lord Aduocatis anfuert touching the perfute, movet be his lordschip and Sir Johnne Home, nawayis can ftay this young Gentilman to difassent thairfra, *sed valeat cum processu quantum valere potest*.

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

the Judge ; in ſa far as (at) the tyme of v^mq^{le} Robert French deceis, father to this young Gentilman, haifing tua father-brether¹ on lyfe, viz., James and Johnne Frenches ; James haifing ane cair of the bairnes educatioun and ſtanding of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne ; bot, becaus he was nocht hable to diſcharge that adminiftratioun of the bairne as become him, in reſpect of dyuerſe trubbillis and cummoris² he come vnto, he makis choſe of the ſaid (Sir) *Johnne Home of North Beruik*, as ane truſtie freind to him and the bairne, borrowis his name to the ſaid Gift, and infertis his name thairintill ; nocht that the ſaid Sir Johnne ſould rype³ ony commoditie thairof, bot vſeing the ſaid Sir Johnnes name, nocht being hable to diſcharge the office him ſelf. For cleiring⁴ of this, it is of veritie, that nocht-withſtanding of the inferting of the ſaid Sir Johnnes name in the Gift, the ſaid v^mq^{le} James French intronettit with the hail leving pertening to the ſaid bairne, during his lyftyme, keipit the ſaid bairne in his cuſtodie, at leiſt was in the cuſtodie of his guidſchir on the mother ſyde,⁵ within the place of Hardiesmylne, and that but⁶ interruption, challenge, or queſtioun made be the ſaid Sir Johnne, anent the cuſtodie of the bairne, or vplifting of the maillis⁷ and deuteis of his leveing : For forder qualificatioun of this argument, it is lykwayis of veritie, that eftir the deceis of the ſaid v^mq^{le} James Frenche, v^mq^{le} Johnne Frenche, younger brother to the ſaid James, being ſervet and retouret air⁸ to the ſaid v^mq^{le} James his brother, nocht only intronettit with the ſaid v^mq^{le} James his leving, bot lykwayis with the hail rentis of the ſaid bairnes leving, *Tutorio nomine*, the ſaid v^mq^{le} Johnne being ſeruet and retouret Tutour to him ; quhairby it is cleir that this Gift of Waird of the ſaid minor can gif the ſaid Sir Johnne no intreis to perfew this cauſe, his name being only borrowit to it, as ſaid is. Lyk as, thair is actioun depending at the inſtance of the bairne and his Curatouris befor the Lordis of Seſſioun aganis the ſaid Sir Johnne for his introniffioun with the maillis and deuteis of his landis, and for transferring and tranſlating of the Gift of the Waird in the perſone of the minor, as tane to his awin behuif, and the ſaid Sir Johnnes name only borrowit thairto. And ſa, haifing nather entreis *in perſonam neque in rem minoris*, his Gift can geve him na intreis to perfew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proffeit of the ſaid Sir Johnne, yet the Gift of the Waird can geve the ſaid Sir Johnne na intreis to perfew this caus, being ane Criminal perſute, without the expres concurſe, aſſiſtance, and ratihabitoun of the ſaid minor him ſelf, aganis quhome the Rapt lybellit is allegit to be com-

¹ Paternal uncles.² Literally *cumbers*, encumbrances, difficulties, embarraſſments ; but in this inſtance it denotes ſtrife, feud, &c., as the word then denoted.³ Reap.⁴ Elucidating.⁵ Maternal grandfather.⁶ Without.⁷ Rents.⁸ Served and retoured heir.

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

It is anfuerit, be my lord Aduocat, and the faid Sir Johnne Home, that the faid Sir Johnnes entreis is fufficientlie qualifeit and instructit for perfute of the actioun lybellit, feeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our fouerane lordis frie lege; and that the custodie and keiping of minoris, quhais landis fallis in our fouerane lordis handis be reflone of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is exprellie qualifeit in the faid Summondis, that the faid minor was in the faid Sir Johnnes poffeffioun mony yeiris befor the tyme lybellit, furth of quhais poffeffioun it was nocht lauchfull to the defenderis nor nane of thame to mell¹ with him, in maner lybellit, nor tak him furth of his poffeffioun: Lyk as, complant being made of befor be the faid Sir Johnne, befor the Lordis of Secreit Counsell, aganis the speciall perfones his away-takeris, viz. Williame Home and Williame Moffet, the faid Sir Johnne was ffund to be ane pairtie compliner to call for exhibitioun of the faid bairne; in quhais favour ane sentence was gevin and pronuncet, ffinding and declairing that the faidis Williame Home and Williame Moffet had committit ane verrie grit offence and ane most pernicious and wicket preparatiue and example, in trayning and taking away the faid Adame Frenche out of the faid Toun of Hadingtoun, quhair he was placet at the scole be the faid Sir Johnne; in respect quhairof, the faid Sir Johnne hes indoutit rycht and intreis to perfew the actioun lybellit; and speciallie, to informe and concur with our fouerane lordis Aduocat, quha hes speciall entreis be him selff, in his hienes name, to perfew the crymes lybellit. As ffor the impertinent² difcourfe, that the richt of the Waird was tane to the behove of the bairne be the advyfe of vmq¹⁰ James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor instructit; and fa, na respect aucht to be had thairto: And yit, to anfuer to the first pairt, anent James intromiffioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that establisches na richt of the Waird in his perfone, bot the Donatour had fufficient intreis to perfew the intromitteris with the mailis and douteis of the Waird landis: And, to mak the matter mair manifest, James deceit within fyftene dayis efter Robert his brother: Lyk as, vmq¹⁰ Johnne was ane actual seruand to the faid Sir Johnne, during his lyftyme, eftir the dait of the faid Gift. And as to the last pairt of the secund allegeance, beiring that the faid Adame French difaffentis fra the perfute, and concurris with the defenderis,

¹ O. Fr. *mesler*, to intermeddle; to interfere.

² Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin consent, it is anfuert, as of befor, that his disaffenting fra the perfute can nocht preiudge ony of the perfewis : And as to the last pairt of the said allegiance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the said Sir Johnne hes intreis nor¹ oppositioun aganis the samyn ; and gif it fall pleis the pannell to propone it, as ane defense in the cause, thay fall haif ane direct anfuert ; ffor, be the proponing of that allegiance, it is grantit that the Donatour hes intreis ; and that he is Donatour, it is verifeit be the Gift producet : Bot to mak this matter cleir, it is anfuert directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confessioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,² and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maiesteis intreis, nor na vther pairtie quha is preiudget ; as is cleir in the hail article of the Cod. L. vnica Codice *de Raptu Virginium*, et *Lege Raptores, C. de Episcopis et Clericis* : And to mak this matter the mair cleir, it is speciallie declairit be the Act of Parliament maid in October 1612, that the declaratioun of the persone ravischet fall nawayis preiudge the Kingis Maiestie of his intreis to persue the committer of the cryme : And to cleir this matter forder, the said Adame Frenche, eftir his away-taking, be ane Letter, all writtin and subfcryuit with his awin hand, grantit and confessit that he was tane away aganis his will and vndone ; as the Letter heirwith producet beiris.

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

¹ Rather than the contrary argument.

² A person arrived at lawful age, or majority.

withstanding of the Gift of the Waird disponit to the said Sir Johnne Home, quhais entreis could be na impediment to stay the said Adames libertie: Lyk as, conforme to the said Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eist Nisbet, quhairin he hes remanit sensyne, as to ane speciall freind; and, gif neid beis, the said Adame, be his awin Declaratioun, will declair his intentioun of passing to Eist Nisbet. And for instructing thair of, produces the bairnes grevis,¹ to be confiderit be my lord Justice, desyring the samyn to be red as ane speciall pairt of the proces. As to the Letter productet be my lord Aduocat, the said Adame denyis the same altogidder to be his hand writt, and thairfor na respect sould be had thairto: Lyk as, the said Adame being personallie present, Judiciallie declairis he can nocht wryte; and this Letter productet be my Lord Aduocat was writtin by² his knowlege in *the Guidman of Manderstones* hous, the tyme of his sequestratioun; and in cace it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament productet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis naways in this eirand, nather is this persute foundit vpon that Act of Parliament; and quhan as my lord Aduocat foundis a persute thairupoun, it fall haif the awin anfuere.³ *Igitur, &c.*

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

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

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

the allegit Rapt, yit he was maior befoir the allegit Rapt, past fourtene yeiris of age, &c. *Igitur*, &c.—It is anfuert thairto be my lord Aduocat and the persewar, that na respect aucht to be had, quhidder he was past xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the custodie and keiping of the Donatour to the Waird, and na curatouris chofin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Missiue uset and producet for the said Adame, aucht nocht to be respectit, in respect of his minoritie ; it is anfuert, that the samyn aucht to be respectit, being all writtin and subscryuit with his awin hand : And to convert that argument aganis the defenderis, na respect aucht to be had to his Declaratioun, nather be word or writ this day, in respect of his minoritie. As to the Testimoniall producet for his age, na respect aucht to be had thairto, for the ressones aboue writtin, speciallie, in respect he was baptizet the xij of November, 1601, and was tane away in November 1615, sua that it is nocht constant¹ thairby, quhidder he was past xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur*, &c.

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

¹ Clear ; apparent.² Maternal uncle.

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

It is anfuenerit be the persfwaris, for verifeing of thair Summondis, and hail memberis thair of, that the samyn is verrie relevantlie confaet, and aggreis with the Lawis and practique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maist ciuile, England and france; and thir anfueneris ar proponit be him to verife all the memberis of the propositioun contenit in the Summondis, and to elyde¹ the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the first member of the propositioun, the persfwaris alledges, that the samyn is sufficientlie verifeit be the hail article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis*; lyk as, be the Lawis and practique of this realme, the taking of ony frie persone is capitall, and suntyme thocht to be tressonable: It was fund to be capitall aganis *George Meldrum of Dumbrek*, for taking of *Mr Alexander Gibsone*; lyk as, he was persfweit and pwneift to the death thairfoir: *The Marquis of Huntlie*, and *the Erles of Cranfurd* and *Bothuell*, war persfweit criminallie, for the taking of vniq^o *Thomas Maister of Glammes*, and put to the knowledge of ane Inqueist. As concerning the Ravischeing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and siclyk, be the foirnameit Act, in October, 1612; be the Ciuile Law, the same member anent the Ravischeing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et *Lege Raptores, Codice de Episcopis et Clericis*: And albeit the saidis Lawis chieffie makis mentioun of violence committit againt Wemen, yit the Glofs and hail Jurisconsultis resolues, that the same lawis hes place quhair ane man is ravished:

¹ Cut off; redargue. Lat. *elidere*.

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

of England. Julius Clarus, § *Raptus*, num. 6, ait, ‘*Raptum viri etiam puniri pena Raptus, ac si Virgo rapta esset.*’ Be the Lawis of the Maieftie of Scotland, *Quon. Attach.* cap. 95, *de Raptu heredis Maritajium debentis, et ejus pena*, &c. Be the self fame Law of the Maieftie, in findrie pairtis, Ravifching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie perfewit befor the Juftice. And laft, Ravifcheing is fa odious ane cryme in Scotland, that the famyn is exceptit furth of Remiffiones, as ane cryme maift haynous and detestable.—In respect of the quihikis alledgeances, proponit for verificatioun of the propofitioun contenit in the Summondis, the Dittay is relevant aganis the haill perfones on pannell. And that pairt of the lybell, ‘airt and pairt,’ is verrie relevant aganis all perfones, and speciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the perfones that concurris and affistis the fact quihik is capitall, ar all culpable as the committeris thairof: Bot in this caice, it is lybellit expreflie, that Williame Home and William Moffet intyfet and tranet¹ the said Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was reffaut be the said Alexander Cranftoun; quhilk Alexander and Johnne Cranftoun convoyit him thairfra to Eift Nifbet, and thairfra altogidder to Beruik, quhan he was mareit *clandestinè*, as said is, and reffaut be the said *Laird of Eift Nifbet*, and keipit be him quhill he mareit with his dochter, purpoiflie done to preiudge the said Sir Johnne Home of the double availl of his Mariage; quhilk makis the haill pannell nocht only to be affifteris of the fact, bot airt and pairt, and direct doaris thairof. And to verifie that he was seducet, intyfet, and cayreit away aganis his will, repeittis the foirsaid Letter, all writtin and fubfcryuit with his awin hand; and the Decreit gevin to the Secret Counfall, finding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propofitioun of the Summondis, bot also to elyde the exceptiones proponit be the perfones on pannell aganis the relevancy of the Dittay.

To the quihik it is ANSWERIT be the perfones on pannell and thair prelocoutouris, that the pannellis allegiance proponit aganis the irrelevancy of the Dittay standis relevant, nochtwithftanding of all the arguments proponit be my lord Advocat aganis the famyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Advocat, for confirmatioun of the propofitioun of the Dittay, and to infer the conclusioun thairof, gif the fubfumptioun war relevant, quhilk is *factum*; ffor it is nocht contravertit with² my lord Advocat, that *Raptus Virginis*, Ravifcheing of wemen, *vel crimen Plagij*, as the taking of his Maieftis frie lege, is capi-

¹ Trained; led away craftily, or by stratagem.

² It is not controverted, even according to the doctrine laid down by the Lord Advocate.

tall of the Law, and may be criminallie perfewit at his Maiefteis Aduocattis instance; bot the queftioun in this judgement¹ is, quhidder gif this pannell haif committit ony of thir crymes, at the leift quhidder the famyn be relevantlie lybellit to infer the cryme cravet; ffor his lordfchip will nocht deny, that of the Law, to either of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumftances allegit be me ofbefoir, viz. *Abductio per violentiam*, *Deportatio de loco in locum clandestinè*, *Seclufio parentum*, quhairby nather of thame fould haif accèfs to the partie ravifchet, and detenit, and withaldin fra thair kyn and freindis, *quafi et tanquam in carcere*; fua that without thir circumftances concur in this caice, it can nather be *Raptus* nor *Plagium*; and confequentlie, thay can nocht pas to the knowlege of ane Affyfe thairfoir. As to the instances citet be my lord Aduocat, betuix *Dumbrek* and *Mr Alex Gihfone*, nixt betuix vmq⁶ *Thomas Maifter of Glammis* and the *Erles of Huntlie*, *Craufurd*, and *Bothuell*, thair militat nathing in this caice; ffor as to *Dumbrek*, he expreflie committit *crimen Plagiū*, in taking of the Kingis Maiefteis frie lege, quyetlie and clandestinlie, by² all his freindis knowlege, be plane violence and force, being accompaneit with ten or tuelf perfones in hoftell and weirfair maner, with wappoues prohibeit to be borne or worne, tranfpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Caftell of Harbotill, in England; fua that the pwneifchment inflictit vpon him was dew, accordring³ to the fact. As to the fecund instance, anent *the Maifter of Glames*, it lykwayis far les militatis in this caice, ffor it is not-tour, as my lord Justice, his Affeffouris,⁴ and my lord Aduocat knawis rycht weill, that *the Erles of Huntlie*, *Craufurd*, and *Bothuell*, being banded againft the Kingis Maiefteis autoritie, deprehendit *the faid Maifter of Glammis*, in the Kingis Maiefteis high way, chaiffit him to the Hous of Kirkhill, and pat fyre thairto, quhilk inferris *crimen Plagij* of the Law, and ane gitter punefchment: And as to that part of the Dittay, beiring that the faid Adame was intyfet and feducet, that is nawayis relevant to infer ane cryme, ffor fraud is nocht capitale, of⁵ the Municipall Law of this realme, nor yit accordring to⁶ the practique of the fame: And as to the Lawis citet to infer the famyn to be *crimen capitale*, and fpeciallie the Law of the Maieftie, *Quon. Attach.*, I oppone⁷ the daylie cufrome of this Judgement, the Municipall Law of this realme, and fpeciallie the Act of Parliament in anno 1612, ffor it is expreflie fet down in the Dittay, that the faid Adame Frenche come with the faid William Home out of the faid Mr William Boweis hous, the famyn can infer na Rapt; nocht only

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

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

The Persewaris repeatit thair former answers, with the haill argumentis proponit for verificatioun of the propositioun of the Summondis: and lykways repeatit the Summondis, and haill pairtis thairof, quibilkis ar relevantlie lybellit, as ane direct answer to the last argument proponit. And as to the consent of the said Adame, answers as of befoir, that ane fact capital being committit, the pairtie aganis quhome the samyn is done may mak na² confessioun nor declaratioun to the prejudice ather of the Kingis Maiestie, or the pairtie interesse.³ *Igitur*, &c.—To the quhilk it is answert, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confessioun of the pairtie; bot gif ony sic allegeances he hes to propone, referues the samyn to be proponit *suo loco*: And thairupoun askit instrumentis.

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

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

¹ Bans.² Is not entitled to make any confession, &c.³ Interested.

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

Nov. 9.—THE JUSTICE, befor Interloquitour to be pronouncet be him in the matter, Ordanit the perfones on pannell, and siklyk the said *Sir Johnne Home of North Beruik, knycht*, persewar, to find caution for keiping of his Maiesteis peace, in nocht trubilling and molesting of vtheris,¹ by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and justice, under the panes following, viz. The said *Laird of Eijs Nisbet*, the said *Sir Johnne Home of North Beruik*, and *Alexander Cranftoun*, ilk ane of thame vnder the pane of fyve thowseand merkis; and the saidis *Johnne Cranftoun* and *Williame Home* vnder the pane of I^m (1000) merkis, for ather² of thame.

James Faufyde, younger of that Ilk, become plege and fouertie for Sir Patrik Chirnefyde; Johnne, Maister of Cranftoun, for Alex^r Cranftoun; Alexander Chirnefyde, younger of Eist Nisbet, for Johnne Cranftoun; and the said Alexander Cranftoun of Burne Castell, for Williame Home, that thair fall keip his Maiesteis peace, and that Sir Johnne Home of North Beruik, kny^t, fall be harmles and skaithles of thame in his body, landis, possessiones, and guidis, and onnawayis³ fall be molestit nor trubillit be thame or any of thame thairintill, nor be na vtheris of thair causing, sending, hounding out, command, refest, assistance, or rathabitoun, quhome thay may stop or lat,⁴ directlie nor indirectlie, vtherwayis nor be ordour of Law and Justice, &c.

Sir George Home of Manderstoun, Johnne Home, younger of Aytoun, and Dauid Home of Wedderburne, younger, become pleges and fouerteis, coniunctlie and feuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirnefyde, &c. fall be harmeles and skaithles, &c.⁵

(Nov. 20.)—MY LORD ADVOCAT, befor Interloquitour, declairis he will nocht insift any forder at this present, in persute of the perfones on pannell, for the crymes lybellit: And in respect of the haynoufnes of the fact, and evill preparatiue⁶ and consequence quhilk may follow, desyres that caution may be tane of the defenderis for thair entrie, vpone a fyftene dayis wairning, to abyde tryell for the samyn, &c.—It is allegit be the pannell and thair prelocoutouris, that in respect of the allegeances proponit, alfwieill dilatour as peremptour in this cause, and of my Lord Aduocattis answers maid thairto, quhilk lyes at Interloquitour, his lordschip, as persewar, can nocht be hard to refeill⁷ fra this persute; nather can the pannell be astricted to find caution, seing thay ar willing, vpon my lord Justice Interlocoutour, to defend thame selfis, as accordis of the Law: And in all humilitie abydis his lordschipis Interloquitour thairupone.

¹ Each other.

² Each.

³ In nowise.

⁴ Hinder.

⁵ In the same terms as above.

⁶ Precedent; example.

⁷ Resile; draw back.

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

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

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

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

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

Slaughter.

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

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Faufyde, fervand also to the said James Faufyde, be streking him in the bellie with ane knyfe, within the barne of Faufyde, vpon the tent day of November instant; quhairof, vpon the tuelv day of this instant moneth, he deceiffit.

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

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

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

Falsct—Perjury.

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

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

DITTAY against the Pannell.

FORSAMEKILL AS, it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis falsc Notteris, and falsc periuret Witneffis, that gif ony Notter committis falsct, and beis conuict and fund giltie pairof, (he) fall be pwneift to the daithe: And siclyk, quhair ony Witnes depones falslie, fall lykways be pwneift, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneifchment to be infictit in the persone of þe saidis ffals Witneffes, at the sicht of and discretion of þe Judge, according to the qualitie of þe fact: As þe saidis Lawis and Actis of Parliament in thame selfis proportis. Nochtwithstanding quhairfof, it is of veritie that þe said *Alexander Cuik*, being employit as Notter be *Johnne Home of Slegden* for geving Seafing to him of þe Landis of Eister Pleulandis, gifet and disponit to him be our Souerane lord, as vaikand¹ in his Maiesteis handis be þe forfaltour of vni^ql^e *Frances Erle Bothwell*; and that, conforme to ane Precept direct furth of þe Chancellerie to Adame Cokburne, Schereff depute of þe Scheresdome of Beruik for þe tyme, vnder þe Quarter Seill, for geving Seafing to þe said *Johnne Home* pairof; and to extract and draw furth to him ane Instrument pairupoun; the said *Alexander* maift falslie and erroneoufflie, for his awin gane and lucre, extractit out of his Prothogoll² tua feuerall Extractis of þe foirsaidis Instrumentis of Seafing, of tua dyuerse daittis, the one of þe dait þe xxij of Februar 1592, and the vper in anno 1593: As þe saidis tua Extractis productet, vnder þe saidis *Alexanderis* subscriptionn, beis. Lyk as, in regard of þe said falsc Extract of þe foirsaid Seafing, ane actioun of Improbation being intentit, and as zit depending befor þe Lordis of Sessioun, at þe instance of his Maiesteis Aduocat, and *Walter, Lord of Balclench*, as heritour of þe Lordship and barrony of Haillis, quhairfof þe saidis landis of Eister Pleulandis ar pairt and pertinent, and lykways at þe instance of *Alexander Haitlie*, burges of Ed^r, as takifman pairof, aganis þe said *Johnne Home*, for improving of þe foirsaid Instrument of Seafing, extractit be þe said *Alexander Cuik*, and gevin to þe said *Johnne Home* of the saidis Landis; and þe said *Alexander* being dyuerse tymes summond in þe said actioun of Improbation, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befor þe saidis Lordis, vpon the tuelf day of December instant, and being examinat in pair lordschipis haill prefens, anent þe trew dait of þe foirsaid Instrument of Seafing, and being solempnelie suorne to declair þe veritie pairin, the said *Alexander Cuik* than affirmet, constantlie, that þe trew dait of þe said Seafing was vpon þe xxij day of Februar, 1591, to the quhilk he was Notter; and abaid at þe Extract of þe Instrument gevin furth be him to þe said *Johnne Home* pairupoun; and pairwith declairit that þe vther Extract of þe same Seafing, drawin furth be him to *Alexander Haitlie*, beiring dait þe xxij of Februar, 1593.

¹ Lat. *vacare*. Fr. *vaquer*.

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

fourcoir threttene, was ffalfe; AND þe said Alex^r being þaireftir, vpon the xvij and xix dayis of þis infant moneth, re-examinat, in þe faldis Lordis prefens, and folempnelie fuorne to declair þe verritie, concerning þe dait of þe faldis tua Extractis, he varet fra his former Depofitiones, maift impudentlie : Lyk as, his Prothogoll buik was viciat be him, in þe dait foirfaid, foiring out ‘ primo,’ and putting in ‘ tertio,’ and þairefter foiring furth ‘ tertio,’ and wryting agane ‘ primo.’ Quhairn he hes declairit him felf to be ane ffals and infamous Notter; and be his contrair Depofitiones, maid in his examinatioun, to be ane manifest ffals and menfuorne Witnes : Lyk as, þe faldis Lordis of Counfell, be þair Decreit, gevin vpon his tryell and Examinatioun, hes fund þe said Alex^r to be ane ffals Notter and manifest Periuret Witnes : As the Extract pairof, vnder þe fubfcriptioun of *my Lord Clerk of Regifter*, daitit þe xix day of þis infant, togidder with his Depofitiones, maid in prefens of þe faldis Lordis, beiris. LYK AS, for verifeing of his ffalfet aboue writtin, þair was ane Band maid be him to the said *Alexander Haitlie*, quhairn he obleift him felf to ftand and abyde at the Inftrument extractit be him, daitit þe 23 of Februar, 1593, he procureing his Maiefteis Remiffioun for þe famyn. For þe quhilk ffalfet and Periurie, committit be þe said Alexander, he aucht and fould be pwneift to þe dait, in example of vtheris.

ASSISA.

James Levingftoun of Jerifwoid,	Jo ⁿ Keir, mercheand burges, Ed ^r ,	Thomas Mulliekyn, mercheand
George Logane of Bonytoun,	Patrik Somervell, mercheand	burgies of Edinburghe,
James Nafmyth of Poffo,	burgies thair,	James Halyburtoun, mercheand
Joseph Douglas of Pompharfoun,	Robert Halyburtoun, mercheand	burgies thair,
Johne Gairdin, merchand burges	burgies thair,	Jo ⁿ Mitchelhill, mercheand burges
of Edinburghe,	Jo ⁿ Keir, skipper, burges thair,	thair,
James Douglas in Lugtoun,	Johne Reid, indueller in Leyth,	Rob. Moffett, merch ^d burges thair.

The Aduocat takis instrumentis of the fweiring of the Affyfe : And for verifeing of the Dittay, producet the tua Inftrumentis of Seafing, vnder the pannellis fubfcriptioun, baith to ane effect, of dyuerfe daittis : Producet lykways, the pannellis feuerall Miffiue Letteris, direct to *Alexander Haitlie*, beirand, that the Seafing extractit to him, of the dait the xxij of Februar, I^m.V^c. fourcoir threttene, was the trew Extract, and that he wald abyde thairat : Producet alfo, dyuerfe Letteris, writtin be the pannell to *Williame Ker*, beirand that the Seafing extractit to him, of the dait the xxij of Februar I^m.V^c. fourcoir ellevin, was the trew Extract, and that he wald abyde thairat : And ficlyk, producet ane Letter, direct be him to the Lordis of Seffion, being feik for the tyme, all writtin and fubfcriuit with his hand, teftefeing the said Extract gevin to the said *Williame Ker*, daitit in anno 1591, to be the only trew Extract : Producet alfo, the pannellis Depofitiones, maid be him in prefens of the Lordis, beiring the Confeffioun of the Extract of the Seafing in anno 1591, to be the trew Extract, and the vther, of the dait 1593, to be ffals : And vpon his Re-examinatioun, beiring the Seafing gevin in anno 1593 to be trew, and the vther in anno 1591 to be ffals : Togidder alfo with his Prothogoll-buik, alfo producet, quhairn it is twyfe mendit in the dait of the said Seafing. And laft, producet the Lordis Decreit, finding the pannell to be ane ffalfé Notter, and ane manifest

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

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

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

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

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

Sir Richard Cokburne of Clerkingtoun, kny^t,

Sir Alexander Drummond of Meidhope, kny^t;

Lord Previe feill;

Sir Andro Hammiltoun of Reidhous, kny^t; and

Sir Williame Levingtoun of Kilfythe, kny^t;

Sir James Skene of Curriehill, kny^t.¹]

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

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

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

PERSEWARIS, Sir Williame Olyphant of Newtoun, kny^t, Aduocat to our souerane lord, for his Maiesteis intreis; Mariorie Keith, as mother to the said vmq^{le} Frances Hay.

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

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

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

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

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

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t; Mariorie Keith, as mother; George Hay, as brother to the defunct; Williame Hay, sfiar of Brunthillis, George Hay, his brother.

PRELOCOUTOURIS in perfute and fortificatioun thairof, Frances Erle of Errole, Laurence lord Oliphant, My Lord Zester, Alexander Keith of Ludqsharne.

PRELOCOUTOURIS in defence, George Marqueis of Huntlie, My lord of Eglington, My lord Viscount of Lauderdaleill, My lord Ochiltrie, Mr Thomas Nicolfsoune, and Mr Alexander Peiblis.

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

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

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

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

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

commandit to ferche and feik the man-slayer, being certifeit of the Slauchter; and sa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he presentit him to the Schereff but¹ ony hurt of fence, or iniurie done to him: And that it is lauchfull to ony of the people, alswell as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif steill ony mannis guidis, it is lauchfull to the persone fra quhome the guidis ar stowin, to convene his kyn and freindis, and raise the cuntrie, and persue the Theiff sa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrant of ane Magiftrat; as is cleir and nottour be the daylie practique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than steilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactor, and delyuer him to the Justice: And as it was lauchfull to the pannell to ferche, feik, tak, and apprehend the malefactor, and delyuer him to the Justice, evin sa it was lauchfull to him to do the samyn with conuening of his freindis, (nawayis granting he did the samyn,) and with quhatsumeur armes; ffor vtherways, this absurditie sould follow, that the malefactor sould efsaip, and the innocent persone sould be flane; in fa far as, gif the innocent persone fall preise to apprehend the malefactor airmet with hagbutis and pistolettis, namelie, haifing the benefit of ane houfe, it war easie for him to sla sic as socht him; and sa he sould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *concesso aliquo extremo, conceduntur omnia media, per que pervenitur ad illud*; than it is subfument, gif it was lauchfull to tak the man-slayer, as is afoir provin, *ergo*, it was lauchfull to vse all the middiffis² be the quhilk he sould be taken, baith of airmour and vtherways.

It is anferit be my lord Aduocat, to the *first* pairt, anent the avenger of bluid, thair is nather Law nor reffone can mak the *Laird of Geicht* the avenger of bluid, bot only the Kingis Maiestie, his Justice, and vtheris haifing power and autoritie of his Maiestie. As for the argument proponit vpon the Act of Parliament maid in the dayis of King James the ffirst, the allegiance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and difconforme to the Act; be the quhilk, it is statute, that the Man-slayer sould be persewit be the Schereff, and the cuntrie to concur; and gif the malefactor be tane be the Schereff, he sould be put in fure firmance, quhill³ the Law be done vpon him; and gif he be tane reid-hand,⁴ to be done with that sone.⁵ It is nevir allegit that the Schereff followit the allegit malefactor, nather that he was

¹ Without.
² Means.
 commission of the fact.

³ Until.

⁴ With the red or bloody hand; instantly after

⁵ Sun; day; before sunset of that day.

tane with reid-hand ; sua that the allegiance is altogether irrelevant, quhillk is founded vpon that Act, as direct repugnant thairto : And as to that part of the allegiance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit absurditie, haifing nather Warrant, grund, nor fundamente, nather of the Lawis of the realme, nor of the Ciuile Law ; feing, be the Lawis of this realme, the Schereff is appointit to follow the Man-flayer ; and be the Ciuile Law, it is nocht leifum¹ to ony privat man to tak and apprehend ony perfone, without ane Commiffioun and Warrant frome the Magiftrat : Leg. *Neminem*, Cod. *de exhibendis Reis*, lib. 9, Tit. 3, Leg. vltima, *Neminem exhibendum esse in iudicio precipimus, nisi de cuius exhibitione Iudex pronunciauerit*. Item, Bartolus, ad dictam Legem : Et Domaderius, cap. 15, num. 40, idem asserit : Et toto titulo, Codice *de Plagiariis* : Et lege *Raptores*, de Episcopis et Clericis : Item, Julius Clarus, § finali quest. 31, in principio : Be the quhillkis premisses, it is cleir, that ane privat perfone, and speciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpon the example of the profecutioun and following of ane Theif, it is altogidder impertinent to this purpois ; feing the Theif is followit, *in ipso actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris ; quhillk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuersall consuetude of the same, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis ; and albeit the Theif be slane in the following, the Slayer is maid frie be the lawis of the realme. It is absurditie to think that the Schereff him self may follow ony man committer of the Slauchter, and instantlie put handis in him, at his awin hand, *nisi in flagranti crimine*, quhillk is nocht allegit in this caise ; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpon him within that sone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perfew or tak him, it was lauchfull to tak him with convocatioun of our fouerane lordis legis, and with wapponis forbiddin ; it is ansuerit, that the first propositioun is altogidder absurd, in respect of the first ansuer maid be the perfewaris ; and consequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, feing he had na autoritie, nather to tak, nor beir forbidden wapponis : In respect quahairof, the first allegiance, and hail argumentis thairin contenit, aucht to be repellit.

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

¹ Lawful.² Disputed ; argued.

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

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

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

DECLINATURE OF THE JUDGE.

Mar. 1.—IT is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this cause, in respect he is fourtis of kyn to the Countes of Errole; my Lord of Arrole, hir husband, being persewar, viz. The said Mr Alex^r Coluiles grandame was ane dochter of the Houfe of Lochlevin, quha is ane; the said Mr Alexanderis guidfchir, tua; the said Mr Alexanderis father, thre; and him self the fourt: And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anfuert be my lord Aduocat, that this Declinatour can nocht be ressaui this day, becaus Mr Alexander Coluile, being Justice-depute in this Judgement, quhilk is ane ordiner and Supreme Jurisdiction, na declinatour aucht to be proponit aganis him; at the leif, na kinreid² fould be ony caus to declyne him. *Secundo*, the declinatour can nocht now be ressaui, becaus the Court being fenfit yesterday, he sitting as Judge, the persewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay; eftir the quhilk, ane declinatour can nocht be proponit.

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

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

² No objection on the ground of kindred or relationship.

standis relevant, notwithstanding of my lord Aduocattis twa answers; namely, the *first* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat, electit, and suorne; that pairt of the answere *non relevat*; becaus the creatioun and admiffioun of Mr Alexander Coluile takis nocht away the pannellis exceptioun declinatour, *ex superveniente causa*, vpon consanguinitie of bluid to the perswair; for than it sould follow, that in an actioun perswair befor the Lordis of Sessioun, quha are supreme Judges of the land in ciuile caussis, at the instance of ane persone, quhais brother is ane of the Lordis of Sessioun, it sould follow that he sould be Judge to his brother, perswair in the caus perswair be him aganis ane vther, quhilk can nocht be: As to the *secund* member of the answere, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be resson that in ane Court haldin yisterday in the samyn caus, Mr Alexander sat as Judge, befor quhome the pannell proponit dyuerse exceptiones dilatour and peremptour, aftir the proponing quhairof, the pannell can nocht be hard to propone ony exceptioun declinatour, be resson that ane exceptioun declinatour is the first exceptioun sould be proponit in judgement; —to the quhilk it is answairit, that notwithstanding of the said secund answere, the exceptioun declinatour standis relevant aganis the said Mr Alexander Coluile, be resson thair was ane sufficient judgment and iudicatorie establishet yisterday by¹ the said Mr Alexander, to wit, Sir Williame Heart, ordiner Justice, quha sat in judgement, and pronuncet Interloquitour in this caus; sa that this exceptioun, gif it had bene proponit yisterday, could nocht be respectit, becaus the Judgement had bene ane perfyte Judgment without him, quhilk is nocht this day in this caise; and sua, be the presens yisterday of the said Sir Williame Heart, and his absence this day, the caise is alterit: In respect quhairof, the exceptioun standis relevant, notwithstanding of the answere. And forder, quhair it is answairit, that Mr Alexander Coluile is Justice-generall, *in criminalibus*, thair can no exceptioun of consanguinitie be proponit aganis him as depute, it has nather Law to sustene the answere, and it is aganis the daylie practise; for thair is na Judge in Scotland that hes that priuilege to sit *in causa consanguinei*, bot only the Lordis of Sessioun; quhilk is done of necessitie, for vtherways thair will be no judgement thair, quhilk is nocht in this caise,—for the removeing of ane only Judge may be suppleit be the fitting of ane vther, *ubi non est penuria*: And this was practizet in the grittest pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the slauchter of the Laird of Caddell; in the quhilk, the Justice-depute was set,² as being depute to the Erle of Ergyle, quha bakit³ the perswair; lyk as, the Kingis Maiestie haveing chosin dyuerse Judges *successiué* eftir vtheris, thay war all declynit, pairtlie vpon consanguinitie with the Erle of Ergyle, and pairtlie as being pensioneris to sic as assistit

¹ *Forbye*; besides; independent of.² Declined.³ Backed; countenanced; supported.

the perfute; and namelie, Mr Thomas Henderfoun, Commiffar, was fet, becaus he was within greis¹-defendant with the Hous of Bafs; and Mr Thomas Nicolfoun, as penfioner to my Lord Ogilvie, quha fortifeit the perfute.

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

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

DECLINATURE *of two of the Affeffors.*

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

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

¹ Certain degrees of near relationship, called *degrees-defendant*.

Reidhous, him self the fourt. In respect of the quhilk rekning, the veritie quhairof is sufficientlie knawin to my Lord him self, he can nocht be Assessor in this cause.—It is anfuert be Mr Thomas Nicolson, as prelocoutour for the pannell, that he can nocht be bund to geve ane anfuert to the tua allegiances foirfaidis, foundit vpon the declinatour of the tua Assessouris; becaus in the last Court haldin on Setterday, the first of this instant moneth of Marche, thair was ane Declinatour exceptioun proponit be the pannell aganis the Justice him self, quhy he could nocht sit as Judge in this cause, viz., that he was within greis-defendant to the Countess of Errole; my Lord of Errole, hir husband, being ane persewar. To the quhilk declinatour, dyuerse anfuertis, duplyis, and triplyis war proponit, quhilk as yit ar nocht descussit, bot the Judge continewit Interloquitour vpon the said exceptioun-declinatour to this day: And thairfoir, *ante omnia*, befoir ony alledgeance may be had ather be persewer or defender, Interloquitour man¹ be first pronuncet vpon the said alledgeance, conforme to the ordour of the proces; quhilk man be done of necessitie; for, gif the Justice find the declinatour relevant, quhilk will be provin be his awin aith of veritie, than consequentlie he can nocht sit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronounce Interloquitour in the allegiances proponit aganis my Lord of Meidhoip and my Lord of Reidhouse as Assessouris, quhiddir thay may be Assessouris or nocht, *qui vbi non est Judex, ibi nec Assessor, nec processus, nec sententia interloquutoria, litiscontestatio, nec sententia definitiva*: And thairfoir, quhill first it be pronuncet vpon the foirsaid declinatour proponit aganis the Judge him self, thair can na alledgeance be proponit or discussit aganis the Assessouris.

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

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

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

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

COMPERIT judicialle Williame Hay, seruitour to my lord Erle of Errole, and productet ane Commissioun of Justiciarie, vnder his Maiesteis Caschet² and Court signet, subscryuit be my Lord Chancellor, my Lord of Mar thesaurer, and

¹ Must.

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

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

COMMISSION in favour of Mr James Bannatyne of Newtyld.

JAMES R.

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

AL. CANCEL^{ls}. AL. MAR. HAMILTON.

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

ACT of Acceptation by Mr James Bannatyne.

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

that he fall discharge the said Commiffioun vprichtlie and faithfullie, according to his knowlege; as he will anfuer to God and the Kingis Maieftie pairupoun.

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

JACOBUS PRYMROIS.

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

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

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

[*Mr James Bannatyne.*]

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

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

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

JUSTICE, Justice Clerk, and 3our deputis. 3ow fall, vpone the sight heirof, continew 3our Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, detening, and execution of vmq^e Francis Hay; and for pe beiring and weiring of haquebutis and pistolettis; and for pe persute and inuasioun of the breper of Brunthillis, vntill the aughtene day of Junij nixtocum; takand new caution, conforme to pe ordour: Quhairanent thir presentis fall be 3our Warrant. ATT ED^s, the xijj day of Marche, 1617.

AL. CANCELL^s. AL. MAR. BYNNING.

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

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

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

the Laird of Geicht to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of ffyve thowfeand merkis, conforme to his Maiefteis directioun, reportit be his Maiefteis Aduocat, as faid is.

The faid Laird fstand Williame Gordoun of Rothemay, ffear of Cairneburrow, fouertie for his entrie, &c.

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

Adultery—Bigamy.

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

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

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

VERDICT. The Assyse, be the mouthe of George Carnebie, indueller in Ed^r, all in ane voice, fstand the faidis perfones to be ffylet, culpable, and convict.—SENTENCE. In respect of the quhilk convictioun, THE JUSTICE, conforme to ane Warrant of the Kingis Maieftie, quhairof the tennour followis:

TO OUR JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatfoeur, quhome thafe presentis may concerne; and to all and each of thame.

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

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

SENTENCE *against Johnne Guthrie, alias Williame Laird.*

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

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

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

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

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

Slaughter.

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

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Andro Kynnynmond, sone to David Kynnynmond of that ilk; committit vpon the tent day of Junij last-bypast, viz. The said *Johnne* being in companie with Mr Walter Kynnynmond, appeirand of Kilduncane, his maister, Jedione Kynnynmond, brother to the said Mr Walter, Patrik Kynnynmond, sone to the said Mr Walter, Hew Dik, seruand to the said Mr Walter, Thomas Fentoun, messinger citiner¹ in St Androis, Thomas Fentoun, his sone, thair, *Johnne Clelland*, and . . . Clelland, sones to Robert Clelland of Fermlaw, and . . . Broun, citiner of St Androis, with convocatioun of his Maiesteis leiges, to the number of tuentie persones, or thairby, all bodin in feir of weir, with suordis, daigeris, plait-slevis, hagbutis, and pistolettis, expresse prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament; haifing consaueit ane deidlie feid, rancour, and malice aganis the said vmq^{le} Andro, vmbeset² his hie way and passage, vpon Cires-mure, ane myle or thairby fra the burch of Couper; quhair he, being only accompaneit with ane servand of his awin, war, in sober and quyet maner, for the tyme, cuming furth of the hie way, lipning for na harme, &c., and thair set vpon the said vmq^{le} Andro, schot him throw the body with hagbutis, and crewallie hurt and demanit.³

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

² Beset; blockaded;

³ Abused. Literally, treated; used.

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

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

The Justice superceidis the pronouncing of Dome, &c.¹

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

Child-Murder.

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

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thair of, be putting it vnder the stra of the bed quhairupone scho lay ; and thaireftir lying thairupoun, and smoiring² the said infant to deid : committit in ane bak hous of the said George Craigis, vnder nycht, vpone the fourtene day of Julij instant ; Williame Borthuik, sone to Johnne Borthuik in Waster Dudingstoun, ane young boy of xvij yeiris of age, being the father thair of.

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

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

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed⁷, and thair to be Hangit quhill scho be deid ; and all hir moveabill guidis and geir, gif scho ony hes, to be efcheit, &c.

Falset—Forgery—Perjury.

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

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,³ and counterfuteing of vmq^{le} Johnne Nisbet of Swannisfeild his subscriptioun thairto (allegit fetter⁴ of the said Tak) eftir his deceife : And of periureing him self, in maner fet down in his Dittay.

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

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

³ A Lease for nineteen years.

² Smothering ;

who set it in Lease.

⁴ The landlord or proprietor of the ground,

liament, aucht to be remandit fra this Judicatorie to the Justice of England, at the leist, to the Bischope of Dureham, within quhais diocie he duelt, the pannell being ane Ecclesiasticall persone, servand at the Kirk of Tuedmouth: And last, he appaillis to his Maiesteis mercie and clemencie; and offeris him self in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, with the fals Tak, quhilk is fund to be fals and ffezeit befor the Lordis of Sessioun, and in respect thairof ordainit to be cancellat and distroyit: And anfueraud to the allegeances maid be the pannell, sayis, that nochtwithstanding thairof, he aucht to be put to ane Assyse, in respect the Act of Parliament allegit, is only in faouris of sic persones as duellis in England, and being citet for slauchter, thift, burning of houffis, and vtheris crymes, perticulerlie expressit thairin, quhairof the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfoir; and the pannell, cuming willinglie to this cuntrie to beir witnessing in ane matter betuix tua Scottis persones, was nawayis fugitiue: And as to the privilege of his professioun, that he is ane Ecclesiasticall persone, sayis that the samyn aggrages his offence: And thairfoir, fould be justlie puneist for the ffalset and Periurie confessit be him and contenit in his Dittay.

THE JUSTICE, nochtwithstanding of the pannellis allegeances, Remittis him to the tryell of ane Assyse.

ASSISA.

Ednard Johnnestoun, Proveist of Annon, James Douglas, bailje of Dalkeith,
Johnne Ramsay, mercheand burges of Ed^r, James Nafmyth of Poss^o.¹

VERDICT. The Assise, all in ane voce, be the declaratioun of Eduard Johnnestoun, chancellor, fand the said Mr Johnne to be fylet, culpable, and convict of the forgering and fformeing of the said fals Tak; and of couinterfuteing of the said vmq^o Johnne Nisbetis subscriptioun thairto, estir he was deid; and Periureing of him self, in maner speifeit in his Dittay.—SENTENCE. To be tane to the mercat croce of Ed^r, and thair vppone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be escheit, &c.

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

Jan. 9, 1618.—THOMAS MELDRUM of Idene,² Walter Grant, his servand, James Grant in Tulliebo, his brother, and Johnue Roifs, also his seruand.

Dilaitit of Vsurpation of our souerane lordis autoritie, in cuming, vnder silence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

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

² See Nov. 20, 1618, &c.

. . . ., and thair, be way of Hamefucken, clymmyng the walls thairof, turring¹ he ruif of the chalmer quhair he lay bedfast, nocht weil convalessit of ane fever quhairwith he was afflictit and viffeit, be the space of tuentie foure oulkis ofbefoir: And for taking of him furth thairof, and cayreing him as ane captiue and priffoner to the place of Idene, quhair he was detenit in privat and frait priffone, be the space of foure dayis and foure nychtis; vргеing him, all that tyme, to discharge certane actiones quhilk he had depending aganis the said Thomas: And for the haill remanent crymes contenit in the Letteris: Committit vpon the aucht of Majj, 1612 yeiris.

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

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

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

(Jan. 16.)—Continued, by Warrant of the Secret Counfell, to the xxj instant.

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

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

Slaughter—Convocation of the Lieges, &c.

Jan. 14.—WILLIAME JOHNNSTOUN, callit of *Lokarbie*; Archbald J., his brother; Mungo and Hercules J., sones to the said Williame; Williame J., sone to vmq^{le} George J., in Lokarbie; Williame J., in Grenesyde; Thomas Harknes, in Lokarbie; Johnne Chalmer, thair; Andro Chalmer, thair; Johnne Johnnestoun, sone to David J., in Cleuchheid; Williame J., in Auldwallis; Patrik J. of Mynebank, his brother; Johnne J., in Turmour, callit of *Lokarbie*; Andro J., his sone; Archy Halyday, in Turmour; Andro Chalmer, thair; Johnne Bell, in Lokarbie; Francis Bell, thair; James Kennydie, in Bektoun; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Johnnestoun, in Kirktoune; committit with convocation of our fouerane lordis leigis, vpon the

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

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

PERSEWARIS, Agnes Johnneſtoun, the relict, Sir Williame Oliphant of Newtown, kny^t.

PRELOCUTORIS in defence.

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

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

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

PERSEWAR, Andro Johnneſtoun, as ſone.

PRELOCUTOR in perſute, Sir Robert Gordoun of Lochinvar, kny^t.²

(Mar. 27.)—It is declairit be the pannell, befoir thair cum to thair allegeance, be way of information to the Juſtice, that it wald pleis his Lordſchip vnderſtand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebiſchope of Glegow for the tyme, haifing ane cair to haif the hail Kirkis within his dyocie³ ſufficientlie plantit ; and eftir vizitation, cuming to the Kirk of Dryſdail, quhair it was fund be him that the watter of Dryfe ran fa violentlie, eftir ane ſpeat,⁴ throw the hail kirk yaird and landis adjacent thairto, that the Kirk it ſelf was liklie to becum ruinous and decay, except the courſe of the ſaid watter had bene divertit and drawin ane vther way thairfra : For remeid quhair of it was aggreit, with conſent of the hail gentilmen of the parochin, that the ſaid watter ſould be divertit ane vther way ; and accourding thairto, it was appointit, that vpon the ſaid xxv day of Apryle, the ſaid Williame Johnneſtoun, with aſſiſtance of the parochin, ſould cum, with ſpaidis and ſchuiles, to mak ane watter-gang : In the doing quhair of, the ſaid vni^q^e James Johnneſtoun, with his ſones, come bodin in feir of weir, and maid interruption to the perſones foirſaidis that war caſting the ſaid watter-gang, and invaidit and perſewit dyuerſe of the perſones that war working, for thair ſlauchter ; be occaſioun of the quhilk

¹ Breast.

² These in addition to the persons abovenamed.

³ Diocese.

Flood

perfute and invasioun ane straik was gevin to the said vmq^{le} James vpon the heid with ane spaid or schule, be quhat persone the pannell knawis nocht: Eftir the quhilk straik he convalescit, and was at tua feuerall Justice-Courtis in Jedburgh; was also at the Parliament in Ed^r; raid in dyuerse pairtis of the cuntrie, and within England; and thaireftir, fell feik of ane fever, quahairof he deceissit; as is noutour to the haill cuntrie.

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

It is allegit be the perfewaris, as to the Relaxatioun and allegiance maid thairupoun, that the said Relaxatioun is lauchfull and sufficient in the selff; becaus the samyn is purchest be the said vmq^{le} James, and he lauchfullie relaxt, be vertew thairof, lang befor his daithe.—The pannell repeittis thair former answur.

¹ Premised.

² On margin, ' 1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnstoun, producer thairof.'

³ Pleaded; urged as a plea.

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

THE JUSTICE continewis Interlocutour, vpon the allegeances foirfaidis, to Wednissday nixt. The Assyfe wairnit *apud Acta*, ilk perfone vnder the pane of ij^s merkis. Williame Douglas, younger of Caschogill, become fouertie for the entrie of the haill perfones on pannell, &c.

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

Inbading—Hurting and Wounding—Slaughter.

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

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

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

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

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

Slaughter.

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

Dilaittit of air and pairt of the Slaughter of vmq^{le} Cristopher Wigholme,¹ burges of Sanquhar; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as sone; Sir Williame Oliphant, knycht.

PRELOCUTORIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocattis.

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

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

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

¹ This name is now written *Wigham*, and *Whigam*.

Slaughter.

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

Dilaittit of the crewall Slauchter of vinq^{le} Daud Graham, sone to vinq^{le} James Grahame of Leuchland ; committit vpone the xxix day of Apryle, 1616 yeiris, vpone the Hauche of Infche, neir to the Mekill-mylne of Brechin, be streking him throw the body with ane rapper-fuord ; quhairof, within sex or fevin dayis thaireftir, he deceiffit.

PERSEWER, James Grahame, as brother to the defunct ; James Keith of Harviestoun, brother-in-law ; Sir Robert Grahame of Morphie, neir kinfman ; Sir Williame Oliphant of Newtown, kny^t.

PRELOCUTOR in defence, Mr George Symmer.

The pannell, being accuset be Dittay, of the slauchter of the said vinq^{le} Daud Grahame, denyis the samyn, with the hail circumstfances set down in the Dittay, concerning the said slauchter.

ASSISA.

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

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

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

Intercommuning with the Clan-Gregor.

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

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

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

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

Slaughter at a Funeral.

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

Dilaitit of airt and pairt of the Slauchter of vni^q Frances Johnneftoune, brother-germane to Williame Johnneftoune of Lockerbie; committit vpon the xxj day of Apryle laft, at the Buriall of Thomas Johnneftoun, zounger of Fingland, befide the Kirk of Twnergathe, and zaird thairof.

PERSEWARIS, Williame Johnneftoune of Locherbie, brother; Sir Williame Oliphant, kny^t.

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

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

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

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

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

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

Slaughter at a Funeral.

Jun. 10.—JAMES JOHNNSTOUN of Waftraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, spous to the said Williame ('*pass fra'*), and others.¹

Dilaitit of airt and pairt of the Slauchter of vniq^{le} Andro Johnnstoun, sone to Johne Johnnstoun of Twnergathe; and Slauchter of vniq^{le} Johne J., brothergermane to Andro J. of Kirktown; committit the xxj day of Apryle last, within the Kirk-zaird of Tounergathe, at the Buriall of Thomas Johnnstoun, zounger of Fingland.

PERSEWARIS.

Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord; Johne Johnnstoun of Twnergathe, as father to the said vniq^{le} Andro; Johnnstoun of Kirktown, as brother to the said vniq^{le} Johne.

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

Rape—Forcing and shamefully Abusing, &c.

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

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

Dilaitit of the Foirceing and schamefull abufeing of Jonet Crambie, dochter to vmq^{le} George Crambie, burges of Bruntieland, and Jonet Broune, hir mother; committit within the dwelling-houfe of Alexander Anderfone in Bruntieland, vpon the xxvj day of Marche laft.

PERSEWARIS.

Jonet Brown, as mother to the said Jonet Crambie; Sir Williame Oliphant of Newtown, kny^t. PRELOCOUTOURIS in defence, Mr Thomas Nicolfoun, Mr Vmphra Blindfchell, Mr Johnne Ruffell.

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

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

THE JUSTICE Ordanis the pannell to find caution for thair compeirance the thrid day of the nixt Justice-air of the scherefdome quhairin thai duell,¹ or foner, vpon xv dayis wairning, to vnderly the law for the samyn, vnder the pane of I^m merkis for ilk ane of thame.—Mr Johnne Elphinstoun, indueller in Leith, become fouertie for the said Andro, vnder the pane of I^m merkis. Andro Watfone, bailzie and burges of Bruntieland, become fouertie for the said Mr David, vnder the said pane.

Slaughter.

Jun. 20.—JAMES STEWART, sone to vmq^{le} Johnne Stewart of Kilpatrick.

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

¹ Forfar and Edinburgh.

Arrane, in the moneth of Majj laft, come bodin in feir of weir,¹ with ane fuord and vther wappones, *inuafue*, to the faidis Landis of Belliemichell, of purpois to haif darnet² himfelf in the brome,³ neir to the faid Androis hous, thair to haif murthouret him: In his cuming to the quhilk brome, being efpit be ane . . . Jerveife, fervand to the faid Andro, quha was addreffing him felf in to the faid Androis hous, to geve him adverteifment of the faid James being thair; the faid James followit the faid . . . Jerveife, and befoir he could cum to his maifteris hous, ouertuik him, and with ane fuord ftrak him in the bellie, and flew him thairwith.

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

VERDICT. The Affyfe, be the mouth of Mr Donald Campbell, chancellor, all in ane voce, in refpect of the faid James Judiciall Confeffion, fland and declairit the faid James to be ffylet, culpable, and convict of the Slauchter of the faid vmq⁶ . . . Jerveis.—SENTENCE. To be tane to the Caftle-hill of Edinburge, and thair his heid to be ftrukin frome his body; and his haill guidis and geir to be efcheit, &c.

Theft.

Jul. 2.—GILBERT ELLOTE, callit *Gib the Galzart*.⁴

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

The pannell declairit that he nawayis ftaw⁵ the purfe, in maner fpecificeit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryfeing in the moirning, fand the purfe vpone the flure of the chalmer; quhilk he retenit, and fpendit of the money that was thairin ten merkis allanerlie,⁶ in recompance to the faiffer;⁷ and reftoirit the faid purfe, with the reft of the money

¹ Furnished in warlike manner.

² Concealed; hidden.

³ Broom; *planta genista*.

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

⁶ Only.

⁷ Salvage money, and for restoring what was lost.

⁵ Stole.

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

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

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

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

Murder.

Jul. 8.—JOHNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Castelhill; Raulff Dalzell at the mylne of Durisdeir, James Barbour in Colymme, Hectour M^cQuhynzie in Thornehill, Jonet M^cRone, spous to Johnne Williamfoun in Dufdeir, Johnne Williamfoun hir spous for his intreis, Marioun M^cRone, sifter to the said Jonet.

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

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny^t.

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

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

¹ The remainder are merchants and burgesses of Edinburgh.

Castelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Cafchogill for the entrie of Hectour M^cQuhynzjie.

Slaughter—Demembration.

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

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

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq¹⁶ *Dauid Toscheoche*, 3ounger of *Monyvaird*; and Demembring of *Dauid Malloche*, his seruand, of his richt hand; committit within the burgh of Perth, vpone the xxiiij day of Junij laft.³

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

Slaughter—Demembration.

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

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

Eduard Toscheoche, elder of Monyvaird, as ffather o vmq¹⁶ *Dauid Toscheoche*, 3ounger of Monyvaird, produced the Letters deulie execute and indorfate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhair of the saidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

¹ Orig. MS. Adv. Library.

² Orig. MS. preserved in Adv. Library.

³ See Dec. 4,

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

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

Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vni^q George Robertfone, seruant for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be streking him in the bellie with ane knyfe, quhairof he deceift.

PERSEWAR.

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

PRELOCUTORIS in defence.

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

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

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

The pannell, for obedience of the Justice ordinance, ffand Jonne Leslie, ffear of Balquhane, cautioner for his compeirance befoir the Justice or his deputis, the saidis day and place.—The said Alexander Hervie being suorne, maid fayth that he dred¹ bodelie harme of Alexander Soure (Sovre), insafar as he had affirmet, in prefens of dyuerse famous² perfonas, that ‘ gif he gat nocht his intent befoir the Justice, that he fould wair³ his mother fone vpone him also !’ And thair-

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

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

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

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

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

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

Stealing of a Purse.

Jul. 30.—JOHNNE BROUNE.

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

VERDICT. Convict of the steilling of the said purse.—SENTENCE. To be Scurget throw the burgh of Edinburgh, and Brunt² vpon the cheik: And to be Banisheit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland; nevir to be fund agane within the samyn, vnder the pane of deid, but³ faour.

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

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

¹ Juratory caution.

² Burnt; branded.

³ Without.

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

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

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of 'the British Solomon.' *Sir James Balfour*⁵ gives the following account of this extraordinary tragedy. "THE 20 of August, this zeire, Mr Thomas Rosse, a brother of the Houffe of *Cragie*, in *Perthshire*, was sentenced by the Justice-Generall to losse his head,⁶ at the Crosse of *Edinbrughe*; and thereafter, the same head to be affixed one the jayle—for proposinge certane villanous and opprobrious Theses, in defamations of his auen natue countrey and countreyemen, and affixing them on a Church-dore, in *Oxford*, before *fermon*, one a Tuesday; offering them to be publickly dispute, and himselue (miserable wretche!) to defend them. This sentence was put in executione within 2 dayes thereafter."⁷—Another authority⁸ narrates the proceeding thus. "MR THOMAS ROSS, Minister at *Cargill*, having been convicted by an Affize, at *Edinburgh*, of writing, at *Oxford*, in *England*, against the Scots Nation, was executed at *Edinburgh*.⁹ His right hand was first stricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the Houffe of *Craigie*, being a son of *John Ross*, Laird of *Craigie*, and went to Court. He wrote very unnaturally, and whereof he was not wife, against the Scots Nation. He was conveyed to Scotland in a ship. Mr Thomas Ross was insane, and his infirmity was pled in his defence. He affixed to the door of *St Mary's Church*, in *Oxford*, a Latin Thesis, in which were ten propositions; wherein he attempted to prove, that the English ought not to allow so many of the Scots to remain among them. The King was ridiculously incensed, and instead of confining him, as one in his condition needed to be, he sent him to Scotland, along with strict orders that he should suffer death."

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

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

¹ See Vol. I. 385.

² *Ibid.* II. 332.

³ *Ibid.* II. 349.

⁴ *Ibid.* III. 359.

⁵ *Olliphant of Newton*.

⁶ *Annales*, MS. Adv. Library.—and II. 70, *Edin.* 1824.

⁷ "In September 1618,

Mr Thomas Ros, sone to the Lard of *Craigie*, wes, for vreying, at *Oxford*, in *England*, aganis the Scottis nation, being send to Scotland be ship, convict be ane Assyse, his richt hand first stricken aff, thairetir beheadit."—MS. Adv. Library.

⁸ An obvious oversight of *Sir James Balfour*, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King's Warrant had been received. ⁹ *The Rev. James Scott's* transcript of the *Diary or Chronicle of John Mercer*, who was appointed Town-Clerk of *Perth*, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. The Editor has the pleasure of notifying, that this interesting *Diary* is preparing for publication by his friend *James Maidment, Esquire*, as his contribution to the *MAITLAND CLUB*, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scottish affairs.

¹⁰ "2 Sep. 1618. MR THOMAS ROSS, Minister at *Cargill*, went to Court; and thair, for soun infamous writings, and railing aganis the Scottis Nation, werie onnaturallie, being on of the sones of the Huns of *Craigie*; quhairof he wes not wyse. He wes headit in *Edinbrughe*, quaharterit, and putt wpon the Ports."—*Fleming's (Mercer's) Chron.* MS. Adv. Library.

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

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

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

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

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

¹ It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scotch Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a *Thesis*, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the *outer-door* of that Hall. It intimates that a public disputation, “*Disputatio Juridica*,” is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the *Thesis* is thus notified. Originally, the candidate had stoutly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is “elegantly understood”—as no disputation whatever takes place, excepting that which is apt to arise with the printer and book-binder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty. ² *Church History*, Adv. Library, MS. ad ann. 1612.

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

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

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

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

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

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

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

¹ A copy is in the valuable Collection of David Laing, Esquire. ² Probably the author of the 'History of the Valiant Bruce,' in heroic verse. Dort, 1615; quarto. ³ See Decree of Lords of Privy Council, in *Charter-room of the City of Edinburgh*. ⁴ Prefatory Notice, xii. The two preceding 'Books' bear date, 1827, and 1828.

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

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

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

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

Aug. 20.—MR THOMAS ROISE, sone to vmq^{le} Johnne Roise of Craigie.

Dilaitit of the devillische and detestable sforgeing, fenszeing, blasphemous vuttering, and by writ publictly expofeing, of ane villaneous, infamous, and devillische Writt, all writtin with his awin hand, concerninge ane PASQUEILL or THESE; togidder with ten feuerall abhominable ARTICLES or APPENDICES, confirminge the samyn—that all SCOTTISMEN aucht to be schote⁶ furth of THE COURT OF ENGLAND, excepting his gracios MAJESTIE, his sone, and ane verrie few vtheris, and that the ENGLISCHMEN ar nichtillie blindet, fylet, and disflaet,

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

⁶ Ejected; thrust out by violence.

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

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

DITTAY against Mr Thomas Roife.

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

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

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

fforget, maid, and writtin innumerable leafingis, ffalfe, fklanderous, and vntrew fpeiches and wrytingis, quhilk mycht haif ingenderit difcoird betuix his Maieftie and his guid fubiectis; to the difdane, reproche, and contempt of his Maieftie and his noble progenitouris and thair proceedingis, and of your natiue countrie, nocht worthie to haif the name of ane borne fubiect thairin; and thairby, hes medlit with his hienes effairis, eftait, and gouvernement, maift ffallie, barbaruffie, and vnnaturalle; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring defervetlie the panes and pwneifchment aboute written, mentionet thairintill; quhilk aucht and fould, in maift exemplarie maner, be inflictit vpon yow, with all rigour; to the terrour and example of vtheris to attempt the lyk. Quhilk is mair nor nottour, and ye can nocht deny.

MY LORD ADUOCAT producet the faid Mr Thomas Roifs Dittay, togidder with ane directioun of the Counfell, vnder forme of Act, Ordaning him to perfew the faid Mr Thomas for the crymes thairin contenit.

The faid Mr Thomas, eftir reiding of the Dittay, and his accufatioun of the crymes mentionat thairintill, acknowleges and confefles the famyn crymes to be of veritie; declairing that THE THESIS producet war writtin be him furth of ane mad and diftemperat humour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maieftie, and haill cuntrie people¹ pardoun for that his offence: And offeris him felf in his Maiefteis will, being a gracious Prince, quhais Royall difpofitioun, in all his proceedingis, hes ever inclynet rather to mercie, quhilk is the richt hand of God, nor² to the rigour of Juftice, quhilk is his left hand: Defyreing thairfoir, in all humilitie, my lord Juftice and Lordis of his Maiefteis Counfall prefent,³ to interceid at his Maiefteis handis, for faouour in his behalff.

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

THE JUSTICE findis the Dittay relevant, and Ordanis the famyn to be put to the knawlege of ane Affyfe of the perfones fummoud to that effect.

ASSISA.

James Somerwell of Spittell,	Johnne Levinftoun of Hayneing,	James Hoppringile of Heriote
James Levingftoun of Jerifwoid,	Robert Johnnftoun of Wamfray,	mylne,
Patrik Hunter of Hiltarvet,	Ja ^s Douglas, portioner of Lugtoun,	Robert Phillope, Schereff-clerk
Johnne Achiefoun, portioner of	Eduard Johnneftoun, elder, bur-	of Dumfreis,
Inuerefk,	ges of Edinburgh,	Mr James Ord,
George Redik, Shereff-depute of	Johnne Ker, portioner of Duding-	George Carnebie, burges of Ed ^r ,
Kirkcudbrycht,	ftoune,	Hew Rois of Balnamukie.

Eftir fweiring of the Affyfe, the faid Mr Thomas of new agane, in thair

¹ Countrymen.

² Than.

³ Sitting as Assessors. Their names are not recorded.

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

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

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

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

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

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to ward, and to be kept in irnes, quhill his Maieftie by acquetit with his convictioun, and quhat exemplarie pwneischment fall be execute vpon him for his offence.

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

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

Utilitation.

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

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

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and convicted of the haynous crymes conteaned in his diuelish Pasquil, produced for verification of his guiltines, to the Assyse. The Dome is delaied till your MA^{TIE} be pleased to signifie your royall determination in it.

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

Your MAIESTIES Adnoeat has wyselic considered, that the infame of his Dittay meritis not to be insert in the Register of the Adionnall. Always I haue sent to James Douglas the copie of the proces, that when your MA^{TIE} desyres to sie it, he may haue it reddie, and may conceale it from all vthers. So expecting the signification of your MAIESTIES farder pleafour, anent this vnaturall and furious soole, I besekik God long to preserue your MAIESTIE in perfection of all honour, happines, and contentment.

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

ED^S, 22 Aug. (1613.)

TO THE KINGIS most sacred MAIESTIE.

BINNING.

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

PERSEWARIS, Adame Dagleifche, Sir Williame Oliphant, knyt.

PRELOCUTOR in defence, Mr Thomas Nicolfone, Aduocat.

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

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

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

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

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

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

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

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

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

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

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

ASSISA.

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

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

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

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

¹ The rest of the Assise were persons of no note.

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

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

(Jan. 13, 1619.)—THE JUSTICE, of consent of Adame Dalgleifeche, perfewer, continewis the pronouncing of Dome, to the tent day of Februar nixtocum.

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

Slaughter.

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

Dilaitit of airt and pairt of the Slauchter of viii^{le} James Hammiltoun in Brigbrae; committit at ane Oifler-hous, callit the Woman-hill, in the moneth of . . . , 1617.

PERSEWAR, Robert Hammiltoun, as brother.

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

[*Mr Alexander Coluile.*]

Cutting and Carrying away of Growing Timber.

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

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

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

Slaughter.

Nov. 18.—JAMES MYDDILTOUN, fone to Robert Myddiltoun, tailgeour, burges of Edinburghe.¹

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

¹ See Aug. 26, 1612, where the whole particulars of the Trial are inserted.

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

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, your seruitour, *James Mydiltoun*, sone lauchfull to vmq^{le} Robert Mydiltoun, tailzeour burges of Edr, That quhair, vpon occasioun of that vnhappy accident of the slaughter of vmq^{le} *Clement Mauchane*, committit be me, I was takin, presentit to justice, and convict for þe fame, and the dome of death was pronuncet aganis me accordingle thairfoir: And þe partie, from tyme to tyme, thir fex 3eiris bygane, haifing gevin eir to the offeris of Affythement,¹ quihilkis war by me and my freindis maid and offerit vnto thame; in end, by submissioun of þe matter vnto your lordschipis Sentence and Decreit, as gevin and pronuncet pairintill, quhairby I am decernit to be BANISCHET þe realmes of Scotland and Ingland, and ordanit never to returne agane within the fame, without Licence and consent of Sir Johnne Cokburne of Ormestoun, kny^t, Justice clerk, and Mr James Mauchane, brother to the said vmq^{le} Clement Mauchane, fril had and obtenit pairto, vnder the pane of deid, to be execute vpon me without faour; conforme to þe Sentence and dome alreddie gevin and pronuncet aganis me in þis matter. According quhairvnto, I am maift willing to act my self in þe buikis of Adiornall; In consideratioun quhairof, I humbly besek your lordschip to geve Warrant and command, heirby, to the Justice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirsaid, vnder þe pane aboue writtin: Quhairanent þir presentis fall be vnto þe Justice clerk and his deputis ane Warrant sufficient: And your lordschipis answere.

APUD ED^a, xvij Nouembris, 1618, THE LORDIS Ordanis the Justice, Justice clerk, and his deputis, to appoint and set a Justice Court, and to tak þis supplicant actit in þe buikis of Adiornall, that he fall depart furth of the realmes of Scotland and Ingland, within þe space of ane moneth eftir þe dait heirof; and returne (nocht) agane within þis realme, vnder the pane of deid: And he haifing actit him self, as said is, Ordanis þe said Justice to caus put him to libertie: And Ordanis this supplicant, that, during the tyme of his remaning within þis cuntrie, he hant² nocht Kirk nor mercat, and that he weir nocht a sword.

AL. CANCELL^o. SANCTANDROIS. LAUDERDAILL. CARNAGY. J. PRYMROIS.

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

¹ A compensation or *solatium*, by way of fine, paid to the relations of the murdered party.
² Haut; frequent.

³ Coiner; Master of the Mint. This officer (George Foulis of Ravelston) was the son-in-law and successor of GEORGE BANNATYNE, the far-famed Compiler of the greatest body of Ancient Scottish Poetry now extant; in honour of whom the Literary Association, termed THE BANNATYNE CLUB, assumed his name.

⁴ As above narrated.

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

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

Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Gordoun of Bairn-army; committit within the duelling hous of Andro M'Dowell, mercheand in Monygoft, in the moneth of September laft.

PERSEWAR, Alexander Gordoun of Barnernie, eldest fone.

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

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

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

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

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and priffoner, furth of his duelling houfe of Ordley, vpon the viij day of Maij, 1612 yeiris, vnder nycht; cayreit him to the said Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the fpace of foure dayis and foure nychtis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the fpace of tua dayis and tua nychtis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watfone, quhairin he was detenit, *in privato carcere*, as ane priffoner, the fpace of xxiiij houris: Vfurpeand thairby his Maiefteis authoritie vpon thame, in taking and detening of the said Johnne, *in privato carcere*, but² Commiffioun or authoritie, be the fpaces foirfaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny^t.

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

¹ See Jan. 9, 1618.

² Without.

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

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the samyn,) that thai did na wrang in taking and detening of the said Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for instructing thair of: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be perfewit for his taking.—It is anfuert be my lord Aduocat, as perfewer, that the exception aucht to be repellit; *ffirst*, becaus he infistis vpon the hailly lybell *coniunctim*, as ane cryme to infer the conclusioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the first anfuert, geveand¹ the said Johnne had bene rebell, the pannell had na Warrant to tak or apprehend him, thay nor nane of thame being Magistrattis, haifand na Jurisdiction, power, nor commissioun; feing the pannell could nevir haif bene accuset for suffering a rebell to pas vp and down the cuntrie, nather warthay astrictit of the Law² to tak him, nather mycht thay tak him.

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

¹ Giving or granting, for the sake of argument.

² Bound by law.

ane fugitiue and ane howlat,¹ nocht appeirand in the day; and it being cum to the pannellis knowlege, the tyme lybellit, that he was cum, vnder silence of nycht, and enterit within the houffis, the pannell, vpon suddantie, being adverteit by the spys, nocht haifing the occasioun² of ane melfinger, was forcet of necessitie, *propter periculum fuge*, to pas him self, with his awin domestik servendis, and to fease vpon the said Johnne, of intentioun to exhibeit him to Justice, he being his Maiesteis rebell for causses Criminall, sic as for invading the *Guidman of Harthill, &c.*, as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the said Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to justice; and in the meane tyme, he being feastit vpon and put in waird, at the instance of dyuerse perfones, baith for dett, ryottis, and oppreffiones. Quhairvpon the pannell meant him self³ to the Lordis of Secreit Counsell; quha, be thair Warrant and directioun, vpon the xxj of Maij, 1612, Ordanit the said caution for observeing his Maiesteis peace, and his personall compeirance, quhan euir he sould be chargit thairto, vnder the pane of V^m (5000) merkis, as the Ordinance, heirwith productet, beiris. Sua that the pannell, being *in prosecutione proprie injurie*, for freithing⁴ him self and his tennentis of ane manifest oppreffour, *et quum latitabat tanquam fugitivus*, as said is, he was *in optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cuilibet ex populo*, to tak ane notorious malefactour, and to exhibeit him to justice; and his detentioun is nocht *culpa*, becaus he was presentit to justice.

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

¹ Owl. Such persons were likewise often termed *night-hawks*.

³ Made suit; complained.

⁴ Freeing; ridding.

² Opportunity; convenience.

and his bairnis, is na Criminall Hoirning, becaufe it proceidis frome ane perfute agitat afoir the Counfell; and ffordre, to purge that Hoirning, he was relaxt thairfra, lang ofbefoir, viz. in *anno* 1609. As to the Letteris of Captioun productet, na respect fould be had thairto, becaus thair is an executioun productet, quhairpoun I tak instrumentis, defyreing the hail blankis thairintill to be fcoirit; and allegis, that na respect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurret with him in the taking of the faid Johnne Meldrum: Lyk as, na respect aucht to be had to the faidis Letteris of Captioun, becaus thair is na executioun productet. As to the Warrant of the Secret Counfell, productet, the perfewar acceptis the famyn, and alledges that this Warrant, gevin vpon the xxj of Maij, 1612, could be na Warrant to the perfones on pannell, nor nane of thame, to haif tane him vpon the aucht day of Maij preceeding, and to haif keipit him *in privatis carceribus* to the faid xxj day, *quum carcer est meri imperij, et non competit privato*; and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour¹ the fpace of xxiiij houris. Sua, infiftand vpon the hail lybell coniunctlie, as is confaet, the hail argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis productet, and allegeances foundit vpon the rebellioun of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirfaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer est meri imperij; ffirfi*, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to present him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laitle allegit, *quod ait Pretor, Si debitorum ff. Digest. que in fraudem creditorum*: And thairfoir, feing the defender tuik the perfewar, being ane rebell, and detenit him quhill² he brocht him to the fait of Justice, and thair presentit him, thair can be na vfurpatioun of the Kingis authoritie: And as for the fpace of detentioun, it may be langer or fchorter, accoirding to the diftance of the place; as is cleir in Julius Clarus, L. quinta § finali, *fi captus, et aliquis potest illum detinere, et captum Judici presentare, etiam post septem dies*. And the fame Clarus schawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem septem dies detinuit, &c. sed cum compertum fuerit, quod Judici et officialis obtulerit, absolutus fuerit*.—*Secundo*, it is nocht capitall, bot the grittest pane that is infictit is, *tot dies manere in carcere publico, quot illum in privato incluserit*: ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maiestatis*, yit it is mendit be the nixt Constitutioun immediatlie thair-efir following, quhilk appontis the pane foirfaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the confuetude of all Naciones; and gif *privati*

¹ More than; above.² Until

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

My lord Aduocat, anfuierand to the first part of the secund alleageance, fayis, that the perfewer is formallie contrair to the pannell, and that the lybell contenis ane sufficient Criminall caus, to put the pannell to the knowlege of ane Assyse: And quhair it is allegit, that the pannell brocht the perfewer and presentit him to ane Judge, defyres the pannell to condiscend vpon the name of the Judge to quhome he was presentit; ffor it is treuthe, that quhan he was brocht to Ed^r, he brocht him to the callay,¹ and than tuik instrumentis of his setting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of perfonis and keeping of thame in *privatis carceribus* is nocht capital, the direct contrair is of veritie; becaus the said cryme is nocht only capital, bot, be the rigour of the Law, is tressonable; as was decydit befor the Justice General aganis *the Erles of Huutlie* and *Crafurd*, ffor taking of *the Majster of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlanrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidiflaill*, and na Interlocutour was pronuncet in that cause, becaus the perfewer past fra the perfute thairof, *pro loco et tempore*. In respect quhairof, the lybell standis relevant; and, nochtwithstanding of the saidis alleageances maid be the pannell in the contrair, fould be put to the knowlege of ane Assyse.

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

Slaughter—Horse-stealing.

Nov. 20.—JOHNE MELDRUM of Ordley.

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

PERSEWARIS, Alexander Bythe, as spous; Thomas Meldrum of Idene; Sir William Oliphant, kny^t.
PRELOCUTOUR in defence, Mr Vmphra Blindfchellis, (Advocate.)

¹ Causeway; the paved public streets within the gates.

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

Slaughter—Demembration.

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

Dilaitit of airt and pairt of the Slaughter of vmq^e Dauid Toscheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Dauid Malloche, his ferwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij last, within the burgh of Perth.¹

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

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

PERSEWAR, Dauid Malloche, sumtyme fervand to vmq^e Dauid Toscheoche.

(Feb. 25, 1620.)—THE persewar declaris, that at the tyme of the raising of the Letteris aganis the pannell, informatioun was gevin to him that the said W^m Stewart was in companie with Laurence Bruce of Cultmalundie, Alexander Flemyng of Moness, Alexander Bruce, and remanent perfones thair complices, at the away-streking of his hand; bot fenfyne, he hes tryit² that he is altogidder innocent thairof, nather was he vpon the grund at the committing of that fact: In respect quhairof, he passis *simpliciter* fra the said Williame his perfute.

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

Slaughter.

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

PERSEWARIS, Thomas Symfoun at the Waft-poirt of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtown, kny^t.

¹ See this Collection, Jul. 29, 1618, and Nov. 17, 1619.

² Proved; ascertained.

The pannell takis instrumentis of his entrie, and offerris him selff to the tryell of the Law for the said allegit cryme; affirmeing him selff to be altogidder innocent thairof; and difassentis to all forder continuatioun, in respect that, to the keiping of that dyet, and cleiring of his innocencie of the allegit Slauchter about writtin, being out of the cuntrie this threthene moneth bygane, he being maid foirsene¹ thairof, be Letteris direct to him, and ressaute be him in *Spayne*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haifing na vther errand to returne hame bot to cleir him selff of sic ane haynous imputatioun; quhairof he is innocent.

INTERLOCUTOR. The Justice continewis this matter, and all tryell to be tane thairtill, to the thrid day of the air (Renfrew), or soner, vpon xv dayis warning; and Ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contentin in the Actis of Parliament: Dischargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be resident within the cuntrie for the tyme, nocht vpon the poynt of his voyadge; nather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpon the poynt of his voyadge, for his compeirance vpon a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun² to his voyadge furth of the cuntrie the tyme of the geving of the charge, respect and consideratioun fall be had to the said alleigance, the samyn being lauchfullie verifeit and provin to be of veritie: And last, the Justice Discharges the hail perones fummoned vpon this Assyse fra all compeirance herein in tyme cuming, in respect this is the secund dyet keptit be thame, and nathing is done thairtill, &c.

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

Slaughter.

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

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Tailzeour, his prenteis, be throwing ane four-futtit stule at his breist and heart, and geving him ane deidlie fraik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhairof he deceift, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horse-litter, in grit dollour and payne, quhair he deceiffit of the said deidlie hurt.

PERSEWARIS, Johnne Tailzeour, mafone burges of Elgyn, as father; Sir W. Oliphant of Newtown, kny^t

PRELOCUTOR in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Assyse; becaus it is cleir, be the Dittay, that eftir the allegit fraik gevin to the defunct with the stule lybellit, he travellit the space of fourcoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhairof he deceift.—It is anfuertit be my lord Aduocat, that the alleigance aucht to be repellit, in respect of the Dittay beiring the defunct to haif ressaute ane deidlie fraik, quhilk was the cause of his daithe.

¹ Acquainted.

² Prepared; furnished; equipped.

THE JUSTICE findis the Dittay relevant ; and Ordanis the samyn to be tryit be ane Affyse.

The Aduocat takis instrumentis of the fueiring of the Affyse ; and thaireftir declairit, that feing they ar all induelleris in Dundie, to quhome the treuth of this matter was best knawin ; and that the defunct reffaut ane deidlie fraik, quhairof he deceift, protestis for Wilfull Errour, gif thay acquit.—The pannell protestit in the contrair, affirmeing that the Defunct past hail and feir¹ furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpon fute.

VERDICT. The Affyse, be the repoirt and declaratioun of Robert Moreife, merchand in Dundie, chancellor, fand, pronuncet, and declairit, all in ane voce, the said Andro Wast to be Clene, innocent, and acquit of the said crewall Slauchter.

Slaughter—Proof in exculpation, by Witnesses, refused.

Jan. 15.—JAMES SCRYMGEOUR in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq¹ Johnne Eduard in Acharne, be streking him ane deidlie fraik in the heid, in September 1617 ; quhairof he deceiftit in Januar thaireftir.

PERSEWARIS, Johnne Eduard, as sone ; David Eduard, as brother ; Sir W. Oliphant, kny^t.

PRELOQUITOURIS for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocoutouris, that the Dittay is nawayis relevant to pas to ane Affyse, nather in the distinct memberis nor *conjunctim* ; nather can ony Homicid be tryit or pwneift, except the samyn proceed vpon ffoirthocht ffellony. As to that member of the Dittay, beiring the defunct to haif bene best and dung with ane rung,² *non relevat* to infer ane cryme. *Secundo*, as to that article thairof, quhair the pannell laket his heid with ane quhinger,³ (nocht granting the samyn,) it is na capitall cryme, bot ane ryote ; the tryell quhairof pertenis to the Counfell. *Tertio*, quhair it is allegit, that he was strukin to the grund, and hurt in his nobill pairtis, *non relevat*, vnles the persewar confidend quhat intrallis or noble pairtis was brokin. *Quarto*, as to that point of the lybell, quhilk is the chiefest member, beiring, that be occasioun of the hail fraikis preceding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat*, vnles he say *positiue*, that he deceift be thais fraikis ; *nam non dici potest prebere occasionem mortis, nisi sit causa mortis*.—It is anfuert be my lord Aduocat, that the allegiance foirsaid aucht to be repellit, in respect of the lybell beirand, that the defunct deceift of the fraikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant ; becaus the preceding qualificatioun can nocht be estemit *causam mortis*, except it war lybellit, that the defunct, immediatlie eftir the allegit fraikis, he

¹ Whole and sound, or hearty.

² Basted and violently struck with a cudgel or heavy staff.

³ Hacked or *notched* his head with a sort of hanger or short sword.

fell down in found¹ to the grund; or ellis, that be the straikis he contractit a deidlie disease and lay bedfast, atler immediatlie eftir the straikis to be the caus of a fupervenient difeis; ffor be the cownoun consent of all Laweris, *vulnus non dicitur causa mortis, quando a die vulneris vsque ad vigesimum primum diem nulla supervenit febris vulnerato*. Panormitanus, ad Cap. *presbiterium, extra de Homicidium*. In the quhilk place, Panormitan and all the Canonistis consentis, *quod hoc fit iudicium medicorum*; ffor if ony ffever had followit, gif he had convalesst thaireftir, the ffever falling out vpon the straik was na cause of deathe; *multo magis* in this caice, na fever following vpon the allegit straik gevin. In respect quahirof, the Dittay is nawayis relevant, *hoc autentio maxime*, that in the Dittay it is confest, that the persone slane was threscoir ten yeiris of age, sa that it was nocht possible to him to reffau deidlie woundis, and to leave in h ealth fa ang but² feiknes.

It is anfuert be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay beiring deidlie woundis, in maner qualifeit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyit be the pannell, that my lord Aduocattis reply is only in respect of the last member; and thairfoir the vther tua, as nocht relevant, fould be scoiret out of the Summondis.

My lord Aduocat declairis, he infistis vpon the Dittay *conjunctim*, as it is confauet.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johanne Eduard* deit of the allegit straikis, in respect of the lybell, quhilk beiris, that he levit be the space of foure monethis (albeit, *in rei veritate*, he levit quhill a thre dayis befoir Fastrenisevin,³ quhilk was the 18 of Februar): becaus *secundum sententiam omnium medicorum, nullus lethaliter vulneratus potest vivere ultra quadraginta dies*. Jul. Clarus ad § *Homicidium*, vbi subdit, *quod ita observat communis filius, et si vulneratus post illatum vulnus ambulaverit, non presumitur decessisse ex vulnere*. Lege vnica, Cod. de *Emendatione servorum*. Bartol. ad *Legem finalem, ff. scarijs*, particulo preterea extra de *Clerico percussore*. Pharmacius de *Homicidio*, Tit. 14, quest. 125, num. 46, vbi testatur de communi medicorum opinione, *Vulneratum qui ultra quadraginta dies vitum porrigit, non presumitur ex vulnere decessisse*. And be all thair consentis, gif the pairtie nocht onlie leave,⁴ bot also gif he leave in healthe, without feiknes, and walk vp and doun in healthe, as ane haill man, the space of thre dayis, it is accoordit, that the wound can nocht be the cause of daithe: And the grund⁵ of this is tane out of the law of Moyfes, Exod. cap. 21, ver. 21. Off the quhilkis it is subfumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

¹ In a swoon or fainting fit.

² To live, in health, so long without sickness.

³ Fasten's-eye;

the day before the commencement of Lent.

⁴ Live; survive.

⁵ Ground; warrant.

dayis, ffor he deit vpon the 16 or 17 of februar 1618 : During the quhilk tyme, he was nocht onlie frie of feiknes, nor nevir lay bedfast, except in the ordiner tyme of rest, in the nycht; bot also, he walkit vp and doun the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befor his deceis, at quhilk tyme he was tane with ane fever, quhairof baith he and his wyfe deceiffit.—Nather can the accuser, quhilk is the defunctis sone, be hard to allege in the contrair; becaus, at Martimes thaireftir, he forcet his father out of his awin hous; and the particuleris of this exceptioun the pannell offeris to prove be Witnesses, quha are summond be the Lordis delyuerance : Quhilkis Letteris, proceeding vpon the said delyuerance, thay produce, and defyres that the Witnesses may be callit and admittit thairupone. *Last*, the lybell can nocht be sustenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, nisi homicidium dolosum et deliberatum sive ex feloniam; aut culpofum vel casuale non puniuntur ad mortem*. And for proveing of this propofitioun, the pannell cites the third Parliament of King James the first, cap. 51, Quhair the Estaitis distinguisches betuix Slauchter of suddentie, and Slauchter of ffoirthocht ffellonie; and declairis ffellonie to be pwneist be death; bot the vther, that the pairtie skaithed fall follow, and the pairtie trespassand defend, according to the courfe of the auld Lawis of this cuntrie: And siclyk, in the 6 Parliament of King James the ffirst, cap. 95, quhilk contenis the same distinctioun, and closes this article, that gif it be ffoirthocht ffellonie, he fall die thairfoir. Vpon the quhilkis it is subfument, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpon ffoirthocht ffellonie; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maister to Findlay Ramfay and vmq^h Johnne Eduard, being baith his tennentis, *et sic dans operam rei licite*; in sa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin consent to haif done wrang in teilling and sawing¹ of ane peice of land pertening to the said Finlay Ramfay; and be the Act of Court, the officer was ordanit to pas the tyme of schering, and scheir and leid the coirnes, as sawin vpon Finlay Ramfayis grund; lyk as, the saidis coirnis war arreiftit be the officer, vpon the sext of Junij 1617; and thaireftir, in the tyme of scheiring, the said officer haifing past to the grundis, and schorne the coirnes, and being leiding the samyn away, the said Johnne Edward cam maift prouddie and contemptuouffie (his maister being vpon the grund), and defoirect the officer in his prefens; quhairupone the officer brak his wand:² Lyk as, the defunct being commandit be his maister to desift, he maift prouddie repynet contrair his Maiesteis lawis; and the pannell being present, haifing ane littill staff in his hand, strak the defunct thairwith vpon the heid, and did no forder; nochtwithstanding quhairof,

¹ Tilling or ploughing, and sowing. ² Broke his staff or wand of office, symbolical of his being *deforced*, as it was termed, i. e. violently and forcibly interrupted in the execution of his office.

the defunct prouddie cayreit away the coirnes to his awin zaird, walking foundlie vpon his feit, without ony appeirance of hurt. And for verifeing thair of, producet the deforcementis.

It is anfuertit be the perfewaris, to the first allegeance, proponit *peremptorie*, the samyn aucht to be repellit, in respect of the Dittay, Lawis and practique vniuerfallie obseruit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knowlege of ane Inqueist, being lybellit and set down in maner as this Dittay is lybellit; and that the persone offendit deceffit throw the hurtis and woundis gevin to him: And quhair it is meant,¹ that he survivet efter the geting of the hurtis the space of fyve monethis, that pairt is nawayis relevant mair nor was the first; in respect that the Dittay beiris, that the defunct was hurt and woundit vpon the nynt of September 1617, and he deceffit thair of vpon the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet conti-nuallie fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be ressaunt vpon this allegeance, anfuertis, na Witnesses can be ressaunt in Criminall cauffis, conforme to the Lawis of this realme, except in matteris of Tressone: And albeit Witnesses mycht be ressaunt, yit thay can nocht be ressaunt vnto the tyme the allegeance be first fund relevant; and gif it war fund relevant, thair aucht na Witnesses be ressaunt befor the Assyse, feing the hail poyntis confitis *in facto*, and the tryell thair of is remittit to the Assyse, quha becumis bayth tryeris and Witnesses thairin:² And as to the Lordis deliuerance grantit for summonding the Witnesses, it aucht nocht to be respectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the last allegeance, beiring, that na man fould be pwneist to the daithe, except it be done vpon ffoirthocht felonie, the perfewer denyis that propositioun altogidder, in respect of the vniuerfall practique of this realme; be the quhilk, all persones criminallie perfewit for Slauchter ar put to the knowlege of ane Inqueist, and pwneist to the daithe; this lybell contenand ane verrie relevant cause, qualifeit with all the circumstances necessar aganis the pannel, as committer of the Slauchter, with all circumstances of the Law requifite.

It is duplyit, that Witnesses may be examinat befor the Assyse, vpon the treuth of the exceptioun peremptour; and being remittit be the Judge, with the lybell, to the Inqueist, thay may cognosce thairupoun, and vpon the Witnesses Depositiones, sa far as the samyn may geue thame licht concerning the fact: And be speciall Act of Parliament, maid in his Maiesteis xj Parliament,

¹ Represented. Literally, complained.

² For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is statute, that all writtis, Witnesses, and other probatioun, fall be led and deduced befor the Assyse, and that for tryell of the treuthe, *quia probationes in criminalibus debent esse luce meridiana clariores*: Lyk as, Witnesses war admittit in the Criminall cause persewit be *Strauchane* aganis *Geillis Johnne-stoune*. And quhair it is affirmet, that the Warrant is purchest for summond- ing of Witnesses, *parte non citata*, it is nocht ane Warrant against justice, bot for fortherance of justice, and cleiring the treuthe. And as to the last, the samyn is foundit vpon tua Actis of Parliament, quhilk can nocht be derogat be ane contrair custome; lyk as, my lord Aduocat is nocht hable to schaw quhair this exceptioun, being proponit, was repellit.

INTERLOCUTOR of *Relevancy*.

THE JUSTICE REPELLIS the hail allegance, in respect of the Dittay, and anferis maid be my lord Aduocat in fortificatioun thairof. And Ordanis the Dittay, quhilk is fund relevant, to pas to the knowlege of ane Assyse.

Quhairvpon my lord Aduocat askit instrumentis.

THE JUSTICE, in respect thair is nocht ane number of substantious perfonen, landit men, accoirding to the qualitie and rank of the defender, present, to pas vpon his Assyse, Continewis all forder tryell of this matter to the thrid day of the nixt Justice-air of the scherefdome quhair the defender duellis, or soner, vpon fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this restrictioun, that na Letteris be direct furth in this matter befor the first day of Junij nixt.

Quhairvpon the said James Scrymgeour, defender, askit instrumentis; and quha, for obedience of the said Justice ordinance, stand Johne Scrymgeour of Ballanscho cautioner, to the effect, and vnder the panes foirlaid.

[*Mr Patrik Sandis, Justice-Depute.*]

Slaughter committed at a Bridal.

Jan. 29.—JOHNNE SWYNE, seruant to the Laird of Randiefurd.

Dilaitit of airt and pairt of the crewall Slauchter of vniq¹⁰ Johnne M^ccairtour, seruant for the tyme to Jonet Mayne, wedow, in Menstrie, be streking him with ane durk in the bellie, quhair of he deceissit; committit at ane brydell,¹ in the evening eftir supper, within the sayd Jonet Maynes duelling-hous, vpon the xxij day of December last, being Tyfday befor Jule.²

PERSEWAR, Gilchryft M^ccairtour in Buttergalk, as father.

The pannell confessis the cryme, and cravis Godis mercie and pardoun for the samyn.

VERDICT. The Assyse, all in ane voce, stand, pronuncet, and declairit the said

¹ Bridal (*bride-ale*), wedding.

² Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be efcheit, &c.

Child-Murder.

Jan. 29.—BESSIE WEIR, fervand to James Lowriestone in Over Gogar.

Dilaitit of the crewall and vnnatural Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpon the xx day of Januar instant, about midnicht, within ane zaird lyand to the said James Lowriestones hous in Over Gogar, immediatlie eftir hir delyuerie thairof.

VERDICT. The Assyse, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chancellor, in respect of the said Bessie hir Judiciall Confessioun of the said cryme, ffind, pronuncet, and declairit her to be culpable and convict thairof.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair hir heid to be strukin frome hir body; and all hir guidis, gif scho ony hes, to be efcheit, &c.

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

Slaughter.

Feb. 3.—HABBIE RAE in Moufwall, Pait M'keg, servitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq^l Johnne Carutheris, callit of Dormont; committit vpon the secund of Januar last, with schottis of hagbutis and pistolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnneftoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny^t. PRELOCOUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoune.

Continued to the Justice-air of Dumfries, 'tertio Itineris, vel super premonitione xv dierum.'

Slaughter.

Feb. 3.—JAMES DOUGLAS of Moufwall; Johnne and Williame Greir-fones, his fervandis; Johnne Carleill, sone to Thomas C. in Bankis; Johnne Blak in Moufwall; and Habbie Dikfone, thair.

Dilaitit for the above Slaughter. These persons were all 'denuncet rebellis, and put to the horne, for nocht finding of caution for thair personall compeirance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Colvile of Blair, Justice-Depute.*]

Slaughter.

Mar. 10.—MR THOMAS DOUGLAS, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of v^mq^{le} Thomas Creichtoun of Bodumeraig; committit betuix Balmirrienoche and Couper in Fyfe, vpone the xijj day of Februar laft, 1619.

THE Justice, in respect of the feiknes of Jeane Carmelie, the defunctis relict, quha can nocht be present to concur in this persute, continewis this matter to the thrid day of the nixt Justice-air of the Scherefdom of Fyfe, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie; quha fand James Douglas of Moirtoun, portioner of Gogar, &c.

Treasonable Murder under trust, credit, and assurance.

Apr. 2.—JOHNNE MAXWELL of Garrarie, and George Maxwell, his sone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assureance, of v^mq^{le} Johnne M^cKie of Glasnak; committit vpone the viij day of Julij 1618; in forme and maner spicifeit in the Dittay product againt thame, viz.

DITTAY *against Johnne Maxwell of Garrarie, and George Maxwell, his sone.*

FORSAMEKILL AS, in the ellevint Parliament holdin by our fouerane Lord and Elfaintis of this kingdome, att the burgh of Ed^s, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatfumeuir his Maiesteis legis, quhair the partie flane is vnder the trust, credeit, assureance, and power of the slayer, all sic Murthour and Slauchter to be committit eftir the dait of the said Act, the samyn being lauchfullie tryed, and the persones dilaitit fund giltie thair of be ane Affyse, fall be Treffone; and being sfund culpable, fall sforsalt lyfe, landis, and guidis; as in our said Act of Parliament at mair lenth is contenit. AND trew it is, that the said *Johnne Maxwell of Garrarie*, haifing, in his politique and craftie maner, vpone sic condicions of satisfiacion and recompence best knawin to him self, conquest and acquyrat fra the said v^mq^{le} *Johnne M^cKie of Glasnak* his hail worldlie moyane¹ and estait; and thairby drawin him to his daylie companie and attendance, allweill within his hous of the *Garrarie*, as vther partis of the cuntrie quhair he maid his repair and residence, he, furth of his avaricoufse and churlische dispositioun, lotheing and weireing² of the said *Johnne M^cKie* his companie, in the moneth of Julij, in the yeir of God I^m.Vj^e. and aughtene yeiris, to red and exoner him self of his cumpanie, devysfet and concludit in his devillische heart, the pitifull³ and tressonable Murthour of the said v^mq^{le} *Johnne M^cKie*, as followis; and finding the said v^mq^{le} *Johnne* to be always nder his trust, credeit, assureance, and power; in sa far as, be the space of nyne monethis, or thairby, preceding the tyme foirsaid of the said intendit Murthour, the said v^mq^{le} *Johnne* was for the maist part refoirting and making his daylie residence with him, at bed and buird, within his *Place of Garrarie*, sua that thairby na suspitioun of iniurie to be done be the said *Johnne Maxwell* towardis the said *Johnne M^cKie* could be thoct vpone be him; the said *Johnne Maxwell*, for effectuating of his tressonable and devillische plott, vpone the xvijj day of the said moneth of Julij, in the yeir of God foirsaid, knawing the tyme of the said v^mq^{le} *Johnne M^cKie* his dyet, in cuming to his *Hous of Garrarie*, vnder the silence and clud of nycht, accompaneit with the said *George Maxwell*, his sone, and vtheris thair complices, bodin⁴ with sfurdis and vtheris wapponis *inuafivé*, in the said v^mq^{le} *Johnne* his cuming to the said *Place of Garrarie*, pat violent handis in his persone, band baith his handis and

¹ Means.

² Getting fatigued or wearied.

³ Piteous.

⁴ Furnished; provided.

feitt, and thaireftir, in maift crewall and mercieles maner, playing the pairt of hangmen and burriowis,¹ with ane hair tedder,² strangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit mofs or burne, callit the *Burne of Ranieftoun*, within ane half myle to the said *Hous of Garrarie*, quhairn they flang him: And sa, the said vni^o *Johne M^cKie of Glassik* was maift trefsonabilie and crewallie murdreift and flane be the said *Johne Maxwell of Garrarie*, and *George Maxwell*, his sone, he then being vnder thair trust, credeit, assurance, and power, in maner befoir deducet; and thay, and aither of thame, ar air and pairt of the said trefsonabil and barbarous Murthour, committit vnder trust and credeit; vpon set purpois, prouifoun, precogitat malice, and foirtbocht felonie, in hie and manifest contempt of our fouerane lordis autoritie and lawis, and expres aganis the tennour of the said Act of Parliament; incurring thairthrow the pane and pwneifchment aboue writtin, exprefsit thairintill, viz. as *Tratouris* and *Murthouraris* of the said vni^o *Johne M^cKie*, vnder trust, to florfalt thair lyvis, landis, and guidis, to the terour and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane M^cKie, eldest sone to the defunct; Sir Williame Oliphant of Newtoun, kny^t,
Aduocat to oure fouerane lord.

PRELOCOUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. M^cgill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maiefteis Warrant, daitit at New-mercat, the 13 of Januar, 1619, commanding him to infist in the pannellis perfute, for the Murthour contenit in the Dittay: Quhilk Warrant his lordschip tuik vp agane.—My lord Aduocat declairis, that he is nocht prepairit, at this tyme, to perfew in this matter; and thairfoir desyret the samyn mycht be continewit to the sevint of July nixt.—The pannell, with thair prelocoutouris, altogidder disaffentis to the said continuatioun, and offerit thame selfis instantlie reddie to abyde the tryell of the Law for the said cryme, as altogidder innocent thairof; and thairupoun askit instrumentis.

THE Justice, nochtwithstanding of the pannellis offer and declaratioun, continewis this dyet to the said sevint day of Julij nixt; and Ordanis the pannell to be tane bak to waird to the tolbutth of Edinburgh.

The pannell offeris cautioune for thair compeirance the said day; and allegit, in respect thairof, thay fould nocht pas to waird.

THE Justice Ordanit thame to geve in their Supplicatioune to the Counfall, be quhais Warrant and autoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpon thair offer of cautioune to thair lordschipis, for thair entrie, the day foirsaid; and accourding as the Counfall fould command, in that matter, it fould be obeyit.

PRELOCOUTOUR in defence, My Lord Maxwell.³

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordschipis expres Warrant, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautione for thair compeirance and re-entrie that day, to vnderly the law for the said Murthour, ather⁴ of thame vnder the pane of thre

¹ Old Fr. *bourreau*, an executioner.

² A hair tether or halter.

³ In addition to the above Prelocutors.

⁴ Each of them.

Thowfeand merkis. Quha, for obedience of the said ordinance, ffand Eduard Maxuall of Hillis cautionou.

In respect of the quhilk caution fund be thame, the Justice ordanit the Provoft and Bailleis of Edinburgh to put them to libertie furth of thair ward, &c.

[ASSESSORES JUSTICIARIO, *Dominus Willielmus Levingstoun de Kilfith, et Dominus Georgius Erskin de Innerteill, Senatores Collegij Justicie.*]

PRELOCOUTOURIS in perfute, My Lord of Gairleis, The Laird of Larg-M^cKie.

PRELOCOUTOURIS in defence,¹ The Maister of Maxwell; The Guidman of Hillis; Edward Forrefter, Commiffar of Kirkcudbrycht; Johnne Zoung, notter.

(Dec. 15.)—THE pannell takis instrumentis of thair entrie; as also, that *my Lord of Gairleis* compeiris to perfew thame of thair lyves; and proteftis for thair cautioneris releif.—The perfewaris product the Dittay, with the Letteris and Roll of Affyse; and proteftis for thair cautioneris relief, and defyret proces.

The perfones on pannell denyis the haill crymes content in the Dittay, and passis fra all disputatioun aganis the relevancie thair of; and offeris thame selffis to the tryell of ane honest and vn suspectit Affyse.

ASSISA.

Johnne Dalrumple of Schalloche,	Johnne Maitland of Clonhie,	Andro Craufurd of Barquharrie,
Andro Bruce of Bofark,	Johnne Kirkpatrick of Brachoe,	David Welfche of Colliestoun,
Williame Middlemeist, Constable of Dumbartene,	Gilbert Baird of Kilhinsie,	Walter Cant of Waft-mylne,
Duncane Hunter of Ballagane,	George Logane of that Ilk,	James Birnie of Browrie,
Williame Creichtoun of the Hill,	Williame Cunninghame of Pol-quharne,	Malcolme Dalrumpill of Watersyde.

It is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpon thair Affyse, becaus he is nocht ane landit man of that qualitie and rank quhilk fould be admittit to pas thairupoun; the said Johnne Maxwell of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowfeand merkis of zeirleie rent, and aboue. *Secundo*, the said Johnne is vfer and product be my Lord of Gairleis, ane of his perfewaris, as ane Witnes befor the Counsell, and hes gevin his Deposition in this matter alreddie; and in respect thair of, can nocht be ane Affysour. *Tertio*, he is man, tennet, and fervand to *Josiah Stewart*, quha hes assistit this perfute fra the first begynning thair of, and behavet him self as partie.—It is anferuit be my lord Aduocat, that the allegiance aucht to be repellit, as altogidder irrelevant, the said *Johnne Dalrumple* being ane Gentilman of guid fame, and haifing sufficient moyane of his awin, quhairupoun he levis: And his Deposition maid be him as ane Witnes can nocht stay him to be ane Affysour: And as to that pairt, that he payis mail and deutie to *Josias Stewart*, wha is partie aganis thame, *non relevat*, becaus he is nocht ane perfewar, nor compeiris nocht in this Judgement to perfew, nather payis he ony deutie to him bot for his teyndis, quibilk teynd-deutie can naways stay him to pas vpon this Affyse.—It is allegit be the pannell, that, with the teynd-dentie, he is also subiect to the said *Josias* in daylie seruice.—The said *Johnne Dalrumple* being suorne, declaris he is no forder subiect to *Josias*, bot only in payment of his teynd.

THE Justice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partial counfall; quha, being of new suorne, clarit he had gevin na partial counfall, in this matter, in fauouris of this perfewar aganis the perfonis on pannell;—quha was thairfoir admittit.

It is allegit aganis *Walter Cant of Westmylne*, that he can nocht be admittit vpon this Affyse,

¹ In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.

becaus he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anferit be my lord Aduocat, that the allegiance aucht to be repellit, becaus he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulation, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilation, &c.—It is allegit, that he can nocht be admittit, becaus of the fairfait Act of Parliament, for *ex argumento a paritate rationis*, gif the perfonis of Inqueist, in matteris of Perambulation, man (*must*) be induellaris within the boundis of the Scherefome quhair the landis lyeis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, fould the Affyfouris be induellaris within the boundis of the Scherefome quhair the fact was done, or four halfis about.—Anfueris, *Statuta sunt stricti juris, et non admittent extenſionem*.

The lyk exception proponit aganis *Andro Bruce of Befark*, quha duellis nocht within the Sherefome, or foure halfis about.—My lord Aduocat repeatit his former anfueris for *Andro Bruce*.

It is forder allegit that *Walter Kant* is man, tennent, and fervand to *my Lord of Murray*, quha affistis this perfute; and thairfor, can nocht pas vpon this Affyfe. The said Walter being fuorne, gif he be man, tennent, or fervand to the Erle of Murray? Declairis, he is ane of his Lordſchipis vaffallis, and haldis his landis of him in ffeew.

THE Justice, nochtwithſtanding of the former allegiances maid aganis the faidis Walter and Andro, and that the said Walter is ane ffeuar, Admittit thame vpon the Affyfe.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpon this Affyfe, becaus he is ane removeable tennent to the *Laird of Drumlangrig*, quha affistis this perfute, and is within degreis-defending to the *Lord of Gairleis*, perſewar. The *Laird of Ballagan* being fuorne, declairit that he is *Drumlangrigis* vaffall, and na removeable tennent; quhome the Justice, in that respect, admittit.

It is allegit aganis *Eduard Maxwell in Laroche*, that he can nocht pas vpon this Affyfe, becaus *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ffeid ſtanding betuix the pannell and him vnreconceillit. *Tertio*, he is alreddie reſſaut wites, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anfueris, becaus he hes alreddie deponit as ane Witnes, he may the mair cleirly be admittit ane Affyfour.

THE Justice, in respect thair is na penurie of Affyfouris, Ordanis him to ſtand by.

David Welſche of Collietoun admittit, of conſent.

THE lord Aduocat, for verification of the Dittay, producet ane Testimoniall, ſubſcryuit be dyuerſe Gentilmen and vtheris, teſtifeing the forme of *Glaſſakis* binding, the tyme of his out-taking of the burne; and that he hes bene firſt ſtrangillit, befor his caſting thairin. As lykwayis, producet the pannellis Depoſitione, with the Depoſitiones of dyuerſe famous Witneſſes, reſſaut and examinat be the Lordis of Secreit Counſell, in that matter; and thairupou alſo aſkit inſtrumentis; and proteſtis, in respect thair of, for Wilful Error, gif the Affyfe acquit.—The pannell proteſtit in the contrair, gif thay convict thame of that deteſtable crime; quhair of, vpon thair kneysis, with grit and ſoleme aithes, thay affirmet thame ſelfis to be altogidder innocent.

VERDICT. The Affyfe, for the maiſt pairt, be the mouth and declaratioun of William Cunninghame, chancellor, ſſand, pronuncet, and declairit the faidis *Johne Maxwell of Garrarie*, and *George Maxwell*, his lauchfull ſone, to be GILTIE, culpable, and convict of airt and pairt of the treſſonabill and barbarous

Murthour of the said vmq^{le} *Johne M^cKie of Glassak*, committit be thame in forme and maner specifeit in thair Dittay.

SENTENCE. The Justice, be the mouth of Andro M^ccairtney, dempfter of Court, adiuget thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, steidingis, rowmes, possessiones, coirnis, cattell, inficht pleneiffing, guidis, and geir, to be forfalt and escheit to our souerane lordis vs^e, as culpable and convict of the said tressonable and detestable cryme: Quhilk was pronuncet for Dome.¹

Hurting and Wounding.

Jun. 2.—NORMOND ROBIESOUN, sone to Robert Robiefoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, sone naturall to Johnne Robene, notter, burges of Sterling, in the casting of him doun to the grund, and louping vpon his bak with the haill force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

PERSEWARIS, Johnne Robene and his father; Sir Williame Oliphant, kny^t.

PRELOCOUTOUR in defence, Mr Thomas Nicolfoun, elder, Aduocat.

THE Justice continewis this dyet to the thrid day of the air of the scherefdom of Sterling, or soner, to ane fyftene dayis warning; and ordanis the pannell to find cautioner for his re-entrie. Robert Robiefoun, mercheand, his father, becomes cautioner.

Slaughter.

Jul. 2.—JOHNNE M^cDOWELL of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Alexander M^ckie of Balfeir.

PERSEWAR.

Sir Williame Oliphant of Newtonn, kny^t.

PRELOCOUTOUR in defence.

Mr Thomas Hoip.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of

¹ Sir Johnne Dumbar of Mochrum, kny^t; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kenydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwell of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, zounger of Carlatyre; George Gordoun of Barkeoche; Johnne M^cdowell of Freuche; Patrik Ahannay of Kirkdaill; Alex. M^cculloche, appeirand of Netoun; Alex. Cunninghame of Powtounne; Fergus Dumbar, burges of Stranaer; and Adame Lyndfay, burges of Quithorne, vnlawit, for thair nocht compeirance vpon the said Assyse; ilk ane of thame in the pane of ane hundred merkis.

the scherefdom quhair the pannell duellis, (Wigtoun,) or foner, vpon xv dayis wairning. Plegio, Pat M^dowall de Creoches.

Hurting and Wounding—Masterful Theft and Stouthreif.

Jul. 11.—JOHNNE MURRAY, fone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirfbane, his maister, in cuming out the hie way betuix Kynrofchyre and the fferrie-fyde : Hurting and Wounding him, with ane fuord, in the heid and face, of purposis to haif flane him : And thaireftir, Steilling and away-taking, be way of maisterfull Thift and Stouth-reif, of his maisteris bonnet-caice, togidder with tua pair of silk schankis,¹ tua pair of silk gairtanes,² tua pair of roses³ of taffitie, tua small lynning schankis, thre bonnet mutches,⁴ thre pair of handis,⁵ fyve overlayeris,⁶ ane peirlet lane⁷ ruff, tua naipkynnis, ane kame-caife,⁸ with ane brusch, with certane vther necessaris, being within the samyn, worth tua hundreth pundis ; by and attour⁹ certane writtis and euidentis,¹⁰ being also thairintill ; committit in the moneth of Majj laft.

PERSEWARIS, Mr Andro Meldrum of Rothiebirfbane ; Sir Williame Oliphant of Newtone, kny^t.

THE Justice, in respect thair is nocht ane sufficient number of Assyfe compeirand, continewis this dyet to the xxj instantis : And Ordanis the pannell to be tane bak to waird, to the said day.

Andro Frafer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingftoun, Tutour of Glak, Johnne Ogilvie, 5ounger of Glaffall, and Alexander Frafer, indueller in Leyth, nocht compeirand on Assyfe, the Justice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

ASSISA.

Robert Frafer of Durres,

James Cheane, in Elrig,

Mr Robert Elphingftoun, Tntour
of Glak,

James Gairne of Blakfurd,

Johnne Arbuthnot of Carnegaw,

James Hervie of Elrig,

Andro Hervie, his brother,

James Keith of Craig,

Mr James Stewart, Commiffar

of Dunkeld,

Clement Ruffell, mercheand,

Nicoll 3ule, mercheand,

Johnne Penman, mercheand,

Mathow Bailzie of Litalgill,

Johnne Fairholme, mercheand,

Thomas Broun, lokfmyth.

Jul. 21.—THE Aduocat takis instrumentis of the fweiring of the Assyfe ; and producet the pannellis Depositiones, for verificatioun of the Dittay ; and protestis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Assyfe, be the mouth of the said Mr Robert Elphingftoun,

¹ Silk stockings. ² Garters. ³ Rosettes for the knees. ⁴ Caps. ⁵ Probably a sort of *mittens* or gloves. ⁶ A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck. ⁷ A pearled lawn ruff ? ⁸ Comb-case.

⁹ Over and above. ¹⁰ Writings and Title-deeds.

chancellor, ffind, pronuncet, and declairit, all in ane voce, the said Johnne Murray, conforme to his awin Judiciall Confessioun and Depositiones productet, to be ffylet, culpable, and convict of the hail crymes aboue expremitt.

SENTENCE. To be tane to the mercat croce of Edinburge, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be efcheit, &c.

Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'

NOV. 10.—PATRICK COWIE, in Kincairdin; Johnne Dow, his fervand; Johnne Anderfone, cordiner thair; Thomas Cowie, querriour thair; and David Miller, falter in Eifter Kincairdin.

Dilaitit of the taking and keiping of vmq^{le} Thomas Daidfoun, hynd and fervand to Alexander Leafk, in Porter, be the space of fyftene dayis, *in privato carcere*, within the said Patrik Coweis hous; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,¹ he ffamifchet and deit of hunger; and remanent crymes contenit in the Letteris.

PERSEWARIS, Sir Williame Oliphant, kny^t; Alexander Leafk, as Maister.

The Justice continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome quhair the defenderis duellis, ('Clakmannane,') or foner, vpone xv dayis wairning: And Ordanis thame to find new cautioun, &c.; quha ffind Sir George Bruce of Carnok, kny^t, personallie present, for thair re-entrie.

Mutilation and Demembering.

NOV. 17.—WILLIAME OLIPHANT of Gask.

Dilaitit for airt and pairt of the Demembering of David Malloche, fervand for the tyme to vmq^{le} David Toscheoche of Monyvaird of his rycht hand.²

Compeirit Lawrence Oliphant of Coudie, and productet ane Warrant of the Lordis of Secreit Counfall, direct to my Lord Justice; quhair of the tennour followis.

WARRANT of the Lordis of Secreit Counfall.

JUSTICE, Justice clerk, and 3our deuttis. Forfamekill as the xvij day of November instant is appointit to Williame Oliphant of Gask, for his compeirance befor 3ow, to vnderly the Lawis for the Mutilation and Dismembering of David Malloche: Nochtwithstanding, according to the Kingis Maiefties expres Warrant, command, and directiouns in this matter, theafe ar to command 3ow to continew the said dyet to the tuintie fyve of Februar nixtocum; to the effect, in the meane tyme, the said Williame may tak some courfe for satisfioun of his partie: And that 3ow tak cautionn of the said Williame for his personall compeirance the said day, and dispense with him and his cautioner for his nocht compeirance at this dyet: Quhairanent thir presentis falbe 3our Warrant. At EDⁿ, the xvj day of November, 1619.

AL. CANCELL^r. MAR. MELROIS. LAUDERDAILL.

THE Justice continewis the said dyet to the said xxv day of Februar nixtocum;

¹ Sustainance.

² See Jul. 29 and Dec. 4, 1618.

³ Peter Oliphant of Rescolhie.

and Ordanis cautioning to be fund for the said Williame Oliphant his compeirance that day, &c.—Gilbert Adamefoun of Scoureing-burne become fouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and product ane Warrant of the Lordis of Secreit Counsell, quhair of the tennour followis.

JUSTICE, Justice clerk, and your deputtis. Quhair as, the xxv day of Februar instant is appointit to Williame Oliphant of Galk, for his compeirance befor you, to vnderly the law for the slauchter of the Laird of Monyvaird, and mutilioun and demembring of David Malloche, his servand, of his rycht hand,¹ and vtheris crymes specifeit in the Letteris raisit thairant: Neuertheles, this is to command you to continew the said dyet to the nynt day of Junij nextocum, vpoun new caution, conforme to the ordour: And that you dispens with the perfonal compeirance of the partie: Quhair-ament thir presentis fall be your Warrant. At Halyrudhous, the xxiii of Februar, 1620.

AL. CANCELL^r. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes fouertie, &c. (Jun. 9, 1620.)—THE dyet deferted, by command of another Warrant, signed 'Al. Cancell^r. Melrois.'

[If it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Dennylne MSS.*, and requires no comment.]

LETTER, the Privy Council of Scotland to the King, relative to the DEADLY FEUD between the Lairdis of Cultmalundie and Monyvaird.²

MOST SACRED SOUERANE,

WHEREAS your MAJESTIE was pleasit, tua yeiris fyne, or thairby, to recommend vnto ws the fatling and remoueing, by ane amicable forme and maner, the deadlie ffeade standing betuix THE LAIRDIS OF CULTMALUNDIE and MONYVAIRD and thair ffreindis,³ vpoun occasioun of the slaughter of THE LAIRD OF MONYVAIRD; and to move the partie greued to accept of siche OFFERIS as the offendaris might reafounable performe: We accordinglie wrote for sa many of the ffreindis as we know to haif cheif interesse in that mater, and vsed the best meanes we could to haif brocht the fame to some freindlie dresse; bot that dyet being caffin af, vpoun alledgeance that some of the speciall ffreindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole ffreindis that wer gevin vp, who returnit thair answer to ws, in write, vnder thair handis, that thay could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall partie haueand interesse, in respect of his minoritie. Whairupoun the mater defertit, and we could go no forder thairin. At this secund dyet *Cultmalundie eldair* exhibit befor ws OFFERIS, in write, vnder his hand, maid to the partie, contening the fowme of ane Thowfand crownes for the Assythement of that Slaughter, with the Banishment of *Alexander Bruce his sone*, and *George Tyrie*, Messinger, who wer alledgeit to be the actual slayaris of *Monyvaird*, during your MA^r plefour: And at that fame tyme, we causit him gif satisfiactioun to *Duncane Campbell* and *David Malloche*, who wer deadlie hurte quhen *Monyvaird* was slayne, by payment making to thame of twa Thowfand pundis: Quhairupoun thay haif gevin ane discharge of thair interesse in that mater; as the same produceit befor ws beiris.

¹ The local saying,—

'AFF HANDS IS FAIR PLAY—DAVIE MALLOCH SAYS NAY!'

seems quaintly to allude to this incident.

² *Sir James Balfour's MS. Collections*, Adv. Lib.

³ Blood-relations.

This fleade has altogidder vndone *Auld Culmalundie*; for his estait is exhaustit and wrackit, and he is become verie waik of his judgement and vnderstanding, by the greif that thir troubles hes broght vponn him; whilkis wer the occasioun of his wyffis deathe, and of the exyle and banishment of his fones and freindis, now be the space of foure yeiris; in the quihilk exyle, tua of his freindis of goode rank and qualitie hes departit this lyffe.

This being the effect of our dealing in this bussynes, We haif bene intreated be the pairtie, humelie to present the fame to your Maiesteis considerationn. And so continewing our vncessant prayeris vnto God for youre MA^s long and happie reigne, We rest,

YOUR MA^s humbill and obedient subiectis and feruitouris,

AL. CANCELL^r. MAR. MELROS. GEORGE HAY.

HALIERUDHOUS, xxj of Marche, 1622.

TO THE KING his most sacred and excellent MAIESTIE.

Taking Captive—Murder—Masterful Theft and Stouthreif.

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vmq^{le} Allane M^rrannald in Swynnart, cayreing and keiping him captiue and prissoner ane nycht, within the said Duncane his Place of Megernie:¹ And for Murdreifing him with durkis, vpon the morne eftir his taking, ane myle or thairby fra the said Hous: And be way of Maisterfull Thift and Stouth-reif, steilling and away-taking fra him of his purse, with ane thowseand pundis of gold and siluer being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus M^rrannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Justice-air of the Sheref dome quhair the defender duellis, (Perth,) or soner, vpon xv dayis wairning.

Archibald Campbell of Glencarradell become cautioner for his re-entrie.

Murder.

Dec. 8.—JOHNE MOITT in Wafthouffis, aboue Newbottle.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Bessie Broun, his vmq^{le} spous, be streking hir in the heid, and wounding hir thairin with ane grit kent,² to the effusioun of hir bluid; committit be him vpon ane Setterday, at evin, in the moneth of October last; quhairof scho deceifit within tuelff houris thaireftir.

PERSEWER, Sir Williame Oliphant, kny^t.

PRELOCUTOR in defence, Mr Alexander Cuming.

It is allegit be the pannel, that na proces can be led aganis him, vnles thair

¹ In Glenlyoun, Perthshire. In the preface to Douglas's Baronage, notice is taken of a very remarkable Red-book, (*an Leavar-diariq,*) written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to HISTORY OF THE KENNEDIES, Edinburgh, 1830. 4to. ² Staff, or cudgel.

war ane pairtie informer to assist his Maiesteis aduocat, and to fueir the Dittay to the Assyse, the Dittay being ffund relevant to pas thairto ; and feing nane of the kyn and freindis of the woman flane compeiris to perfew, or to informe his Maiesteis Aduocat in this persute, the Justice can nocht put him to ane Assyse. —It is anfuereit be my lord Aduocat, that the allegiance is impertinentlie proponit be the pannell ; and sayis, that albeit the freindis of the pairtie flane and he wald collude¹ togidder, yit, feing the Prince wantis ane subiect, be the fact committit, the Kingis Aduocat hes verrie guid intreis to perfew, without ony informer : And thairfoir, nocht only fould the Dittay pas to ane Assyse, bot he, for committing of the ffact lybellit, fould be exemplarie pwneift for the samyn, being fund giltie thairof.

VERDICT. The Assyse, for the maist pairt, be the mouthe of Thomas Hog, in Eisthouffis, chancellor, ffand, pronuncet, and declairit the said Johnne Motte to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castellhill of Edinburghe, and thair his heid to be strukin frome his body ; and his hail guidis to be efcheit, &c.

Slaughter—Wearing and Shooting of Hagbutis and Pistolets.

Dec. 22.—JOHNE LYDDELL of Halkerstoun.

Dilaitit of airt and part of the Slauchter of vmq¹⁶ Johnne Bell, servand to Johnne Lord Borthuik ; committit vpon the landis of Hauch-heid, vpon the aucht of October last, quhair the said Johnne Lyddell, with ane charget hagbut in his hand, in vaidit the said vmq¹⁶ Johnne Bell for his slauchter, schote him in his lichting² of his horse with tua bullettis, at the left pape, throw the heart ; and flew him with the said schote : And for contravening of the Actis of Parliament, in beiring and schuiting of hagbutis and pistolettis, &c.

The Justice, of consent of aither pairtie, continewis this matter to the nyntene of Januar nixt : And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

PERSEWARIS, Barbara Levingstoun, the relict ; Sir Williame Oliphant of Newtown, kny^t, his Maiesteis Aduocat, for his hienes intreis.

PRELOCUTORIS in defence, James Lyddell, in Leyth ; Mr Johnne Cranstoun, Minister thair ; Mr Laurence M^cgill, and Mr David Prymrois, Aduocattis.

(Jan. 19, 1620).—It is allegit be the pannell, that the Dittay in that point thairof, ‘airt and part,’ is nocht relevant, except the persewar condifend vpon the names of the persones that war complices or associattis.—Anfuereis, aucht to be repellit, in respect of the Act of Parliament, sustening airt and part to be

¹ Enter into collusion with each other, to defeat the ends of public justice. ² Alighting.

relevant aganis any persone accuset of ane' cryme.—The pannell denyis the hail Dittay to be of verritie.

THE JUSTICE remittis the tryell thairof to the Assyse.

Barbara Levingstoun, relict, being solemlie sworne, declairit, that the Dittay is of verritie; and that scho hes just caus to perfew the pannell for the Slauchter of hir husband. Quhairvpoun my lord Aduocat askit instrumentis, and Proteftis for Wilfull Errour aganis the Assyse, gif thay acquit: As also, tuik instrumentis of the production of the hagbut, quhairwith the said vmq^{le} Johnne Bell was flane.

VERDICT. The Assyse, be pluralitie of voittis, ffand, pronuncet, and declairit the said Johnne Lyddell of Halkerstoun to be Clanget, innocent, and acquit of the said Dittay, and hail crymes aboue writtin mentionet thairintill.

In respect quhairof, the Justice ordanit him to be put to libertie furth of the said Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the saidis crymes; he making satisfioun to the javellour¹ for his expensis.

Slaughter.

Jan. 19, 1620.—ALEXANDER GRAHAME, sone to vmq^{le} David Grahame, in Arduthie, and Johnne M'kane, sone to Williame M'kane, burges of Montroife.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the said Alexander, vpone the Sandis of Montrois, vnder nycht, vpone the tent of December last.

PERSEWARIS, Sir George Keith of Drumtochtie, kny^t, James Keith of Harvieftoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny^t.

PRELOCOUTOURIS in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The persewaris productet Hoirning aganis Robert Grahame, sone to David Grahame of Arduthie.

The persones on pannell offerit thame selfis to the tryell of the Law, for the crymes contenit in the Summondis, quhairof thay declairit thame selfis to be innocent; disassenting *simpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhairof as yit na certane licht of the pannellis guiltines thairof is brokin vp; and thairfoir, desyres thame to be put vnder cautioun, for thair re-entrie, vpone xv dayis wairning.

THE Justice continewis this dyet to the thrid day of the nixt Justice-air of the Scherefdome quhairin the pannell duellis, (Fcrfar,) or soner, to ane fyftene dayis wairning.

¹ Gadler; jailer. Old Fr. *javilleur*.

Slaughter.

Jan. 21.—**JOHNE DUNCANE**, baxter¹ in Dudingstoun.

Dilaitit of the crewall Slauchter of vmq^{le} Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eifter and Wester Dudingstoun, vpone the faxt of Januar instant, be streking of the said Johnne Buchannan with ane knyfe, vnder the left pape; quhairof, within tuelf houris thair-eftir, he deceiffit.

PERSEWARIS, Margaret Robertfoun, the relic; Sir Williame Oliphant, kny^t.

The pannell acknowleges the cryme, and craves God, his Maieftie, and the pairtie pardoun thairfoir.

VERDICT. The Assyse, all in ane voce, in respect of the pannellis Judiciall Confessioun maid be him, confessing the said cryme to be of verritie, ffand, pronuncet, and declairit the said Johnne Duncane to be ffylet, culpable, and convict, &c.—**SENTENCE.** To be tane to the Castell hill of Edinburgh, and thair his heid to be strukin from his body; and all his moveable guidis to be escheit to his hienes vsé, as convict of the said cryme.

Murder—Horse-stealing.

Feb. 25.—**JAMES REOCHE.**

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq^{le} Alexander Sandiesone, servand to Hew Falconer of Innerlochtie; committit in September, vpone Michelmes Evin, in anno 1618, at the zett of Innerlochtie, in staying the said James, and resisting him and his brother in the steiling and away-taking of the said Hew Falconeris horse furth thairof, be schuteing the said Alexander throw the body with ane pistolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maister; Sir Williame Oliphant of Newtoun, kny^t.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being ravischeing ane woman, the pannellis brother being thair present, and he in companie with him, imployit thair help to preserve the woman and to set hir frie; for the quhilk, the defunct, haifing ane knyfe in his hand, invalidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin faiftie, drew ane pistolet frome his fyde, and schote the defunct thairwith; and sa, the fact being committit be his brother, the pannell can nocht be persewit thairfoir.—It is answert be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay beiring him to be airt and pairt of the defunctis slauchter; and that the Slauchter was committit be thame in the steiling of ane horse fra the defunctis maister, haifing cum that eirand to the Hous, at that tyme of the nycht.

¹ Baker.

ASSISA.

Mr James Stewart of Ladywall, Mr James Forbes of Haughtoun, Alex. Farquhar, tailzeour burges of
 Walter Hay in Forresteris-fait, Johnne Roife, proveist of Nairne, Edinburgh,
 Williame Douglas of Erlefmylne, Mr David Stewart, and Johnne Caddell, burges of
 Alex^r Brodie, chalmerlane of Patrik Weymes, fervandis Edinburgh,
 Kinloife, to the Earl of Murray, Alex. Home, burges thair,
 David Dumbar in Targes, Thomas Hunter, burges thair.

The Aduocat takis instrumentis of the fuering of the Assyse; and producet, for instructing the Dittay, the pannellis Depositionn, maid in presens of the Lordis of Secreit Counsell; and protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, stand the said James Reoche to be ffylet, culpable, and convict of airt and pairt of the Slauchter of the said vmq^{le} Alexander, committit vnder nycht, in the steilling of the said Hewis horfe.—

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and his hail guidis confiscat to his Maiesteis vse.

Hamesucken—Slaughter.

Mar. 8.—JOHNE ROGERSOUN, in Bratmureland.

Dilaitit of the crewall Slauchter of vmq^{le} Katharene Broun, spous to Hew Broun in Windiehillis,¹ be (by) cuming be (by) way of Hamesuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair scho was in fober maner for the tyme; and thair crewallie invaidit hir for hir slauchter, becaus scho had houndit hir dog at his schein; tuik hir be the spaldis,² and violentlie slang hir over tua kyis³ bakis; thaireftir threw hir sydis to ane tymber bed,⁴ and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punschet and strak hir vpon the bak, wambe,⁵ and sydis, and brak hir heart-pypes thairwith; sua that thairby scho tuik bed, and keipit the bed the space of fax dayis, or thairby, continuallie vometing hir heart-bluid; and in the moneth of Maij thaireftir, scho deceiffit of the saidis hurtis; and sa, was crewallie and vnmerciefullie slane be the said Johnne Rogerfonne: And he is airt and pairt of the said slauchter; committit vpone set purpois, prouifoun, and forthocht felonie, as at lenth is contenit in the said Dittay.

PERSEWAR, Hew Broun in Windiehillis, as spous to the defunct.

PRELOCUTOURIS in defence, the Laird of Cloisburne; Adame Cunninghame, Aduocat.

The pannell offeris him selff to the tryell of the law for the cryme foirsaid, quhairof he is altogidder innocent.

ASSISA.

Johne Padzeane, younger of Newtoun, Thomas Wauche, elder of Schawis,
 Mr Alexander Flemyng, minister at Dalgarnok, Thomas Wauche, his sone.⁶

¹ The crime is thus briefly described in another place,—⁴ be geving hir dyurse bauch, blae, and bludie straikis, in dyurse pairtis of hir bodie. ² Fr. *épaules*, shoulders. ³ Cows. ⁴ That is, dashed her with violence against or upon a wooden bedstead. ⁵ Belly. ⁶ The rest of the Assise are persons of no note.

VERDICT. The Affyse, all in ane voce, be the repoint and declaratioun of the said Mr Alexander Flemyng, chancellor, ffand, pronuncet, and declarit the said Johnne Rogerfoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and haill circumfstances thairof specifeit in his Dittay.

Forgery—Falset—Counterfeiting a Subscription to a false Bond.

Apr. 20.—THOMAS DEMPSTER, fumtyme of Murefk.

Dilaitit of airt and pairt of the ffalsheweing, fforgeing, and devyfeing and counterfuteing of the fubfcriptioun of ane ffalfe Band of Reuerfioun, &c. specifeit in his DITTAY following, viz.

FORSAMEKILL AS, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and prediceffouris, to the fuceffloun and richt of dyuerfe landis, rowmes, and poffeffiones; the quilkis, be his leud and godles misgovernment, ar maift fchamefullie and vnworthiellie fpendit and put away, to the impoverifching allweill of him felfe, as preiudice and difapointment of his poffertitie: **SIT** the said Thomas, altogidder fenfles of that his miserable cairage, naways being movet thairwith, bot rather refolveing to rwn heidlongis in all godles and cruiket courfes, as a man fauld and gevin over to the practize of the famyn; amangis vtheris, his vnauchfull and damnable proceedingis, a fourtene 3eir fyne or pairby, be maift falllie, fraudulentie, and diffaitfullie plottit, devyfet, forget, and drew vp ane fallie and counterfute BAND, conteneing the tenour of ane fals and simulat Reuerfioun, as gif the famyn had bene maid and fubferyuit be vniq^{le} *Walter Barclay of Toweis*, quibus name and fubfcriptioun was also falllie counterfute be the said Thomas, with the Witnesfes fubfcripions inferit thairintill; beirand in effect, that the said vniq^{le} *Walter Barclay* confeffit and grantit him to haif refauffit fra vniq^{le} *James Dempster of Auchterles*, his father, ane Reuerfioun maid and fubferyuit be vniq^{le} *Patrick Barclay*, fumtyme of *Towie*, his father, in fauouris of vniq^{le} *Johnne Erle of Buchan*, Lord of *Glendovachie*, fubferyuit at the *Caftle of Banff*, the firft day of July 1547 3eiris, for redemeing and out-quyteing fra the said vniq^{le} Patrick and his airis, *Lairdis of Towie, of the Landis of Collane*, with the ffifcher-heaven and remanent pairtis, pendicles, and pertinentis of the famyn, lyand within the Lordfchip of Glendovachie, and Sheref dome of Banff, vpone payment and deluyerance of ane hundreth angell-nobles gold and wecht; with ane nyntene 3eir Tak, eftir the Redemptioun, conteneing frie Office and iurifdictioun of Bailzerie, with payment of thre-fcoir merkis, as for the 3eirle maill thairof allanerlie: And that be vertew of the foirfaid simulat Band, the said vniq^{le} *Walter Barclay of Toweis* obleift him to deluyer bak agane the famyn Reuerfioun to the said *James Dempster*, father to the said Thomas, at quhat tyme or how fone it fould happin him, and his airis, to be difreffit or put at for deluyerie, or exhibitioun of the famyn, be the airis maill of the said vniq^{le} *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempster* and his airis, the fowme of ten thoufand pundis of liquidat expenffis, in caice of failzie: As the said Band, conteneing the tenour of the said fals Reuerfioun, with dynerfe vtheris claufes at lenth fet doun thairintill, all falllie forget, devyfet, and counterfute, firft be the said Thomas, and thaireftir writtin over at his command and directioun be *Airthour Meldrum*, Scule-maifter and Reidar at Kintor, and ante-daitit be him, at the said Thomas command, at Lambes laft, daitit at Mure-fk, the firft day of October 1585, be the fpace of threttie-foure 3eiris of befor, in the felfe proportis. **LYK AS**, in ane actioun of Improbatioun intentit laillie befor the Lordis of Counfell and Seffion, at the instance of *Sir Patrick Barclay*, now of *Towie elder*, and *Patrick Barclay younger* his fone, with concurrence of our fouerane lordis Aduocat, for Improbatioun of the foirfaid Band and Reuerfioun, ingroffit thairintill, the saidis Lordis of Counfell and Seffion, eftir tryell tane be them in the premisses, hes ffand and declairit be thair Decreit, gevin vpone

the second day of Marche instant, conforme to the said *Thomas* awin Confessioun and Deposition, subscrivit be his awin hand, in thair hail Lordschippis prefens, that the foirsaid Band and Reuerfioun foirsaid, ingrossit thairintill, is fals and fenzeit, fallie forget, fabricat, and devyset be the said *Thomas*, and the said *Airhour Meldrum*, at his command and direction: And that the said *Airhour*, be his command and direction, counterfute the names and subscriptions of *Patrik Chalmer*, *Alexander Fraiser*, and *Alexander Wayfoun*, thre of the Witnesses infert thairintill: And that the said *Thomas* him self counterfute, and pat to with his hand the name and subscription of the said v^mq^o *Walter Barclay of Towie*, allegit maker of the said Band, with the names of *George Leslie*, and *James Innes*, uthar tua Witnesses infert thairintill: AND in respect thairof, the samyn Band was, be thair Lordschippis direction, in thair Lordschippis prefens, immediatlie cuttit, cancellit, and destroyt, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming: AND the said *Thomas*, for his former falsfett, (was) also Ordanit be the saidis Lordis Decreit to be pwnieft in his persone and guidis, conforme to the lawis of this realme; quhilk aucht and sould be execute vpon him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the saidis Lordis Decreit, togidder with the said *Thomas*, his awin and the said *Airhour Meldrumes* Depositiones, confessing cleirlye the falsfett aboue writtin, product be our said souerane lordis Aduocat with the Dittay aboue specifit, for verificatioun thairof, at lenth beiris.

The pannell allegit, that in respect the falsfe Reuerfioun quhairupoun he is accuset, was nevir vset nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Justice could nocht put him to ane Assyse.—It is answert be my Lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay, and of the Lordis Decreit, quhairupoun the samyn is foundit, finding the Reuerfioun to be falslie sforget be the pannell, and that *the Laird of Toweis* subscription was falslie counterfute, and put thairto be the pannell; and thairfoir Ordaning him to be pwnieft, conforme to the Lawis of this realme.

THE Justice Repellis the pannellis allegiance, in respect of the answert; and Ordanis the Dittay to pass to ane Assyse.

ASSISA.

George Logane of Bonytoun, elder,	James Halyburtoun, mercheand,	Archibald Law, goldsmyth,
William Lande, bailgie of	Patrik Elis, younger, mercheand,	Harie Hoip, mercheand,
Dumbar,	Capitane Patrik Heiring,	George Hammiltoun, mercheand,
Malcolme Stevinsoun, Tutour of	Johnne Dougall, mercheand,	Eduard Johnnestoun, mercheand,
Hirdmestoun,	Johnne Schaw, mercheand,	William Crystiesoun, tailour.
Michell Ramsay of Forther,	Johnne Smyth, mercheand,	

VERDICT. The Assyse, be the repourt and declaratioun of the said Chancellor, all in ane voce, stand, pronuncet, and declairit the said *Thomas Dempster* to be ffylet, culpable, and convict of the hail falsfettis set down in his Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveable guidis and geir pertening to him to be escheit to his Maiesteis vse, &c.¹

¹ The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have indeed the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

Murder.

Jun. 14.—ROBERT HODGE in Spitteloun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq^{le} Patrik Mitchell, skynner; committit in Marche laft or thairby, be streking him with kentis and flailis, in dyuerse pairtis of his body, and douking him in the mylneleid or dam of Dalmahoy-mylne; quhairof he within xxiiij houris deceffit.

PERSEWAR, Johnne Mitchell in Langfyde, as father.

PRELOCUTOURIS in deferce, Mr Robert Lermonthe, The Laird of Dalmahoy.

THE Justice continewis this dyet to fryday nixt.

Jun. 16.—COMPEIRIT Johnne Mitchell, perfewar, and declairit that the perfonen on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he past *simpliciter* fra thair perfute, as innocent thairof.—The pannell takis instrumentis of the perfewaris Declaratioun, and passing *simpliciter* fra thair perfute; and nochtwithstanding thairof, offerit thame felfis to the tryell of the Law for the said allegit crymes, feing thair is ane sufficient number of honest men heir present, quha war summoned be the perfewar to pas on thair Assyse, and quha best knowis the verritie of that matter; and thairfoir, as of befoir, defyret my lord Justice that thai mycht be put to ane tryell, &c.

THE Justice, in respect of the perfewaris declaratioun and passing fra the pannellis perfute, Ordanis the dyet to defert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuming, at the instance of thir perfewaris.

Murder committed under Trust and Friendship.

Jun. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq^{le} Johnne Johnnestoun, fervand and neir kynsman to the Laird of Caskieben, be schuiting him throw the body with ane double musket, charget with fyve bullettis, vnder trust and freindschip, at the dur of the said Hareis duelling-hous, the xxiiij of Marche laft.

Robert Johnnestoun, in Corfhill, as father to vmq^{le} Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorfate, &c.

THE Justice Ordanit Adame Gordoun of Boighoill, as cautionner, to be vnlawit for nocht entrie of the said Harie, in the pane of Tua hundreth merkis: And sicyk, that the said Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be efcheit, &c.

Murder by Drowning, &c.

Jun. 16.—DONALD NEILSONE of Affint, Neill Neilfone, his sone, and Neill M'Eane Allafter.

Dilaitit for taking vmq^{le} Donald M^cAllaister V^cEane V^cHenrie, binding him hand and fute, and casting him in ane boit; and thaireftir cayreing him to ane craig¹ in the Sea of Clafneffe, in Affint, quhair the fie overflowing the said craig, he was pitiefullie² drownit and cayreit away to the grit Ocean-fie; and fa, crewallie Murthouret be thame.

Michaell Anderfone, tailgeour in the Potter-raw, as cautioner, amerciated for nocht repoirting of the Letteres deulie execute and indorfate, and perfewing thair of, purchest at the instance of Johnne M^cAngus V^cHenrie, neir kynnisman of the said vmq^{le} Donald, viz. 100 merkis for the said Neill M^cEan Allaister; and for the vther tua defenderis, ather of thame in tua hundredth merkis.

Slaughter.

Jun. 20.—WILLIAME JOHNNESTOUN, elder of Kellobank; Williame Johnnestoun, 3ounger, his sone; and Johnne Johnnestoun, also his sone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Williame Johnnestoun of Kynnel-heid; committit in anno 1619.

PERSEWAR, Jeane Johnnestoun, as dochter.

ASSISTERIS of the persute, Robert Johnnestoun, callit of Mossfope, Thomas Johnnestoun of Beirholme, James Johnnestoun of Erfschag.

PRELOCOUTOURIS in defence, Mr Thomas Nicolfone, elder, Mr Laurence M^cgill (Advocates.)

The persewaris passis *simpliciter* fra the pannellis persute, for the crymes foirfaidis: Quhairvpone the pannell askit instrumentis.

Continued, 'for the Kingis pairt,' to the third day of the next Justice-air, or sooner, on xv days warning.

Taking captibe and prisoner—Oppression, &c.

Jul. 12.—WILLIAME GARIOCHE, sone to James Garioche of Kinstair, and Thomas Anderfone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, sumtyme of *Toweis*, vpone the xxj day of Januar, 1620 last, bodin³ with foure piftolettis and tua lang gwnes, suordis, durkis, and vtheris wappones *invafuë*; and cuming airtie in the moirning, befor the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, sone-in-law to Johnne Bonar, in Tuliechetlie, quhair the said Johnne was, in sober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the said hous, pat violent handis in the persone of Barbara Forbes, ane servand thair of, drew hir to the ffyre, and in maist barbarous and crewall maner held hir aboue the samyn, thraitning to cast hir thairin,

¹ Craig, or rock.

² Piteously; lamentably.

³ Furnished; provided.

and to burn hir quick,¹ gif scho reveillit nocht to thame quhair the said Johnne Bonar was: AND lykways, ffor the putting violent handis in the persone of Robert Broun, ane vther fervand of the said hous, and halding ane drawin durk to his breift, thairtuing to strek him thairwith, gif he also reveillit nocht to thame quhair the said Johnne Bonar was for the tyme: AND last, vponne knowlege gevin to the said Alexander Forbes of Toweis and his complices, that the said Johnne Bonar was in his bed within the said hous, ffor thair cuming to him to his bedfyde, and drawing him furth of his bed in maist violent maner, taking him captiue and priffoner, and cayreing him furth of the said hous be the space of tua myles, to the watter of Lochell, and douking² him dyuerse tymes thairin; and thair compelling him to yeild to the furneiffing to the said Alexander Forbes, and delyuering to him of ffyve hundreth merkis money; and becaus of the said Johnne Bonar his refusall of performeing thaireftir of his promeis, ffor cayreing him with thame, as ane captiue and priffoner, to the duelling-hous of Robert Merfar of Edindowie, and keiping him thairin, as ane captiue and priffoner, be the space of tua dayis and tua nichtis togidder: AND for beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

Compeirit personallie the said Williame Garioche and Thomas Anderfones, and maist willinglie offerit thame selfis to the tryell of the law, disassenting *simpliciter* to all maner of continuation: And thairfoir protestit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, listter,³ burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, speciallic constitute, for the said Johnne Bonar, persewar, and be vertew of ane Letter of procuratioun, subscryuit with his hand, of the dait the aucht day of July instant; bearing, that the said Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderstuid the saidis Williame and Thomas, quha had fund cautione, war innocent of the haill crymes aboue writtin, Ordanit the said Johnne Forbes of Brux to pas *simpliciter* fra thair perfute, &c. Quhilk protestatioun the Justice admittit.

House-breaking—Stouthreif—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir; Duncane Grant, in Wester Bunlody; James M^callaster Vic Eane Oig, in Inchebroun; Ewin M^cneill V^cquyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmoriestoun his hous of Belmaeene, in Vrquhart; breking vp of fourtene lokit kiftis⁴ being thairin; steilling and away-taking of certane guidis and geir being within the saidis kiftis, all pertening to the said Johnne Grant; committit in Apryle, 1615 yeiris.

¹ Alive.

² Ducking.

³ Dyer.

⁴ Locked chests.

PERSEWAR, Johnne Grant of Glenmorietoun.

The persewar passis *simpliciter* fra the perfute of the said Ewin ; and declairis him to be innocent thair of.

Continued to the thrid day of the nixt Justice-air of the scherefdom quhair thay duell, or soner, vpon xv dayis warning. Johnne Grant, appeirand of Ballindalloche, become fouertie, &c.

Taking captiue—Oppression—Starving to death.

Jul. 26.—ROBERT M^cCOULE, in Wester Kindrogine ; Robert Glas, thair ; and Johnne Bowe M^kerra Dowy, in Straloche.

Dilaitit for Ufurpatioun of our fouerane lordis autoritie, in taking of vnr^{le} Allaster M^cgilliemule, in Innerridrie, ane simple puir man, furth of the duelling hous of Johnne Roy M^cgilliemule, vpon the landis of Bordland, within the scherefdom of Perth, binding him hand and fute, and cayreng him, as ane captiue and priffoner, with thame to the Castell of Blair, in Athole, and stryppit him naikit of his claithes, and thaireftir casting him in the pit of the said Castell, quhair, in the deid tyme of winter, viz. in December last, he fameifchet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill : And thaireftir cayreng him out of the said pitt to ane gibbet (being deid) vpon the landis of Blair, quhair thay hang him vp as ane malefactour, but power or commissioun gevin to thame, or ony preceeding tryell tane of his guiltines of ony cryme.

THE Justice ordanit Johnne Fergusone of Belnacult, in Straloche, as cautioner and fouertie, to be vnlawit for nocht entrie of ilk ane of the saidis personis, in the pane of ane hundreth merkis : And siclyk, that thay fall be denuncet rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

Hurting and Wounding—Demembration.

Nov. 3.—JOHNNE STEWART of Hulreid ; James Blaikwoid, his seruant ; and Johnne Pollok, sone to Johnne Pollok, in Caldecoittis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allansone, sone to Andro Allansone, in Waterfute, in his heid, be geving to him of fevin bludie woundis thairintill, tua crewall woundis in his schouleris and airmes : As also, of difmembring him of his thombe and thre fingeris of his left hand ; committit vpon the landis of Gorballis, pertening to Sir George Elphinstoun of Blythefwoid, kny^t, in his cuming frome Glasgou to his fatheris hous, in Waterfute, in the moneth of Junij last ; vpon set purposis, prouifoun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Allansone.

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Hulreid, that the Dittay can nocht be put to ane Assyse aganis the said Johnne, nor his men, becaus per Legem, *si quis in rixa, &c.*; quhair ane person, callit for ane cryme and is fugitiue thairfoir, the remanent persones, his allegit complices, enterand, can nocht be tryit be ane Assyse, or persewit for the samyn: As also, he takis instrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpon foirthocht felonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Assyse, for Disinembring, feing the persewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non est membrum, sed tantum pars membri*.

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis instrumentis, that the persewar is willing to pas fra the said Johnne Pollokis persute *simpliciter*, as altogidder innocent of the cryme lybellit; and protestis, in caice he persew nocht Pollok, that the persewaris cautioneris be vnlawit: And thairfoir, in respect of Pollokis innocencie, he offeris him to the tryell of ane Assyse. Takis instrumentis also of the persewaris declaratioun, beirand that he nevir saw the said Johnne Stewart and remanent persones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun; as also, that Johnne Stewart said thease wordis at that tyme, 'It is ane mervellous matter we can nocht get James Pollok and Johnne Allansone red!'

THE Justice repellis the allegiances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the disinembring, in respect of the Dittay: And Ordanis the samyn to be put to ane Assyse.

VERDICT. The Assyse, all in ane voce, ffind the saidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Cleane, innocent, and acquit, &c.

Slaughter.

Nov. 17.—JAMES MURE, in Dalnahoy,¹ and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vni^o Johnne Weir, in Dalnahoy; committit with stanes, rungis,² and vtheris wappones *invasiue*, vpon the last day of September lastbypast, vpon set purposis, prouisioun, and foirthocht felony.

PERSEWARIS, Margaret Wynrahame, the relict; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermonthe.

VERDICT. The Assyse, all in ane voce, ffind the said *Thomas Aikman* to be Cleane, innocent, and acquit: And siclyk, that the said *James Mure* is Giltie, culpable, and convict of the said slauchter.—SENTENCE *against Mure*. To be tane to the Mercat croce of Edinburgh, and thair his heid to be strukin frome his body; and all his moveable guidis to be escheit, &c.

¹ See Jun. 14, 1620.

² Cudgels; staves.

Slaughter.

Dec. 1.—**JOHNE BROWN**, tailzeour, hantand¹ in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} James Williamfone, in Glengeich ; committit the xxvj day of November lastbypast, within the duelling hous of Johnne Gibfone, elder, in Craufurdtown, be hurting him with ane fuord in the heid, airmes, and vtheris partis of his body ; quhairof, vpon the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiffit.

PERSEWARIS, Symone Williamfone, burges of Edinburghe, and Robert Williamfone, brethir to the defunct ; James Williamfone, brother-in-law ; Sir Williame Oliphant, kny^t.

ASSISA.

Mathow Bailzie, of Littillgill,
Mr James Bailzie, fone to Mathow,
Johnne Makmath of Corfbank,

Thomas Johnnstoun of Beirholme,
Williame Tailzeifeir of Herklaw,
Johnne Vmphray in Glenmuklek.²

The said Robert Williamfone, brother to the defunct, fuoir the Dittay to be of verritie : Quhairvpoun my lord Aduocat askit instrumentis ; and protestit for Wilfull Erroure aganis the Assyfe, gif thay acquit.

VERDICT. The Assyfe, all in ane voce, be the declaratioun of the said Mathow Bailzie, chancellor, ffand the said Johnne Brown to be ffylet, culpable, and convict of airt and pairt of the said crewall Slauchter.—**SENTENCE.** To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin frome his body ; and all his moveabill guidis to be escheit, &c.

Slaughter.

Dec. 15.—**SIR JAMES MAXWALL** of Calderwoid, kny^t ; Alexander Lyndfay of Dunrod ; Johnne Lyndfay, his brother naturall ; and James Maxwell, fone to Williame Maxwell of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Lekkic of that Ilk ; committit in September 1601 yeiris.

PERSEWARIS, Alexander Lekkic of that Ilk, as fone ; Adame Cuninghame of Markinfche, the spous of Euphame Maxwell, relict of the said vmq^{le} Alexander, for his intreis ; Sir Williame Oliphant of Newtown, kny^t, Aduocat to our fouerane lord.

PRELOCUTOR in defence, Mr Thomas Hoip, Aduocat.

The Justice, conforme to ane Warrant of the Secretit Counfall, direct to him, quhairof the tennour followis :

JUSTICE, Justice Clerk, and 3our deputis. Quhairas the fyftene day of December instant is appointit to Sir James Maxwell of Calderwoid, kyn^t, W^m Maxwell of Newlandis, James, J^o, and James Maxwellis his fones, Alex^r Lyndfay of Dunrod, and James Wauchope in þe Airdis, ffor þair compeirance befor 3ow, to vnderly the lawis for the Slauchter of vmq^{le} Alex^r Lekkic of þat Ilk : Nochtwithstanding, for certane cauffis moving ws, it is our will, and we Command 3ow to continew þe said dyet, vntill the

¹ Dwelling, but having no fixed residence.

² The rest of no note.

fextene day of Januar, in the 3eir of God I^m. Vj^e. tuentie tua 3eiris : And that 3e tak new caution of thame, conforme to the ordour. Quhairanent thir presentis fall be 3our Warrant. AT ED^s, the tuelf day of December, 1620.

AL. CANCELL^s. MAR. MELROIS. NITHSDAILL. LAUDERDAILL. CARNEGIE.

Continewis this dyet to the faid xvj day of Januar, in anno foirfaid.—Sir Alexander Hammiltoun of Innerweik, kny^t, elder, and Alexander Levingftoun of Belstane, become pleges and fouerteis for the entrie of the faidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwell compeirit, and personallie product ane WARRANT of the Lordis of Secret Counfall, proceeding vponne ane Supplicatioun gevin in by thair Lordschippis ; quhair of the tennour followis.

MY LORDIS OF SECRET COUNSALL, vnto 3our L. humlie meanis¹ and schawis, we 3our feruitouris, Sir James Maxwell of Calderwoid,² fone to vmq^{le} Williame Maxwell of Newlandis, Alex^r Lyndsay of Dunsrode, and Joⁿ Lynajoy, his brother naturale, That quhair, the fextene day of Januare nixtocum is appointit to us for our compeirance befoir his Maiesteis Justice, to vnderly the Law for the Slauchter of vmq^{le} Alex^r Lekie of that ilk, at the quhilk day the Justice intendis to proceed in this matter ; albeit it be of veritie, that be pe mediatioun and travellis of some weil affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent³ freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this vuhappie feid, whilk hes bene of so long continuance betuix our Houffis, to some termes of aggrement and reconciliatioun : Thay brocht pe matter to this poynt, that I, pe faid Sir James, fall superceid and continew the profecutioun and following out of pe actioun of Reduccion, quhilk I haif presentlie in dependance befoir pe Lordis of Counfall and Sesshion, aganis pe faid Laird of Lekkie, and that I fall suffer the same to rest and sleip⁴ till pe faid fextene day of Januar nixtocum ; and that the Criminall dyet foirfaid, appointit for our Tryell befoir pe Justice, fall be continewit till Witfonday nixt ; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the feid and querrell betuix us to ane more happie and finall conclusioun : AND with this appointment of freindis, bothe we pairteis, restit weale satisfeit and content. THAIRFOIR we besaik 3our Lo. to geve command to pe Justice, Justice clerk, and pair deputies, to continew pe dyet foirfaid, appointit for our compeirance befoir thame, to vnderly the Law for pe Slauchter, vnto pe faid terme of Witfonday nixtocum ; and that pai dispense with our personall compeirance, and tak new caution for us, conforme to pe ordour : And to discharge thame of all proceeding aganis us in the mean tyme, and of thair offices in that pairt, quhill pe faid terme of Witfonday : Whairanent thir presentis fall be pair Warrant. And 3our Lordschippis anfuier. [*Followis the Lordis deliquerance.*] APUD ED^s, quarto Decembris, 1621, fiat ut petitur, to the six day of Junij nixtocum : Becaus the Erle of Mar, being personallie present, testifeit pe consent and appointment within writtin.

AL. CANCELL^s.

For obedience of the quhilk Warrant, the Justice continewis this dyet in the same forne, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the faid xix day of Junij, &c.—Sir George Elphingftoun of Blytheswoid, kny^t, became souertie for the entrie of the faid Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid productet his Maiesteis Letter following :

¹ Complains. ² It is likely the following words are omitted in the record, through a clerical error : ' Kny^t, James Maxwell, son, &c. ³ Disinterested. ⁴ When no proceeding takes place in suits before the Court of Session for year and day, the process is technically said to fall asleep, and is revived by a Summons of Wakening, &c.

JAMES R.

TRUSTIE and weilbelouit, We greit 30w weill. WHAIR AS, We be credible informet that *Sir James Maxwell of Calderwood, kny'*, and *Alexander Lindfay of Dunrod*, with their complices, ar summond, to vnderly our Lawis, for þe Slauchter of vmq^{le} *Alexander Lecky of that Ilk*, alleaged committed be thame, We ar well pleased to grant vnto the said *Sir James* a Respitt for the same, during the space of certane monethis eftir the dait hierof: AND thairfoir haif thought goode, by these presentis, to will and requyre 30w not to medle in any wyfe, nor to tak cognitioun of the said cause, till the fyft day of October nixt. Wherein We expect 30wr conformitie to our pleafour. GEVIN at our Court of Grenewiche, the first of Junij, 1622.

THE Justice continewis, &c. *Sir Johnne Hammiltoun of Lettrik*, and *James Maxwell of Kirkconnell*, cautioneris, &c.

PRELOCUTORIS in defence, *Joseph Myller*, Aduocat; *Archibald Hammiltoun*, Commissar of Lanark.

(Oct. 5, 1622.)—JOSEPH MYLLER productet tua feuerall Testimoniallis, the ane subscryvuit be the Minister of Lanark, and dyuerse elderis of the Seffionn of that Kirk; and the vther subscryvet be the Minister of Carlouk, and certane of the elderis of that Kirk, testifeing the deceife of *Sir James Maxwell of Calderwood, kny'*: And vpon the productioun thairof askit instrumentis.

The Laird of Dunrod presentit to the Justice ane LETTER of HIS MAIESTEIS, quhairof the tennour followis.

To o^r trustie and weilbelouit, o^r Justice, Justice clerk, and pair deputeis whatsoever.

JAMES R.

Trustie and weilbelouit, We greete 30w weill. Whairas, We haue bene pleased to write to o^r Counsell, willing thame to employ their best meanes, for reconciliatioun of *Sir James Maxwell of Calderwood* and *Alexander Lekkie of that Ilk*: We haif lykways thoct by these presentis to will and requyre 30w nocht to proceed in the criminall actioun intendit aganis the said *Sir James Maxwell* and his complices, for the Slauchter of vmq^{le} *Alexander Lekkie of that Ilk*, till 3e fall vnderstand by o^r said Counsell that þai haif gevin vp all forder deilling in that matter. So, expecting 30^r conformitie to this o^r plet^r, we bid 30u fare weill. GEVIN at Windesore, the seavinthe day of August, 1622.

Conforme to the quhilk directioun of his Maiestie, the Justice deferris all proceeding aganis the pannell.

The said *Johnne Lyndfay* disaffentis to the said continuatioun, and affirmes him self to be innocent of the said Slauchter; and thairfoir offeris him self presentlie to the tryell of the Law for the samyn.—The Justice Ordanis him, with the remapent defenderis vpon pannell, to find caution. *James Lyndfay of Scheillis*, and *Alexander Levingftoun of Belstane*, become cautioneris, &c.

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

Taking captive King's free lieges—Cruel oppression—Murder, &c.

Feb. 7, 1621.—JAMES PARK in Cathkyn, and *George Park* in Wester Gremlear, his brother.

Dilaitit of airt and pairt of the Taking of vmq^{le} *William Knox*, in Cathkyn, furth of his duelling hous, vnder silence of nycht, and with cudgellis and rungis besting and dinging him in the breift, fydis, bak, and bellie; thairby breking

and bruſeing his hail intrallis and nobill pairtis within him, ſetting thair feit betuix his leggis vpon his ball-cod,¹ and forcing thairby his ſtanes to loup vp in his liſkis;² binding him thairefter with ane coird, or hair-tedder, to ane horſe and ane ſled,³ and cayreing him with thame as ane captiue and priſoner to the toun of Hamiltoun: Off the quhilkis hurttis and dedlie woundis, he deceiſit, in the moneth of Januar; the ſamyn being done to him in the moneth of October of befoir, in the yeir of God I^m.V^c.lxxxv^j yeiris.

PERSEWARIS, Johnne Knox, as ſone; Sir Williame Oliphant, kny^t.

PRELOCOUTOURIS in defence, Mr Tho^s Hoip, Mr Ja^s Hamiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua feuerall crymes; the firſt, for taking and apprehending of his Maieſteis frie lege but⁴ Commiſſioun, quhilk is treflonable; the vther cryme, for Murthour and Slaucher of him, in in maner lybellit. As to the firſt cryme, quhilk inferris the cryme of Trefſone, *non relevat*, becaus, taking without imprifſoning *in privato carcere*, and detening him thairin, *per ſpaciū viginti quatuor horarum*, can nocht, be⁵ the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Aſſyſe, except it war condiscendit, at quhat tyme he contractit the deidlie ſeiknes, eftir the geving of the ſtraikis quhairupoun daith followit, as is alleggit in the lybell. My lord Advocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpon the committeris; and thairfoir deſyres the Juſtice to put the hail lybell *coniunctim* to the knowlege of ane Aſſyſe.—The perſewar, Johnne Knox, declairis that he will nocht perſew at this tyme, becaus the ſpecial perſones that ar ſummoned, and beſt knawis the treuth of the pannellis giltines, ar nocht preſent: And thairfoir, deſyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new caution.—The pannell diſaſſentis to the ſaid continuatioun; and in reſpect, thair is ane ſufficient number of Aſſyſe preſent, all ſummoned be the perſewar, offeris thame ſelfſis to the tryell of the law for the hail crymes lybellit; quhairof thay declair thame ſelfſis to be altogidder innocent: And proteſtis, in reſpect of thair former offer, that thay be nawayis trubillit or perſewit for the ſaidis allegit crymes, in ony tyme cuming.

THE Juſtice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find caution, &c. Williame Anderſone, portioner of Littil Govane, became cautioner, &c.

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

Usurping King's authority—Taking captive, &c.

Feb. 9.—RICHARD GRAHAME of Hoſpitalscheillis, and Robert Merſar, meſſinger in Abirdene.⁶

¹ Testes.

² Reins.

³ Sledge, or cart without wheels.

⁴ Without.

⁵ By.

⁶ Cautioners, ' George Erle of Marſchell, and James Garioche of Kinſtair.'

Dilaitit for cuming to Patrik Farquhar, burges of Abirdene, his duelling-hous thair, and maist violentlie, but ordour of Law,¹ or concurrence of the Magiftratis of the said burgh, and without ony Commiffioun or vther Warrant, putting violent handis in the perfone of the said Patrik Farquhar, taking him furth of his said hous; and thairfra, cayreing him, as ane captiue and priffoner, to the said Richerd Grahames Hous of Overcraig: As also, for cayreing him to the priffone of Stanchyve, quhairin he was keptit be the space of tuentie dayis: LYK AS, he was keptit and detenit in the said Richerd Grahames Hous, *tanquam in privato carcere*, be the space of tuentie foure houris; vsurpeing thairby our fouerane lordis authoritie vpone thame: AND sic lyk, for tranfpoirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keptit in frait firmance the space of vther xxiiij houris: Vfurpeing thairby our fouerane lordis authoritie vpone thame.

PRELOCOUTOURIS in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The said Patrik Farquhar declairit, that the saidis Letteris war altogidder raifit but² his warrant, and by³ his knowlege; and without ony informatioun gevin be him to our fouerane lordis Aduocat, or to the said James Keyth,⁴ or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the said Richard and Robert, and past *fimpliciter* fra thair perfute, as altogidder frie and innocent thairrof.—My lord Aduocat declairis, that thair is collufioun and secreit aggrement betuix Patrik Farquhar and the perfones on pannell; and defyres the pannell thairfoir to be put vnder new caution, for thair compeirance of new agane, vpone xv dayis warning, for his Maiefteis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Justice Ordanit na letteris to be direct furth aganis the pannell, at the instance of the said Patrik, for the crymes foirfaidis, in ony tyme cuming, in respect of his former declaratioun.

Slaughter.

Feb. 23.—JOHNNE BELLENDEN, indueller in Edinburge.

Dilaitit of airt and pairt of the Slaughter of vni^q James Dalmahoy, burges of Edinburgh.

PERSEWARIS.

Agnes and Helene Dalmahoy, fisteris; Sir Johnne Dalmahoy of that Ilk, kyn^t; Andro Ker of Zair.

PRELOCOUTOURIS in defence, James Borthuik of Newbyres, Mr Laurence McGill.

THE JUSTICE, of consent of pairtie, continewis the dyet to the sevint of Marche

¹ Without legal warrant. ² Without. ³ Beside; past; without; contrary to. ⁴ Of Harviestoun, cautioner for producing the Letters duly executed against the pannell.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the said day.

Mar. 7.—CONTINEWIS this matter to Fryday nixt, the nynt *instantis*.

Mar. 9.—THE perfewaris paffis fra the perfute of the pannell, *pro loco et tempore*.

Slaughter.

Mar. 30.—MR JAMES BAILZIE, sone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slaucher of vmq^{le} James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTORIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The saidis Mathow, and Mr James, declairit, that Mr James Bailzie, his sone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit hevelie diseasit with seiknes, that he is nocht able to travell to the keeping of this dyet, &c.

Johne Loverance, Minister at Robertoun being solemplic suorne, declairit, that he is Minister at the Kirk of Robertoun, and within this thre dayis visseit Mr James Bailzie within the parochin, quhair he was lying bedfast, heavilie diseaset with seiknes, and nawayis of habilitie to travell, vpon horse or fute, to the keeping of this dyet; as he sould answer to the grit and Almychtie God.—*Johne Dunsyre* in Robertoun, also suorne, is conforme to the said Johnne Loverance, Minister.—*Mungo Inglis* thair, lykwayis deiplic suorne, depones conforme to the Minister.

THE Justice ordanit caution of new agane to be fund for the said Mr James Bailzie, that he fall compeir the thrid day of the nixt Justice-air of Lanerk, or soner, vpon xv dayis. The said Mathow becomes cautioner.

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

Murder under trust, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and tressonabill Murthour and Slaughter vnder trust, credit, and affurance of vmq^{le} Thomas Lyndsay in Scraibster in Kaithnes; committit be thame and thair compliceis, in forme and maner spicifeit in the Letteris.

Robert Monro of Aldie, Commissar of Kaithnes, as brother on the mother syde, to the said vmq^{le} Thomas, produceit the Letteris deulie execute and indorfate vpon the said Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denuncet rebellis and put to the horne, for nocht finding of caution, to haif compeirit befor the Justice or his deputis this day.

THE Justice, vpon the production of the saidis Letteris deulie execute,

indorfat, and regiftrat, adjudget the faid Erle and James Sinclair, in respect thair of, and of thair nocht compeirance perfonallie this day, to be ffugitiues fra his Maiefteis lawis for the faid treffonabill Murthour, as culpable and fugitiue thairfoir.

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

'Forcing'—Rapt.

Jun. 27.—JAMES M^cNACHT in Igifzaird, and Thomas Weir in Gairdingholme-fute.

Dilaitit of the fforcing of vmq^{le} Jonet M^crone, fervand for the tyme to Thomas Weir in Gairdingholme-fute, and abufeing hir, in the moneth of November, 1620 yeiris, in sic foirt, that within tuentie davis thaireftir fcho deceiffit.

PERSEWAR, Williame Campbell, coufing-germane to the defunct.

PRELOCUTORIS in defence, Mr Lueis Stewart, and Adame Cuninghame, (Advocates.)

The pannell defyres to vnderftand the perfewaris entreis to perfew ; and that he declair how neir of kyn he is to Jonet M^crone.—The perfewar declairis he is coufing-germane to the faid vmq^{le} Jonet, viz. fcho was his father-fifter dochter ; and thairfoir hes guid intreis to perfew.—It is allegit be the pannell, that he can nocht be eftimat ane lauchfull perfewar, becaus the perfewaris father was the defunctis bastard-brother ; and fa, of the Law, can nocht perfew, his father being bastard ; the verritie quhairof referris to the perfewaris ayth : Quha declairit the allegiance to be of verritie.

THE JUSTICE, in respect thair was na lauchfull perfewar to infit in this perfute, Ordanis the dyet to defert.

The pannell takis instrumentis thairupoun, and affirmes that thair atlogidder innocent of the crymes lybellit ; and gif ane lauchfull perfewar, ather for the parteis or the Kingis entreis, war present, thay wald maift willinglie offer thame felffis to the tryell of the law for the faidis crymes ; and difaffentit, *simpliciter*, fra ony continuatioun, without ony exceptioun to be proponit aganis ony lauchfull perfewar or perfones of Affyfe, being honest and vnfulpect perfones ; protesting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

Slaughter.

Jul. 19.—HENRIE BAIRD, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq^{le} Robert Huttone, duelland within the parochin of Mukard, beyde Caftell Campbell, be cafting of ane otter-ftalff, with ane tua-granet fork of irne at the end thair of, at the faid vmq^{le} Robert, quhilk peirfit him in the bellie, quhairof he immediatlie thaireftir deceiffit ; committit vpon the nynt of July instant, vpon fet purpois, prouiffioun, and ffoir-thocht ffellonie.

PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confessis the fact, and craves God mercie.

VERDICT. The Assyse, all in ane voce, stand the said Henrie Baird, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin fra his body; and all his moveable guidis to be efcheit, &c.

Convocation of Lieges—Weiring of Hagbutis—Slaughter, &c.

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.¹

Dilaitit for contravening his Maiesteis Actis of Parliament, in making of convocatioun of his hienes legis: AND beiring and weiring of hagbutis and pistolettis: AND for airt and pairt of the Slauchter of vmq¹⁰ Thomas Coupland in Caschogill: AND demembring of Robert Douglas, sone to Sir Robert Douglas of Caschogill, kny^t, of his left lug:² Committit in Majj lastwas, vpon the tuelf day thairof, at the Mofs of Caschogill.

PERSEWARIS, Margaret Corbie, the relict; Williame, Robert, and Thomas Couplandis, as sones; and Coupland, as dochter to the said vmq¹⁶ Thomas; Sir Robert Douglas of Caschogill, kny^t, as father to Robert Douglas, and maister to vmq¹⁶ Thomas.

PRELOCUTORIS, Mr Thomas Hoip; Mr Thomas Nicolfone, younger; and James Dowie, wryter.

Convocation of Lieges—Weiring of Hagbutis—Slaughter, &c.

Jul. 20.—SIR ROBERT DOUGLAS of Caschogill, kny^t; Robert Douglas, his sone; Johnne Paterfone, in Caschogill; Thomas Paterfone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-seven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocatioun of his Maiesteis legis; beiring and weiring of hagbutis and pistolettis; and invading of the Laird of Drumlangrig, his brother, and remanent persewaris, with schottis of hagbutis and pistolettis; committit at the Mofs of Knockconnie, pertening to David Douglas, heritour thairof, vpon the tuelf day of Majj last.

¹ The rest of the pannels were, 'Duncane Hunter of Ballagan; James Johnnstoun of Lochhous; James Johnnstoun, callit *Braikinsfyde*, James Johnnstoun, callit *Croftheid*, James Douglas, and Robert Grabame, all four servandis to the said James of Lochehous; Archibald Douglas, servand to the Laird of Mouffell; Robert Creichtoun, sone to . . . Creichtoun of Craufurdton; Thomas Bell, sone to *Reidcloke*; James Douglas, callit *Glenmeid*; Christie Airnestrang in Bigholme, his sone in law; Andro Hunter in Auchinbathe; James Douglas, Thomas Mairtene, Johnne Paterfone, callit *the fukler*, all servandis to the said Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, messinger.'² Ear.

PERSEWARIS, Williame Douglas of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrane; James Johnnstoun of Lochehous; Robert Dalzell, sone naturall to Sir Robert Dalzell of Eliok, kny^t; Sir Williame Oliphant of Newtown, kny^t.

Ane WARRANT was producet to my lord Justice, quhair of the tennour followis.

JUSTICE, Justice Clerk, and 3onr deputis; fforamekill as the tuintie day of July instant is set and affixed for perfute of *Williame Douglas of Drumlangrig*, and certane his speciall freindis and kynfmen befor 5ow, for pe slaughter of vmq^{le} *Thomas Coupland*, with hagbuttis and pistolettis; as also, for perfute of *Sir Robert Douglas of Caschogill*, and certane his freindis and pairt-takeris, for making of convocatioun of his Maiesteis legis, and beiring, weiring, and schuiting of hagbutis and pistolettis, contrair his Maiesteis Actis of Parliament; as the Letteris, *hinc inde*, raiffit be ather pairtie thairintill, beiris: AND because, be the mediatioun of freindis, the saidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis jame pairintill: IT is pairfoir our will and plesour, that 3e continew the saidis dyettis to the thrid day of pe nixt Justice-air of the Scherefdome quhair pe saidis pairteis duellis, or foner, vpone fyftene dayis warning; dispenfand with thair nocht compeirance befor 5ow this day, and takand new cautioun for pe hail perfonnes re-entrie content in the Letteris, to that effect, vnder the panes content in the Actis of Parliament. Qubairament thir presentis fall be to 5ow ane sufficient Warrant. Subscrivit at Edinburgh, the xx day of July, 1621.

HAMMILTOUN. AL. CANCELL^r. MAR. MELROS.

THE Justice continewis the saidis tua dyettis to the thrid day of the nixt Justice-air of the Scherefdome of Dumfreis, quhairin the hail perfonnes duellis, or foner, vpone fyftene dayis.

Compeirit perfonallie Douglas of Caveris, Scheriff of Teviedaill, and become fouertie for the said Williame Douglas of Drumlangrig: And siclyk, Johnne Wilfone of Croglene, James Menzies of Enoche, and Malcolme Dalrumpill of Enoche, fouerteis, conjunctlie and feuerallie, for Sir Robert Dalzell of Eliok, James Douglas of Mouffell, &c., that thay fall compeir, &c.—And on the vther pairt, compeirit Sir Williame Douglas, younger of Caschogill, kny^t, and become plege and fouertie for his father, and hail remanent defenderis, &c.

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

Slaughter—Wearing of Hagbuts and Pistolets, &c.

Aug. 24.—CAPITANE JAMES JOHNNSTOUN of Thornik.

Dilaitit of the felloun and crewall Slaughter of vmq^{le} Williame Johnnstoun, brother germane to Robert Johnnstoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and schuiting of hagbutis and pistolettis, and slaying the said vmq^{le} Williame Johnnstoun thairwith; and remanent crymes content in the criminall Letteris.

THE Justice ordanit James Johnnstoun of Braikanfyde, cautioner for the said Capitane, to be vnlawit and amerciat, for nocht entrie of the said Capitane, in the pane of ffyve hundreth merkis: And siclyk, that the said Capitane James, for his nocht compeirance, fall be denuncet rebell, and put to the horne; and all his moveabill guidis to be escheit, &c.

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

Slaughter in Single Combat, or Duel, while in Foreign Service.

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL OR SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings!]

The reader may here be referred to the Case of “*Capitan Johne Rig, Archeour of the Gaird of France,*” in a former part of this Collection, Vol. II., p. 382.]

NOV. 14.—CAPITANE HARIE BRUCE, seruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of vmq^{le} Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of fflanderis, in anno I^m.Vj^c. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as sifter; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCOUTOUR in defence, Mr Robert Foullis.

The pannell productet ane WARRANT and command of the Lordis of Secret Counfall, quhairof the tennour followis.

ACT OF THE LORDS OF PRIVY COUNCIL.

AT EDINBUR^t, the threttene day of November, the 3e ir of God I^m. fex hundreth twentie ane 3eiris. ANENT the Supplicatioun presentit to the Lordis of Secret Counfall be *Capitane Harie Bruce*, seruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November instant is appointit vnto him, vpon the complemt of *Margaret Hammiltoun*, as sifter, with the remanent kyn and freindis of vmq^{le} *Capitane Johnne Hammiltoun*, for his compeirance befor the Justice or his deputis, in the Tolbuthe of Ed^t, to vnderly the law for the Slauchter of þe said vmq^{le} *Capitane Johnne Hammiltoun*, committit be the said *Capitane Harie*, in ane Singular Combat, in the Law Countreyis of fflanderis, some fevintene 3eiris ago; lyk as, the Justice intendis to proced aganis him, in that matter, althocht it be of veritie, that gif respect be had to the nature and qualitie of the perfute, and to the circumstanes of the Slauchter, quhan, quhair, and vpon quhat occasioun it fell out, it will be fund that the tryell thairof can no way be propper nor competent befor the said Justice, nor in no vther Judicatorie within this Kingdome; becaus the said Slauchter was committit outwith his Maiesteis dominiones, within the territoreis of the *Esstaitis of the Law Countreyis*, in ane Singular Combat, quhairvnto the said *Capitane Harie* was vrgeid and drawin by the grittest respectis of credeit and reputation quhairwith a Gentilman could be asfail3eid: AND howeur the said *Capitane Johnne Hammiltoun* and he be borne Scottisfen, and in that respect obleist in all submissiue deuteis of allegiance to thair naturall Sovereane, zit the tyme of that vnhappie slauchter, and dyuerse 3eiris befor, they war bothe in actual feruce, and suorne *Officeris* to the saidis *Esstaitis*, and als far subiect to thame and to thair Judgement and Jurisdiction, in all matteris, alswell impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne subiectis : And thair was no difference betuix thame and the natives of the cuntry, in pointis of subiection to the saidis *Estaitis* and pair lawis, the saidis *Estaitis*, at that tyme, being pair souerane Judges in all matters, of quhatsumeur qualitie, occurring within thair boundis. AND twitcheing the matter it selff, the treuth is, as was clerlie verifeit befor the *Counsell of Weiris*¹ established be the saidis *Estaitis*, for trying and censuring of matters of this kynd, that the said *Capitane Harie* was dyuerse tymes challenget to the Combat be the said vmq^{le} *Capitane Johnne Hammiltoun*, nochtwithstanding of the mony offeris maid be the said *Capitane Harie* to geve him all dew satisfioun and reffone, in the matter contravertit betuix thame, that, in respectiue termes of consideratioun, could be craved ; bot the moir the said *Capitane Harie* eschewit his Challenge, he was fo much the moir earnest in following of the same, obiecting vnto the said *Capitane Harie* the reproche of cowardice, and protesting to abuse him, in his private revenge, accordingle : And so, the said *Capitane Harie*, finding him selff interest and tuiched in so heigh a poynt of credeit and reputatioun, quhilk being anes lost, was never to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious spott of vnworthie cowardice ; and haifing respect, pairwithall, to his birth and parentage, quhilk he was lothe to blemishe, in a matter of this kynd ; and aboue all thingis, haeving euir befor his eis the equitie of his caus, with ane full and constant assureance, that God, who is pe trew sercheour of the heart, and vpon quhois devyne Providence the event of fuch duellis dependis, wald iustifie his pairt, in that uniuft Challenge quhilk was revertit vpon him, he acceptit and vnderuik the Challenge, quhairin it pleit God to iustifie and cleir the equitie of his caus, by making the said vmq^{le} *Capitane Johnne* to vnderly the dew desert of his error and raschenes : Quhairvpon, the said *Capitane Harie*, being callit befor the said *Counsell of Weir*, and the forme and circumstances of pe samyn being narowlie examined and ryped vp be thame, the qualitie of the said *Capitane Harie* and pe said vmq^{le} *Capitane Johnne*, thair persones being sworne and actual Officeris in the armie, making thame subiect vnto the said *Counsell of Weir*, and punisheable be the lawis of that *Estait* ; thay stand, that pe said *Capitane Harie* had done nothing vnbecomeing the deutie of a souldiour, suppourt with the testimonie of a good conscience : And pairfoir, restoitir him to his place and charge, quhairin he serued with good credeit dyuerse zeiris pairrestir. AND quhair as, he looked that this forme of tryell, vsed aganis him be the said *Counsell of Weir*, who wer only Judges to him in this caice, fould haif securit and warrantit him frome ony new perfute, zit the suster and freindis² of the said vmq^{le} *Capitane Johnne* callit him, for pe same Slauchter, befor his Maiesteis Justice, in the fax hundreth and fyve zeir of God³ quhairof informatioun being send vnto him frome hence, he maid his addrefs to HIS MAIESTIE, acquaintit his hienes with the perticuleris of this matter, and all that proceedit pairin ; quho, eftir consideratioun pairof, nocht only vterit his discontentment that ony fuch matteris fould haif bene walknit heir, bot HIS MAIESTIE was gracioullie pleit to grant vnto the said *Capitane Harie* his Remissione for that deid, and wait a Letter vnto the Lordis of his Maiesteis *Previe Counsell* flor discharginge the Justice to meddle in that matter : Quhilk Remission and Letter being delyuerit to the lair *Erle of Dumber*, and presentit vnto the saidis Lordis, as some of thame rememberis ; the sleuth and negligence of those who war trustit with the said *Capitane Harie* his effairis, sufferit his Letteris to perrishe ; and the matter has euir restit and sleipit senfyne till now. AND quhairis this matter is alreddie tryed and censured by those whome it properlie concerned, humble thairfoir desyring the saidis Lordis that thay wald geve command to the Justice, Justice clerk, and thair deputtis to desert the said dyet, and to desist and ceis fra all proceeding thairintill ; lykas, at mair lenth is content in the said Supplication. Quhilk being red, hard, and confidderit be the saidis Lordis, and thay being pairwith weill advyset, THE LORDIS OF SECRET COUNSALL findis it verrie neccessar and expedient, that pai vnderstand HIS MAIESTEIS Will and pleour in this matter, afoir thay gif ony final sentence or

¹ Council of war ; court-martial.² Blood-relations.³ Anno 1605 ; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.

direction thairan : And thairfor the saidis Lordis Ordanis and commandis his Maiesteis Justice, Justice clerk, and thair deputis, to continew the said dyet to the tuintie nynt day of Marche nixtocum, and to desift and ceis fra all forder proceeding jairin, quhill the said day ; takand new caution of this supplicant, for his compeirance to his tryell the said day, conforme to the ordour obseruet in fuche caices ; to the effect that in this meane tyme the saidis Lordis may haif convenient tyme and lafure to informe HIS MAIESTIE anent the estait of this matter ; and to attend HIS MAIESTEIS gracious Will and pleasour pairanent. For quibilk purpois the saidis Lordis Ordanis ane Missiue Letter to be writtin to his Maiestie.

EXTRACTUM de Libris Actorum secreti Consilij, f. d. n. Regis, per me Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

According to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Justice continewis this dyet, with all tryell to be tane for the said cryme, to the said tuintie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautioner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was cautioner for the said *Capitane Harie* his entrie, and product

ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, xxij die mensis Martij, anno dom. I^{re}. Vj^{te}. xxij^o. THE Lordis of Secreit Counfall, according to ane Warrant and direction in writ, signed be THE KINGIS MA^{TIE}, and this day presented vnto thame, Ordanis and Commandis the Justice, Justice clerk, and pair deputis to Desert þe dyet appoint to *Capitane Harie Bruce* for his compeirance befor thame, to vnderly the law for þe Slaucher of vniq^{le} *Johne Hammiltoun*, and to desift and ceise from all proceeding aganis him at this dyet. Quhairanent the Extract of þir presentis fall be vnto thame a Warrant. EXTRACTUM, &c.

JACOBUS PRYMROIS.

Followis also the tennour of HIS MAIESTEIS Letter and direction to the Lordis of Secreit Counfall, anent the premisses.

JAMES R.

RIcht trustie and weilbelouit coungis and counfalouris, and richt trustie and belouit counfalouris, We greit 3ow weil. We war pleased to wryte to 3ow about tuelf 3eiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceeding fould be permitted to be vsed aganis him for þe Slaucher of vniq^{le} *Jo^h Hammiltoun*, in respect that þe samyn was committed out of oure dominiones ; AND now, being credible informed, that of late some haif gone about to reveive þat perfute, nochtwithstanding of our former commandement, We haif thought guid, by theis presentis, to will and requyre 3ow to discharge o^r Justice generall, Justice clerk, and pair deputis, and all vperis o^r Judges and officeris quhatfumeur, to grant ony Summondis or proces against þe said *Capitane Harie* for þe foirsaid Slaucher, or in ony wayis presume to medle or call him in questioun for þe samyn. And thus, most earnestlie recommending to 3o^r special cair, We bid 3ow fairweill. GEVIN at o^r manno^r of Theobaldis, the xiiij of Marche, 1622.

According to the quhilk Act of Counfall and ordinance thairin contenit, the Justice DESERTIT THE DYET aboue writtin.

APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the Law and practice, in Scotland, as to DUELLING, Interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest ; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. LETTER from the Privy Council of Scotland to King James VI., relative to the CHALLENGE, &c. between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY.¹

PLEAS YOUR MOST EXCELLENT AND SACRED MA^{TIES},

AS WE hope that your highnes hathe long sence vnderstood of sum CHALLENGE OF COMBAT betuix the secound sone of THE LORD CRANSTOUN and SIR GEDEON MURRAY his sone, begun betuix the yowthes, vpon licht cawffis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowrfe taken for there reconciliatioun, whiche was done in prefens of the hole COUNSALL, wehirby all probabilitie of forder Challenging betuix the pairteis then, in appeirans, wes removed; so when, vpon priue informatioun maid to ws, sum fear was apprehendit of a new breache betuix the pairteis, by interchanginge of CARTELLIS priuilege betuix thame selfis, wbowever we wald have bene forye that the yoleis of the childrene, or the hard event which followe suche accidentis, suld have empairod or diminishid the love and affectioun which heirtofoir haith bene and doeth still continew betuix there parentis, (bothe of quhome haith the worthelie deserved, and have behaved thame selfis most dewtifullye and faithfullye as thay have bene employed in your Ma^{TIES} seruis,) yit heirin we war so muche more iustlie moved to adverte to suche a noveltye, that efter a reconciliatioun once maid befoir your Ma^{TIES} COUNSELL, atter the keepinge of your highnes peace suld be so lytle regardit, or the ordour takin by ws for the obseruinge therof so far contemned, as that any durst presume or attempt any new querrelling. Wherevpon both the fateris wer charged to compeir, and bringe with thame and exhibite there sones; whiche beinge accordingle and dewtifullye obeyit by bothe of thame, efter a verye hard and exact tryall² takin, in regard of the vnwillinges of aither³ of the yowthes, vpon thair first questioneing, to confesse what new maiter baid passed betuix thame; at last, it beinge found that THE LORD CRANSTOUNIS sone wes the Challenger, by a CARTELL, wrettin efter the reconciliatioun maid; we therwpon committed him cloiste prisoner in the *Castle of Blaknes*. The other, whowever, beinge provoked, yit, in regard he did obscure and conceale it, (beinge some presumptioun that he intendit to keip the meiting, and so to mak a breache of your Ma^{TIES} peace,) wes adiudget to be committed in *Ed^l Castell*, in frie waerde, haueing haid fredome granted vnto him furth thairof within xlvij houris, and confyned within this Burghe and a myle about the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haueing lvin cloiste prisoner in *Blaknes*, and in the mean whyle makinge suite often by Bill⁴ to be releived, confessing, in most humble maner, his offence, and offeringe all satisfiatioun that suld be ioyned he ws, wes, by directioun, brocht from the place of his imprisonment by the *Lieutenant of your MA^{TIES} GAIRD*, and presented befoir ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your MA^{TIES} for the offence done, and did intreat ws to be suitters for the same to your sacred highnes, on his behalf; haueing heirwithe confessed, also, the great wrong he baid done vnto your Ma^{TIES} COUNSELL, in preswminge to renewe any Challenge efter reconciliatioun maid; and theirwith vttering most apparent signes of inward sorrow for offendinge of his so loueinge father, vnto whome he knew this his bypast behaviour wes so distaittefull, as without any intercessioun he culd expect at his handes no fauour. He then to the pairtie challenged, in pre-

¹ *Denmylne MSS.*, Advocates' Library, A. 2, 40.

² Enquiry; examination.

³ Both.

⁴ A Bill,

or 'Supplication' to the Lords of Privy Council.

fence of bothe fathers, did there confes the wrong he haid done him, offering him what satisfioun he wald demand; and did there protest, that howevir, in his yowthfull folye, he haid ascryed the last reconcilioun as a maiter extorted by conffrait or command of THE COUNSELL, that yit nottheles this his present aggriment wes of meire affectioun, whiche he intendit all bypass aylift¹ abolished to continue herefter.

There wes sum jealowsye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whovevir not a direct vrger of his sone to this *Challenge*, haid nottheles intendit to tak some advantage, to the prejudice of the credite and honour of him and his sone; and by the speiches delyvered by SIR GEDEON in our prejudice, we did conceive no les: Bot yit, that this imprefsioun, not being cleirit, might tak no deiper roote, we then did questioun THE LORD CRANSTOUN theirof; who, in prefence of SIR GEDEON, by his great oathe, vntrequeyred, did protest that he wes so far from countenaucing or allowing of his sones actioun and cariage in this busynes, as on the contrary, these fevin yeiris past, no incident whatfoever that haid interveyned haid fo muche greivit him; and that he did seivir him self that SIR GEDEON wes no les in conscience perswadit, since he haid foirwarned him, immediatlie vpon his knowledge of the first *Challenge*; and vpon his sones departour the last tyme from him, suspecting the humour of the yowthe, and yit, vpon his conscience, nocht knowing of any thing intendit, did of new certifie SIR GEDEONE of his fears. Whiche declarioun, being delivered with so great attestations by one not muche accustomed to fweiriog, did not onlie remove all scrupule and jealowsye from SIR GEDEON, as he then affirmed, but left none of the beholderis vnatisfyed, and fullie perswadit of that Noble-mannis innocencye. THE COUNSELL, haveing taken a verye strict and exact tryall of all circumstancis whiche might inferre any the least suspitioune of THE LORD CRANSTOUNS allowance, airte, pairte, or connivence at his sonis actioun, in the examining wherof, the farder that we did dryve we still fand the father the more cleare of all imputatioun; and, in our judgement, SIR GEDEON is fullye perswadit theirof; lykas, in our prefence he did profess no les. And howevir, that heirvpon all pairteis, bothe eldar and younger, wer reconciled, yit, becaws of the offence done to your MA^{TIE} by JAMES CRANSTOUN, in pressing to renew any querrell, efter aggriment ones maid in prefence of COUNSELL, we have theirovpon adjudget the said *James Cranstoun*, that betuix and the first of October nixt, he fall depart your Ma^{TIES} dominiones, and remaine furthe of the same, and naway returne bak, vntill that your MA^{TIES} speciall Licence and Warrant be purchest; and have takin sovertye and cautious, bound vnder a great fowme, for that effect. AND becaws there wilbe a necessitye of provisioun to be maid by the father for the sones furneing, in his going beyond See, therfore we have committed him prisoner in his father's owin keiping, vntill the tyme of his departure; who is to refraine, endureing that space, his sone of all suche libertye, wheirbye any furder harme might be feared.

AND albeit the reconcilioun and aggriment wes fullye maid, so as in our judgementis there did not remayne the least scruple of any furder grudge amonges the pairteis, yit the noveltye of the raice, and the harme whiche the impunitye thairof might produce, if vpon this example, others who haif bene formerlye reconcilit, wald now preife to renew and revieue there olde querrellis, we culd nocht, in our dewtye to your MA^{TIE}, suffer this to go vnpunished; whiche moved vs, (however earnefastlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the said *James Cranstoun*), nottheles, for an exemplarye punishment, and efferying² of others to commit³ the lyk infolence, to continour our resolutioun takin in the maiter for his BANISCHEING, as said is. As lykwayis, ather of the two fathers bund and obleist, not onlie for these there sones, betuix whome this *CHALLENGE* hes past, bot for all others of there sones come to mannis aige, everie one of thame vnder the payne of Ten Thowfand merkis, that thay fall keep your Ma^{TIES} peace, that no CARTELLIS salbe sent by the one to the other; and that the pairtye vnto whome any salbe sent, fall

¹ Offence; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum.

effrayand.

² A strange form of speech, then in use, to express 'from committing.'

³ Affraying; terrifying. Fr.

immediatlie, with all possible diligence, acquaint the Counsell with the CHALLENGE sent to him ; otherwayes the payne forfeitd to be incurrit. And hoiping that nothing heirin is left vndone, whiche in sic a caise wes requirit, and fullye expecting your MA^{ties} good allowance and favorable confection of our proceedingis, wischeing thay may prove good metall when thay come to the tryall of the trew tuitchestone, vnto whome we do most humblye pray for the continuance of all happines, We doe rest

Your sacred Maiesteis most humble and obedyant subiectis and feruitouris,
AL. CANCELL^r. DUMBAR. WIGTOUN. KILSAYTH. J. PRESTOUN. ALEX^r HAY. S. T. HAMILTON.
EDINBURGH, the tent of August, 1610.

TO THE KING, his most sacred and axcellent MAIESTIE, &c.

II. LETTER, *the Privy Council to the King.*¹

MOST GRATIOUS AND SACRED SOUERANE,

We ressaunt your MAIESTEIS Letter, twitcheing your MA^{ties} censure² of that lait committit ryott be the ERLL of LOTHEANE, and adent the fyne whilk your MAIESTIE wold haif to be imposed vpon him for that caus ; whairin, as your MAIESTEIS most excellent and rair wisdome in the censureing of that mater so iuditiouslie, by the circomestanceis sett down in your MAIESTEIS Lettre, and the direction gevin be your MAIESTIE anent the pvnishing thairof, is verye weele warrantit with infallible groundis of iustice and reason ; yitt, becaus suche beich fynes in ryottis of this qualitey hathe not bene vsuall to be imposed vpoun ony personis heir, we wilbe bauld to intreate your MAIESTEIS fauour, for a mitigationoun of the fyne to Thrie Thousand merkis, whiche in all oure opinionis is anseuerable³ to the qualitey of the offence committed. He is full prisoner, and fall so continew whill the pairtye in some meafour ressaue satisfiatioun. And howeur this ouersight, by⁴ all oure expectationis, hes fallen oute in his persone, we hoip that this your MAIESTEIS censure of him, will mak him moir consideratlie and respectiuelie to looke to his future cariage and behaviour.

AND whereas your MAIESTIE doeth mervell that no tryale hes bene tane be ws of the infolencie committit be the LORD of CRANSTONIS sones aganis the ERLE of LOTHEANE, it will pleis your MAIESTIE we did nevir heir of ony complaint in that mater, the pairtye being sileut, and no informatioun gevin be him thairin : Alwayes,⁵ we haif causit demand of him, yf he will perfew ? He hes promiseit to gif informatioun to your MAIESTEIS Aduocat, and to furneis probatioun ; whairin we shall tak suche exact tryall, and accordinglie inflict such pvnishment as the course of iustice, in suche a caise, requireth. And so, praying God to blisse your Maieste with all contentment and happynes, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and feruitouris,
AL. CANCELL^r. ARGYLE. MONTROSE. GLENCAIRNE. BALFOUR. GLASGOW.

EDINBURGH, xv May, 1611.

TO THE KING, his most sacred and excellent MAIESTIE.

‘Forcing’—‘Despoiring’—Rape.

Dec. 5.—ANDRO WISCHERT of Muretoun.

Dilaitit of the schamefull forcing and despoiring of Bessie Leslie, dochter naturall to George Leslie of Auldcreraig, aganis hir will, scho being ane young virgane nocht past ellevin yeiris of age ; committit in maner and at the tyme specifeit in the Letteris.

PERSEWARIS, Bessie Leslie, George Leslie of Auldcreraig.
PRELOCOUTOURIS in defence, Mr Laurence Mc Gill, Mr Roger Mowat.

¹ *Denmyln MSS.* Adv. Library.

² Judgment.

³ Commensurate ; corresponding to.

⁴ Contrary

to ; against. ⁵ Nevertheless ; at all events.

The pannell offeris him felff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and difaffentis fra all maner of continuatioun: And protestis, in respect of his compeirance this day and place, to vnderly the law, and that thair is nocht ane fufficient number of Asslyse present, that na Letteris be direct aganis him in tyme cuming; speciallie, in respect this perfute is maliciouffie intendit aganis him, being ane man of thre scoir ten yeiris of age, at the instance of the said George Leslie of Auldrcraig, quha compeiris nocht this day to assist this perfute.

THE Justice ordanit the Asslyfouris, lauchfullie summoned and nocht compeirand, to be vnlawit.— Levingstoun of Donypace become caution for the said Andro his entrie, vpone xv dayis warning, &c.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij 1622, per Magistrum Alexandrum Coluile de Blair, Jusficiarium; necnon per Dominum Walterum Stewart de Myuto, ballivum Regalitatit de Glesgou, virtute cujusdam deliberationis Dominorum Secreti Consilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secretit Counfall:

James Archebifchope of Glesgou,¹ Sir George Erkyne of Innerteill,² Mr Joⁿ Weymes of Craigtoun.³

**Witchcraft—Sorcery—Charming—Incantation—Soothsaying
—Abusing the People.**

Mar. 20, 1622.—MARGARET WALLACE, spous of Johnne Dynning, mercheand burges of Glesgou.

Dilaitit, accused, and perfewit of the feuerall articles and poyntis of Dittay following. DITTAY *against the pannel*,⁴ *Margaret Wallace.*

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, fet down in his sacred woird, speciallie in þe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis þe vfearis and practizaris of WITCHCRAFT, SORCERIE, CHARMING, and SOTHESAYING, and against the SEIKERIS *of help and resposnsis of thame*, thraitning and denunceing to þe committeris of sic devillisch practizes the pwneifchment of daith. As also, be dyuerse Actis of Parliament, and Municipall lawis of this Kingdome, alweill publeift and fet furth be his Maieftie, in his awin tyme, as in the dayis of his maift noble progenitouris; namelie, be þe 73 Act of the Parliament, haldin be his hienes darrest mojer, Quene Marie, of

¹ James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.

² Lord Innerteil, one of the Ordinary Lords of Session.

³ An Ordinary Lord of Session.

⁴ This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scottish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.

worthie memorie, it is expreslie provydit, statute, and ordanit, that na maner of persone or perfones, of quhatsumeuir estait, degrie, or condition thay be of, perfume, nor tak vpone hand to vse any maner of *Witchcraft, Sorcerie, or Negromancie*, nor gif thame selfis furth to haif any sic craft or knowlege, thair-by abufeing his hienes people and subiectis; and that na persone seik any help, repons, or consultatioun at ony sic vsearis or abusearis foirfaidis, vnder the pane of death, alfwieill to be execute vpone the vsear and abusear, as to the seiker of the repons or consultatioun; as in the saidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of verritie, that the said *Margaret Wallace*, schaiking of all feir of God, reuerence or regaird to our souerane lordis authoritie and lawis, haifing confaet ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Glesgow, because of certane speiches vtterit be him aganis hir and vmq^o *Cristiane Grahame*, ane notorious Witche, and laitle execute for Sorcerie and Witchcraft, at Witsonday a thre zeir syne, or pairby, the said *Margaret Wallace*, furth of þe malice of hir heart, promiseit and avowit that schoould mak the said *Cuthbert*, within few dayis pair-estir, nocht of habilitie to work or wyn to him self ane caik of breid; accoirding to the quhilk devillische promiseit and damnable vow, the said *Cuthbert* schortlie thairestir, be the said *Margaret* hir devillische Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was visseit and grevoullie trubillit with ane strange vnnaturall and vnknawin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and pairby was brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself: And the said *Margaret*, as ane Witche and Sorcerar, being suspectit as the onlayer and causer of the said grevous and heavie disseis, was sent for by certane of þe said *Cuthbertis* freindis, and requeisit to cum and vizeit him; and estir mony malicious refusifallis maid be hir, in end scho come to him; at quhais cuming, scho, to manifest hir skill for his help, tuik him be þe schaikill-bane¹ with the ane hand, and laid hir vther hand vpone his breist, and without ony word-speiking, saif only be moveing of hir lipis, past fra him at that instant; and vpone þe morne pairrestir, returning bak agane to the said *Cuthbert*, scho tuik him be þe airme and bad him aryse, quha at that tyme, and fyftene dayis befor, was nocht abill to lift his legis without help; zit scho, haifing vrget him to ryse, and taking him be the hand, as said is, brocht him out of his bed, and pairrestir led him but² the hous; quha, immediatlie pairrestir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and down þe fluir, without help or suppoirt of ony; and fra that tyme quiklie recoverit and convalescit of þe former

¹ Wrist.² To another apartment. In small houses, consisting merely of a 'but' and a 'ben,' the 'but' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous difeais : Quhairin þe faid *Margaret* hes committit manifest Sorcerie and Witchcraft, in laying on and taking af feikneffis, be hir devillifche meanis, vset and practizet be hir vpone the faid *Cuthbert*, in maner foirfaid. AND ficlyk, about foure 3eir fyne, or þairby, the faid *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Glegfow, and haifing fallin in ane grit and fuddane feiknes within þe faid hous, fcho incontinent þair-efter, as ane confulter and feiker of help and refponffis of Witches and Sorceraris, instrumentis of the Devill þair maifter, fend for vmq^{le} *Cristiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerse his Maiesteis guid fubiectis, in Glegfow and þairaboutis ; quhilk vmq^{le} *Cristiane Grahame*, haifing cum to the faid *Margaret* to þe faid Hous, fcho tuik þe faid *Margaret* furth þairof to hir awin buith,¹ quhair, be the faid *Cristiane* hir devillifche charmes practizet vpone the faid *Margaret*, the faid *Margaret* was curet of hir former fuddane feiknes. And þe faid *Cristiane Grahame*, with the faid *Margaret Wallace*, cuming togidder bak agane to the faid hous, and at þe turnepok-fute þairof, meitting with *Margaret Vallange*, dochter to the faid *Alexander*, thay, at þe leift ane or vther of thame, laid þe faid crewall feiknes, be þair Sorcerie and Witchcraft, vpone the faid *Margaret Vallange*, ane 3oung infant bairne, quha immediatlie þaireftir, in grit fuddantie, fell down to þe grund, the haill power of hir body being tane away frome hir ; and with pitiefull fereiches, fchoutis, and cryis, lying in that horrible payne, nocht hable to arryfe, was tane vp be *Margaret Montgomerie* hir moþer, fþous to þe faid *Alexander*, and brocht in be hir in hir airmes to þe hous, and þair remanit with continuall fchouteing and crying, nocht being of habitie to move or gang be þe fpace of xxiiij houris þaireftir, quhill² þe faid *Margaret Wallace*, vnſent for, come in to vizeit hir ; lyk as, þe faid *Margaret*, as ſone as ſcho luikit vpone þe faid bairne, declairit that it was the fuddane tranſe or diſeis that ſcho had tane the day befoir, and þairfoir willit and defyret the bairnes mother to fend for *Cristiane Grahame* to cure and releif hir þairof : And the faid *Margaret Montgomerie* haifing abſolutelie refuifit fa to do, ſaying to hir, ‘ ſcho wad commit hir bairne to God, and nocht mell³ with the Devill or ony of his instrumentis,’ the faid *Margaret Wallace* maift blaſphemouſlie and devillifchlie anſuerit agane, that þe faid ‘ *Cristiane Grahame* could do als mekill, in that eirand, in cureing of that diſeais, as gif God him ſelff wald cum out of Hevin and cure hir—and albeit þe deid-ftraik⁴ war laid on, ſcho could tak it af agane—and without hir help þair could be na remeid to the bairne !’ Lyk as, ſchortlie þaireftir, without the motheris knowlege, the faid *Cristiane Grahame* was brocht in be þe faid *Margaret Wallace* to þe faid bairne ; at

¹ Her husband's booth, or shop.² Until.³ Fr. *mêler*.⁴ Literally, death-blow.

quhais cuming, the said *Margaret* listit vp þe bairnes heid, and the said *Cristiane* tuik hir be þe schaikill-bane,¹ and brocht þe bairne furth of hir bed, quhair scho was lying bedfast in grit payne of befor; and þairefter, setting hir down vpon ane stuile, with some croces and signes maid vpon hir, and be vttering of dyuerse woirdis, (nocht knawin quhat thay war,) restoirit hir to hir helth. Quhairin, the said *Margaret Wallace* hes planelie declairit hir selff to be ane oppin and manifest confulter with the said *Cristiane Grahame*, ane notorious Witch, and ane feiker of help and responsis off hir, in her devillisch airt; allweill for cureing of her selff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe said *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe said *Margaret Wallace* is airt and pairt of þe devillisch practizes abouewrittin, practizet be the said *Cristiane Grahame*, at the time and in maner foirsaid. To the taikin,² the said *Cristiane Grahame*, the day of hir accusatioun and perfute, being þe xxvj day of October last, 1621, willinglie, of hir awin accord, in Judgement, befor hir convictioun, the Assyse being incloset, affirmet, and with oppin speache declairit, that þe said *Margaret Wallace* was airt and pairt with hir in all hir wiket deidis; and ressauit fra hir sum cullourit silk and worfet, for practizeing of Witchcraft against sic perones to quhome þe said *Margaret* buir invy; and quhan willinglie scho wald nocht geve þe said *Margaret* sic materiallis, the said *Margaret*, as scho saw thame in þe said *Cristianes* handis, wald violentlie reif þame from hir: Lyk as, vpon the morne þaireftir, scho being at þe staik befor hir executioun, ratifeit and renewit the haill premisses to be of verritie. ITEM, a tua zeir syne, or þairby, *Margaret Mure*, dochter to vmq^o *Archibald Mure*, burges of Glesgow, being hevelie diseasit with ane strange and vncouth feiknes, and nocht liklie to haif recoverit pairof, the said *Margaret Wallace*, geving out hir selff to haif skill in þe cure of the said feiknes, scho come to the duelling-hous of *David Scheirar*, couper, burges of Glesgow, and þair finding *Marioun Mure*, his spous, soper-sister to the said *Margaret Mure*, lamenting and weiping for the said *Margaretis* feiknes, the said vmq^o *Cristiane Grahame*, be þe said *Margaret Wallace* hir devyse and directioun, a littill þaireftir, come to þe said hous; and þe said *Margaret Wallace*, being acquentit with þe caus of þe said *Mariones* greif, desyret þe said *Cristiane Grahame* to help þe bairne; quhais ansuer was to the said *Margaret Wallace*, that the said *Margaret Wallace* and scho behovet to go first to the place aggreit vpon betuix thame, quhilk plâce was knawin to þe said *Margaret* hir selff: Accordiing to the quhilk appointment, the said *Margaret Wallace*, with the said *Cristiane Grahame*, past, that same nycht, betuix elleven and tuelf houris, vnder silence and clud of nycht, to the zaird of *James Fynlay*, burges of Glesgow, quhair thay remanet the space

¹ Wrist.² In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe said bairne, and taking the said seiknes af hir, be vnlauchfull meanis; lyk as, þat samyn nycht, the said seiknes wes tane af þe said bairne, and scho conualeffit þairof. To the taikin, the said *Margaret Wallace*, in hir going to þe 3aird þat nycht, tynt hir pantoun;¹ lyk as, þe said *Marioun Mure*, for þe foirsaid cuir, gaif to þe said *Margaret Wallace* and *Cristiane Grahame* ane guife,² with ane pynt of wyne, within aucht dayis þaireftir. ITEM, a tua 3eir fyne, or pairby, ane discoid haifing fallin out betuix *Alexander Boig*, smyth in Gorballis, and þe said *Margaret Wallace* and *Johne Dynning*, hir husband, about the bying of ane irne studie³ to *Williame Weymes*, mercheand burges of Glesgow, ane complant was maid vpon him be þe said *Margaret* to *Sir George Elphingston of Blitheswoid, knyf*, his maister; and becaus scho ressaunt na amendis at þe said *Sir George* handis, becaus he tryt⁴ hir complement to be vniust, and only maid vpon malice, the said *Margaret*, maist impudentlie, in presens of þe said *Sir George* and *his Lady, James Pollok*, and *George Thomefone*, his tennentis, oppinlie thraitnet and avowet to do to þe said *Alexander Boig* ane evill turne: sfor effectuating quhairof, scho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and seirfull seiknes vpon *Boig*, the said *Alexanderis* bairne, of foure 3eir auld, within few dayis þaireftir; quhilk bairne, with continuall sueiting and vomeiting, deceffit within tua dayis thaireftir. AND last, þe said *Margaret Wallace* is, and hes bene thir aucht or nyne 3eir is bygane, ane cowmoun consulter with Witches, speciallic with the said *Cristiane Grahame, Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and resposnsis of thame, allweill for hir awin cure and releif of dyuerse seiknesses and diseassis quhairwith scho hes bene visseit, as for þe cure and help of hir freindis and acquentance in þair seiknesses and diseassis; as also, for þe overthrow and distructioun of dyuerse perones, men, wemen, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vperis devillisch and vnlauchfull meanis, expresse prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abusing the people, and puting thame in grit dreddour⁵ and feir of hir and of hir devillisch practizes, vsset and practizet be hir aganis sic of our fouerane lordis peceable subiectes to quhome scho hes borne ony grudge, or vtterit ony malicious thaitnings. BE the committing of þe quhilkis perticular practizes aboue writtin, as also be the hanting, vseing, and frequenting of þe vnhappie sociatie and companie of þe said Witches and Sorceraris, instrumentis of the Devill, sauld and gevin over to him for committing of all maner of mischeif, and in assisting and

¹ Slipper. Fr. *pantoufle*.² Goose.³ Purchasing of a smith's stithy, or anvil.⁴ Ascertained upon examination.⁵ Dread; terror.

taking pairt with thame in þe practize of all foirt of Witchcraft and Sorcerie, and in the feiking of help and responffis of thame, baith for cureing of vnnaturall and vnkawin feikneffes, and for þe malicious inflicting and laying on of dyuerfe feirfull and horrible feikneffes and difeaffis vpon dyuerfe perfones, for þair overthrow and diftructioun, in maner foirfaid, the faid *Margaret Wallace* hes contravenit the tennour of þe faidis Lawis and Actis of Parliament, and incurrit the panes and pwneshment of daith fet doun þairintill; quhilk aucht and fould be execute vpon hir, with all rigour, to þe terrour and example of vtheris heireftir.

PERSEWARIS, Sir Williame Oliphant of Newtown, kny^t; Alexander Boig, fmyth in Gorbellis; Johnne Robertoun, querrour, burges of Glesgow, for thame felffis, and as informeris to his Maieftes Aduocat of the haill pointis of Dittay.

PRELOCOUTOURIS in defence, Johnne Dynning, mercheand in (Glesgow); Mr Alexander Peiblis, Mr Robert Lermonth, Mr Thomas Nicolfone, younger, (Advocates.)

COMPEIRIT Sir Walter Stewart of Mynto, kny^t, and productet ane delyuerance of the Lordis of Secret Counfell; quhair of the tennour followis.

SUPPLICATIOUN of *Ludouik, Duik of Lennox.*

MY LORDIS OF SECRET COUNSALL, vnto 3our Ll. humlie meanis and schawis I 3our feruitour, LODOUIK DUIK OF LENNOX, lord and heritabill Bailzie of the Regalitie of Glesgow, and Sir Walter Stewart of Mynto, kny^t, my depute of þe faid Bailzerie: That quhair, þe tuentie day of Marche instant is appointit to Margaret Wallace to compeir befor the Justice, in the Tolbuth of Edr, to vnderly the law for sum poyntis of Witchcraft laid to hir charge: And quhair as, scho duellis within þe boundis of my Regalitie, and sua is subiect to me, my office and Jurisdictione, 3it I will nocht contest in that poynt, nor stand out aganis þe courfe tane be 3our Ll. for hir tryell; bot for the preferuatioun of þe liberteis and privileges of my office and Jurisdiction, my humble defoyre and Petitioun vnto 3our Lo. is, that my faid depute may be admittit to sit with his Maieftes Justice in the tryell of the faid Margaret, and to judge pairn with him accordinglie—and 3our Lo. anfuere.

[*Followis the Lordis delyuerance, vpon the bak of the foirfaid Supplicatioun.*]

APUD ED^{IN}, xiv^{to} Marcij, I^{mo}. Vj^{to}.xxij. FIAT ut petitur. AL. CANCELL^{us}. MAR. MELROIS.

Vpon the productioun of the quhilk delyuerance, the faid Sir Walter askit instrumentis.

THE JUSTICE Ordanit the faid *Sir Walter* to sitt doun with him, with the remanent Assessoris.

THE Dittay being red, and *the ffirft Article* thair of, concerning hir laying on of ane grevous feiknes vpon Cuthbert Greg, couper, burges of Glesgow, be Sorcerie and Witchcraft, and aff-taking of the faid feiknes be the lyk devillifche and vnlouchfull meanes; as the ffirft Article beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocoutour for the pannell, that the Dittay and ffirft Article thair of can nawayis be put to the knowlege of ane Assyfe; becaus it is nocht lybellit, nor fet doun in the Dittay, that the fact lybellit was done be the pannell, or the feiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus*, the famyn was accomplischet; becaus Witchcraft can nocht be accomplischet as

Witchcraft, bot¹ be characteris, signes, croces, poyfonet watteris, poyfonet afches, poyfonet oyles, powderis, figures, pictouris, poyfonet herbis, ruittis, venneuous oyles, woirdis, speiches, by incalling and invocatioun of the name of Sathan, quha, at the accomplifchment quhairof, hes promeift to geve his prefens to thame; without the quhilkis, or any of thame, Witchcraft can nocht be accomplifchet: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be any of thir meanis: And fa, that Article can nocht pas to ane Affyfe.—To the quhilk it is anfuerit be my lord Aduocat, that the allegeance aucht to be repellit, in refpect of the lybell and haill poyntis thairrof, tane *conjunctim*; be the quhilk it is affirmet *positiue*, that this feiknes was laid on be the pannell vpon *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and releuit, and reftoirit to his helth be hir Sorcerie and Witchcraft: And fa, the Dittay, as relevant in that poynt, fould pas to ane Affyfe.

It is forder allegit be the pannell and hir prelocoutouris, that the woirdis ‘laying on and taking af’ ar altogidder generall, and can nocht pas to ane Affyfe, nevir condifcending in fpeciall quhat was done; as is fet down in the former definitioun of Witchcraft.—To the quhilk it is anfuerit be the perfewaris, that thair is no neceffitie to condifcend vpon the forme of the on-laying and aftaking of feikneffes, quhidder be woirdis, signes, croces, and vtherwayis, the perfewaris nawayis being previe thairto, nather can thai be vrget to condifcend thairupoun, feing the Witches, practizeris of that vnlauchfull and godles meane, ar beft acquetit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the feiknes was baith laid on and tane af be hir, the famyn fould pas to the knowlege of ane Affyfe, as relevant.

It is forder allegit be Mr Thomas Nicolfone, as prelocoutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt iudicium indubitatum, quia nunquam ea que natura sunt dubia possunt facere rem indubitatum; ut multa integra vnum sanum, multa non alba vnum album*. This is the opinioun of *Pharina cius*, and of *Debrio* in his 5 sect. pag. 728; at the leift, except that thair war ane coherence and neccffar fubordinatioun of *illa multa indicia*. Bot fa it is, in this poynt of dittay, thair is confufet feuerall articles, quhilkis, *per fe*, ar *indicia debilia*; and thair is na coherence amangis thame felfis, in fa far as the promeiffing to do him ane evill turne, and the fubfequent feiknes, ar nawayis coherent, nather can the ane follow vpon the vther. *SECUNDO, circumstantie iudiciorum sine quibus ad inquisitionem non proceditur sunt quis, quando, ubi, cum quibus, quomodo circumstantia, quomodo est huic vsui, et quibus instrumentis factum esse dicatur, vt sint pulveres, vnguina determina mortuorum*. And quhair it appeiris to be allegit in the reply, that *de medijs non potest constare*, becaus

¹ Excepting; unless.

they are knawin only to the Witches and thair Maister, thair is heirin ane manifest equivocatioun, in fa far as be the determinatioun of the hail traiteris *de Veneficijs, hec duo sunt disperata signa media*; it is grantit *sine medijs*, confidending vpon *medijs*, a lybell may stand relevant; becaus *hec SATANA stratumata quibus ille naturaliter vtatur medijs sunt plerumque incognita*; bot of all necessitie, to the lybelling of ane deid of Witchcraft, *accedere oportet superstitionem vt dicatur vsurpasse res aliquas facta vel verba que sapiant incantationem vel dicatur nominatim exercuisse actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur*. This is DELRIO'S opinioun, ceitting the hail treiteis *de Veneficijs*, in his thrid sect. pag. 711; et libro 5, sect. 16, pag. 774. And the premisses, sa authorizet be the hail learnet wryteris, ar of infallible verritie; for this reafone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man¹ be sa lybellit, as it is possible, *per rerum naturam*, to the Assyse to cognofce thairupvn; bot it is subfument, that except sum sensible action or signe, or vther thing be lybellit, it is impossible to the Assyse to cognofce thairupoun, *quia nihil est in anima quod non sit prius in sensu*.

The persewaris repeittis thair former ansuer, foundit vpon the hail memberis of the Dittay, tane *coniunctim*; quhilkis memberis coheris verrie pertinentlie—a promeis to inflict the feiknes, and laid on—the on-laying of the feiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the persone vzeit with the feiknes, and releifing him thairof be moveing of hir lipis, &c.: And as for the tryell of the Assyse, the deidis ar verrie publict and knawin; and referis the verritie thairof to the Depositiones of the Witneses alreddie tane, and to be tane in that matter, and to the Assyse awin knowlege.—The pannell adheris to thair former exceptioun, vncondiscending in speciall, *quibus modis, quibus medijs, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is said, that scho inflicted the feiknes be Witchcraft, nocht condiscending quhat maner of Witchcraft was vsēt for inflicting thairof. And quhair it is said, that the memberis coheris, becaus of a promeife and the effect following, the pannell oppones the authority of *Pharinatius*, confirmet be *Delrio*, in the 718 page of his 3 sect.; quhair it is said, *immo mine² delictum subsecutum inimicia non sufficiunt ad penam fortilegij; quia huiusmodi indicia sunt tantum remota*. As lykwayis, a stronger authoritie, pag. 717; quhair it is affirmet, and bakit with resson,³ in thir termes, *mine subsecute damno—et si male fame sit minus indicium, sunt inferum ratio potest enim pars offensa alios habere inimicos qui hoc tegmine preter scelus perpetrarunt*: Nather is thair necessitie to affirme *alium fecisse*; becaus the possibilitie of ane instance aganis ane generall reule evinces the incertantie

¹ Must.² Threatening expressions.³ Backed, seconded by argument.

thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the feiknes, thair is na deid lybellit bot ordinarie deidis of vizeiting a patient, be a freind or a plifitioun, to wit, graipping of the pulfes or chaikill-bane and breift, quhilk is the steiring of the spreittis-vitall, and is the ordiner behaiour vset and practizet be the vifitouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraife, and that scho maid him to ryse, *est elenchus dilirij.* And forder, the pannellis former authorities man¹ be respectit, becaus thair is na contrair practeis producet.—My lord Aduocat repeitis his former anfuer.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Jokne Robertoun*, querriour, a thre yeir fyne, scho thraitnet and avowit to be avengit vpone his flesche; quhairvpone a diseis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him.—It is allegit be the pannell, aganis the said secund Article of Dittay, that the famyn is nawayis relevant anent *Johne Robertoun*; being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor² the former; ffor thair is na member thairof relevant to infer Witchcraft, for sa mekill thairof as consistis in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his feiknes, quhilk is manifest fals in the self: ffor it is evident, be oculer inspectioun, to luik to him presentlie at the bar, that he hes sufficient strenth of body to work: As also, it fall be verifeit, gif neid beis, that he, being an querriour of his craft,³ hes wrocht, thir dyuerse yeiris bygane, to dyuerse perfonas, namelie, to *Sir George Elphingstoun of Bliheswoid*, *George Anderfone in Woidfyde*, and to the pannell, be wyning of stanes furth of the querrell;⁴ and repeitis the former allegeance maid against the first Article. *Igitur, &c.*—To the quhilk it is anfuerit be the perfewaris, that the allegeance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it self. And as to that point consistin *in facto*, the perfewar referris the tryell thairof to the Witnesfes producet and to be producet, and to the perfonas of Aflise, quha aucht to cognosce vpone the hail poyntis of Dittay, consistin *in facto*.

It is forder allegit be Mr Thomas Nicolfone, that the said secund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indictum minarum et damni subsquenti*, quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequutum*; bot sa it is, in this Dittay, it is lybellit, that the thraitning of *Johne Robertoun*, and the inflicting of the diseis, was within this yeir and this half, quhilk is *ex intervallo*; And

¹ Must.² Than.³ To his trade.⁴ Stone quarry.

quhair as, it appearis that this seiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johnne Robertoun*, *nullo modo relevat*; becaus *et mine et damnum subsecutum faciunt indicium, oportet vt sit eadem persona cui mine et damnum dicuntur inferri*; sa that the thraitning to the wyfe, and inflictiong seiknes vpon hir husband, is na relevant poynt. *Item, mine et damnum subsecutum nullum omnino faciunt indicium, nisi mine fuerint specificate, seu de eodem quod subsecutum est in specie*; ffor ane general thraitning to do ane evill turne, nocht condiscending vpon the speciall evill turne, can haif na coherence with ane speciall skaith following thairaftir, to mak it *venefice*; becaus *mine et damnum subsecutum ar comptit aliquale indicium maxime respectu predictionis*, as ane maner of suthesaying; and that can be comptit na suthesaying quhilk ony man could lykways foirtell by¹ ane Witche, viz. *predicere de genere et subsecutum esse speciem*.—My lord Aduocat adheris to his former ansuer.

THE *Thrid Article of Dittay*, anent ane discord that fell out betuix the pannell and *Jonet Harper*, and of ane thraitning and vow maid to mak the said *Jonet Harper* in a worfe cais nor² hir poysonet svyne; and anent ane feirfull seiknes quhairin scho sehorthlie thaireftir fell be the pannellis Sorcerie, Incantatioun, and Witchcraft—It is allegit be the pannell and his prelocoutouris, that the thrid Article is nawayis relevant, nevir condiscending quhat maner of Inchantment scho was bewitched with, and be quhat factis and deidis this was done, and quhat was vsed be the pannell for that effect.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay.

THE *ffourth Article of Dittay*, anent the pannell hir being within *Alexander Vallange* hous, quhair scho fell in ane grit and suddane seiknes; and hir sending for vmq¹⁶ *Cristiane Grahame*, ane notorious Witche, and consulting with hir for hir relief of that seiknes; and eftir the said *Cristiane* hir cuming, of the pannellis passing out of the said *Alexander Vallange* hous to hir awin buith, with the said *Cristiane*, quhair scho was charmet and curet; and thaireftir the same seiknes, be devillerie and Witchcraft, cassin vpon *Alexander Vallange* bairne; and anent the said *Cristiane Grahame* hir cuming with the pannell to the bairne, and cureing hir, be taking af agane of the said seiknes; and for airt and pairt of the af-taking and on-laying of seiknes, and of af-taking the samyn agane af the said bairne with the said *Cristiane*; and consulting and practizeing of Witchcraft with hir for that effect, &c. The samyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocoutouris, aganis the said fourt Article, that the first pairt thairof is nawayis relevant, beiring that scho contractit ane suddane diseise, and for cureing thairof, send for *Cristiane Grahame*, ane notorious Witche, except it had bene exprellie lybellit, that the tyme the

¹ Besides; *forbye*; independent of.

² Than.

pannell fend for hir, fcho was ane notorious Witche, of the pannellis knowlege, and that fcho fend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that difeis: And it is nocht lybellit nather, that quhan *Cristiane* come, the pannell consultit with hir as with ane Witche; ffor, it is fupponit¹ that ane Notter² war hangit for ane ffals Instrument, and he had gevin the excipient ane Seifing tuentie yeiris afoir, is that Seafing, gevin fa lang befoir, ffalfe? Na mair can that be ane poynt of Dittay, the pannellis fending for *Cristiane Grahame*, except fcho was knawin to hir at that tyme to be ane Witche. The fecond member is nawayis relevant, beiring that fcho curet the pannell in the buithe, for that makis ane contradictioun, that fcho was deidlie difeafet quhan fcho come, and thaireftir raife and pait to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis feiknes was caffin on the bairne, being lybellit that the famyn was done be the pannell, or be *Cristiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confeffit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuift it on the bairne: Gif the pannell was curet in the buith, quhair was the feiknes? *Hoc est impossibile*. As to the rest of the poyntis of that Article, that fcho come doun to the hous, vnset for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declarit it was the feiknes fcho had, *non relevat*, except it had bene verifeit and tryit³ that hir felf had bene bewitched. And as for that member thairof, defyreing to fend for *Cristiane Grahame* to help her, *non relevat* to infer Witchcraft, except fcho had knawin the faid *Cristiane* to be ane notorious Witche. As to the rest of that Article, quhilk the pannell alto-gidder denyis, vpon hir aith and conscience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blasphemie, and blasphemous speiches, quhilk can nocht coheir with this lybell of Witche-craft; bot is content, quhan evir fcho fall be tryit and fund giltie, to vnderly the pwneifchment of the lawis of the cuntrie. That poynt of the Dittay, that *Cristiane Grahame* come at the pannellis defyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the famyn had bene done at hir fpeciall command, *malis artibus et veneficis artibus*, for the hailing of hir. It is nocht lybellit that the famyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vset be hir for that effect: And as to *Cristiane Grahame*, quhat fcho did, the pannell can nocht be pwneift thairfoir. And as to *Cristiane Grahames* pretendit Confessioun, quhilk is nocht productet, it can nocht be respectit, *quia est dicta scia dicti criminis*; nather is the famyn relevant, albeit it war trew, as it is nocht, ffor hir confessioun can nocht

¹ Supposed, or argued, for the sake of illustration. ² Notary public. ³ Proved; established legally.

work aganis Margaret Wallace, *quia dicit se esse sociam dicti criminis; et dicente se sociam criminis non creditur, quia ex suo dicto est infamis et sic testimonium perhibere non potest; precipuè, quia malefici, venefici qui ad sortilegos divinosque concurrunt nullatenus ad testimonium sunt admittendi.* And quhair as it may appeir, that *in crimine venefici, vt in casu excepto, etiam infames admittuntur; hoc verum non est nisi cum duplici cautela, vna quod confessio infamis sit jurata non enim ei creditur nisi testi, et non testi nisi jurato: The secund cautell is, non fidem facit dictum socij nisi confirmatum sit in tormentis.* Dammoderius, *'Tit. de Reprobatione.*

The persewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in respect of the Article and haill memberis thairof, tane *coniunctim*; and quh air it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Cristiane Grahame* to be ane Witche, that pairt aucht to be repellit, in respect of the expres woirdis of the Dittay, beiring, 'that the said *Margaret Wallace* affirmet that *Cristiane Grahame* had als grit knowlege as God him selff, and as gif God him selff wald cum out of Hevin and cure hir! Albeit the deid-straik war laid on, scho could tak it af agane!' As to the argumentis proponit aganis that pairt of the Dittay foundit vpon the Depositiones of *Cristiane Grahame*, that pairt is verrie relevant, and the argument is only proponit aganis the probatioun; to the quhilkis argumentis sufficient answers fall be maid the tyme of the verificatioun of that poynt of the Dittay; at quhilk tyme, it fall be maid cleir, baith be Law and practique, that in matteris of Treffone and Witchcraft, and vtheris caices exceptit, weimen, *socij criminis*, and infame¹ perfones ar admittit Witneffis.

The pannell, adheirand to hir former allegeance, affirms that that member of the Article of Dittay is nawayis relevant, becaus scho is summond to answere to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the persewaris repeiting thais odious and vnrehairfable speiches, as ane argument of the pannellis knowlege of *Grahame* to haif bene ane Witch, the samyn ar woirdis of Blasphemie: Quhilkis being plane Blasphemie, (nocht granting the speiking thairof,) scho is nocht haldin to answere to that pairt thairof, in this persute; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knowlege that *Cristiane Grahame* was ane Witche, (vnder protestatioun, the pannell denyis thame altogidder to be of verritie, as of befoir,) yit the samyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confessit be the pannell to be trew; nather can it furneise a Dittay of Withcraft, quhairvpon scho may be accuset, nor repute nor estemit a Confessioun, nocht being maid iudiciallie, bot allegit spokin be ane wyfe to ane vther, vpon certane

¹ Persons declared, or considered, infamous by law.

altercationes arryfeing amangis thame. *Igitur, &c.* And to the anfuver *de sociis criminum*, thair is na anfuver maid speciallie to that pairt, quhair it is said, *non creditur socij testimonio, nisi confirmatur tormentis*. As to ony Confessioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Affyse thairfoir.

THE *ffyft Article of Dittay* being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to vmq^{le} *Archibald Mure*, of ane strange and vnkawin difeafe, be taking af the said feiknes af the said bairne, be the help and affiftance of *Cristiane Grahame*, and consulting with the said *Cristiane* thairanent, being a notorious Witche; the said *Margaret Wallace*, with the said *Cristiane Grahame*, haifing past, vnder filence and clud of nycht, to the 5aird of *James Fyndlay*, burges of Glesgow, quhair thay abaid togidder the space of ane hour, practizeing Sorcerie and Witchcraft for cureing the said bairne, and taking the said feiknes af hir; as at lenth is fet down in the said *ffyft Article*: And the said *Margaret* being accuset thairof—It is allegit be the said *Margaret* and hir prelocoutouris, that the said *ffyft Article* is nawayis relevant, nor na pairt thairof; nevir condifcending in fpeciall quhat scho did, quhat Sorcerie or Inchantment scho vsfet or applyit, or quhat was practizet be hir for taking af the feiknes af the bairne; nor yit condifcending vpon the meanis of Sorcerie or Witchcraft, quhidder be signes, woirdis, croces, incantatioun, invocatioun of the Devillis name; without the quhilkis, Witchcraft can nocht be accomplifchet.—It is anfuverit be the perfewaris, that the allegiance aucht to be repellit, in respect of the article of Dittay, beirand the feiknes to be tane af the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Cristiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE *Saxt Article of Dittay* being red, and the said *Margaret* accuset thairof, viz. that scho, haifing confauet ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Glesgow, thraitnet him with mony outragious fpeiches, faying to him, ‘Thow fall gang hame to thy hous, and fall bleid at thy noife ane quart of bluid, bot fall nocht die quhill (*until*) thow fend for me and ask me forgivenes;’ quhairvpon schortlie thaireftir, be the said *Margaret* hir Sorcerie and Witchcraft practizet vpon him, he contractit ane grevous and suddane feiknes, quhairaf he deceffit; quhilk is confessit in prefens of Witnesfes—It is allegit be the pannell and hir prelocoutouris, aganis the *saxt Article*, that the famyn is nocht relevant, for the particular anfwers and argumentis maid to the hail Articles of befoir, quhilk the pannell repeittis, and everie ane of thame, as ane sufficient allegiance, *brevitatis causa*, to stay the famyn to pas to ane Affyse: And as to hir pretendit Confessioun, maid in prefens of Witnesfes, can nocht be respectit, becaus *est Confessio extra-judicialis que non tenet confitentem nisi in judicio fac-*

tam : And albeit it war grantit, as it is nocht, that scho maid ony sic Confessioun, scho may refeill¹ thairfra ; and sa is na relevant poynt to pas to ane Allyse ; quihilk is confirmet be the autoritie of SALICOTUS, L. finali, codice de *Probationibus* ; *probationem seu Confessionem sponte factam potest reus revocare, et confessus non est condemnandus nisi constet de corpore delicti, id est damnum datum esse malificium facinoris.* Libro I de Contraverfiis, cap. 28. *Item*, we haif ane expres text, *Lege prima, § Divus, ff. de Questionibus* ; *Confessiones reorum pro exploratis facinoribus haberi non oportere, et Confessio extrajudicialis non sufficit ad qualificationem delicti.* JULIUS CLARUS, Lib. 5, § finali, quest. 55, num. 2. *Immo Confessio facta coram Judice non sedente pro tribunali est tanquam facta privata et ex ea reus non potest condemnari.*

It is anfuert be the persewaris, that the saxt Article is verrie relevant, being tane *coniunctim*, becaus it contenis ane promeis to do the deid, the doing of the deid, and the confessioun thaireftir of the doing thairrof. And as to the Confessioun, that the samyn is maid extra-judiciallie of ane cryme committit, that extra-judiciall Confessioun is lauchfull and valid to condampne the pairtie quaha hes confessit. Dammoderius, cap. 54, num. vltimo.—It is duplyt be the pannell, that the samyn is contrair to the text, and Dammoderius speikis na thing of ane extra-judiciall Confessioun ; and repeitis thair peticular anfuert maid to the particular Articles of Dittay ofbefoir.—The persewar also repeitis the hail particular anfuertis maid of befoir.

THE *Sevint Article of Dittay* being red, and the pannell accuset thairby, that a flyve or sex yeir fyne, scho being ccavenit befoir the Sessioun of the Kirk of Glasgow, and accuset be *Mr Archibald Glen*, Minister at Carmunnok, ffor rayleing on the said vmq^{le} *Robert Mure*, brother-in-law to the said *Mr Archibald*, and raleing on *Elspeth Arbukle*, his mother, and for taking away of the said *Robert Mures* life be Sorcerie and Witchcraft ; and that the said *Margaret*, in revenge thairrof, schortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnkawin feiknes vpon the said *Mr Archibald*, quhairrof, be continuall fueitting, he deceiffit ; and sa, was airt and pairt of his dait^h ; quihilk scho hes confessit, senfyne, in presens of witnesses. It is allegit and anfuert be the pannell, *vt supra*, against the *sevint Article*, baith anent the fact and pretendit Confessioun lybellit, ffor thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the said *Mr Archibald* : for the treuth is, that the man deceiffit of ane consumption of his lichtis ;² nather is it lybellit that scho inflictit ony thing vpon him be signes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The persewaris anfuertis, that the said allegiance aucht to be repellit, in respect of the sevint Article of Dittay, relevant in the self, and anfuertis maid of befoir.

¹ Withdraw ; retract ; *resile*.² Lungs ; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforfamekill as fcho, haifing confauet ane deiddie haitrent aganis *Williame Mure*, flefcheour, a fyve yeir fyne, for calling *Criftiane Grahame* ‘ane rank Witche,’ fcho, in revenge thairof, come to the faid *Williame*, vpone the Hie Streit of Glesgow, and in grit wraithe faid to him, ‘Go thy wayis hame, bludie boutcher that thow art, thow fall nevir fie the calfay¹ agane, bot fall fuddanlie fchute to deid in thy awin chyre!’² Accordint to the quhilk thraitning be the faid *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane feiknes was laid vpone the faid *Williame*, and vpone the morne thaireftir, in his awin chyre, in grit fuddantie deceffit: Quhilk fcho hes confeffit to be of verritie, in prefens of Witneffes; and fa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article, ut fupra*, with this eik,³ that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that fcho gaif him evill woirdis, and be thais woirdis he deceffit. As to the pretendit Confessioun thairin contenit, anfuers thairto *ut fupra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anfuers maid be him to the hail former poyntis thairof.

It is forder allegit be the pannell and hir prelocutouris to the *Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin fpecificeit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir⁴ fabulous, refolveing only vpone ‘he faid and fcho faid.’⁵ And forder, oppones to his lordfchip all the authoriteis foirlaidis; and na practiques in the contrar ar producet, bot ane naikit affertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpone fic a fubiect; quhilk is nair relevant in everie article nor the Dittayis producet aganis *Barbara Naper*, *Eufame Mcalzeane*, and *Agnes Sanpfone*, quha war put to ane Affyfe, and convict, &c.⁶

The pannell addis forder, that *damnum infecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, fectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accufet, beiring that a tua yeir fyne, or thairby, ane difcord falling out betuix hir and *Alexander Boig*, fmyth in Garboillis, about the bying⁷ fra hir and *Johne Dyming*, hir husband, of ane irne studie to *Williame Wemyes*, fcho thraitnet to do the faid *Alexander* ane evill turne; ffor performeing quhairof, fcho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall feiknes vpone the faid *Alexanderis* bairne, fa that, with continuall fueitting, within tua dayis the bairne deceffit, &c.—AND ficyk, the *Last Article of Dittay* being red, and fcho alfo accufet thairof, beiring hir to haif bene thair aucht or nyne yeiris bygane ane cownoun

¹ Causeway, or street. ² Chair. ³ Addition. ⁴ Merely. ⁵ Mere matter of idle hearsay, without foundation in truth, and not supported by legal evidence—‘says he’ and ‘says she.’
⁶ See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247. ⁷ Purchasing.

confulter with Witches, speciallie with *Cristiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane feiker of help and responfies of thame, baith for distructioun of dyuerse perfones, men, wemen, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devillifche meanis, expreflie forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome; as also for cureing and help of hir felf, in dyuerse feikneffes, and of dyuerse hir freindis and acquentance, &c.

It is allegit be the pannell and hir prelocoutouris againft the *Tent Article*, that the fãmyn is naways relevant, for the argumentis befoir proponit, with this additioun, that in accomplifcheing of Witchcraft, practizeing thair of, the maner, forme, and qualitie of Inchanting is neccesfariie requyret, quhilk is nocht heir lybellit; nather that thair was ony Witchcraft vset be the pannell be ony Article of the Dittay, and be woirdis, signes, croces, ruitis, herbis, poysone, or be inchantit pictouris, fpeiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accomplifchet.—As to the *Last member of the Dittay*, it is fa generall, that it mereittis na anfuer. As to that poynt of the Dittay, anent confulting with *Cristiane Grahame* and *Katherine Blair*, that is altogidder generall and irrelevant, nocht condifcending vpon the tyme and place, *quando et ubi*, nor yit condifcending quhairvpon they confultit, quhidder vpon Witchcraft or vthirways; and that the pannell, the tyme of thair meitting, knew thame to be Witches, and confultit vpon Witchcraft with thame as Witches: And quhair as, fcho helpit hir freindis, *non relevat*, nocht condifcending thair names, or quhair-with they war helpit. ITEM, it is anfuerit to that pairt of the Lybell, *per totum*, quhair it is faid, that the pannell inflictit difeaffis, be Inchantment, and Sorcerie, and Witchcraft, nocht condifcending quhat foirt of Inchantment or Sorcerie; *quia et inquisitio fit valida, oportet fit clara, certas delicti qualitates et circumstantias continens, de quibus poffet Judex judicare: Bot, de incantamentis in genere nemo Judex poffet judicare: Ergo, the species of the Inchantment man¹ be exprefsit be fum figne or fpecial deid; et ratio est, quia ne per incertitudinem, generalitatem, et obscuritatem tollatur reo defenfio.* DELRIO, Lib. 5, fect. 2, pag. 617. I argu, *a simili*, iff it war lybellit, that a man had burft out ane vther manis guttis with rolling over ane beift vpon him, *non relevat*, except ye fay quhat beift, and sic ane beift as mycht haif done it; ffor ane mous could nocht haif done it! Ewin fua, it being only lybellit, it was done ‘be Inchantmentis’: And gif thay war fpeciall, I wald contend, that thair war naturall meanis, and na Sorcerie. And thairfoir, the generalitie is altogidder irrelevant, takand away my exceptioun; for gif thai war fpeciall, we mycht reffone and difpute quhidder thay war Inchantmentis or no Inchantmentis.

¹ Must.

ITEM, *per totum* to the hail lybell, *non relevat* 'vncouth feiknes,' except it war in lyk maner qualifeit, quhat is vncouth; ¹ ffor quhat can the Assyfe cognofce quhat is vncouth or nocht vncouth, it nocht being condifcendit quhat is 'vncouth feiknes,' quhilc is to be judget be thame quhiddir it be vncouth or nocht? And for the fweiting, *nullo modo relevat*, for the proponer fuat ² in ane feiknes ane hail moneth, and fweitting is ane naturall purgatioun. *Igitur, &c.*

The Aduocat repeitis the hail Articles aboue writtin, quhilkis ar fpecial in thame felffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpon the hail allegiances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Assyfe wairnet *apud Acta* to compeir agane the morne, the xxj *in flantis*, in the hour of caus; ilk perfone vnder the pane of tua hundreth merkis.

INTERLOQUITOUR *of the Judges and Assessouris.*

Mar. 21.—THE JUDGES and Assessouris, be thair Sentence-Interloquitour, ³ Repellis the hail allegiances aboue writtin, in respect of the Dittay, and anfuieris maid be his Maiefteis Aduocat, in fortificatioun thairof. And as to *the last Article*, quhilc is generall, ffindis the samyn relevant, with ony ane of the ten Articles of Dittay, *et non per se*: And thairfoir, Ordanis the samyn to pas to ane Assyfe, viz. the hail ten Articles of Dittay, as relevant; and the last general Article, with ony ane of the ten.

ASSISA.

Johne Lawfoune, mercheand burgess of Glesgow,	Robert Bell, wrycht thair, James Mitchell, tailseour,	Airthour Gilmour, mercheand, James Fallis, mercheand,
Jo ⁿ Dikfoune, mercheand thair,	Patrik Bell, elder,	Johne Boyd, mesome,
Andro Fales, mercheand thair,	Williamme Anderfoune, cordiner,	Johne Anderfoun, cordiner,
George Louk, mercheand thair,	Johne Gilmour, mercheand,	Andro Ker, cordiner, burgesfes of Glesgow.
Williamme Neilfoun, maltman thair,		

OBJECTIONS *against Assysers.*

It is allegit be the pannell aganis *Johne Dikfoune*, that he can nocht be admittit vpon hir Assyfe, becaus thair is inimitie and evill will betuix *Johne Dynning*, the pannellis husband and him, vnreconceillit this ten yeir bygane: Lyk as, the said Johnne Dikfoune, being dyuerse tymes travellit with to be reconceillit with the said Johnne Dynning, refusit.—It is anfuierit, the allegiance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he say, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behaivit him felf as pairtie, and hes gevin partiall Counfall, in prejudice of the pannell; in fa far as scho, being tane be the Proveist, Bailleis, and Counfall of Glesgow, without ane Warrant, out of hir awin hous, was put in waird in the Castell be thame: In the quhilc taking and committing of hir to waird, the said Johnne Dikfoune wes ane speciall affister of the saidis Proveist and Bailleis.—It is anfuierit be the perfewaris, that the allegiance meretis nocht ane anfuier, feing he did nothing but the dutie of ane honest citizen and burges, to affist the Magiftrat to apprehend a malefactor, being fufpect of sic haynous crymes.—Johnne Dikfoune, being

¹ Strange; indescribable.

² Sweated.

³ Interlocutory sentence, or judgment.

folemlie fuorne, and declairing that, to his knowlege, thair was nevir difcord nor inimitie betuix Johnne Dynning and him, the Justice thairnpoun, and vpon his declaratioun that he had gevin na partial counfall in this caufe, admittit him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Affyfe, becaus he is brother-in-law to vni^o *Robert Mure*; thair being ane speciall poynt of Dittay fet doun aganis the pannell, for allegit iniurie done to Robert Mure.—Anfuerit, aucht to be repellit, becaus thair is na perfute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir fould be admittit.—It is forder allegit, that Walter Sterling, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being fet doun aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Affyfe; the said Walter can nocht be ane Affyfour aganis me, being perfewit vpon me my life.—My lord Aduocat anfueris *ut supra*, that nochtwithstanding thairfoir he fould be admittit, except Robert Mure, or sum of his freindis, war ather perfewaris or defenderis, or vpguevaris of the Dittay, or Informeris to his Maiesteis Aduocat thairin.—THE JUSTICE Ordanis Walter Sterling to stand by; and to call ane vther.

It is allegit against *William Neilfone*, elder, that he can nocht pas vpon this Affyfe, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauid him felf as partie, in geving informatioun of the Dittay, and is present at the bar affisting the perfewaris in this perfute.—Anfueris, the allegiance aucht to be repellit, becaus Johnne Nicoll is nocht a perfewar, nor the Summondis is nocht raifit at his infance.—William Neilfoun, being fuorne, and purget be his ayth of partial counfall, is admittit be the Justice.

William Anderfone, cordiner. It is allegit aganis him, that he can nocht be admittit vpon this Affyfe, becaus the pannell, haifing skill in chirurgerie, fauld to him sum drogis, quihik he haifing post-poit the pannell in payment, scho thairfoir perfewit him be ordour of Law thairfoir; quhairvpon ane inimitie fell out betuix thame, quihik is yet vnreconceilit.—The said *William*, be his grit (aith) being purget of partial counfall, is admittit.

VERIFICATIOUN of the perticuler poyntis of Dittay.

MY Lord Aduocat takis instrumentis of the sweiring of the Affyfe; and, for verificatioun of the perticuler poyntis of Dittay following, vfes and produces the probatioun and Witnesses efter specifit. And first, for Verificatioun of the *ffirst Article (of Dittay)* anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witnesses, desyreing thair Depositiones to be tane.

Chairlis Pollok, couper, burges of Glesgow, fworne judiciallie, and examinat in prefens of the Judges, parteis, and Affyfouris, and purget of partiall counfall, mareit, of the aige of threttie yeiris, declairis, that a thre year syne, or thairby, ane differ¹ being betuix Cuthbert Greg and Cristiane Grahame, for ane dog quihik Cristiane desyret fra him, and he refuifet, anfuering to hir agane, ‘I rather ze and my huffie² baith (meaning be *Margaret Wallace*) war brunt or³ ze get my dog!’ Quhairof *Margaret Wallace* getting knowlege, scho comes to *Cuthbert* and faysis to him, ‘ffals land-loupper loun that thow art, faysis thow that Cristiane Grahame and I fall be brunt for Witches? I vow to God I fall do to ze ane evill turne!’ And declairis, that, within foure or fyve dayis thaireftir, the said *Cuthbert* fell feik. Being inquiryret, gif he hard hir fay thir woirdis, ‘that *he* (*she*)

¹ Quarrel; *difference*; altercation.

² *Cummer*; gossip.

³ Rather than.

fould mak *hir* (*him*), within few dayis, nocht of habitie to wyn ane caik of breid ?' Denyis that he hard sic woirdis—bot only that scho fould 'do him ane evill turne.' Sayis, he saw *Cuthbert Greig*, the tyme of his feiknes, fueitting and brocheing¹ in ane vnconth feiknes, fairlie handillit, quhairby he was nocht able to gang ; bot knawis nocht how lang he swat, or abaid in that estait. Demandit, gif he saw Margaret Wallace cum in to Cuthbert, at any time of his feiknes ? Declairis, he saw hir nocht within that hous ; and forder, knawis nocht anent that first Article of Dittay.

Margaret Dynning, the spous to Andro Lennox, fuorne and examinat vpon the first Article, concerning Cuthbert Greg, and desyret to tell the treuth, sa far as she knawis thairanent ; Depones, that the tyme of Cuthbertis feiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, past all three togidder vp to Cuthbertis hous, to viffet him, the tyme of his feiknes ; at thair in-cumming, declairis, scho saw Margaret Montgomerie, with Margaret Wallace, pass to his bed-fyde quhairin he lay, and that the said Margaret Wallace sat down with hir bak to him, the deponer hir self nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme : And forder knawis nocht.

For the *Second poynt of Dittay*, concerning *Johne Robertoun*, querriour, desyres the said Johnne Robertoun, as perfewar, his ayth to be tane, and that poynt of Dittay to be fuorne be him, gif he has just caus to perfew the pannell as giltie thairof ? Quha, being solemplic fuorne, declairit, that the said Margaret Wallace avovit 'to be avengit vpon his fflesche !' And that schortlie thaireftir, conforme to the Dittay, the feiknes was laid vpon him ; and thairfoir, hes just caus to perfew the said Margaret, for that poynt : And eikis² thairto, that sen the making of that vow be hir, he was nevir able to wyn him self fyve s. (shillings.) Quhairvpon my lord Aduocat askit instrumentis.

Chairles Pollak being product, and fuorne vpon the secund Article of Dittay, anent the said Johnne Robertoun, querriour ; declairis, he knawis na thing thairof, except allanerlie, that he saw him hevelie diseaft.

As to the *Thrid Article of Dittay*, referris the notorietye of the pannellis giltines thairof to the Assyse.

For verificatioun of the *ffourt Article*, my lord Aduocat product *Cristiane Grahames* Depositioun, tane be *my lord Archebyschope of Glesgow*. As also, produces *Marioun Mitchell*, the spous of Johnne Hunter, and desyres hir to be examinat, and her Depositioun to be writtin.

Marioun Mitchell, the spous of Johnne Hunter, tasker,³ fuorne, and examinat

¹ Commonly pronounced *broiching* ; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning.

² Adds ; subjoins.

³ Day-labourer.

vpone the ffourte Article of Dittay, in prefens of the Judges, Affysouris, and parteis, judicillie, Depones, that four yeir syne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Gleggow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Symfone; and in drinking thair of, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the said Margaret tuik ane suddan brafche of feiknes, vnknewin to the deponer quhat feiknes it was, quhairin the said Margaret was fa extremelie handillit, that scho was liklie to ryve hir self! Thaireftir scho cryis, 'Bring me hither my deir burd!'—And Margaret Montgomerie, the guid-wyfe of the hous, being present, anfuers hir, 'Quhilk deir burd wald ze haif? I beleif,' sayis scho, (thinking it had bene *Johne Dunning*, hir husband,) 'he is nocht at hame!' 'Na,' anfuert Margaret Wallace, 'bring me *Cristiane Grahame*, my deir burd!' All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Cristiane Mcclauchlane be the vther. Thaireftir, at hir desyre, Robert Stewart pafst, and with grit dilligence brocht Cristiane Grahame to hir, at quhais suddane cuming, Margaret Montgomerie sayis to Robert, 'Jesuf saif ws! I beleif thow hes met her be the way!' And Cristiane Grahame anfuert, 'ffayth, he met me nocht, bot come and brocht me out of my awin chalmers; and fra I hard that my burd was fa diseasit, I sped me hither!' Sayis, thaireftir, that Cristiane Grahame tuik Margaret Wallace be the schaikill-bane,³ and kist hir; and in hir airmes cayreit hir down the stair, saying to hir, 'Nothing fould aill hir.' Eftir quhais outgoing, Margaret Vallange, dochter to the said Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame down the stair; and in the ganging out at the zet,³ over the dur-threschold, scho fell down in a suddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the said Margaret Wallace come bak agane, and declairit that the bairne was greting at the stair-fute; and desyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, 'Mother, mother, ding me nocht, for thair is ane preyne⁴ raschet throw my fute!' And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill⁵ the morne at that same tyme of the day. The Deponer forder declairis, that scho and the bairnes father and mother fat vp all that nycht, and walkit⁶ the bairne; and that vpon the morne thaireftir, the said Margaret Wallace come to vifit the bairne, and desyret Margaret Montgomerie, hir mothir, to fend for Cristiane Grahame, making all that tyme ane grit mone⁷ for the bairnes feiknes: To quhome Margaret Montgomerie anfuert, 'I haif nothing ado with Cristiane Grahame, and

¹ This attack was probably a hysterical affection, or rather a kind of convulsion fit.

² Wrist.

³ Gate; wicket.

⁴ Pin.

⁵ Until.

⁶ Watched.

⁷ Moan; lamentation.

will nocht fend for hir! ffor gif God hes laid on that feiknes on my bairne, he will, at his awin plefour, tak it af agane! Sayis thairefter, that Margaret Wallace maid anfuere to hir, 'Gif ze knew of Cristiane Grahame skill, and quhat scho can, ze wald nocht refuse to fend for hir; for scho can do alse mekill as God in the Heavin!' Deponis forder, that schortlie thaireftir, Margaret Wallace, by¹ the said Margaret Montgomeris knowlege, brocht the said Cristiane Grahame in to the hous, the bairne being lying as ane deid flock in the bed, and haifing gevin over greting for the tyme; and at thair incomming, ane heip of grene webbis² being lying on the fluir, Margaret Wallace lap over the same, and cumis to the bairne, and takis hir vp out of hir bed, and settis hir on Cristiane Grahames knie; and declairis, that eftir the bairne had fittin ane schorte space vpon the said Cristianes knie, scho grew better, and eftir that mendit.

FOR verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depositiones tane befor *the Bischope of Glesgow*;³ with ane vther Deposition tane befor *the Commissar of Glesgow*; as also, producet certane Depositiones tane be the said *Archebischope*, at command of the Secreit Counsall; and thairwith produces Andro Mure, chirurgane, as Witnes; desyring him to be suorne, and his Deposition to be writtin.

Andro Mure, chirurgane, mareit a sevintene yeir syne, of the age of xlij yeiris, suorne, and purget of partiall counsell; being inquiryet, quhat he knawis concerning the ffyft Article of Dittay, red in his audience? Depones, he knawis nothing of Margaret Mures feiknes specifeit in the said Article, except that he himself, cuming doun the Brig-gait,⁴ he saw Cristiane Grahame cum furth of Marioun Mures hous; quha thaireftir come to the deponer, and desyret him to gang in to the said Marioun: And the deponer, at hir desyre, haifing past in to the hous, at his incuming ane roistit hen was fett doun on the buird;⁵ and the deponer, with David Scheirar and the said Marioun Mure, sat doun at the buird togidder; and within ane schorte space thaireftir, Margaret Wallace come in to thame: Declairis, at Margaret Wallace incuming, ane guife⁶ was fett doun on the buird: And the deponer, persaveing that sic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the rest of the cumpanie behind him. And forder knawis nocht.

FOR verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Deposition of Alexander Montgomerie and vtheris, subscryuit be *my Lord of Glesgow*; togidder with ane Testimoniall of the Minister, testifeing Mr Alexander Montgomerie his feiknes, that he was nocht able to travell, without hazard

¹ Without; contrary to. ² Webs of newly weaved, or unbleached, linen cloth. ³ James Law, Archbishop of Glasgow; who had been translated from the See of Orkney, anno 1610. ⁴ The Bridge-gate of Glasgow. ⁵ A roasted fowl was set upon the table. ⁶ Goose.

of his lyfe: And referris the notorietye of the pannellis giltines of the saidis Articles to the Assyfe.

FOR preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomas Wilkyne, and Johnne Thomefone, as Witnesfes, defyreing thair Depositiones to be tane, for the Assyfe better informatioun.

Robert Dykis, maltman in Ruglen, mareit, fuorne and examinat, in prefens of the Judges, Assyfouris, and pairtie, in judgement, vpone the Nynt Article, to declair the verritie, and purget of partiall counsell, Depones, that at command of vmq^{le} Allane Spens, the deponer come to Johnne Dynning, and defyret ane ficht of his elwand,¹ and, conforme to the Dittay, the elwand was brokin; and a fyftene dayis thaireftir, or thairby, the said Allane Spens being in Glesgow, and fleing ane schoure,² come befoir Johnne Dynningis buthe-dur,³ quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, say thir woirdis to Allane, 'Away, deboifchet knave!' Depones, the said Allane Spens fell feik; bot knawis nocht how sone eftir thais woirdis war spokin this feiknes fell⁴ to him. Declairis, he come in to him the tyme of his feiknes, and saw him hevelie diseasit with continuall fuitting.

Thomas Wilkyne, burges of Ruthirglene, mareit, fuorne in prefens of pairtie, Judges, and Assyfouris, in judgement, Depones, he knawis nocht Margaret Wallace, befoir his cuming to Edinburgh. As to that Article of Dittay concerning Allane Spens feiknes, declairis, he was hevelie diseasit with ane suddane and grevous feiknes, quhairof he deceiffit; bot knawis nocht quhat or quha war the causeris thairof.

Johnne Thomefone, burges of Ruthirglene, mareit, and fuorne vpone the nynt Article of Dittay red to him in judgement, in prefens of the pairteis, Judges, and Assyfouris, is conforme to the said Thomas Wilkyne.

Johnne Pincartoun, fuorne and demandit vpone the nynt Article, quhat he knawis thairintill? Depones, he was narrest dur nychtbour⁵ to Allane Spens, and saw Johnne Dynningis elwand brokin, at quhilk tyme the said Johnne Dynning and Allane Spens war likelie to go by the earis for breking of the said elwand. Declairis, that he hard Margaret Wallace, scho being present with hir husband, say to him, 'Go your wayis joy, let him allane;' (meaning be Allane Spens,) 'I fall tak ane amendis thairof!' Sayis he knew that Allane Spens fell in ane heavie difeas, bot knawis nocht quhat was the caus thairof.

FOR verificatiounn of *the Tent Article* of Dittay, my lord Aduocat vfes the aithe and declaratiounn of *Alexander Boig* in Garboillis, perfewar thairof, and desyres that Article to be fuorne be him to the Assyfe, for thair better informa-

¹ Ell-wand, yard measure.

² For shelter from the shower.

³ Shop door.

⁴ Happened.

⁵ Next-door neighbour.

tioun: Quha being suorne, declairit that he had juft caus to perfew the said Article, as is fet doun thairintill, aganis the pannell.

Produces also George Thomefone and James Pollok, Witnesfes, defyreing thair Depositiones to be reffaut for preving of the said tent Article of Dittay.

George Thomefoue, duelland vnder Sir George Elphingstoun of Blithesfoid, kny^t, suorne and examinat in judgement, Quhat he knawis anent the said tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that scho said to him, in a grit rage and furie of mynd, that scho fould 'do to him ane evill turne,'—or fould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the said Alexander his bairne fell feik, and deceffit of fueitling and vther grevous panes.

James Pollok, gairdner to Sir George Elphingstoun, suorne and examinat vpon the said Article, Depones, he being working at the hedge within the 5aird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger scho said to him, scho fould 'do to him ane evill turne!' And schortlie thaireftir, his bairne contractit ane feiknes, and deceffit.

My lord Advocat takis instrumentis of the Witnes judiciall declaratioun aboue writtin; quhilk he repetit to the Assyse, with the vther Depositiones product be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Assyse wairnit to be present the morne, at xj houris; ilk persone vnder the pane of iij^c merkis.

*OBJECTIONS be the Pannell to hir pretendit CONFESSIOUN, and haill
Probatioun adduct.*

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocoutouris aganis *hir pretendit Confessioun*, maid be hir befor the Lordis of Secreit Counsell, that the samyn can prove nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confessioun, quhair as scho confessit 'that scho was content, in caice it fould be provin that scho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anfuers thairto, that is na Confessioun of the Dittay, nor of na pairt thairof; ffor the Dittay is fet doun vpon Witchcraft, and that the pannell practizet Witchcraft vpon the perfones contenit in the Dittay, be Sorcerie and Inchantment; scho hes nocht confessit the samyn be hir Deposition, nor na pairt thairof; sua that hir Deposition can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it fall be provin aganis hir, hir being in Gregis hous, quhilk scho hes denyit, scho hes thairin committit onlie a lie, and being perfewit and provin, is content to vnderly the pwneifchment appointit aganis Leafing-makeris. *Secundo*, be the Confessioun contenit in hir

Deposition befor the Counsell, scho is only content, gif that hail Article be provin aganis hir, than to confes all the rest to be trew; bot albeit it be provin that scho was in the hous, it is nocht confessit thairby that scho was ane Witche. *Tertio*, it is nawayis provin be the Deposition product, that scho was within the hous, becaus thair is only ane woman product as a Witnes to verifie the fame. It is forder allegit, that thair can be na probatioun vpone that hir Confessioun maid befor the Counsell, becaus the famyn is na poynt of Dittay.

It is anfuert be the persewaris, as to the obiectioun maid against the Deposition maid be the pannell befor the Counsell, that obiectioun aucht nocht to be respectit, in respect of the Judicial Confessioun maid befor the Lordis of Counfall, quhilk bindis hir; be the quhilk it is manifest, that scho hes denyt the treuth, in respect of the probatioun led be dyuerse of the Witness product, verifieing hir to haif bene in Gregis hous the tyme of his seiknes, quhilk the persewaris referis to the Inqueistis knowlege and Witness Deposition. And desyres it may be rememberit to the Assyse, quhat sentence was gevin aganis *Patrik Cheyne*, vpone the lyk Deposition.

It is forder allegit be the pannell, that the Deposition maid befor my Lord of Glesgow, the famyn can mak na fayth, in respect his Lordschip had na warrant to that effect.—It is anfuert be the persewaris to that obiectioun, that the famyn aucht to be repellit, in respect of my Lord of Glesgowis Judicial Declaration maid be his Lordschip, that he had ane special Letter direct to him be the Lordis of Secret Counsell, for taking of the saidis Depositiones, and of the article subioynet to hir Depositiones subscryuit be the Clerk of Counsell.

It is allegit be the pannell, that nather the first nor secund Deposition of *Cristiane Grahame* can be respectit: *ffirst*, becaus it is nather hir principall Deposition, nor Extract thairof; nocht the principall, becaus it is nocht subscryuit be hir, nocht the Extract, becaus nocht (subscryuit) be ane Clerk of Court: *Secundo*, can preve nathing, becaus it is maid, scho nocht being suorne to that effect: *Tertio*, it is maid be the pairtie being absent aganis quhome it is deponit, quha, gif scho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif scho had bene confrontit, wald haif denyt the famyn: Lyk as, scho cum of set purpos to the Tolbuth, befor hir Convictioun, and offerit hir self to haif bene confrontit, quhilk was denyt. *Laß*, hir Deposition can work nathing aganis the pannell, being ane condampnet persone; and the Deposition aucht nawayis to be respectit, except it war instantlie verifeit be the proces, that befor the making of the said Deposition, or the tyme of the making thairof, that the said Cristian Grahame had confessit the hail poyntis of Dittay than laid to hir charge: sfor as the woirdis ar confauet, thay ar spokin be compariesone, that estir scho had denyt the poyntis of Dittay laid to hir

charge, and declairit hir self to be altogidder innocent thairof, and the pannell being at that tyme ane honest woman, sua repute and haldin, scho sayis, 'scho was als frie of Witchcraft as scho or ony vther in the toun!' Forder, the Confessioun can nocht be respectit, becaus it is nocht maid befor ane Judge haifing power to tak her Confessioun, thair being na Commissioun product for taking of the said Confessioun. Nixt, the Deposition beiris nocht that scho was ony wayis interrogat or speirit¹ at, and is nocht maid in judgement, becaus the Assyse was than incloset, being than hir Judges. Last, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of sic deidis as scho did, and confessit to haif done: And referris to the Assyse, hir Confessioun, that scho was innocent of all. And as to the worsettis,² thay ar na pairt of Witchcraft, be reveing³ or drawing thame furth of hir purse.

It is answert thairto be the persewaris, that the obiectiones maid aganis the tua Depositiones product is nawayis relevant, and is nocht to be respectit be the Assyse, becaus the samyn is subscriuit be *my Lord Archbischope of Glesgow*, as Lord of the Regalitie, and quha was present the hail tyme of Cristiane Grahames tryell, nocht onlie as Lord of the said Regalitie, bot also as being ane of the Lordis of his Maiesteis Previe Counfall; and thairby, be vertew of his office and autoritie, haifing sufficient power to tak cognitioun of quhatsumeur ryote or offence committit to ony of his Maiesteis subiectis, be quhatsumeur maner of way, within that pairt of his dyocie,⁴ or ony pairt of the kingdome. *Igitur, &c.* —To the quhilk it is answert be the pannell, that the Deposition was nocht subscriuit be *my Lord of Kilsythe*, to quhome the Commissioun was grantit, bot is allanerlie subscriuit be the Proneist and Bailleis of Glesgow, quha ar pairteis: Lyk as presentlie, at the dyteing heiroy, Gabriell Cunninghame, standing at the bar, hes professit him self to be a pairtie and informer to my lord Aduocat. Last, her Deposition can nocht be respectit, becaus scho alleges hir self to be participant of the same cryme; and sa hir Deposition, of the Law, can mak na fayth, except scho had confessit scho had maid hir Deposition or Confessioun eftir tortour.

To the quhilk it is answert be the persewaris, that the saidis Depositiones ar subscriuit be the Proveist and Bailleis of Glasgow, quha war a pairt of the Commissioneris nominat and appointit to the tryell of the said Cristiane Grahame, as also subscriuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Ministeris of Glasgow, quhais subscriptions ar sufficient to geve autoritie to the Depositiones, as evir has bene fund in this judgement, in all matteris of Witchcraft, and speciallie, in the proces of *Euphame Macalzeane, Barbara Naper*, and *Agnes Sampson*. The last pairt aucht nocht to be

¹ Enquired.² The coloured worsted threads formerly noticed.³ Stealing.⁴ Diocese.

respectit, in respect *ſocij criminis* ar reſſaut and admittit in all crymes of Trefſone, Erracie,¹ and Witchcraft.

Quhairvnto the pannell and hir prelocoutouris anſueris to thais tua memberis of my lord Aduocattis anſueris, that the tua Miniſteris befor quhome Criſtiane Grahame hir Depoſitioun was maid, that thai war honeſt men, it is nocht denyit; bot it followis nocht, becaus thay are honeſt men, thairfoir thay had power to tak hir Depoſitioun, in ane matter concerning hir lyfe, without Commiſſioun. For anſuer to the proces allegit aganis *Euphame M^ccalzeane, Barbara Naper, &c.*, agreis thairto, in regard thay war examinat be Mr James Carmichell, to quhome ſpeciall Commiſſioun was gevin for that effect. Laſt, it is declarit be the pannell, that evin in the cryme of Erracie or Leſe-maieſtie, a partner of ane cryme² is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Trefſone, becaus he was partner of the Trefſone.

It is objectit be the pannell and hir prelocoutouris, aganis the Depoſitioun maid be *Margaret Grahame*, dochter to Criſtiane Grahame, befor the Commiſſar of Glefſgow, it can nocht be reſpectit; firſt, becaus it is not maid judiciallie, befor ane Judge haifing power to that effect: *Secundo*, befor ane Commiſſar, without ane Commiſſioun, quha had na power in matteris of Witchcraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befor ane Judge haifing Commiſſioun, nor ſworne to that effect: *Quarto*, hir Depoſitioun can nocht be reſpectit, in reſpect of hir age, ſcho nocht being paſt xvij³ yeiris: *Quinto*, in all hir Depoſitiones, nevir a word deponet that ſcho knew Margaret Wallace to be ane Witche, or a practizer of Witchcraft; bot only that hir mother and ſcho paſt to the zaird togidder, tynt hir pantoun, quhilk was put one agane be Criſtiane Grahame, &c.: *And* quhair, it is affirmet in the Depoſitioun, that ſcho tuik ane ſchooe, and pat in ſum ſeidis thairin, that is nocht lybellit, and can nocht be reſpectit, becaus naething followit thairupoun: *Laſt*, na Depoſitioun can be reſpectit at all, of ony perſone, as Witnes, bot only ſic as ar product in Judgement,⁴ to the effect the pannell may object aganis thame, quhidder thay may depone aganis hir or nocht. And thairfoir, of all Law, it is inviolablie oberuet, that na faith is gevin to Teſtimoniallis, bot as Witneſſes, in a matter of fourtie ſhillings.

It is anſuerit be the perſewar, as to the alleageance and objectioun aganis *Margaret Grahame*, the ſamyn aucht to be repellit, it being tane befor ane Judge-Ordiner, judiciallie, viz. the Commiſſar of Glefſgow: And as to hir age, ſcho hes deponet ſcho is paſt xiiij yeiris, quhilk is referrit to the Aſſyſe knowlege; and that than ſcho mycht haif mareit lauchfullie, mekill mair to beir witneſſing in

¹ Heresy.² *Particeps criminis*.³ *Sic*; xiiij?⁴ This is the first time that this objection is recorded as having been started by the Counsel for the pannel.

obfcure factis, fic as ony thing concerning vni^q^{le} Cristiane Grahame and Margaret Wallace, quhais companie scho refoirtit daylie. And forder, the perfewar referris to the Assyse knowlege, quhat thay knaw of hir Depositionne; and speciallie, gif it was grantit befor my Lord of Glesgow, the pannell hir self, and sum of the Inqueit: And forder, productet the dome and sentence of convictioun to the Assyse, quhair the Proveist and Bailleis of Glesgow war Commissiouneris appointit and set for tryell of Cristiane Grahame, and sa had power to reffaute Cristiane Grahames ayth, for haifing Commiffioun thairto.

It is anfuertit be the pannell, as to that pairt of the anfuertit anent Margaret Grahames age, the Depositionne productet beiris na sic thing.—My lord Aduocat, for anfuertit thairto, declairis, he produces ane vther Depositionne of hiris of the same dait, beiring hir former age: Quhilk is referrit to the Assyse.

Item, the pannell anfuertis to that poynt, anent the production of Cristiane Grahames Sentence of Convictioun, that the pannell acceptis the same; and protestis that the perfewaris repetitioun thairto, for instructing of the Assyse, anent that alledgeance proponit be the pannell, that Cristiane Grahames Depositionne, beiring Margaret Wallace to be airt and pairt of all confest be hir to haif done, preves nawayis hir to be gilty of Witchcraft; becaus the convictioun productet, beiris hir to haif denyt all the poyntis of the lybell anent Witchcraft; and scho confesses that scho was pairt-taker of sic thingis as scho confesses hir self to haif done, it man (*myt*) be of na deidis impoirting Witchcraft.—The last objectioun proponit be the pannell is nocht to be respectit, in respect of Cristiane Grahames Confessioun and convictioun productet; quhairin scho is convict of tua poyntis, conforme to hir awin Confessioun, viz. the secund and fourt poyntis of Dittay quhairupone scho was indytit.—It is anfuertit be the pannell, that the said convictioun proceedis vpone the admitting of the hail Articles thairto to the knowlege of ane Assyse, sua that the finding of hir gilty of ony of the Articles is nocht the grund of the sentence of Convictioun; ffor thais tua Articles, a pairt quhairto scho is convict, was nocht relevant without the hail Articles had bene admittit; and forder, thir tua poyntis quhairto Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Depositionne, subseryuit be my Lord of Glesgow, the samyn can nocht be respectit, for the ressones foir-faidis; with this additioun, that gif the said Marioun Mure war now productet as Witnes at the bar, scho wald be repellit; for this resson, becaus be the Depositionne it is confest that scho is father-sister to the bairne quha is alleget to haif bene bewitched or curet be the pannell, as being within degreis-defending to the said bairne mentionet in the Dittay. And forder, it is objectit, that scho had gevin partiall counfall in the caus, quhilk defens is tane fra us be production of

ane Testimoniall, and nocht hir selff. And repeittis all the rest of the objectiones aganis the vther Testimoniall.—The last objection aucht to be repellit, in respect of the Depositioun of *Marioun Mure*, tane be my Lord of Glesgow, quha had Commiffioun of the Counsell, as he hes deponit, and is testifeit be James Prymrois, clerk of the Counsell. Lyk as, the samyn Depositioun is subscryuit be the Laird of Mynto, and the Proveist and Bailleis of Glesgow, Commiffioneris for Tryell of the said Cristiane Grahame: And as to the objection, that scho was within degreis-defending to the bairne, it is anfuert directlie, that Commiffioun be the Counsell for hir examinatioun, the pannell being present, and nathing objectit be pannell in the contrair, is sufficient to elyd¹ that pairt of the said objectione.

It is objectit be the pannell aganis the Depositioun of *Mr Alexander Montgomerie* productet, that the samyn can mak na fayth, it nocht being maid befor ane Judge, nor he fuorne to that effect; nor nane inquiryng sic thing of him: And speciallic, aucht to haif bene summond befor ane Judge-Ordiner, and to haif deponit judicallie; in respect that letteris war direct, summondng him to compeir befor the Justice in this judgement, and hes nocht compeirit, being summond to that effect; and speciallic, his Depositioun could nocht haif bene ressaunt gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Hefilheid,² quhais dochter is allegit to haif bene witchet, be ane special poynt of Dittay gevin in aganis this pannell; and sa, his extra-judicial Confessioun out of all judgement, subscryuet be him without Witnes, could nocht be respectit.—To the quhilk the persewaris anfuertis, that this last objection aucht to be repellit, in respect of the Testimoniall productet, beiring Mr Alexander to be feik, subscryuit be ane Minister, quhilk excuises his absence: Quhilk Depositioun is ferrit to the tryell of the Assyse.

IN respect of the quhilkis Depositiones and Verificationes productet to the persones of Inqueist, for thair forder informatioun of the pannellis giltines of the perticular poyntis of Dittay aboue written, Protestis for Wilfull Error aganis thame, gif thay acquit.

VERDICT. The Assyse, for the maist pairt, FYLES *Margaret Wallace* of the *first* Article of Dittay,³ anent Cuthbert Greg, couper, and haill circumstances thairof: AND siclyk, all in ane voce, ffyles hir of the *fourth* poynt of Dittay, and haill circumstances mentionet thairintill, anent the consulting with vmq¹⁶ Crif-

¹ Cut off, &c. Lat. *elidere*.

² The Montgomeries of Hazelhead, a respectable family in Ayrshire.

³ The Articles of Dittay of which the pannel is found guilty, are rehearsed at length at the commencement of the Trial, being the only part of the Dittay preserved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illustrate the state of the Law and practice on this extraordinary subject. More freedom of discussion was permitted in this Trial, than in any of the previous cases of a similar nature.

tiane Grahame, ane notorious Witche, for cureing of hir selff of ane suddane diseafe, be taking the samyn of hir, and laying it vpon Alexander Vallange bairne; and thaireftir cureing the said bairne of the said diseafe, in forme and maner specifeit in the Dittay: AND lykwayis, for the maist part,¹ ffyles hir of the *fyft* poynt, anent the cureing of Margaret Mure of the seiknes quhairwith scho was visseit, be Sorcerie and Withecraft, and consulting with Cristiane Grahame for that effect, in maner contenit in the said *fyft* Article: AND in lyk maner, all in ane voce, ffyles hir of the *tent* Article of Dittay, and haill circumstances thairof, anent the seiknes laid vpon Alexander Boig his bairne, be Sorcerie and Withecraft, in maner specifeit in that Article: AND last, all in ane voce, ffyles hir of the generall poynt, as ane cownoun confulter with Witches, thir aucht or nyne yeiris, namelie with vmq^e Cristiane Grahame, laitlie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and seiken² of help and respossis of thame, alsweill for cureing of hir selff of dyuerse seiknesses, and cureing of hir ffreindis and acquentance, as for inflicting of dyuerse crowthal diseissis vpon dyuerse perones to quhome scho buir ony haitrent; and distructione of thame thairby, be devillrie, Incantatioun, and Withecraft, expresse forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.³

SENTENCE. The Justice, be the mouth of James M'cairtour,⁴ dempster of Court, Ordanit the said Margaret Wallace to be tane to the Castell-hill of Ed^r, and thair to be wirreit⁵ at ane staik to the deid; and hir body thaireftir to be brunt in asches: And all hir moveabill guidis to be escheit, &c.

Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^e Johnne Low in Gairnetullie; committit vpon the xvij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perth, neir kynfman; Sir W. Oliphant. PRELOCUTORIS in defence, Mr Lueis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Assyse, in respect thai haif obtenit his Maiesteis Remissioun, vnder his hienes Greit Seil, quihilk thay vse and produce, daitit the xxij day of Marche, 1618 yeiris.—The Justice ordanis the pannell to find caution to satisfie the pairties; quaha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleift thame, &c.

¹ 'By a plurality of voices,' as it was more recently expressed.

Lawsonne, chancellor.

⁴ Who appears for the first time in this office.

² Seeking.

³ 'Johnne

⁵ Strangled.

**Intercommuning with the MacGregors—Slaughter—Theft—
Fire-raising, &c.**

Apr. 23.—**JOHNE MOIR M^eEANE CHERE¹ CHAMRONE** (Cameron), and **Duncane (Moir) M^eeane Chamrone**, his brother.

Dilaitit of the crymes following, viz. The said *Johnne Moir*, ffor being in cumpanie with vmq¹⁶ Allaster M^eGregour of Glenstra, Johnne Dow M^eGregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroch, and vtheris brokin men and foirneris, to the number of ffoure hundreth perones, convocat in battell array, vpon the landis of *Glenfrune*,² pertening to the Laird of Lufe,³ in ffebruar, 1603 yeiris; quhair vmq¹⁶hile Alexander Colquhoun of Lufe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure fouerane lordis Commiffioun, to resist the saidis M^eGREGOURIS cruell interpryfes and intentiones. AND for airt and part of the steilling and away-taking of sex hundreth ky and oxin, aucht hundreth scheip and gait, fourtene scoir horse and meiris, with the hail pleniffing, guidis and geir of the four-pund-land of Lufe, pertening to the inhabitantis thairof. AND ficylk, the said *Duncane Moir M^eeane Chamrone*, ffor being in companie with Robert Abroche,⁴ Johnne Dow M^eallaster,⁵ and vtheris thair complices, ane aucht yeir fyne, or thairby,⁶ at the Slauchter of vmq¹⁶ James Menzies, brother to the Barrone of Comerie, and Burning of his hous;⁷ and sa was airt and part of the said slauchter, and burning of the said hous. TO THE TAIKIN,⁸ he hes confessit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Affythement⁹ of the Slauchter and Burning; as at lenth is contenit in the Dittay.¹⁰

PERSEWAR, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perones on pannel, being enterit, declairit that nane of the freindis of the Barone of Comerie could perfew thame for the Slauchter of James Menzies; becaus thai had ressaunt satisfioun for the Slauchter and Burning, fra Duncane. And the said Johnne Moir confessit his being at the ffeild of Glenfrune, bot denyis that he did ony skayth thairat.

¹ John 'the large,' the son of John of 'the mouse colour.' ² See this Collection, II. 430, for an account of the Battle of Glenfruin, &c. ³ Luss, on the banks of Loch-Lomond. ⁴ M^eGregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.' ⁵ It appears from the Records of the Privy Council, that he was killed in February, 1611. ⁶ Robert Abroche received the Royal pardon, previous to December, 1612. ⁷ As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan. ⁸ In testimony or *token* whereof.

⁹ That compensation shall thee nought avail,
Which erst necessity, not Justice gave;
Howe'er in others it be held sustainable—
But shall be quoted as sound proof of guilt,
And practical confession of thy crime.

Anon.

¹⁰ The Dittay is not preserved on record.

The Justice Ordanis the Dittay to pas to the knowlege of ane Assyse, &c.

ASSISA.

Johnne Naper of Kilmahew,	George Nicoll, cuik in Ed ^r ,	Vmphra Colquhonne, indueller in
Johnne Darleith of that Ilk,	James Mitchell in Chapelton,	the Cannogait,
Johnne Danielstoun of Dal-	Johnne Williamfoun, thair,	Williame Buchannane, thair,
quherne,	Williame Gow in Drymmene,	Adame Clerk, litster in Edinburgh,
Mungo Buchannane in Tillie-	Robert Moriefoun, burges of	Patrik Colquhoun, alias Cowane,
chevin,	Dumbartane,	tailzeour in Edinburgh,
W ^m Buntene in Auchinsofle,		George Mitchel, staibler thair.

VERDICT. The Assyse, all in ane voce, ffand, pronuncet, and declairit the saidis Johnne and Duncane to be ffylet, culpable, and convict of the crymes *respectiue* aboute writtin.—SENTENCE. To be tane to the Castell-hill of Ed^r, and thair, thair heidis to be strukin fra thair bodeyis; and thair guidis to be efscheit and inbrocht to his Maiesteis vse, &c.

Suborning of Witnesses—Perjury.

Jun. 22.—ANDRO TRUMBLE in Belfches, Robert Ker in Bewlie, James 3ong in Belfches, and David Trumble in Lufruthir.

Dilaitit of Suborning of Witnesses, and for beiring of ffalfe-witnesing.

My lord Aduocat producet the Dittay, with ane Warrant direct to the Justice be the Lordis of Sessioun, for putting the pannell to the tryell of ane Assyse, for the crymes spcifeit in thair Dittay.¹

ASSISA.

Gilbert Ker of Lochtour, Williame Ker of Lyntoun, Johnne Glendonyng of Drumrafche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, sone to the Guidman of Yair.²

My lord Aduocat takis instrumentis of the fueiring of the Assyse; and for verificatioun of the Dittay, producet the Depositiones maid in presens of the Lordis of Sessioun, subseruyit be my Lord of Melrois,³ *in presentia Dominorum*; And also, producet ane Decreit of the saidis Lordis, vnder the subscriptioun of Mr Thomas Hay, clerk, daitit the xxij of Junij instant, ffinding and declairing the said Andro Trumble to be a periured and ffals man, and ane corrupter and seducer of Witnesses to depone ffalšie; and also, ffinding the saidis Robert Ker, James 3ong, and David Trumble, Witnesses foirsaidis, seducet be the said Andro, to be in lyk maner perjuret and ffalše Witnesses; in respect, thay first declairit be thair foleme aithes, that thai war nawayis seducet, be the said Andro Trumble, to heir ffals witnes in his cause of Spuilzie, persewit be him aganis Williame and Walter Mydilmestis; and thaireftir, being mair fraittlie and narrowlie examinat, confessit the verritie of the said seduction, and the ffalset of thair Depositiones. And vpon the production thairof, askit instrumentis, and

¹ The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. ² The rest burgresses. ³ Sir Thomas Hammliton of Binning, &c. afterwards Earl of Hadington, Lord President of the College of Justice, &c. one of the greatest men of his time.

proteffit for Wilfull Erroure aganis the saidis perfones of Affyfe, gif thay acquit ; speciallie, in respect of the pannellis offering thame in his Maieftis will for the said crymes.

VERDICT. The Affyfe, all in ane voce, be the repoint of Nicoll Edger, mercheand burges of Edinburghe, Chancellor, fand, pronuncet, and declairit the saidis Andro, Robert, James and David, to be ffylet, culpable, and convict.—

SENTENCE. The saidis *Andro Trumble*, *Robert Ker*, and *James Young*, to be tane to the Castell-hill of Edinburghe, and thair to be Hangit quhill thai be deid ; and thair haill moveabill guidis to be escheit to his Maieftis vfe.—And the said *David Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his toung to be pearcet with ane hett boitkyn ; and thaireftir Banifchet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

ASSISORS fined for being absent.

SIR WILLIAME McDUGALL of M'cairstoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailzie of Lauder, Sir Robert Scott of Thirlstane, Williame Johnnestoun of Lockerbie, Williame Borthuik, elder of Johnnstoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanscheill, James Fairbairne of West Gordonne, Johnne Elphinstoun of Schank, Alexander Cranstoun of Moriestoun, Johnne Cranstoun of Thornydykis, Sir Robert Scott of Hayneing, David Vaufe of Blaufe, Williame Home of Hardeifmylne, Williame Bennet, feruitour to the Erle of Roxburgh, Johnne Symontoun, younger, of that ilk, Gilbert Ellote of Stobis, Robert Logane, ffear of Bonnytoun, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—ilk ane of thame, for thair nocht compeirance, to pas vpon the said Affyfe, war vnlawit in the pane of ane hundredth merkis.'

Taking captive—Scourging—Slaughter, &c.

Jun. 26.—SIR WILLIAME KEYTH of Ludquhairne, kny^t, and Hew Charteris, his fervand.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeld, vnder nycht, furth of his duelling hous, mother-naikit as he was borne ; and for cayreing him, as ane captiue and priffoner, to the Place of Feachfeld, and breking vp of the zettis and durris of the said place ; fcurgeing him with fuord-beltis and horfe-brydillis vp and doun the hall thairof, to the effioun of his bluid. AND fielyk, for allegit airt and pairt of the daith and Slauchter of vmq^{ls} Andro Frafer, ane young infant bairne, sone to Andro Frafer, younger of Mukallis : AND for contraveining the Actis of Parliament, in beiring and weiring of hagbutis and piftolettis PERSEWARIS, Andro Frafer, younger of Mukallis, as father ; Alexander Pedder, myller ; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fonerane lord, for his hienes entreis.

PRELOCOUTOURIS in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the said Sir Williame and his fervand, togidder with the said prelocoutouris, and exponet and declairit, that thai war informet, Criminall Letteris

war direct out aganis thame, vpone threfcoir dayis wairning, at the instance of Andro Frafer, &c. chargeing thame and certane vtheris¹ to find caution for thair personall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes: For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the saidis allegit crymes, the said Sir Williame Keyth, and Hew Chairteris, compeirit and offerit thame selffis of the Law, as altogidder innocent thairof. And in respect na pairtie compeiris to insist in thair perfute, being oft tymes callit to that effect, protestit for thair cautioneris relief, and that thai, na nane of thame on nawayis fould be callit or perfewit for the saidis allegit crymes, in ony tyme cuming; and thairupoun afkit instrumentis.

Johnne Forbes, eldest sone and appeirand air to Mr Duncane Forbes of Bannagask, as cautioner and fouertie, for repoirting the above Letteris, deulie execute and indorsate, and perfute thairof, &c., vnlawit vnder the panes following, viz. vpone the said Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v^c merkis; and vpone ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, sumtyme seruant to Mr James M^cGill of Cranstoun.

Dilaitit of airt and pairt of the breking of the said Mr James M^cgillis Place of Cranstoun, and breking vp of ane kist,² within the Woman-hous³ thairof, pertening to Malie Newlandis, and steilling xxx li. furth thairof; committit in Majj last.

The pannell offerit him selff in the Kingis Maiestie and the Laird of Cranstones will, for the said cryme: Quhairvpone, the Justice ordanit him, of his awin consent, to be Banischet the parochin of Cranstoune; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find caution for his compeirance vpone fyftene dayis wairning, to vnderly the law for the said cryme, gif in ony tyme cuming he beis fund within the said parochin; quha fund Thomas Rutherford in Borthiuk-manes caution for that effect.

Fire-raising—Slaughter.

Jul. 24.—DONALD M^cANGUS of Glengarie.

¹ There were 'Nathaniell Keyth of Coklaw, Williame Keyth, sone to Alex. Keyth of Bodome, Robert Marschell, Gilbert Wairdene, Gilbert Huchoun, and Alexander Forbes, all seruitouris to the said Sir Williame; Johnne Keyth, sone to Alex. Keyth, vnkle to the said Sir Williame, George Keyth, callit *Caitnes*, George Johnne Dow M^cfarlaue, Alexander Fordyce, and Thomas Murray, seruitouris to the said Nathaniell Keyth, vnkle to the said Sir Williame.' ² Chest. ³ Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of th treffonable Raifing of ffyre, Burning of xxvij Houffes, with the inficht being thairin, pertening to Mr Johnne M^cKenzie, Archedeane of Rofs; and Slauchter of dyuerfe his tennentis.

PERSEWAR, Mr Johnne M^cKenzie, Archedeane of Rofs.

The perfewar paffis fra the pannellis perfute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him felff to the tryell of the law for the faidis crymes, as altogidder innocent; and difaffentis to the faid continuatioun. And for obedience of the Justice ordinance, fand Sir Donald Gorme of Slait, kny^t, personallie present, cautione for his entrie, to the effect foirfaid.

Resetting of a Jesuit-Priest.

Aug. 6.—ANDRO HATHOWIE, burges of Glesgow, and Jonet Pollok, his spous.

Dilaitit of the treffonabil Receipt of George Mortimer, ane Jesuite Preift, &c.¹

VERDICT. The Assyfe, be pluralitie of voittis, be the repoint and declaratioun of George Moore of Powmadie, chancellor, fand the faidis Andro and Jonet to be ffylet, culpable, and convict, &c.—SENTENCE. The Justice, conforme to ane Warrant of the Lordis of his Maiefties Secret Counfall, decernis and ordanis the faidis *Andro* and *Jonet* to be Banifchet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to ward, thairin to remane, quhill cautioun be fund to the Proveift and Bailleis of Glesgow, for obedience of the faid dome, and thair nocht returning agane; vnder sic panes, as fall be fet down be the faidis Proveift and Bailleis, in thair Act to be maid thairupoun.

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

Chest.

Sep. 20.—HENRIE KYNLOCHE, fumtyme post-maister, indueller in the Cannogait.

Dilaitit of the thiftious steilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret fatene, and tua pair silk fchankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyrudhous; committit in November 1621 lastbypast.

The pannell confessis the cryme specifeit in his Dittay, with all humilitie: Seing the guidis flowin ar restorit to the rychteous owner thairof, offeris him felff in the Kingis Maieftie and his hienes Counfellis will, for the faid cryme.

WARRANT of the Lordis of Secret Counfall.

APUD HALYRUDHOUS, *decimo quinto mensis Maij*, 1622. FORSAMEKILL AS Henrie Kinloche, fumtyme post-maister in the Cannogait, being tane and put in ward, within the Tolbuthe of the Canno-

¹ The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he presertle remanis, ffor certane poyntis of Thift committit be him : Off the quhilkis, necessar it is that he be tryed, and that some pwnieichment be inflictit vpon him, to the terrour of vtheris to offend in the lyk heirestrif. Thairfoir, the Lordis of Secreit Counfall Ordanis his Maiesteis Justice, Justice-clark, and thair deputis, to appoint ane Justice Court to be haldin in the Tolbuthe of Edinburge, at fuche ane day as thay fall think expedient ; and to caus the said Henrie to be exhibeit and producet befor thame ; and thair to accufe him of the said cryme of Thift, according to the particuler Dittay, that fall be gevin in aganis him. And Ordanis his Maiesteis Advocat to insift in the persute of him ; and gif the said Henrie fall confes the said cryme, and become in his Maiesteis will for the fame, that than thay pronunce dome and sentence aganis him, ordaning him to be Banist from the realmes of Scotland and Ingland, and nevir to returne agane within the samyn during his lyftyme, vnder the pane of deid.

Extractum, &c.

JACOBUS PRYMOIS.

SENTENCE was pronounced in conformity to this Warrant.

'Rapt and Ravishing'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN M'FINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary M'Connell* (*MacDonald*), the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald M'Allan V'Ean*, the injured husband, was brother to *Donald M'Allan M'Ean*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.¹

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

NOV. 8.—SIR LAUCHLANE M'FINGANE of Strathardill, kny^t.

Dilaitit of the Rapt and Raveifcheing of Marie M'conneill, sifter to Sir Donald M'conneill of Slait, and spouse to Rannald M'allane V'eane of Castelwirrie ;² committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorfate, and regiftrat ; quhairby the said Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of cautioun, to haif compeirit to haif vnderlyne the law.

Slaughter.

Mar. 12, 1623.—WILLIAME OLIPHANT of Gask, and Alexander Flemyng of Monnefs.³

Dilaitit of airt and pairt of the Slaughter of vmquhile Daud Toscheoch of Monyvaird.⁴

¹ See Record of the *Privy Seal* and *History of the Macdonalds*.

² Castletirrim.

³ Peter

Oliphant of Rescobie, and Johnne Erle of Wigtoun, cautioners for the pannels' entry.

⁴ See Jul.

29, 1618, &c.

Compeirit Mr James Campbell, sone to the Laird of Laweris, for him selff, and in name and behaf of the remanent kyn and freindis¹ of the said vmq^o David, and in name of Annas Grahame, Lady Monyvaird, and past fra the said Williame Oliphant of Gask his perfute, *pro loco et tempore*.

Compeirit personallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gask, and producet ane Warrant and deluyurance of the Lordis of Secretit Counfall, commanding the Justice to desert the dyet appointit this day for the said Williame Oliphant; quhair of the tennour followis.

WARRANT of the Secret Counsell, concerning Williame Oliphant of Gask, for Monyvairdis Slauchter.

MY LORDIS OF SECRETIT COUNSALL, vnto your ll.^s humble meanis and schawis, I, your ferutour, Williame Oliphant of Gask: That quhair, I am charget to compeir befor his Maiesteis Justice, in the Tolbuth of Edinburge, vpon pe xij day of Marche instant, to vnderly the Law for the Slauchter of vmq^o David Tojcheoche of Monyvaird, and vtheris crymes specifeit in the Letteris raisid thair-upoun. Lyk as, pe Justice intendis to proced aganis me in that matter, albeit it be of verritie that HIS MAIESTIE, being treulie informet of the forme and inauer how that vnhappie Slauchter fell out, and how that dyuerse come to pe fray quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith; HIS MAIESTIE was pair-upoun graciouffle pleisit, by his Letteris writtin and direct to your Lo., to recommend to your Lo. the fetling of that feid³ by some amicable and freindlie dresse, and by making of suche Assythement⁴ and satisfioun, as convenientlie may be performed: AND in the meane tyme, it was his Maiesteis expres will, and special command, and directioun vnto your ll., that all proces Criminal and Ciuill aganis me, for that caus, sculd rest and ceis, till some generall course war concludit vpon and tane in that matter: As his Maiesteis Letter, exhibeit vnto your ll. in the sex hundreth and nyntene 3eir of God beiris. ACCORDING quhairvnto, your Lo. hes nocht onlie gevin Warrant to desert findrie dyettis, quhilis formerie war appointit for my tryell in this matter, bot with that your ll. tooke verrie grit panes, in tua or thre seuerall dyetis, to haif fetled this feid, and caused wairne ane grit number of Monyvairdis special freindis to that effect: And at pir dyettis your ll. causit satisfioun to be maid to *Duncean Campbell* and *David Malloche*, who war bothe deidlie burte and woundit at the slauchter of *Monyvaird*, the on haiveing his hand cut aff, and pe vther being deidlie woundit in the heid; bot anent pe satisfioun for *Monyvairdis* Slauchter, whairin thair was verrie honorable Offeris maid; the same was cassin af, be refone of *Young Monyvairdis* minoritie, his freindis in the mean tyme refusing to medle pairin, or to tak burding for him; sua that pe nocht fetling of this buffines procedis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affectioun wold do mair nor goodlie they may in pat matter, bot frome the refusall of *Monyvairdis* freindis to deale thairin, during his minoritie. IN consideratioun quhair of, I man⁵ maist humlie besek your ll. to geve command to pe Justice, Justice clerk, and pair deputtis to desert pe said dyet, and to desist and ceise fra all proceeding aganis me or my cautioneris pairintill; dischargeing thame pair of, and of pair offices in that pairt, till some generall course be takin for pe final fetling of that fead. And your ll. ansuer. (followis pe deluyurance on the bak pair of.)

APUD EDINBURGHE, xj Marcij, 1623. FIAT ut petitur,

GEO. CANCELL^r. MAR. MOIRTOUN. WIGTOUN. ROXBURGH. MELDOIS.
LAUDERDAILL. R. COKBURNE. ALL. HAMMILTOUN. J. PRYMROIS.

THE Justice, for obedience of the said Warrant, and command thairin, Ordanit

¹ Blood-relations. ² Lordships. ³ Feud. ⁴ Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation. ⁵ Must.

the said dyet to DESERT aganis the said *Williame Oliphant*: AND of consent of the said Mr James Campbell, continewis the dyet aganis *Alexander Flemynge of Monnes*, to ane fyftene dayis warning; and caution to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes caution for the said Alexander, to enter him befor his Maiesteis Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom quhair he duellis, (Perthe,) or soner, vpone xv dayis warning, &c.

Slaughter.

JUN. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert M'kie, younger, in Dumfreis; committit vpone the last day of December lastbypast; be geving to the said vmq^{le} Harbert M'kie, at the Brig-end of Dumfreis, of ane grit and deidlie fraik, with his fute, in the said vmq^{le} Harbert his secreit pairtis; ane vther, at the left pape, vpone the heart; and ane thrid, on his left schoulder, quhairby his schoulder-bayne was strukin out of joynt: Off the quhillkis fraikis he nevir convalesset, bot being instantlie borne hame to his hous, tuik bed; quhairin he lay bedfast, in grit dollour and payne, of the saidis hurtis, vnder the cure of chirurganes, be the space of tuentie dayis thaireftir; and, in end, vpone the xxvj of Januar thaireftir, now bypast, he deceisit of the saidis hurtis and woundis.

PERSEWARIS.
Katharene Edger, relict;
Agnes Maxwell, mother;
Eduard and Johnne M'kie, his
tua brether.

PRELOCUTOUR
for the persewaris.
Johnne Maxwell of
Conhathie.

PRELOCUTOURIS
in defence.
Mr Lueis Stewart,
Mr Thomas Nicolfoun,
younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Justice of the secreit proceedingis of thir persewaris, and how maliciousslie thai proceid aganis him, declairis, that thair was nevir querrell nor discoird betuix him and vmq^{le} Harbert M'kie, for quhais slauchter he is wrangussie and injustlie persewit; bot as the treuth is, ane contraverfie falling out betuix ane Thomas Craik and the pannell, in craveing of ane sowme of money addetit be Craik to him, and sum woidis and dry cuffs¹ being gevin be ather of thame to vther, the Bailzie of the Regalitie of Lyncluden, viz. Johnne Maxwell, brother to Kirkconnell, within quhais Regalitie the contraverfie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill caution war fund for keiping his Maiesteis peace; quhairvpone, the said vmq^{le} Harbert M'kie, with ane number that assistit him, laid handis vpone the pannell, brocht him, with grit violence, to the Waird-

¹ Dry blows, i. e. upon which no blood had followed; fisty-cuffs.

hous, pat him in the stokis; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be stowit and placet within the hoillis of the stokis, thai maift infolentlie strak him vpone his bak, dung doun the over¹ bar of the stokis, and dancet thairupoun with thair feit and kneysis, as also vpone his breift and bellie, quhairthrow he was almost confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes straikis gevin to the said vmq¹⁰ Harbert, quhairof he deceiffit; the verritie thairof is, that ane yeir or thairby, of befoir, he being strukin in at the left pape be ane Ahannay, with ane durk, a sevin inches or thairby, with grit difficultie was than curet, bot never fullilie convalescit; sua that the corruptioun² gadding within the wound, raisit vpone him ane new fever, quhairof he deceiffit; as is sufficientlie knawin to the hail countrey. Lyk as, it was declairit be the said vmq¹⁰ Harbert to dyuerse inhabitantis of the said burgh of Dumfreis, that, lang befoir that contraverfie of the pannellis, he was strukin in the secreit pairtis, quhilk he ever declairit would be his deid. And sa, the premisses being considerit, the said persute is maift wrangullie inventit, and vpone greid of geir to be obtenit of this pannell be thir schameles persewaris; and, vnder coulour of justice, thay haif followit furth this persute aganis him, albeit the defunct him self, in presens of his chirurgane and vtheris, cleirlye absoluit and fred the pannell of all persute done to him.—Quhilk being premitit,³ for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Assyse, becaus the said vmq¹⁰ Harbert M'kie, the persone allegit flane, the tyme lybellit of his slauchter, was rebell and at his Maiesteis horne, for ane criminall cause, viz. ffor nocht compeirance befoir his Maiesteis Commiffioneris within the Tolbuthe of Jedburgh, vpone the tuentie sevint day of Apryle, I^m.Vj^c. and nyntene yeiris, in ane Justice court, haldin be thame the saidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and pistolettis, and contravening the Actis of Parliament maid thairanent. And for verificatioun thairof, product the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Justice-air of Dumfreis, &c.—The said Thomas Goudie, defender, be his aithe gevin, declairit that he dred⁴ bodelie harme of the said Eduard M'kie, ane of his persewaris; and thairfoir desyret cautioun and lauborreis of him, conforme to the ordour, vnder sic pane as his lordschip fould pleis modifie. Johnne Maxwell of Conhaithe become souertie, &c., vnder the pane of ffyve hundreth merkis money, *toties quoties*.

Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

¹ Upper.

² Purulent or corrupted matter.

³ Premised.

⁴ Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

Jun. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his sone; Patrik B., sone to George B. of Archinar (Auchmar); Patrik M'wreift, his fervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his sone; Johnne Keir, in Gartnahinch;¹ Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Duncane M'farlane, sone to Andro Moir M'farlane, in Voneffene; committit vpon the fast day of Apryle last, within the town of Kippinnoche, in Drummond, in the Lennox.

PERSEWARIS.	PRELOCOUTOURIS	PRELOCOUTOURIS
Robert and Thomas M'farlane, as brether;	for the persewaris. The Young Laird of M'farlane;	for the pannell. Alexander Douglas of Maynes;
Sir Williame Oliphant, kny ^t .	Mr David Prymrois.	Mr Robert Nairne.

Compeirit the said Robert M'farlane, &c., and product the criminal letteris, deulie execute and indorfate, vpon the hail perfones defenderis aboue writtin; and offerit thame selfis reddie to perfew the defenderis for the said cryme, and defyret proces.

The said Alexander Douglas of Maynes, cautioner for the entrie of the hail defenderis, with Mr Robert Nairne, Aduocat, product ane WARRANT and command to the Justice, proceeding vpon the following

SUPPLICATIOUN, *gevin into the Lordis of Secreit Counsall, be the foirsaidis hail defenderis, and in their names.*

MY LORDIS OF SECREIT COUNSALL, vnto your Lo. humlie meanis and felawis WE, your feruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincaber; Johnne Buchannane, his sone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his sone; Thomas Buchannane, sone to vmq^{le} Williame Buchannane, in Blairneborg; Archibald Buchannane, his broper; Donald Keir, in Gartnahinche; and . . . M'caula, ferui-

¹ Perhaps for Gartranich, or Gartrahnich.

tour to the said Patrik Buchannane : THAT quhair, the saxt day of Junij instant is appointit vnto ws for our compeirance befor the Justice or his deputtis, in the Tolbuth of Edin^r, to vnderly the law for the Slauchter of vmq^{le} Duncane M^rfarlane, sone to vmq^{le} Andro Moir M^rfarlane, in Kipnoche : Lyk as, the Justice intendis to proceid aganis ws in the said matter, althocht it be of verritie, that gif 5our ll. war informed of þe certane treuth of this buffines, how and vpone quhat grund and occasioun the Slauchter fell out, and quhat just caus of wraith and displeasour was gevin to vs thairin, we persuaid our selffis that 5our lo., in honnour and justice, wald nocht think this persute to mereit ony fauour : FOR the treuth is, that þe said vmq^{le} *Andro Moir M^rfarlane*, quho, during the whole course of his vnhappy lyfe, was knowin to be ane notorious thief and lymmer, haifing flowin sum goodis frome certane of his Maiesteis guid subiectis in THE LENNOX, some foure or fyve 5eiris since, or þairby ; and þe said vmq^{le} *Williame Buchannane*, out of his trew haitrent and detestatioun of suche the-vische doingis, haifing maid some inquierie, and having tane panes and travell to speir out and try the goodis, in end, he tryed the goodis to be stowin be the said vmq^{le} *Andro Moir M^rfarlane*, who, by course of Justice, was confraned to mak redres and satisfacioune for the same : AND the said vmq^{le} *Andro*, haifing confauet ane deidlie haitrent and malice aganis þe said vmq^{le} *Williame* for speiring¹ of thir goodis, he refolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, estir þe most detestable and crewall maner that the heart of him could devyse : And knowing that the Gentilman was accus-tomed at some tymes, for his recreatioune and pastyme, to go to þe hunting, in þe Mure about the Ducher, he maid chose and took hold of that occasioun to do his turne ; and haueing, be some previe moyane, bene maid acquentit with þe Gentilmannis dyet for his pastyme, he, accompaneit with his tuo sones, and sewin or aucht vtheris lawles lymmaris,² come to the said Mure, and lay at await for the Gentilman ; and howsone he come þair, about aucht of þe cloke in þe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him fast, that he mycht not steir ; and haifing consultit amang thame selfis, estir quhat forme and maner thay sould dispatche him, thay refolued, in end, that his presumptioun and malapeartnes to speir out þe saidis goodis deserued ane extraordiner deathe, by torture ; quhilk thay maid him to vnderly, the space of ten houris, in maner following, to wit : Thay band him fast to ane trie, at the said hour of aucht in the moirning ; and everie hour thairestir, till sax at nicht, quhilk maid vp ten houris, thay gais him thre crewall straikis with ane durk, in suche partis of his body as war nocht to bring present daithe ; and haifing this way maggillit him with threttie straikis, till þe full number of

¹ Enquiring ; searching after.² Thieves ; worthless characters.

ten houris war outrwn, thay than gaif him þe laft deidlie ſtraik, at the heart; quhairwith he fell deid to the ground! And haifing tirred¹ him naiked, becaus his towng was the instrument quhairby, as thay alleged, he offendit, in ſpeiring out of þe former ſtowing goodis, thay cuttit his throte, tooke his toung out of his heid, ſlew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to ſatisfie þair inhuman and barbarous crewaltie vpone the naked corpis, thay ſlitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And ſo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the ſpace of aucht dayis thaireftir, or² he was found: FOR the quhilke deteftabill butcherie and Murthour, thir lymmeris being callit to thair tryell, befor his Maieſteis Juſtice, thay tuik the cryme vpone thame, and paſt to the horne; quhairat the ſaid *Andro* remainit till þe hour of his deathe, and the reſt of his complices remanis þairat as zit: Aganis quhome your Lo. paſt ane ampill Commiſſioun, for þe perſute of thame with ffyre and fuord. AND quhair as, this deteftable and moir than barbarous Murthour ſould haif bred, in the heart and conſcience of thoſe lymmeris, ſome remorſe and fealling of this ſyn, and ane abſtinance and forbearance frome all forder impietie, zit þe ſaid *Andro* continewit in his accuſtomet theviſche trade of Thift, Reaffe, and Oppreſſioun, and could nevir be reclaimed þairfra, till the hour of his deathe: AND, for his laſt Thift, he, a littill befor his deathe, ſtaw an ox fra me, the ſaid *George Buchannane*, and cayreid the ſamyn to ane Houſe in,³ quhair he and his wyfe hes thair ordiner reſett; and how-ſone we vnderſtuid of the ſteilling of the ox, we followed the tred⁴ directlie toward the ſaid houſe; and haifing ſend for the *Erle of Pearth*⁵ his Officer, to aſſiſt ws in rypeing⁶ of the Houſſes þairabout, the lymmar and his ſaid ſone, being in the Houſe foirſaid, and þair guiltie conſcience ſtanding vp aganis thame, as ane bureaw⁷ to tak vengeance of thame, thay diſguiſet þame ſelfis in weamenis apparell, and preit⁸ to flie away; whilk being perſaued be ws, and we thinking that thay keipit nocht þe ordiner paife of wemen, and zitt nawayis ſuſpecting that thay war the lymmaris, we followit, in a ſoft pace, to remark quhat courſe thay held; and the ſaid *Duncane Mcfarlane*, luiking over his ſchoulder, and ſeing ws follow, he turnes about, and preſentit ane lang hagbute at ws; quhilke being fyred, by the Prouidence of God, miſgaue: And with that, he and his father drew þair fuordis, and come dryveand

¹ Violently stripped, by tearing off the clothes. ² Ere; before. ³ Left blank. ⁴ Tread; foot-marks—probably by means of the *sleuth-hound*, or blood-hound. ⁵ As Lord of the Regality, whose Bailie would, upon application, grant warrant to search, &c. ⁶ Searching. ⁷ Fr. *bourreau*, a hangman; an executioner. ⁸ *Pressed*; made every effort.

vpone ws with all pair force ; and or evir we preift to perfew thame, thay gaif me, the said *George*, ane deidlie fraik, whairat thay strak me deid¹ to the grund, and in the opinioun of the rest of my companie I was a deid man ; and thay hurt and woundit vther thre of ws : And sua, we finding no longer tyme, with suretie, to be beholdaris and sufferaris, we tuik ws to our just and lauchfull defence, quhairin the vnhappie lymmer was worthielie flane, and his sone, who vnhappielie was in companie with him, and who maid the first onfet with his hacquebut or eur we knew quhat he was, was lykwayis killed ; the fader being rebell and at the horne for þe Murthour foirsaid, and he and his quhole bairnis being þe most notorious lymmeris of that Clan. AND howeur it may be obiectit, for þe pairt of þe young man, that he was nocht accessour to þe Murthour foirsaid, and that he sould nocht be pwneift for his fatheris deid, it is of treuth that continewallie sen þe fader was rebell for the Murthour foirsaid, the said Duncane, his sone, remanit and attendit vpone him, was airt and pairt with him in all his thevifche and wicked deidis ; and in assisting and taking pairt with his fader aganis ws, in our just and lauchfull defence, was flane : At quhose lyke-walk, that nycht, the ox foirsaid, stowin be þe fader and þe sone, was flane and eittin.

THIS being the trew and simple discourfe of all that hes past in this buffines, We humblie present the samyn to your Lo. consideratioun, quhairby your Lo. may perfaue how mischantie² and barbaruslie the innocent and hermeles Gentilman was mordreift and flane, and quhilk was þe ground and occasioun of the succeding slauchteris ; quhairin, becaus pair is grit appeirance of disorder to arryse, to the disturbance and brek of þe peace of þe countrey, seing THE CLAN-FARLANE gois about pair privat revenge, and our freindis [THE BUCHANANS] on þe vþer pairt, will be cairfull of pair awin defence : We will humlie befeik your Lo. to tak siche course and ordour heiranent, as your Lo. fall think fittest for the peace of þe Countrey ; and we, for our partis, will be willing to vnderly quhateuir your Lo., in honnour and justice, fall preseryve to ws. And becaus this can nocht be done vpone the suddane, bot will requyre some tyme and lasour to be tane ordour with and fatled ; We most humlie befeik your Lordschipis to geve command to þe Justice, Justice-Clerk, and pair deputis, to DESERT þe said dyet, and to desift and ceis fra all proceeding aganis ws thairin, or calling of our cautioneris for our entrie ; discharging thame pairrof, and of pair offices in that pairt : Quhairanent þir presentis fall be pair Warrant.

AND your Lordschipis humlie I befeik.

ORDINANCE of the Lordis of Secret Counsell, on the above Supplication.

APUD *Halyrudhous, quinto Junij*, 1623. THE LORDIS Ordanis and commandis the Justice, Justice Clerk, and pair deputis, to continew the dyet within writtin to þe xiiij day of Junij instant :

¹ Insensible ; in a dead swoon.

² Old Fr. *meschantement*, wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to present the Offeris to þe 3OUNG LAIRD of M^cFARLANE, yf he be in the toun, and to þe speciall freindis attending this dyet, quhome the saidis Lordis Ordanis to remane in this toun of Edinburgh till some ordour be tane for satling of the matter within writtin, and for the peace and quyettes of þe Countrey. And Ordanis the Justice to dispens with the personall compeirance of þe pairtie, vpon new caution, conforme to þe ordour.

GEO. CANCELL^r, I. P. D.

And thairwith also producet OFFERIS, in writt, conforme to the Ordinance aboue writtin; quhilk was presentit be *the Young Laird of Buchannane* to the Justice, to be delyuerit to *the Young Laird of M^cFarlane*, also personallie present.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *instantis*: And Ordanit the persfwaris to considder vpon the Offeris in the meane tyme: And siclyk Ordanis caution to be fund for the hail defend-eris re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr David Prymrois protestit, that this Warrant, and Offeris presentit this day, nawayis prejudice the persfwaris of thair lauchfull persfute, for the slauchter of thair freind and kinsman.

The Laird of Maynes become caution for re-entrie of the hail defenderis, containit in the Letteris, the day foirlaid, &c.

JUN. 14.—COMPEIRIT personallie, THE LAIRD OF M^cFARLANE, ELDER, as CHEIFF to the persfwaris, and desyret proces on the ane pairt; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the de-fenderis entrie this day, and producet,

WARRANT of the Lordis of Secret Counfall, &c.

MY Lordis of Secret Counsell, vnto 3our Lordschipis humlie meanis² and schawis I, 3our seruitour, George Buchannane, appeirand of that ilk: That quhair, for obedience of 3our Lordschipis ordinance, I, in name of my freindis quho war callit for the slauchter of vmq^{le} Duncane M^cFarlane, haif maid Offeris to the pairtie; quhairin I haif offerit, that thay, or I, in pair names, fall submit thame selfis to þe ERLES of MAR, MENTEITH, WIGTOUN, and LINLITHGOW: As þe coppie of my Offeris, heirwith producet, beiris. Whairanent, as zitt, thay haif returnet no anfuert; sua that it appeiris my Offeris ar reiectit. And gif 3our Lordschipis fall nocht find thir Offeris to be sufficient, I, in pair names, offeris to caus thame submit all thair differences to 3our lordschipis, and to do thairin as 3our lordschipis fall think meitt. Heirfoir, I besek 3our ll. to considder of thir Offeris, and to do thairin as 3our ll. fall think meit for þe peace of þe countrey. And becaus the matter can nocht be presentlie settled and put to ane poynt, that 3our lps. will geve a new Warrant to the Justice, Justice-clerk, and pair deputis, to continew þe dyet appointit to my freindis for pair tryell befoir thame, vnto suche ressonabill day as 3our lps. pleiffis. And 3our lps. anfuert.

APUD Halyrudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECRET COUNSALL Ordanis and Commandis the Justice, Justice-clerk, and pair deputis, to proceid and minister justice in þe matter within writtin, aganis Jolme Buchannane, sone to *Johanne Beg*, and *Archibald Buchannane*, sone to vmq^{le} *William Dow*. And to Desert þe dyet for þe remanent persones chargat to compeir to vnderly þe Law for þe Slauchter within writtin: Quhairanent þir presentis fall be vnto þe said Justice, Justice-clerk, and pair deputis, a sufficient Warrant.

GEO. CANCELL.

¹ In presentia dominorum (Secreti Consilij.)

² Complains; literally, *means*, or *bemoans*.

THE Justice Ordanis THE DYET TO DESERT vpon the hail defenderis inferit in the Letteris, except as above; and justice to be profecute and followit furth aganis thame, conforme to the ordour. And Ordanit the said Alexander Douglas, as cautioner forsaidd, to be vnlawe for nocht entrie of the saidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And siclyke, that the saidis Johnne and Archibald fall be denuncet our fouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be escheit, &c.

APPENDIX TO THE PRECEDING TRIAL.

SUPPLICATION *by the Kin and Friends of v^mqu^{le} Duncane M^{ac}Farlane to THE LORDS OF PRIVY COUNCIL.*¹

MY LORDIS OF SECRET COUNSELL, vnto yo^r lo^{ps} humelie menis and schawis we, yo^r seruitouris, the KIN and FREINDIS² of v^mquhile DUNCANE M^cFARLANE, sone to v^mquhile Andro M^cFarlane, in Kipnoche: THAT quhair, the said v^mquhile Duncane, a young boy of the aige of xvj yeiris, or thairyir, being most shamefullie and cruellie slayne be certane of THE NAME OF BUQUHANNANE, vpon mett purpos, prouisoun, and foirdocht fellowny; we, foirbearinge to atone priue revenge, and in most submissiue obedience to HIS MAIESTIE and his Lawis, haueing resolued, be the ordinar course of iustice, to follow out the tryall of that slaughter; we, for this effect, raised Letteris, and charged the Criminalis to thair tryall befor HIS MAIESTIS Justice, vpon the fact of this instant: At the quhilk day, we, lookeing that the course of iustice sould haif had place, conforme to the Lawis of the Kingdome, notwithstanding, it is trewthe, that yo^r lo^{ps}, vpon the sinister and wrong informatioun of the partie, concerning the slaughter of v^mquhile WILLIAME DOW BUQUHANNANE, w^{lk} thay aggregit³ with such circumfances, and after such a detestable maner, as might mak we, who ar innocent, to seame odious.

AND towcheing the occasiouns of the slaughter of the young boy and of his fader, and of the forme and maner thairof, grantit ane WARRANT for continewatioun of our dyet, till the xiiij of this instant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar summoned vpon the Assise, ar verie far preiudged and troublit, and the course of iustice is interruptit and hinderit; and we persuade oure selffis that yo^r lo^{ps} in yo^r awne honourable regard and dispositioun to iustice, wald neur haue grantit such ane Warrant, yf yo^r lo^{ps} had bene treulie informed anent the slaughtair of the innocent and harmles young boy; for althocht we will not preafe to extennat the slaughter of v^mquhile *Williame Dow*, who, to our regret, wes mischeantlie⁴ and vnworthelie slayne, yit we may treulie afferme vnto yo^r lo^{ps}, that anent the forme, maner, and circumfanceis of the slaughter, as is punctuallie sett down in THE PETITION givin in to yo^r lo^{ps}; and anent the forme, maner, and occasiouns of the slaughter of the young boy and his fader, as is lykwayes sett down in the Petitioun, and q^{lk} wes the ground whervpon yo^r lo^{ps} wer moved to grant the said continewatioun, the party hes verie far oversene thame selffis, and past the boundis of modestie; and hes abused yo^r lo^{ps} with thair sinister and wrong informatioun; quhilk, yf thay be able to iustife and mak good, as thay haif sett down in the Petitioun, first, anent the maner of the slaughter of *Williame Dow*, and how that the slaughter of the boy proceedit vpon occasioun of thair following of ane stollin ox, quhilk thay alledgeit in thair BILL⁵ wes stollin be the said Andro, and eatin at his lykewalk;⁶ and that the boy, assisting his fader, presentit ane hagbute, w^{lk} misgaif, and thairefter concurring w^{lk} his fader in perfute of the *Buquhannanis* wes slayne;

¹ From the Original, preserved among the Warrants of Secret Council, General Register House, Edinburgh.

² Blood-relations.

³ Aggravated.

⁴ Wickedly; O. Fr. *meschantem.nt.*

⁵ Bill of Supplication.

⁶ See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the partie be the hand,¹ and to rennce o^r Crimnall perfute againes thame : ffor the treuthe is, that thay come to the boyis houfe, quhairof he wes tennent to the *Erle of Perth*, vpoun fett purposis and provifoun ; and the boy, apprehending his danger, after he hard the shoute raifed be thame, he fled for faultie of his lyffe ; whome thay followit ane lang way ; and haueing ouertane him, and he being thair prifoner, thay brocht him bak half ane myle, and in cauld bloode, cruellie and barbarouffle flew and manglit him, but² pitie or compaffioun, with xvij deadlie woundis, with durkis ; and haueing caffin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to fatisfie thair raige vpoun the poore corps,³ cuttit his bak in tua with fwerdis.

This is the fimple treuthe of the buffynes, w^h we will ftand to : And thairfoir, we will humble befeike y^r lo^{ps} to caus thair Petitioun to be exhibite be the faidis perfonis befor yo^r lo^{ps}, to the intent the treuthe of the circumftanceis of the slaughteris, as thay ar fett down in the faid Petitioun, may be examined be yo^r lo^{ps}, and ordour tane thairin accordinglie. AND feeing, we haif, in all modestie, and w^h grite patience, as humble and deutfull fubiectis [to HIS MA^{TY}] focht the benefeit of his Lawis, We humelie befeike yo^r lo^{ps} that the fame may be grantit vnto ws, and that no forder continewation be grantit to o^r party : And yo^r lo^{ps} anfuer.

DELIVERANCE by the *Lords of Privy Council*. [On the back of the foregoing Petition.]

APUD Halyrudhoufe, decimo Junij, 1623. THE LORDIS Ordanis a Maiffer to pas and warne both the partyis, the *Barone of Achyll*, *David Drummond of Innermaith*, and *Mr Alex^r Seatoun of Gargonnok*, to compeir befor the Lordis, vpoun Thurifday nixt, to heir and fie ordour tane in the mater within-writtin, as accordis.

GEO. CANCELL^r.

Usurpation of the King's authority—Taking captive, &c.

Jun. 18.—ALEXANDER GORDOUN, appeirand of Erlestoun, and James Gordoun, meffinger.

Dilaitit of the Vfurpatioun of our fouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumrafche, and keiping him captiue and priffoner be the fpace of thre houris, *in privato carcere*, he being his Majesteis frie lege, and thair haifing na power nor commiffioun for that effect ; committit in Februar, or thairby, laft.

The perfwear paffis *simpliciter* frae the pannellis perfute : Quhairvpoun thay alkitt instrumentis.

THE JUSTICE ordanis caution to be ffund be the faid Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt ; quha fund Vthreid M^c-Dowell of Mondurk, fouertie, &c.

Resetting of a stolen Purse, &c.

Jun. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Mustard his fpous.

Dilaitit of the Thiftious Resetting of ane ftowin purfe, with ffyve hundreth pundis of gold ; and tua jewellis being thairin, worth thre thowfeand pundis ; pertening to Sir Johnne Scott of Newburgh ; ftowin fra him be Margaret Ahannay.

¹ To be reconciled. ² Without. ³ By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. ⁴ Probably for *outher*, i. e. either party.

PERSEWARIS, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, kny^t.

PRELOCOUTOURIS in defence, The Laird of Maynes, Mr Laurence M^cGill, James King.

Eftir the reiding of the Dittay, and accusatioun of the pannell of the crymes thairin contenit ; it was allegit be the pannell and thair prelocoutouris, that the first pairt of the Dittay is nawayis relevant, anent the reffet of the stowin purfe and jewellis thairin ; vnles the principall steiller war first callit, and ather convict and pwnseit for the cryme, or ellis declarit fugitiue thairfoir : For, gif the principall steiller thairof, viz. Margaret Ahannay, war accuset in this judgement, for the said allegit cryme, it wald be allegit and verifeit be hir, that gif ony purfe was apprehendit or gottin be hir fra the persewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill first scho be callit, na proces.

THE JUSTICE, in respect na dilligence is vset aganis the said Margaret Ahannay, Ordanis the pannell to find caution for thair re-entrie, vpoun xv dayis wairning : Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburgh.¹

Slaughter.

JUN. 27.—COILL M^cGILLESPIK M^cDONALD in Collonsay, Archibald M^cDonald, his sone, and four others, ‘seruitouris to the said Coill.’

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Malcolme M^cphie of Collonsay, Donald Oig M^cphie, Dougall M^cphie, Johnne M^cquhirrie, and Ewir Bayne, alias Quhyte ; committit in Februar last.

PERSEWARIS, Marie M^cdonald, the relict ; Donald Oig M^cphie, as sone ; Katharene, Anne, and Fynwall M^cphies, as dochteris to vmq^{le} Malcolme ; Murdoche M^cphie in Hay, as brother to vmq^{le} Donald Oig, and Dougall M^cphie, and as nerrest of kyn to vmq^{le} Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duelie executed, &c. and proteffit for releif of Archibald Campbell, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll M^callaster, ffear of Dounskye, as cautioner for the said Coill, &c. vnlawit, for nocht entrie of ilk ane of the saidis persones, in the pane of ane hundreth merkis. And siclyk, the Justice Ordanis that the saidis Coill, &c. sall be denuncet our fouerane lordis rebellis, and all thair moveabill guidis to be escheit, &c.

Taking Captive and Strangling, &c.

JUL. 2.—JOHNE GRANT of Glenmoreistoun, Finlay M^cean Roy in Invermoreistoun, and Alexander Dow M^cean Roy, his brother.

Dilaitit for Vfurpatioun of our fouerane lordis autoritie, in taking of vmq^{le} Donald M^cfindlay Vⁿnorofiche, mercheand, vpone the landis of Glenmoreistoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

¹ It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.

woid neir to the landis of Glenmoreiftoun; quhair thay, as hangmen, hang him vp vpon ane trie of the faid woid, and wirreit him to deid;¹ and thaireftir cuttit him doun, and, with thair durkis, gaif him dyuerse straikis in the breift and bellie, to the effuoune of his bluid in grit quantitie; and thaireftir, cayreit him to ane burne-bra,² vnder the quhillk they bureit him, be cafting the faid bray vpon him; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V^cnorofyche, in Kintail, as brother; Sir Williame Oliphant of Newtown, kny^t, Aduocat to our fouerane lord.

James Logy, wryter, producet the Letteris, duelic execute, &c., and proteffit for releif of Mr Alexander M^ckenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannel, Ordanit be the Justice to be in ane amerciament, for nocht entrie of the faid Johnne Grant, in the vnlaw of V^c merkis; and of ather of the faidis Fynlay and Duncane, in the pane of ane hundredreth merkis.

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

Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith; Duncane Stewart, his brother-germane, and others.³

Dilaitit of the Slauchter of vmq^{le} Robert M^cphatrick Campbell, and vmq^{le} Malcolme M^ccall; committit in Apryle last, vpon the landis of Dochallie, on Lochow-fyde.

INTRAN. *familiter.*

ALLASTER M^cPHATRICK V^cALLASTER, in Balquhiddier; Robert Dow M^ccondochie V^cJames, thair; Duncane Oure Stewart M^cinrie, thair; Archibald Stewart, thair; and Williame M^cphatrick Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to vmq^{le} Robert.

The Laird of Keir takis instrumentis of the entrie of the fourtene on pannel (Stewarts), and proteffis, in that respect, for his awin releif, as cautioner, &c.; and as to Duncane Stewart, declairis he hes fallin feik, fen his cuming to Edinburghe, and thairfoir could nocht compeir.—Sir Mungo Murray proteffis for his releif, as cautioner for the others, ‘the ffyve men of Balquhiddier.’

THE JUSTICE, with consent of the persewar, continewis this matter to ane xv dayis wairning; and Ordanis the pannell to find caution for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

¹ Strangled him to death. ² Burn-brae, a sloping bank, along the foot of which a *burn* or rivulet runs. ³ Their names are, Alexander Stewart, *alias* M^cean, in Glenfinglas; Johnne, Archibald, and Andro Stewartis, his thre fones; Patrik Stewart of Stragartnay; Johnne Stewart, his brother; Robert Stewart, sone to Andro Stewart of Blairgarrie; Patrik M^cKyndlay Gill, in Glenfinglas; Walter M^ceadowie, *alias* Stewart; Johnne M^cintyre, feruitour to James Stewart; Gilliechreift Dewar, Duncane M^ceane Vail, and Donald Reoch, fervand to the faid James Stewart.

My Lord of Murray, present, obleift him to Warrant and releif the Laird of Keir of his former cautionerie, &c.

Breaking Gardens—Theft, &c.

Jul. 23.—**JOHNE RATE**, and Alexander Deane, cramer.¹

Dilaitit for the breking of the yairdis² of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmestoun, Carlowrie, and Libbertoun, and dyuerse vtheris yairdis, within Eift and West Louthiane: Steilling and away-taking furth thairof, off dyuerse herbis, bie-skeppis,³ fyboes,⁴ plantis, kaill-feid, artechoiffis,⁵ distilled watteris, plaittis and trunfcheouris,⁶ with ane tyn-floupe,⁷ furth of the place of Langhirdmeiftoun; committit at dyuerse tymes, within this moneth bygane.

The perfones on pannell confessis the Dittay, and crymes thairin contenit.

VERDICT. Fand the faidis Johnne and Alexander, conforme to thair awin Judiciall Confessioun, to be fyilet, culpable, and convict, &c.

THE Justice Ordanit thame to be tane bak to waird, thair to remane quhill he be advyfet with the Lordis of Secreit Counfall, anent the Dome to be pronuncet aganis thame, for the faidis crymes.

Jul. 25.—**SENTENCE.** The Justice Ordanit the faidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill thay be deid; and thair haill moveable guidis to be escheit, &c.: And that by virtue of the following **WARRANT** of the Lordis of Secreit Counfall.

JUSTICE, Justice clark and your deputis. Sow fall pronounce Sentence of daith againt Johnne Rait and Alex^r Deane, cramer, who was convict of befor in Mussilburgh, for the breking of zairdis and steilling of findrie bie-skepiss furth of the same; and who, since thair apprehensioun, haif of lait bene convict befor sow of the same crymes; committit be thame since thair last convictioun and pwnement following thairupoun. And that sow cause the Sentence of daith be execute vpon thame: Quhairanent theife presentis fall be vnto sow ane sufficient Warrant. Gevin at Halyrudhous, the xxiiij day of July, 1623.

GEO. CANCELL^r. GLENCARNE. NITHSDAILL. OLIPHANT. HAMILTON.

Sorcery—Witchcraft.

Aug. 1.—**THOMAS GREAVE.**

Dilaitit of dyuerse poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perfones following, be Sorcerie and Witchcraft, to wit: ANE sone of Archibald Arnote in the Wayne, of ane heavie and vncouth⁸ seiknes: ANE sone of Andro Geddis in Freuchie, also hevillie disseift: ANE bairne of Thomas Kilgoures in Falkland, visseit with ane grevous seiknes. **ITEM**, for cureing, be

¹ Huxter; one who keeps a petty booth for the sale of small wares. ² Gardens. ³ Bee-hives. ⁴ A young or small sort of onion. ⁵ Artichokes. ⁶ Trenchers. ⁷ Tin flagon. ⁸ Strange; unusual; unaccountable.

Sorcerie and Witchcraft, and making of certane croces and singes,¹ off David Chalmer in Lethame, and be causeing wafche his fark² in ane South-rynnand watter, and thairefter putting it vpone him ; quhairby he reffaut his helthe. ITEM, ffor cureing of ane woman in Ingrie, befyde Leslie, of ane grevous feiknes, be taking the feiknes af hir and puting it vpone ane kow ; quhilk kow thaireftir ran woid,⁴ and deit. ITEM, ffor cureing off Alexander Laufones bairne, in Falkland, of grit feiknes, be Sorcerie, and making of certane signes, and vttering of dyuerse vnkawin woirdis. ITEM, ffor cureing of ane woman, duelland befyde Margaret Douglas, of ane grit and panefull feiknes, be drawing hir nyne tymes bakward and fordward be the leg. ITEM, ffor cureing of Michael Glassies wyfe, in the Mylnes of Forthe, of ane grevous feiknes, be cauffing brek ane hoill in the wall, vpone the North syde of the chymnay, and putting ane hesp⁴ of yairne thre several tymes furth at the said hoill, and taking it bak at the dur ; and thaireftir, causeing the said Michaelis wyfe ix tymes pass throw the said hesp of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the feiknes callit *Morbis caducus*,⁵ be fraiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buist,⁶ and rowing⁷ the bairne nyne tymes within the said claith, vttering, at ilk tyme of the putting about of the claith, dyuerse wordes and croces and vther signes ; and be that meanis pat the bairne alleip ; and thairby, throw his devillerie and Witchcraft, curet the said bairne of the said feiknes. ITEM, vnderstanding that Johnne Fifeher, in Achalanfky, was hevelie diseait of a grevous and vnkawin fever, vpone aduerteifment gevin to him thairof, he causit bring the said Johnne Fifeheris fark to him ; quhilk fark being brocht, the said Thomas, turning it over, cryt out at that instant, ‘ Allace ! the Witchcraft appointit for ane vther hes lichted vpone him !’ And, luyking at the breift of the fark, he tauld ‘ that the feiknes was nocht cum as zit to his heart.’ And eftir some croces and signes maid be the said Thomas vpone the fark, delyuerit the fark to Jonet Patoun, the said Johnne Fifeheris mother, commanding hir, with all speid to ryn to him thairwith ; and declairit to hir that ‘ Gif scho come thairwith, befoir his heart was assaulted,’ he sould convalesce ; At quhais cuming to him with the said fark, the said Johnne hir sone was deid. ITEM, ffor practizeing of dyuerse poyntis of Sorcerie vpone Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous feiknes, be causeing him pas throw ane hesp of yairne thre feuerall tymes ; and thairefter burning the said hesp of yairne in ane

¹ Crosses and signs. ² Shirt. ³ Mad. ⁴ A hasp of yarn is equal to twelve ‘ cuts,’ or six ‘ heer.’ Each ‘ cut’ goes six score times round the reel. ⁵ Epilepsy, or the falling sickness. Perhaps it may refer to consumption, ‘ decay’ or ‘ decline.’ ⁶ Out of a small box or chest.

⁷ Wrapping ; rolling.

grit fyre, quhilk turnet baillilie blew. ITEM, ffor cureing of Margaret Gibfones ky,¹ in Balgonie, be putting thame thryfe throw ane heffe of yairne, and cafting of certane enchantit watter, enchantit be him, athort² the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif nocht ane moneth of befor.³ ITEM, at Martimes, 1621, Elfpeth Thomefone, fifter to Johnne Thomefone, portioner of Pitwar, being viffeit with ane grevous feiknes, the faid Thomas com to hir hous in Corachie, quhair, eftir fichting and gripping of hir, he promeift to cure hir thairof; and fo this effect callit for hir fark, and defyret tua of hir nerrest freindis⁴ to go with him: Lykas, Johnne and Williame Thomefones, hir brether, being sent for, paft with the faid Thomas, in the nicht feafone, fra Corachie towardis Burley, be the fpace of tuelff myles; and inioynet the tua brethir nocht to fpeik ane woird all the way; and quhat euir thay hard or faw, nawayis to be effrayed, faying to thame, 'it mycht be that thlai wald heir grit rumbling, and fic vncouth and feirfull apparitiones, bot nathing fould annoy thame!' And at the ffurde be-eift Burley, in ane South-rynning watter, he thair wufche the fark; during the tyme of the quhilk wafching of the fark, thair was ane grit noyfe maid be ffoullis,⁵ or the lyll beiftis,⁶ that arraife and flichtered in the water. And cuming hame with the fark, pat the famyn vpone hir, and curet hir of hir feikens: And thairby committit manifft Sorcerie and Witchcraft. ITEM, ffor cureing of Williame Coufines wyfe, be Sorcerie and Witchcraft, be caufing bir husband heit the coulter of his pleuch, and cule the famyn in watter brocht from Haly Well of Hillfyde; and thaireftir, making certane coniurations, croces, and fignes vpone the watter, caufet hir drink thairof for hir helth; and thairby, be Sorcerie, curet hir of hir feiknes. ITEM, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be caufeing ane grit fyre to be put on, and ane hoill to be maid in the North fyde of the hous,⁷ and ane quik hen⁸ to be put furth thairat, at thre feuerall tymes, and tane in at the hous-dur, widderschynnes;⁹ and thaireftir, taking the hen and puting it vnder the feik womanis okftar,¹⁰ or airme; and thairfra, cayreing it to the fyre, quhair it was haldin down and brunt quik thairin; and be that devillifch maner, practizet be him, curet hir of hir feiknes: ffor the quhilk, the faid Thomas reffauit xx lib. fra hir husband. AND laft, ffor commoun Sorcerie and Witchcraft, practizet be him, and abufeing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

VERDICT. The Affyfe, being ryplie advyfet thairwith, togidder with certane

¹ Kine; cattle.

² Athwart; across.

³ Which they had not yielded for the space of a

month.

⁴ Kinsmen; relations.

⁵ Water-fowl.

⁶ Little 'beasts'; *Scotticé*, for some

sort of small birds or fowls, such as snipes, &c.

⁷ A hole to be made in the north wall of the

house.

⁸ A live fowl.

⁹ Backwards; contrary to the course of the sun.

¹⁰ Arm-pit.

Depositiones producet be Mr Johnne Cowdoun, Minister at Kynrois, Mr Edmond Myles, Minister at Cleifche, Mr Robert Coluile, Minister at Cleifche, ffor verificatioun thairof; thay, be the declaratioun of Williame Dempstartoun, chancellor, fand, pronuncet, and declairit the said Thomas Greave to be ffylet, culpable, and convict of the haill poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be Wirreit at ane staik, quhill he be deid; and his body thaireftir to be Brunt in asches, as culpable and convict of the saidis crymes of Sorcerie and Witchcraft.

Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.

Nov. 28.—SIR ARCHIBALD NAPER of Merchinstoun, kny^t, Thesaurer-depute to our souerane lord of this Kingdome, producet his Maiesteis Gift, grantit to him, vnder his hienes Previe seall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GENERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther solemne Assembleis, quhair honourable ceremoneis ar accustomat and necessarie to be vsed, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, casualteis, proffetis, and deuteis quhatfumeur, pertaining and belonging thairto; during all the dayis of the said Sir Archibaldis lyfytyme: Vacand in his Maiesteis handis, be dimiffioun of Sir Johnne Cokburne of Ormestoun, kny^t, last Justice Clerk, and Maister of the said Ceremoneis. Dated at Roystoun, the sext day of November, 1623.—Which Gift was ordanit to be insert in the Registeris of Adiornall, *ad futuram memoriam*.

Commissioun of Justiciary,

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Justice to our souerane Lord, producet his Maiesteis Commissioun of Justiciarie; and desyret the samyn to be insert in the Register of Adjournal, *ad futuram memoriam*.

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaith: To all and findrie our leigis and subiectis whome it esseiris, to whose knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the administratioun of Justice, in matteris propper to that judgement, ceasses by the absence of those who formarlie suppleit that place: AND whear as, the frequent occasioun, daylie occurring within this our kingdome, requyres a present choise to be maid of some sufficient and qualifiet persone to exerce the said place and office: And We, vnderstanding the goode affectioun of our trustie and weilbelouit counsalour, *Sir George Erskine* of Innerteill, to do ws feruice, and that he is a persone of found and vpricht judgement, and vtherways accomplischet and furneist with giftis anfuerable to the

¹ From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.

dignitie of fuche ane employment : Thairfoir, We haif maid and constitute, and be the tennour heirof makis and constitutis, the said Sir George our JUSTICE, and geves to him the Office thairof, with all honouris, digniteis, prevelegis, and prerogatives belonging thairto ; to be posselt, bruket, vsed, and exered be him als frelie and ample, in all respectis and conditiones, as ony vtheris his prediceffouris in the said Office formerlie bruket the same ; with power to him to feuse and hald Justice-Courts within the Tolbauth of our burgh of Edinburghe, and vtheris pairtis of our Kingdome, according as the necessitie of oure seruce schall requyre, and to proceed and minister justice in all and findrie materis occurring in that judgment, and vpon all persones of quahatsomeuir qualitie, that fall be presentit in judgement befor him, to abyde thair tryell ; and according as thay fall be fund Guiltie or Innocent of the crymes to be obietit vnto thame, and to be laid to thair charge, to caus justice be ministrat vpon thame, conforme to the lawis of our realme : Assyses neidfull, to this effect, vnder the vsuale and accusell panes, to summond, wairne, choofe, and caus be suorne ; and to creat officiaris and memberis of Court neidfull ; and all vther thingis neidfull towardis the executioun of this our Commissioun to do and vse, whiche laughfullie, in such caises, may be done ; ferme and fable balding, and for to hald all and quahatsomeuir thingis fall be laughfullie done heirin. CHARGEING heirfoir yow, all our said leiges and subiectis, to reuerence, acknowledge, and obey our said Justice, in all and everie thing tending to the executioun of this our Commissioun : As yow and everie ane of yow will anfweir to us vpon the contrair, at your perrell. This our Commissioun, dureing our will and pleafour, and ay and quhill we discharge the same, to indure. GEVIN vnder our signet, AT ED^B, the tentic day of Januare, and of oure reigne the lvij and xxj yeiris, 1624.

GEO. CANCELL^R. MELROS. LAUDERDAILL. R. COKBURNE. KILSAYTH.
W. OLIPHANT. A. HAY. AR. NAPER. J. HAMILTON.

[*Sir George Erskyne of Innerteill, knycht, Justice.*]

Egyptians—Vagabonds—Sorners, &c.

Jan. 23.—CAPITANE JOHNE FAA, Robert Faa, Samuell Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egiptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpon pannell be the Magiftratis of Ed^t, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny^t, of the cryme vnderwrittin, viz. FORSAMEKILL AS, first, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit EGIPTIANES, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to returne agane within the samyn, vnder the pane of daithe ; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our fouerane lordis 20 Parliament, haldin at Edinburgh vpon the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maiestie and Estaitis of Parliament than convenit ; and the same Act ordanit to haif force and executioun, eftir the first day of August nixt thaireftir following, in the foirsaid yeir of God I^m.Vj^o. and nyne yeiris ; eftir the quhilk tyme, gif ony of the saidis Vagaboundis callit EGIP-

TIANES, alsweill wemen as men, fall be fund within this kingdome, or ony pair thairof, it fall be leafum to all his Maieftis goode fubiectis, or ony of thame, to caus tak, apprehend, impriffone, and execute to death, the faidis Egiptianes, ather men or wemen, as commoun, notorious, and condempned Theves, by ane Affyfe, only to be tryed¹ that thay ar callit, knawin, and repute and haldin Egiptians: In the quhilk caice, quhatfoeur of the Affyfe hapins to clange ony of the foir-faidis perfones, Egiptianes, pannelled as faid is, falbe perfewit, handillit, and censuret as committeris of Wilfull Errour. As the faidis Actis of Secreit Counfall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeift, in the self proportis. Nochtwithftanding quhairof, it is of verritie, that the foirnamet aucht perfones impannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cownoun Thevis, callit, knawin, repute, and haldin EGIPTIANES, in plane contempt of his Maieftis lawis and Actis of Parliament, hes prouddie repairit to this kingdome, remanit and abiddin within the famyn, and nawayis departit nor past furth thairof, fen the faid first day of Auguft, 1609 yeiris, appointit for thair away-paffing; incurring thairthrow the pane and pwneifchment aboue writtin, mentionet in the faid Act of Parliament.

ASSISA.

James Lokhart, elder of Lie, Leith of Hairthill, Williame Sydferff of Ruchelaw.²

VERDICT. The Affyfe, for the maift pairt, be the declaratioun of the faid James Lokhart of Lie, chancellor, ffand, pronuncet, and declairit the faidis perfones (being all Vagaboundis, and repute and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the faid Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpon the former³ conuictioun, to the morne; that in the meane tyme he may advyfe with the Lordis of Secreit Counfall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair hail moveabill guidis, gif thay ony haif, to be efcheit to his Maieftis vse, &c.⁴

Egiptians—Sorneris, &c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq¹⁰ Capitane Johnne Faa; Lucece Faa, spous to James Broun; Elfpeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq¹⁰ Eduard Faa;

¹ Proved; established. ² The remainder are burghesses of Edinburgh. James Hopper of Bourhouffis, the Laird of Coulter-Cuming, Ogilvie of Boyne, Maxwell of Cowhill, and six others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.' ³ Preceding.
⁴ See the following article, Jan. 29, and Mar. 22, where the proceedings against their helpless widows are recorded.

Meriore Faa, spous to James Faa; Jeane Faa, the relict of vmq^{le} Andro Faa; Helene Faa, the relict of vmq^{le} Robert Campbell; Margaret Faa, dochter to vmq^{le} Eduard Faa; Ifsobbell Faa, the relict of vmq^{le} Robert Broun; Margaret Valantyne, relict of Johnne Wilfoun; Elspeth Faa, dochter to vmq^{le} Henrie Faa.

Dilaitit for contravening the 13 Act of his Maiesteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis EGIPTIANIS, chargeing thame, alfveill wemen as men, to pas furth of this kingdome, and to remane perpetuallie furth thair of; and nevir to be fundin within the samyn, eftir the first day of Auguft thaireftir, in the said yeir of God 1609, vnder the pane of deid: And the foirnamet perfones, being all Theves, Vagaboundis, and Egiptianis, fa repute and haldin, and tane as people of that vnhappie race and societie, hes, be thair remaning within this kingdome eftir the tyme foirsaid, appointit for thair away-passing furth thair of, contravenit the tennour of the said Act of Parliament, and incurrit the pwneischment aboue writtin, mentionet thairintill.

VERDICT. Giltie, culpable, and convict of the contravening of the foirsaid Act of Parliament.—SENTENCE. To be tane to the place of thair executioun, in some convenient pairt, and thair to be DROWNED quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be confiscat to his Maiesteis vse, &c.

(Mar. 22.)—THE above perfons, together with ALEXANDER FAA, sone to Eduard Faa, JOHNNE FAA and FRANCIE FAA, sones to vmq^{le} Capitane Johnne Faa, and HARIE BROUN, brother to vmq^{le} Robert Broun, being brocht furth of waird, and presentit of new agane vpone pannell, as thay that war convict of EGIPTIANES, and the Dome of daith pronuncet aganis elleivin of thame, vpone the xxix day of Januar last, the executioun quhair of was supercedit, be the Lordis of Secreit Counfallis Warrant and directioun, vnto the tyme our souerane Lordis will and pleafour war knawin thairanent.

HIS MAIESTEIS Letter and Directioun sent to the Counfall.

To our right trustie and right weilbelouit counsallour, SIR GEORGE HAY of Kynfawnes, kny^t, our Chancellor, and to our right trustie and right weilbelouit consinges and counsallouris, and vtheris our trustie and weilbelouit counsallouris, THE ERLES, LORDIS, and vtheris of our PREVIE COUNSELL, in our kingdome of SCOTLAND.

JAMES R.

RIGHT trustie and right weilbelouit counsallour, right trustie and right weilbelouit counsallouris, and vtheris our trustie and weilbelouit counsallouris, We greete yow well. We haze vnderitood, by your Letter of the 29 of Januar last, that a number of these Theeves and counterfooted Vagabondis, commonlie callit EGIPTIANIS, being apprehendit be your directioun, war therftir put to a Crimall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the rest, being either childrene and of leffe-age, and wemen with chyld, or geving sucke to childrene, Se haze therfore committed thair perfones to priffone, superceding the executione of the Sentence pronounced

aganis thame, till yee should acquaynte ws, and know oure further pleafonre thairanent. In whicher regard, these are to certefie to yow, that as We allow well of the course taiken for executinge of the men, so now, in colde bloode, (thesē children and weemen haueing beene soe long kepte prisoneris,) and chellie in respect of that which yee wryte to be the present estaite of most part of thesē weemen, We can not bot inclyne to pittie and compassion of them. WHEREFORE, as We ar willing that their lyues be spared, soe that nather thame selues, nor any others of that kynd may be therby emboldned to presume vpon our clemencie, yee fall caus thame act them selues to depairt, with thair childrene, furth of that our kingdome, between and such a competent day as yee shall think fitting, for that effect, to preferue; vnder the payne of death, to be inflicted (without any forder proces or dome) vpon them, whersoever they can be apprehendit within our said kingdome, efter the said day. AND for your putting them to libertie, (nochtwithstanding the Sentence pronounced againt them,) vpon condition foirsaid, these shalbe vnto yow a Warrant sufficient. And soe We bid yow farewell. FROM our Honour of HAMPTON, the 13 of Merche, 1624.

THE JUSTICE, conforme to his Maiesteis Letter and directioun, caufit the hail Egypitianis aboue writtin, presented vpon pannell, act thame selfis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the blessing of God to his Maiestie and Counfall, become actit and obleist to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuintie-tua day of Apryle nixtocum, vnder the payne and pwneischment of daith, without ony forther proces or doome, to be inflicted but fauour¹ vpon them, quhaireur thay fall be fund or apprehendit, within this kingdome, eftir the said day.

Treasonable and Masterful Theft and Stouthreif.

Mar. 3.—[DAME MARGARET OGILVIE, COUNTESS OF MARSCHELL,²]

SIR ALEXANDER STRAUCHANE of Thornetoun, kny^t, (hir spoufe,) and Mr Robert Strauchane, Doctour in Phisik.

Dilaitit of the Maisterfull Thift and Stouthe-reiff, sfourth of the Place of Benholme, pertening to vniq^{lc} GEORGE ERLE MARSHALL, of certane his Lordschipis jouellis, siluer-plait, houshold-stuff, gold, siluer, eidentis, writtis, and vtheris guidis, at lenth expreffit in the criminall Letteris direct thairupoun, at the instance of our fourane lordis Aduocat; committit in October 1622, a littill befor the said Erles deceife.³

PERSEWAR.

Sir Williame Oliphant, kny^t.

PRELOCOUTOURIS in defence.

Mr Thomas Hoip, Mr Lueis Stewart.

The persones enterit on pannell takes instrumentis of thair entrie, and protestis for releif of Sir George Afflek of Balmanno of his cautionerie. There was presented the following

WARRANT of the Lordis of Secreit Counfall.

APUD ED^{ns}, *secundo die mensis Marcij*, 1624. THE Lordis of Secreit Counfall, ffor some speciall

¹ Without favour or mercy. ² Daughter of James, sixth Lord Ogilvy of Airlly. She was the second wife of George, fifth Earl Marischal. ³ He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commissioner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

considerationes moving thame, Ordanes and commandis the Justice, Justice-clerk, and thair deputis, to continew the dyet appointit to DAME MARGARET OGILVIE, COUNTES OF MARSCHELL, Sir Alexander Strauchane of Thornetoun, hir spous, and vtheris persones specificit in the Criminall Letteris raisit pairnpoun, for pair compeirance befor þe Justice, vpon the thrid day of Marche instant, to vnderly the Law for the crymes of Thift and Stouthe-reiff of the houshald stuff, insight pleniffing, siluer plait, and vtheris goodis pertening to the lait Erle of Marschell, and at lenth specificit in the saidis criminall letteris raisit at þe instance of his Maiesteis Aduocat, vntill the secund day of Julij nixtocum; takand new caution of þe defenderis, for pair compeirance that day, conforme to the ordour. Quhairanent þe Extract of þis Act fall be vnto þe said Justice, Justice-clerk, and thair deputis, ane sufficient Warrant.

EXTRACTUM de *Libris Actorum Secreti Conflij, f. d. n. Regis, &c.* JACOBUS PRYMROIS.

Sir George Afflek of new becomes cautioner for the saidis Dame Margaret, &c., vnder the panes contentit in the Actis of Parliament.

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

(Jul. 2.)—ANOTHER Warrant, dated ‘at Halyrudhous, the first day of July’—and signed by ‘Geo. Cancell’. Mar. Morton. Linlithgow. Melros. Lauderdale. Aw. Carnegie’—directs the case to be continued ‘vntill the xxvij of July instant, vpon new caution:’—‘And that yow dispens with the personall compeirance of the Lady Marschell and Doctour Strauchane.’

(Jul. 27.)—A THIRD Warrant, dated ‘at Halyrudhous, the xxij of July,’ and subscribed, ‘Geo. Cancell’. Mar. Melrois. Lauderdale. J. Kokburne. Kilsayth.’—David Levingftoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Treasonable and Masterful Theft, &c.

Mar. 3.—JAMES KEITH of Benholme.

Dilaitit of airt and pairt of the tresonabil¹ and theftious steilling, be way of Maisterfull-thift and Stouthe-reiff, in the moneth of October, 1622 yeiris, sthurth of the Place of Benholme, off ane grene coffer, pertening to vmq¹⁶ GEORGE ERLE MARSCHELL, with the jowellis and vtheris vnder writtin being thairintill, als pertening to his lordschip, viz. of Portugall ducattis, and vtheris spaces² of foreigne gold, to the avail³ of tuentie thousand pundis, or thairby; threttie-sax duffane of gold buttones; ane ritche jowell, all fet with dyamontis, quhilk the said vmq¹⁶ Erle ressaunt as ane gift gevin to him the tyme he was Ambassadour in Denmark, worth sex thousand merkis; the Quene of Denmarkis pictour in gold, fet about with ritche dyamontis, estimat to fyve thousand merkis; ane jasp flane for

¹ *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI. ² *Species*. ³ *Worth; value.*

steming of bluid,¹ estimat to fyve hundreth French crownes; ane chenzie² of equall perle, quhairin was foure hundreth perles gritt and small; tua chenzeis of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis fet in gold, worth thre thoufeand merkis; ane grit pair of bracelettis, all fett with dyamondis, pryce thair of fyve hundreth crownes; the vther pair of gold bracelettis, at sex hundreth pundis the pair; ane turcas³ ring, worth ten French crownes; ane dyamond fet in ane ring, price xxvij French crownes; with ane number of vther small ringis, fet with dyamondis and vtheris ritche stanes in gold, worth thre hundreth Frenche crownes; mair, sextene thoufeand merkis of filuer and gold, reddie cunzeit,⁴ quhilk was within the said grene coffer; togidder with the hail Tapestrie, filuer-work, bedding, and vther guidis, geir, and pleniffing, being within the said Place, particulerlie specifit and fet down in the Criminnal Letteris direct aganis the said James Keyth of Benholme and his complices.⁵ AS ALSO, for airt and pairt of the thiftious steilling and away-taking, be way of maisterfull Thift and Stouthe-reiff, in the moneth and yeir of God foirlaid, furth of the said Place, of ane grit clothe bag, with the said vmq⁶ Erle his hail eidentis⁶ and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capitall crymes contenit in the saidis Criminnal Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane amerciamment, viz. for nocht entrie of the said James Keyth, in the pane and vnlaw of ane thowfeand merkis: And siclyk, that the said James be denuncet our fouerane lordis rebell, and put to his hienes horne; and his hail moveabill guidis to be efcheit and inbrocht to his Maiefteis vse, as fugitiue fra his hienes lawis for the saidis crymes.

Stealing Corn, &c.

Mar. 24.—HARIE MENTEITH of Panfteid; James and Williame, his tua fones; Andro Menteith, fone-naturall to the said Harie; Johnne Menteith, callit of Balderstoun; and fix others.

Dilaitit of the thiftious steilling and away-taking, furth of Thomas Kincaid of Warieftoun his barnes of Saltoittis, in the Eist-Kerle, lyand in the barrony

¹ Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of the *Lord High Treasurer of Scotland*, Feb. 9, 1504.—² ITEM, to the said Williame [Foular, potingary,] for ANE BLUESTANE, and thre vnce vjir stuf, for THE QUENE, for bleding of þe nefse; eftir ane R. (*recipe*) of *Maister Robert Schaw*, xxij l. ³ Chain, or string. ⁴ Turquois. ⁵ Ready coined.

⁶ The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. ⁶ Title-deeds.

thairof, and fcherefdome of Sterling, off threttie bollis of aittis, faxtene bollis of peis, and tuentie bollis beir, pertening to the faid Thomas Kincaid.

The perfewar productet our fouerane lordis Letteris, be vertew quhairof the faidis perfones, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of cautioun to haif compeirit, &c.; and protestit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

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

MURDER.

Jun. 5.—JAMES GALBRAITH, in Lekkic.

Dilaitit of the Murthour and Slauchter of vmq^{le} James Broke in Kirkpatrick, his brother-in-law; committit vnder nycht, betuix Kirklistoun and Corstorphin, in thair cuming furth the hie-way togidder towards Edinburch, in the moneth of Apryle last, in the begynning thairof.

ASSISA.

James Tennent of Lynhous,
Johnne M^cFarlane of Arrochar,

James Burnet of Barnes,
Alexander Lokhart of Braidfcaw.¹

The pannell confessis, in prefens and audience of the Assyse, the Murthour and Slauchter contentit in his Dittay.

VERDICT. The Assyse being ryplie and at lenth advyset with the Dittay, togidder with the faid James Galbraith his awin Confessioun maid in judgement, with his Deposition maid be him, vpon the thrid day of Junij instant, in prefens of the hail lordis of Counsell and Sessioun, confessing the Murthour aboue writtin, thay all in ane voce ffand, pronuncet, and declairit the faid James to be ffylet, culpable, and convict.—SENTENCE. To be tane to the Mercat-croce of Edinburch, and thair his heid to be strukin frome his body; and his hail guidis and geir to be efcheit, &c.

Thift—Slaughtcr—Fire-raising—Intercommuning with the MacGregors, &c.

Jul. 17.—JOHNNE ROY M^cFARLANE, sone to Andro of Gortane, and others.²

Dilaitit of the feuerall crymes of Thift and Slauchter following, viz. The faid *Johnne Roy M^cFarlane*, ffor airt and part of the Slauchter of vmq^{le} Williame M^cclane in Blairvak, fervand to vmq^{le} Duncane M^cfarlane of Blairvak, for the tyme; committit vpon the thrid day of October lastbypast, 1623 yeiris: And

¹ The rest of the Assise were tradesmen. James Tennent, chancellor. ² The remainder of the pannels were, 'Johnne Beg M^ccauife M^cfarlane (in Stukewa), Duncane M^ccorrie M^cewin (M^cfarlane in Ardlowie), Johnne M^cinnair M^cfarlane in Garboyle, Thomas Moir M^cfarlane, (sone to Duncane Dow M^cfarlane in Morlagane,) Allaster Blair (in Brachairne), Johnne (Dow) Blair, his sone, Johnne Gar M^cgilliemichell, (feruitour to Robert Abroche M^cGregour,) Duncane Bayne M^ccartnay, (feruand to Robert Abroche M^cGregour.)'

fielyk, for airt and pairt of the tressonable Raifing of fyre, and Burning of the house of Abervrchill, pertening to vmq^{le} Colene Campbell of Abervrchill, being in company with Johnne Dow M^cCondochie Bayne, his maister, and vtheris his complices, at the said Burning; committit a ten yeir fyne, or thairby. ITEM, the said *Johnne Beg M^cCauise M^cfarlane*, ffor the thiftious ressetting of ane blak kow, quhilk was stowin be Johnne Roy M^cWilliame M^cfarlane, furth of the landis of Balliemoir, fra Andro M^cWilliame M^cfarlane, in the moneth of December last: And fielyk, for airt and pairt of the steilling of tua ky furth of the landis of Clofwrak, pertening to Callum M^cfarlane, indueller thair: And alsé, for airt and pairt of the thiftious steilling, at the leift ressetting, of ane blak horse, stowin be Duncane M^ccorriche M^ceane M^cfarlane, furth of the cuntrie of Argyle; committit in Marche last. ITEM, the said *Duncane M^ccorrie M^ceane M^cfarlane*, ffor airt, pairt, and being in company with Johnne Roy M^cWilliame M^cfarlane, at the steilling of ane broun kow, a four yeir fyne, or thairby: And for airt and pairt of the steilling of nyne lambes, pertening to Johnne M^ccorrie M^cfarlane and Patrik M^ccorrie M^cfarlane in Ardmulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I^m.Vj^c.xxij yeiris: And also, for airt and pairt of the steilling of ane gait¹ furth of the landis of Glencroe, in the moneth of October, the yeir of God I^m.Vj^c. tuentie tua yeiris: And in lyk maner, for airt and pairt of the steilling of ane blak horse out of Argyle, in the moneth of Merche lastbypast: And for thiftious steilling of ane scheip fra vmq^{le} Malcolm M^cfarlane, in Innerfnamet,² in the moneth of Julij, 1616 yeiris. ITEM, the said *Johnne M^cInnair M^cfarlane*, ffor airt and pairt of the steilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be fauld; committit a fevin yeir fyne, or thairby: And ffor airt and pairt of the steilling of ane blak kow, a four yeir fyne, furth of the saidis landis of Glencroe. ITEM, the said *Thomas Moir M^cfarlane*, sone to Duncane Dow, ffor airt and pairt of the steilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilfythes tennentis: And ffor airt and pairt of the steilling of nyne lambes, furth of Craigoftane,³ pertening to Patrik Glafs M^cfarlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious ressetting of ane stowin kow, quhilk was stowin be Callum M^ccauise in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun soirner⁴ and oppressour, vpone dyuerse his Maiesteis subjectis: And for common Thift and Reslet of thift. ITEM, the saidis *Allaster Blair* in Bracherie, and *Johnne Blair*, his sone, ffor airt and pairt of the steilling of foure ky, furth of the landis of Difeher, in Menteith, a

¹ Goat. ² Inversnaid?

this property in *anno* 1705.

³ Afterwards the residence of Rob Roy M^cGregor, who acquired this property in *anno* 1705.

⁴ One who oppressively takes free quarters, &c. by violence.

fyve yeir fyne, or thairby, quhilk pertenit to . . . Logane, fervand to the Laird of Auchinbrek. ITEM, the said *Allaster*, ffor the steilling of tua oxin fra the Laird of Buchannane, furth of the landis of Salloche, a fyve yeir fyne, or thairby. ITEM, the saidis *Allaster*, and *Johne Dow Blair*, his sone, ffor the thiftious steilling of thre ky, furth of the landis of Drongie, pertening to Robert Campbell of Drongie, a foure yeir fyne, or thairby: And forder, for the thiftious recept¹ of tua stowin horse, stowin be the said Robert Abroche, furth of the North pairtis of this realme, a yeir fyne, or thairby. ITEM, the said *Allaster*, ffor the thiftious ressetting of ane grit quantitie of the guidis and geir rest, stowin, and away-tane furth of Balwill, be Robert Abroche, Johnne M'cairtour, Donald Darleith, and vtheris thair complices, quhilkis pertenit to Johnne Falladlaill, bailzie of Dunbartane: And last, the said *Johne Blair*, ffor steilling of ane kow, furth of the landis of Clofrak, pertening to Parlen M'neill, thair, a foure yeir fyne, or thairby. ITEM, the said *Johne Gar M'gilliemichell*, ffor airt and pairt of the thiftious steilling, be way of Maisterfull Thift and Stouth-reiff, furth of Murray, in the North, fra dyuerse of the Inhabitantis thairof, in the moneth of Julij last, of ffytie ffyve oxin and ky, with dyuerse horse, scheip, gait, inficht and pleniffing, quhilk war drewin² be the said Johnne Gar, and be Robert Abroche, his maister, and vtheris thair complices, to the Wast pairtis of this realme, quhair the samyn was fauld and disponit vpon to thair vse: And siclyk, for ane commoun Soirner and Oppressour, in keeping daylie and nyctlie company with Robert Abroche M'gregour, and passing with him throw dyuerse pairtis of the cuntrie, soirning and committing oppreffioun vpon dyuerse his Maiesteis subiectis, inhabitantis thairintill; forceing and compelling thame to furneise meit, drink, and vther prouiffioun, aganis thair will, and without payment of ony money for the same; in hie and manifest contempt of his Maiesteis auctoritie and lawis. ITEM, the said *Duncane Bayne M'cartnay*, ffor ane commoun Soirner and Oppressour; specialie, for cuming to the duelling-hous of Neill M'claren in Innernandie, in the heid of Balquhiddel, in May last, and thair forcet and compellit him to furneise to the said Duncane, meit, drink, and vtheris necessaris; and becaus ane kid was refusit be the said Neill to be slane and eittan, at the said Duncanes desyre, the said Duncane thairupoun maist crewallie invaidit the said Neill for his slauchter, gaif him ane crewall and deidlie wound in the heid, to the effusioun of his bluid in grit quantitie; quha, be occasioun of the said straik, being irritat with rage and furie, with ane grit caber³ in his hand, rynnand at the said Duncane in revenge thairof, strak Donald M'Intyre (quha was ane redder⁴) in

¹ Reset.² Driven.³ A large rafter, beam, or joist.⁴ A peace-maker, who, in this instance, got the *redding-straik*, the proverbial recompense of those who, through their good nature, endeavour to separate angry combatants. The foregoing details afford a highly unfavourable picture of the state of society, in 'Rob Roy's country,' at the close of the reign of James VI.

the foirheid, and fellit and flew him thairwith; and fa, the faid Duncane was airt and pairt of the Slauchter of the faid vmq^e Donald M^cIntyre: ITEM, ffor cuming to the faid Neill M^cclarens hous, vnder nycht, and steilling furth thair of his haill inficht pleniffing, guidis, and geir, to the avaiill of fourtie pundis money.

The foirnamet haill perfones, dilaitit and accufet of the crymes *reſpectiue* above writtin, haifing denyit the famyn to be of verritie, war put be the Juſtice to the knowlege of the perfones following.

ASSISA.

Johnne M ^c farlane of Arrochar,	Duncane M ^c Innoyer in Gortane,	Parlane M ^c Corrie in Ardeleifch,
James Garbraithe in Garbell,	Patrik Roy M ^c Innoyer,	Patrik M ^c farlane in Pullochre,
Dougall M ^c farlane in Tullichin- tail,	Andro M ^c farlane in Drumfad,	Johnne Dow M ^c farlane,
Thomas M ^c farlane,	Malcolme M ^c Williame in Downe,	Donald Dow M ^c farlane,
Johnne M ^c farlane in Kenmore,	Duncane M ^c farlane in Port- Chapell,	Harie Dow, feruitour to Johnne Erl of Mar, &c.
Duncane M ^c farlane, thair,	Johnne M ^c Innoyer,	

VERDICT. The Affyfe, all in ane voce, be the repoirt and declaratioun of the faid Andro M^cfarlane in Drumfad, chancellor, fſand the faidis perfones on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes about writtin.—**SENTENCE.** To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be eſcheit to his Maieſtevs vſe, as giltie of the faidis crymes.

Sheep and Cattle Stealing, &c.

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddifdail, fervand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the ſteilling of ſex ky (*cattle*) furth of Schewingſcheill-Caftell, pertening to Williame Heroun of Chipcheſe, in the moneth of November laſt: ITEM, ffor airt and pairt of the ſteilling of ſextene gaitis (*goats*) furth of Emmetiſhauch, pertening to Will Charletoun of Emmetiſhaugh; Will Vfcher, his ſone, being in company with him at the ſteilling thair of; committit in September laſt: ITEM, ffor airt and pairt of the ſteilling of tua ky furth of Hafillyde, in Inglannd, the ane blak, the vther broun, pertening to Williame Chairletoun of Hafillyde; committit be him and the faid Will Vfcher, his ſone, in October laſt: ITEM, ffor airt and pairt of the ſteilling of an yellow brandit ox, furth of the landis of Heifſlefyde, in the faid moneth of October laſt, pertening to the faid Will Chairletoun; the faid Will Vfcher, his ſone, being in companie with him at the committing thair of: ITEM, ffor airt and pairt of the ſteilling of ſextene gaittis furth of the landis of Leipieleiſche, in October laſt; quhilk pertenit to Mathew Robfoun of Leipieleiſche; the faid Will, his ſone, being with him at the ſteilling thair of: ITEM, ffor ſteilling and away-taking, about Hallowmes laſt, of tua ſcheip

furth of Richartoun-fute, pertening to Archie Henderfoun, and Johnne Robie-foun, thair; committit be him and the said Will, his sone: ITEM, ffor airt and pairt of the steilling, furth of Burnemouth, of fyve schein, pertening to Johnne Nixyne, thair; the said Will Vscher being at the steilling thair of: LAST, ffor airt and pairt of the steilling of fyve schein, about St Thomas-Evin laft, fra Johnne Ellote, callit *the Dod*, and Johnne Elliot, callit *the Gyde*: AND ffor commoun Thift and Resset of Thift.

PERSEWARIS, Mr (Williame) Heroun of Chipchefe, Will Chairletoun of Hifflesfyde, Sir Williame Oliphant of Newtown, kny^t, Aduocat.

ASSISA.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Williame Middlemeft of Chapell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Cranftoun of Corfbie,
Andro Douglas of Priesttoun,	W ^m Trumble of Phillopehauche,	Robert Edjer of Wodderlie,
Williame Benuet,	James Nayfmyth of Poffo,	Robert Lauder of that Ilk,

VERDICT. The Assyse, all in ane voce, in respect of the said Adie his Judicial Confessioun of the crymes foirfaidis to be of verritie, be the mouth of the said Laird of Riddell, chancellor, ffand, pronuncet, and declairit the said Adie Vscher to be flylet, culpable, and convict of the crymes foirfaidis.—SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

Sheep and Cattle Stealing, &c.

Jul. 21.—WILL VSCHER, sone to the said Adie Vscher.

Being presentit vpon pannell, in prefens of my Lord Justice, Confessit him selff to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him selff in his Maiestie and Counfallis will for the famyn.—SENTENCE. The Justice, in regaird of the said Will Vscher his minoritie, nocht being past fastene yeiris of age, with advyse of the Lordis of Secreit Counfall, ordanit the said Will to be Baneifchet his Maieftis hail dominions, and nocht to be ffund thairintill in ony tyme cuming, without his Maieftis Licence, vnder the pane of deid, &c.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Murder under trust—Stouthreif—Piracy, &c.

Nov. 3.—JOHNNE BROUN, skipper in Brunteilland; Robert Broun, mariner, his sone, thair; Daid Dowie, burges and awner thair; and Robert Duff, in South Quenis-fferrie.

Dilaitit and accufet of airt and pairt of the schamefull, crewall, and vnmerciful Murthour vnder trust of thre Spanische mercheand young men; and steilling

and appropriating to thame selfis, be way of Maisterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair schipis-boddome, pertening to the faidis Mercheandis ; committit a thre yeir syne, or thairby, in thair cuming fra the Poirt of S^t Johnnes, in Spayne, to Callife, be casting the faidis thre Spanische Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame selfis, and making money thairof, to thair awin vse.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduaocat.

DITTAY against the persons on pannell.

JOHNE BROUN, skipper in Bruntieland, maister and owner of ane quarter of the schip vnderwritte, ROBERT BROUN, your sone, awner of ane vther quarter thairof ; DAVID DOWIE, mariner, burges of Bruntieland, awner of the half thairof ; and ROBERT DUFF, indueller and mariner in South Quenifertie, YE ar indytit and accuset, FORSAMKILL AS the traffique and commerce betuix mercheand and mercheand, in exporting of commoditeis frome ane cuntrie to ane vther, hes, in all weill-governet Kingdomes and Commoun welthis, bene estimat the ground and fundamentall caus, nocht only of grit welth and ritches to the inhabitantis, but also ane grit help and furtherance to intertene freindschip and correspondence betuix Princes ; qulairthrow mony loveabill Lawis, vpon guid advyfe and deliberation, hes bene publeift and fet furth be thame and thair estaitis, for advancement of thair tred, and reiking out of schipis and veschellis for the better vphald and continuance thairof ; and thairupoun, the art of Navigatioun, with the perfonas expert thairintill, alsweill for thair skill and dexteritie in sailing, as fidelitie in that tred, be the saif conveying of the merchandis and passangeris, with thair merchandice and guidis, committit to thair trust, hes becum famous and of goode estimatioun throw the hail world : LYK AS, the failleris of this Kingdome, being, for thair skill and fidelitie in that tred, nathing inferiour to ony vther cuntrie, people, or nation, haif commonlie, in regard thairof, bene sa respectit be frangeris in forayne pairtis, that thay, with thair schipis, hes bene preferrit in seruice to ony vther people qubat-fumenir. Nochtwithstanding quhairof, it is of verritie, that ye and ilk ane of yow, schalking of all feir of the Omnipotent and Almychtie God, regard to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairof ye ar namet maist vnworthlie to be inhabitantis and natieue borne people ; as also, to the grit obloquy, schame and reproche, and oppiu discredeit of the hail failleris of this kingdome resoirting to forayne pairtis, prejudice and disapointing of all lauchfull commerce and tred with ony of the Mercheandis of the samyn, and employment of the hail seafairing men with thair schipis and barkis in tyme cuming, a thre yeir syne or thairby, ye being in S^t Johnnes, a Sie-point within the Kingdome and dominioun of Spayne, togidder with the schip callit, quhairof ye, the said Johnne Broun, was maister and awner of ane quarter, and ye, the said David Dowie, awner of ane half, and ye, the said Robert Broun, awner of the fourt quarter ; and being fraucht be ane Gilzeane Thastone, a Spanzaird, to pas fra the said Poirt of S^t Johnnes to the Poirt of Caillife, with ane laiding of Walnuttis, chestanis,¹ and certane Spanische irne ; and according thairto, haifing tane in the said laiding, togidder with thre Spanische young men, quha war directed be the said Mercheand to await vpon the discharge of the said Mercheandice, and to make mony thairof at the said schipis arryvell at hir appointit Poirt aboue writtin,² ye, befor your cuming abuid of the said schip in S^t Johnnes, plottit, contrivet, and devyset the crevall and barbarous Murthour of the faidis thre frangeris, and the appropriating to your selfis of the hail guidis and mercheandice imput within the said schip ; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the said schip put to your handis ; and thaireftir, cuming all aboird, heaft vp sail, and past to the Sea : And being in the middis of Sea, far frae ony land, ye, vpon schamefull and damnable greid and covetousnes, vpon set

¹ Chestnuts.

² As supercargoes.

purpois, deliberatioun, and ffoirthocht ffellony, fulschilie apprehending that the al-feing eie of the Almyctie did nocht luik down, nor wald bring to licht your maist horrible and detestable Murthour and Pirracie, ye being also secundit, aidit, and affistit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fterrie, James Carrane in Tradache, in Ireland, Robert Kincauill, cuik of the schip, with ane Irifche boy, namet Thomas Cur; all of yow, being nyne in number, within schip-buird, ye maist crewallie and vnnaturalie, aganis the Lawis of Nationes, haifing the saidis thre strangeris in your power, and for the valauchfull acqyreing and appropriating to your felfis of the saidis guidis and merchandice, violentlie, and but¹ pitie or commiferatioun, threw them all thre ouerbaird, ane eftir vther, in the raging seas; and thairby crewallie and vnmerciefullie, vnder trust, credeit, and assurance, Murdreit and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to eftchew your crewaltie: Quhilk being done, ye, in plane mokage,² and skorne of the Almyctie, as gif his deyrne Maistie had approvin that your horrible fact, maid ane Prayer, and sang vp ane Pfalme: And thaireftir, as Thevis and maisterfull Sea-robberis, divertit your curse fra Callife,³ and past with your said schip and laiding thairof to Myddilburgh in Zeilland, quhair the saidis walnuttis and chestanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;⁴ and the samyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the samyn was fauld, for reddie money.—Committing thairby maist horrible Murthour and Slauchter vnder trust and credeit, the saidis thre strangeris being vnder your power and command, within your schip; and lykways Maisterfull Thift, Stouthe-reiff and Pirracie, in appropriating of thair guidis and merchandice to your felfis: Off the quhilkis, ye, and ilk ane of yow, ar and war speciall actouris, airt and pairt; and thairfoir, aucht and fould, in maist exemplarie maner, be pwneit, to the terrour of vtheris.

My lord Aduocat, eftir reiding of the Dittay, and the pannellis accusatioun of the saidis crymes, at length fet down thairintill; and that in respect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevancie thairof, desyret my lord Justice to put the samyn to the tryell of ane Assyse of the perones summond to that effect.

My lord Aduocat takis instrumentis of the sweiring and admissioun of the Assyse, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, product the Deposition maid be the foure perones on pannell, viz. the said Johnne Broun, Robert Broun, and Dauid Doweis Depositiones, maid be thame in prefens of the Laird of Bombie, the Commisar of Kirkculdbrycht, and the Bailleis thairof, vpone the xxviij day of August last, confessing the Murthour and thiftious taking and appropriating of the guidis and merchandice to thame felfis. Togidder with the said Johnne Broun and Dauid Doweis Deposition, tane in prefence of the Erle of Melrois, vpone the xv of September last. Produces also the Depositiones of Robert Duff, tane in prefens of the said Erle of Melrois, on the vij day October last, beirand the said Johnne Broun, and Dauid Dowie, to be casters of the first Mercheand overburd. Produces the pannellis haill Depositiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October last. Togidder with the Deposition of Robert Kincauill, cuik of the schip, and ane of

¹ Without.² Mockery.³ Calais.⁴ Crew.

the equippage thair of in that veadge,¹ tane in prefens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpon the 28 of Junij laft. With the Depofitioun of the faid Robert Duff, maid in prefens of my lord Aduocat him felf, vpon the 27 of October laft. And laft, vfes and produces the Declaratioun of Robert Meluill and Robert Cellok, vnder thair hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the hail poyntis contenit in thair Indytement. And vpon the production of the verifications aboue writtin, askit instrumentis: And proteftit for Wilfull-Errour aganis the perfones of Affyfe, gif thay acquit the pannell of the deteftable crymes aboue written.

VERDICT. The Affyfe, all in ane voce, be the repoir and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chancellor, fand, pronuncet, and declairit the hail foure perfones on pannell to be Giltie, culpable, and convict of the crymes aboue fpecifeit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And thaireftir, thair heidis to be ftrukin fra thair bodeyis: And tua of them to be fet vp vpon prikis of irne at *Leith*; and the vther tua to be sent to *Brunteiland*, to be fet vp vpon prikis thair: And thair hail moveabill guidis to be efcheit to his Maiefties vfe.

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

Murder, &c.

Nov. 13.—HARIE LISTOUN, indueller in the bak of Plefance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforfamekill as the faid Harie, haifing, without ony juft caus, confanet ane deidlie haitrent and evill will againft vmq^{le} James Mayne, feruitour to Robirt Young, maltman, burges of Edinburghe, with ane fettillit purpois and refolution to bareiff him of his lyffe, be on meine or vther; laitle, vpon the laft day of Auguft laftbypast, come in the twielicht, eftir fetting of the fone, betuix fevin and acht houris at evin or thairby, to the faid Robert Young, his peife-land, beyde the Seanis,² near to the Burrow-mure of the faid burgh, quhair the faid vmq^{le} James was in fober and quyet maner for the tyme, keiping his faid maifteris peife, and vtheris his coirnes, than growand and ftanding floukit³ vpon the ground of the faidis landis; and thair, the faid Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invafue wappones, firft vpbraidit the faid James Mayne with woirdis, alledging that he was ane commoun Theiff, and had ftowin ane grit number of the faid Harie his beanes and peife, growand neir to the faid Robert Youngis land, and lyand contigue

¹ One of the crew in that voyage.

² Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh.

³ Cut down and put up in stouks, ricks, or shocks.

thairto ; and thaireftir, becaus the faid James purget him felff of that calummie, and anfuert him, be woird, that he was als honeft as him felff ; the faid Harie, thairupoun, ran vpon the faid James, and rwfchet him (being ane aget man of threfcoir fourtene yeiris of age) to the grund, dang him in the heid, craig,¹ fchoulderis, and fydis with the faid battoun, lap vpon his breift and bellie with his feit and knyvis, punchet him as alfo vpon the heart, and thairby brak and birfet his intrallis and noble pairtis ; in maift insolent maner cuttit his cleithing in peices with knyves, and thaireftir harrellit and drew him be the heillis the fpace of ane quarter of ane myle af the faidis landis, to ane laich volt in S^t Geillie Grange, and impriffonet him thairintill, *tanquam in privato carcere*, he being in the deid-thraw :² Lyk as, within thre houris efter his imputing within the faid volt, he deceiffit of the faidis ftraikis : And the faid Harie, vnderftanding of his daith, to fuppres the Murthour of the faid puir man fra the warld, caufit him to be bureit fecretlie in the nycht, in ane obfcure place. And fa, the faid vnc^{le} James Mayne was fchamefullie, crewallie, and barbaruffie Murthouret, and thairefter fecretlie bureit, be the faid Harie and his complices ; and he is airt and pairt thairof ; committit vpon fet purpois, prouiffoun, and foirthocht felony.

PERSEWARIS.

Jonet Watfoun, the relict ; Euphame Cuninghame, fifter-dochter ;³ Sir Williame Oliphant, knycht ; Robert Young, as maifter.

PRELOCOUTOURIS in defence.

The Laird of Innerleyth, The Laird of Lugtoun, Mr Lueis Stewart, and Mr Johnne Oliphant, Aduocatis.

It is allegit be the pannell, and be Mr Lueis Stewart, his prelocoutour, eftir reiding of the Dittay, that the famyn is nawayis relevant to pas to the knowlege of ane Affyfe, as it is fett down ; nawayis affirmeing thairin, that the pannell was the actuall committer of the flauchter lybellit ; and fua, nocht concludand, *de homine occifo*, the famyn can nocht pas to ane Affyfe.—It is anfuert be my lord Aduocat, the allegeance aucht to be repellit, in refpect of the Dittay beir- and *per expreffum*, that the defunct refautt dyuerfe ftraikis with ane battoun in the heid, and was punchet in the breift and bellie, and his hail noble pairtis brokin within him ; and be occaffoun thairof the defunct deceiffit ; quhilk was gevin to him be the pannell, and that he deceiffit off the famyn ftraikis gevin to him be the pannell, the tyme lybellit.

It is allegit, that the Dittay contenis dyuerfe and feuerall⁴ memberis, ilk member thairof being ane cryme be the felff, viz. firft, that the defunct was ftrukin with a battoun : 2. His claithis cuttit with knyves : 3. The defunct was harrellit be the heillis af the landis lybellit, to the Grange : 4. Was caffin in ane laiche volt, *tanquam in privato carcere*, quhairin he was detenit captiue and priffoner ; quhairin, it is affirmet, that the defunct deceiffit : Quhilkis, being feuerall crymes,

¹ Throat ; neck² Half dead ; in the *throes*, or agonies, of death.³ Niece.⁴ Separate.

man (*must*) be difcuffit feuerallie. The Aduocat declairis that he conjoynes the hail crymes togidder, and devydis na pairt of the Dittay; and fays, that the famyn is verrie relevant, as it is fet doun, to pas to the knowlege of ane Affyfe.

It is allegit be the pannell, that the famyn can nocht pas to ane Affyfe, becaus he offeris him to prove, be fufficient Witneffes present at the bar, that the said James Mayne deceiffit be hanging himfelff within ane laiche volt in the Grange, eftir he was committit thairin for steilling of certane beanis and peife, and eftir he had remanit thairin the fpace of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anfuert, aucht to be repellit, in refpect the allegeance confifting *in facto*; and gif ony probatioun be tane, it man be proponit to the Affyfe, quha, for thair informatioun, may tak the Witneffes declaratioun, gif thay fall think it expedient, or reject the famyn.¹

THE JUSTICE Ordanis the Dittay to pas to the knowlege of ane Affyfe: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him felff, feing it confistis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATIOUN TO BE VSET BEFOIR THAME.

ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinfoun, maltman,	Robert Wilfoun, beltmaker,
Johnne Marfchell, burges of Edr,	Johnne Lowrie, maltman,	James Johnnefoun, maltman,
Adame Marfchell, maltman thair,	Adame Bar, tailzeour,	Frances Stevinfoun, chirurgane,
Johnne Campbell, ftairler thair,	Robert Moubray, fuordflipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, lifter,	Johnne Ahannay, baxter,	Johnne Clarkfoun, fmyth.

It is allegit be the pannell aganis ffrances Stevinfoun and Johnne fluiker, chirurganes, that nather of thame can be admittit vpon this Affyfe, becaus thay haif behavet thame felffis as pairteis, in paffing, at the defyre of the perfewaris, and for guid deid gevin to thame, to the defunctis graiff, fevin dayis eftir his buriall, and taking him vp and fichting the deid corpis, ffor ane pre-

¹ This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perfewar, anent the tryell of this mater.—It is anfuert be the Aduocat, the allegiance is nawayis relevant to stay thame to be admittit vpon this Assyse; becaus, quhatevir was done be thame in raising and sichtig of the corpis, was done be command of the Bailleis of Edinburghe.

Robert Young, perfewar, being suorne, gif he has just cause to perfew this Dittay as it is sett down, declairit, that he has just caus to perfew, vpon this reasone only, becaus he, haifing gottin knowlege of James Maynes daith, and cuming to the Grange to vnderstand the forme thairof, and haifing seane the deid corpis, desyret Mr Johnne Cant to keip him vnbreit quhill the morne at nyne houris, that his wyfe and freindis (nicht) come to sie him; quhilk the said Mr Johnne promeit fould be done; and nochtwithstanding thairof, he was bureit, be the pannellis servandis, lang befor sex houris in the moirning: And thairfoir, in respect of his buriall, secretly, by¹ promeis, he had just caus to perfew the pannell, as giltie of the said James Maynes daith.

The Aduocat takis instrumentis of the sueiring of the Assyse, and of the producioun of the defunctis claithes be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And protestis, in caice thay acquit, for Wilfull Errorr.—The pannell protestis in² the contrair, gif thay fyle; and that the Witnesfes may be tryit for preving that the only cause of the defunct his daith the proceidit fra his putting violent handis in his awin persone, be his feirfull and crewall hanging him self, and thairby devoireing him self to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Assyse, estir the pannell had apprehendit him in his peise, and tane him with tua grit wallat-full of scheillit beanis, stowin be him af his peise-rig, and brocht him to the said Mr Johnne Cant, as Justice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneit for the said Thift. And for cleiring of the veritie of the foirsaid allegiance to the said Assyse, desyret the Witnesfes following, all present at the bar, viz. the said Mr Johnne Cant, ane of the Assyse; Robert Stark, James Scott, and James Wallace, his thre servandis; James Borthuik, indueller in Edinburghe; James M^cCorne, in the Seanis; Williame Mure, ser- vand to Robert Young, ane of the perfewaris, and Johnne Girdwoid, also his servand, to be callit vpon and examinat be the said Assyfouris, estir thair incloifeing.³

VERDICT. The saidis persones of Assyse thairestir remouet altogidder furth of Court to the Assyse-houfe, quhair, be pluralitie of voittis, thay electit and chuifet the said Mr Johnne Cant in chancellor: And thairestir, the saidis haill

¹ Contrary to.

² This seems an extraordinary step. The Assise, *after they are enclosed* in the Assise-house, call before them and examine the Witnesses offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being fuorne and examinat be thame, thay all, but¹ difcrepance, cleir-
lie verifeit be thair declarationes, that the said James Mayne come vpon his feit,
without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill
afoir sex houris at evin, the day contenit in the Dittay, being brocht thairto be
the pannell, for the caufe contenit in his exceptioun; and being put in the laich
volt, at the defyre of the pannell, to be keipit thairin be the said Mr Johnne
Cant, as Justice of Peace, vnto the tyme he war tryit, and that Robert Young,
his mafter, war brocht to that effect; he, within tua houris thaireftir, the volt
dur being lokit vpon him, was fund hingand in tua horfe girthes or coirdes,
deid, and his mouth fameand;² and thairby, that he had devoiret³ him self. Eftir
quhais tryell and examinatioun, the saidis perfonis of Affyse reffonit and voittit
vpon the poyntis of the said Dittay, and being ryplie and at lenth advyfet thair-
with, togidder with the DEPOSITIONES aboue writtin, maid be the saidis WIT-
NESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoint
and declaratioun of the said Mr Johnne Cant, chancellor, ffand, pronuncet, and
declairit the said Harie Liftoun to be Cleane, innocent, and acquit of the slauchter
and murthour of the said James Mayne; and of airt and pairt thairof.

Quhairvpoun the said Harie Liftoun and his prelocoutouris askit instrumentis.

Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and detestable cryme of Incest; committit be him with
Agnes Cairletoun, spous to vniq¹⁰ George Irwing of Bonfchaw, his brotheris
wyfe; quha buir to him, in that filthie copulatioun, thre fones, namet Frances,
George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in
England; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis instrumentis of the pannellis Confessioun; and pro-
testis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyse, all in ane voce, in respect of the said Jaffra his Judi-
cial Confessioun, ffand, pronuncet, and declairit, be the repoint and declaratioun
of Raulff Ker, burges of Lauder, chancellor, the said Jaffra to be flylet, culpable,
and convict of the said cryme of Incest, contenit in his Dittay.—SENTENCE.
To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin
from his body; and all his moveabill guidis to be efcheit, &c.

¹ Without difference in their testimony.
devarare.

² Foaming, or frothing.

³ Destroyed. Lat.

GENERAL APPENDIX.

APPENDIX.

* * * SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

No. I.

PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council*, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Maister of Wintoun, at St Johnefloun.'¹ August 6, 1606.

RIGHT truifie and welbelouit Cousins and Counselloris, We greet 3ow well. The report of that broyle whiche did fall furth in THE TOUN OF PERTH, betuix THE ERLL OF GLENCAIRNE and THE MAISTER OF WINTOUN, immediatlie befor the last sessioun of Parliament keipit thair, did offend ws muche; speciallie, in respect of þe circumfances of þe tyme and place, quhen as, (beside the greit hazard in bringing many of THE NOBILITIE then present in the toun, to haue enterit in blood with vþeris, and thairby to haue revived that new mortified monstres of DEIDLIE FEED,) it was a reddie way to haue stayit the progres of þat sessioun of Parliament, to þe greit preiudice and hurt of þe Estait, and to þe hinderances of all our services thair. Quhairvpoun, We ar moved the moir earnestlie to desire the knowlege of þe beginning of þe misdemeanour, and quhairvpoun the famin proceidit, and whiche partie was first author thairof. And thairfoir, haue thoct meet, heirby, to will 3ow to tak particuler tryell befor 3ow of þe first beginning of that trouble, how the famin fell furth, and whiche of the tuo pairteis began the invasioun; and thairwith to try, whidder it wes vpoun a precogitat or foirthocht intentioun, or if þe same fell furth be mere accident, or *chaud melle*, vuintendit be any of the tuo pairteis against the vþer? And heirof, willing 3ow to certifie ws, particularlie, of the whole treuth of that matter, in all the circumfances of the famin, oure plefour is, that, in the mein tyme, specialle directioun be gevin be 3ow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to any vþer Judges appointed by Commissioun to proceid criminalie in the tryall of that matter, to

¹ From *MS. Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

desert all dayis, and to suspend and continue all processeis intendit befor thame be any of these pairteis against vper, ay and quhill our forder plefour be signifeit vnto thame, efter We haue dewlie confiderit the tryall taikin be 3ow in that matter. And so We bid 3ow richt hairtlie fairwell. FROM our Manowt of GREINWICHE, pe 6 of August, 1606. [JAMES R.]

To our truftie and welbelouit coufins and counfellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*¹ Aug. 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to 3our hienes directioun, signified vnto vs by 3our MA^{TIES} faithfull counsellour THE ERLL OF DUMBAR, we did call and conuene befor the Counfell the ERLLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwner of thair freindis, whome we knew to haue cheifest interes in the present FEED staning betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche 3our sacred MAIESTIE took in 3our awin persone, for extinguischeing of the name and memorie of DEIDLIE FEEDIS, what good succes had followed vpoun 3our MAIESTIES travellis, in sum of the greittest FEEDIS of this kingdome, and how that 3our MA^{TIES} had now recommendit vnto THE COUNSELL the removing this FEED, whiche hes bene of so long continuance, and be reffoon of pe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submissioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair was a quarrell betuix him and EGLINTOUN, and that a Submissioun was vnecessar; and, in end, he directlie refusit to submitt, becaus the Submissioun importet aganis him of the Slauchter of vinq^{le} THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him redy to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceed the Submissioun. We rememberit him of ane Submissioun subscryvit be himself in this sam matter, agreeable, in evrie word, to that whiche was now desirnt when this matter was lait in handis afoir THE COUNSELL, in Februar 1604. Bot he, standing vpoun his innocencie of that Slauchter, refusit to submitt. EGLINTOUN maid no refusall, bot pretending some excufe vpoun the schortnes of the warning, he only craved a continuatioun to be advist with his freindis, becaus this was the first tyme that ever he was chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verrie frelie, for 3our MA^{TIES} satisfactioun and obedience, without ony ceremonie, offerit to submitt. We haue grauntit vnto EGLINTOUN, with his awin consent, the 20 day of November nixt, to be advysit with his freindis, and to come prouydit in this matter. We haue no assurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himself to 3our MA^{TIES} plefour: And THE LORD SEMPILL will be obedient.

We had lykways in hand the proces of GLASGOW, whairin we haue fund verrie greit infolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the perfounes guiltie to waird within the burghes of Linlithgow, whill 3our MA^{TIES} plefour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak 3our sacred MA^{TIES} acquainted; to the effect 3our hienes may give directioun thairin, as 3our MA^{TIES} fall think good; which we fall prosecute and follow out. And sua, praying God to blis 3our sacred MAIESTIE with a long, happy, and prosperous reigne, We rest

3our MA^{TIES} maift humble and obedient subiectis and seruantis.²

LYNLITHCOW, 27 of August, 1606.

¹ From the same MS. Coll. as the preceding. Hamilton, in his transcript.

² The subscriptions have not been transcribed by Sir Thomas

No. II.

SOCIETIE AND COMPANIE OF THE BOYES.

LETTER *from the Privy Council to the Marquis of Huntly.*¹ Jan. 20, 1607.

LETTER our verry hairty commendationis to your good lordschippis, We ar informed of a verry greit infolenyce begvn and lyk to grow to a greiter heicht within the boundis of your ll. office be JOHNNE GORDOUN, *callit of Geyche*, FORBES *of Corfindue*, PATRIK M^CINNEIR, and sum vperis, quho, having associat vnto thame feluis ane number of dobofchet and lawles lymmerris, calling thame feluis YE SOCIETIE AND COMPANY OF BOYES, thay haue most vnlauffullie and feditiouse bund thame feluis in ane fellowfchip, with aithis, vowis, and protestationis of mutuall defence and perfute; and pat every one of pair quarrellis falbe comoun to all; and that the purpose and interpryse of ony one of thame falbe prosequuted, bakkit, and followed out, be the hale SOCIETIE, against all and quahatsumeur, without respect of persons. Lykas, thir same lymmerris keipis thame selfis togidder, committing oppin and avowed reiffis, heir-schippis, and vperis enormities, in all partis, quhair thay may be maisteris and commaunderis. QUHILK proud and detestable attempt, as it is odious to be hard of in a peceable estait, subiect to a PRINCE whome GOD hes airmit with power and force able to suppres the same; so the same caryes with it no lytill sclander and preiudice to your ll. honour and credit, that within your boundis, quhair your ll. may commaund, such ane handfull of lymmerris dar presume to attempt suche interpryses; and We ar certane pat the knowledge beirof being broght to HIS MA^{TIE}, will mak his hienes wonderfullie till admeir your ll. long patience and connivance, in not apprehending, punisheing, and suppressing of thir lymmerris; and quhat constructionis may be maid heirvpoune to HIS MA^{TIE} against your ll., we remitt to your ll. consideration. Alwayes,² we ar heirby to requseit and desire your ll. that, with all convenient speed, you tak ordour for apprehending of the saidis persones, and some vperis THE CHYFTANES of that laules SOCIETIE, and put thame heir befor THE COUNSELL; and that your ll. prosequute *with fyre and sword* the hail rest of thair followaris, and never leue of þe perfute of thame whill they be apprehendit, pvnisht, and altogidder supprest; as you respect HIS MA^{TIES} seruice, the peace of þe cuntry, and your awin credite, honour, and reputatioun, and as your ll. wald efchew that hard censure and construction which HIS MA^{TIE} man³ mak of your behaviour, in this point. Sua we commit you to God. FROM EDINBURGHE, þe 20 of Januar, 1607.

To our verry honourable good Lord, THE MARQUISE OF HUNTLY.⁴

No. III.

TRIAL OF THE MURES OF AUCHINDRANE.⁵

LETTER, *the Earl of Cassillis to the King.*⁶ Dec. 3, 1608.

MAIST SACRED SOUERANE,

It may pleis your gracious MA^{TIE}, I haue taikin this bauldnes, vpon the farder tryall of the

¹ From *Haddington's MS. Coll.* ² Nevertheless; at all events. ³ Must. ⁴ A Letter from the Privy Council, 9th Feb. 1608, directs him, by HIS MAJESTY'S command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence. ⁵ See this Collection, III. 124, &c. ⁶ From *Denmylne MSS. Adv. Library.*

trechrous MURTHOURIS of my vncle THE LAIRD OF CULZEAIN, and of the boy¹ quha careit the Lettir of his dyett, committit be THE LAIRD OF AUCHINDRAINE and his fonne; and now farder cleirit, be the greit paine and cayr of MY LORL CHANCELARE, quha hes broicht them to fik contrarieite in thair DEPOSITIONIS, that all indifferent men may be perfwadit off thair guylines of bayth thais Murthouris. Nochtwithstanding quhairof, thai still continew in ane denyall. I wald maist humelie befeik 3our MA^{TIES} that it micht be 3our MA^{TIES} gracious plefoure to graunt ane WARRAND to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,² quhairthrow thai may be broicht to þe mair evident Confeffioun. So, maist hartlie vyffing 3our MA^{TIES} lang profperitie and happinefs for euer, I remane,

Your MA. maist humbill feruant and subiect,

EDINBURGHE, the thrid of December, 1608.

CASSILLIS.

To THE KING his maist excellent MAIESTIE.

No. IV.

PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.

(See Vol. III., p. 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that ROSS should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *MS. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto*, no person had read it, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of ROSS, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

¹ William Dalrymple.

² The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That Ross was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS OF CRAIGIE, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross* of Creytoun, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539.¹ He married *Marjory Stewart*; by whom he left a daughter, *Janet*,² who married Patrick Lyndsay of Dowhill.³ (3.) *Thomas Ross* of Maitlands, who was killed at the battle of Pinkie.⁴ *Grissell Duncanson*, his relict, afterwards married Alexander Crichton of Forgound.⁵ His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.⁶

II. JOHN ROSS OF CRAIGIE was infest in the Lands of Hilton Malar, Sep. 17, 1539.⁷ He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.⁸ He is mentioned by KNOX, in his History of the Reformation,⁹ along with "the pensionars of the Prelates, Oliver Sinclair, and uteris, who were faithful to them in all things," and informed them of all proceedings at Court. He married *Isobel Liddell*,¹⁰ who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.¹¹ (1.) *Thomas*. (2.) *John*. (3.) *James*, who had a Charter of the Lands of Pitheveles to him and *Catharine McGie*, relict of umq¹² Alexander Menzies of that Ilk, his spouse, Apr. 7, 1566.¹³ He afterwards married *Janet Robertson*, relict of umq¹⁴ Thomas Fowlis, burges of Perth.¹⁵ He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.¹⁶ (4.) *William*. (5.) *Barbara*. (6.) *Alison*. (7.) *Grissell*.

III. THOMAS ROSS of Craigie married *Jean Hepburn*; by whom he had one daughter, *Margaret*,¹⁷ who married John Seytoun, apparent of Lathrisk. *Jean Hepburn* was infest in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.¹⁶

IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn*; and had by her, (1.) *Patrick*, who married *Beatriz Charterhouse* (*Charteris*). She was infest in the lands of Hilton Malar, in liferent, Apr. 9, 1575.¹⁷ After his death, which took place before that of his father, his relict married Robert Lockie, apparent of Kypdaroch.¹⁸ (2.) *Mr Robert Ross*,¹⁹ who was infest in the estate of Craigie, and was designed "fiar of Craigie" before his father's death, which took place about 1601.²⁰ He married *Margaret Eviot*. He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that Ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew*.²¹

¹ Sheriff Records of Perthshire, Jan. 12, 1573. ² May 20, 1588, James Lindsay, apparent of Dowhill, was served heir to *Janet Ross*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Return*. Perth, (1055.) ³ *Sh. Rec.*, Jan. 12, 1573. ⁴ *Ibid.* Apr. 22, 1573. ⁵ *Ibid.* Jan. 12, 1573. ⁶ See this Collection, I. 25. ⁷ *Sh. Rec.*, Nov. 3, 1591. ⁸ *Ibid.* ⁹ Knox's Hlist. of Ref., p. 28. ¹⁰ *Sh. Rec.*, Mar. 14, 1550. ¹¹ *Ibid.* Jan. 5, 1549. ¹² *Ibid.* Apr. 28, 1573. ¹³ *Ibid.* Jan. 12, 1577. ¹⁴ *Ibid.* ¹⁵ She was returned heir to her father, in the lands of Mayler, lying within the barony of Craigie, Feb. 19, 1571.—*Inquisit. Return*. Perth, (36.) ¹⁶ *Sh. Rec.*, Jan. 15, 1574, and Apr. 20, 1575. ¹⁷ Apr. 16, 1600, *Peter Oliphant of Turings*, having acquired an annual rent of 150 merks out of the Maynis of Malar, Barclay's-hauch, &c., in the barony of Craigie, from *John Ros of Cragy*, and *Agnes Hepburn*, his spouse, under reversion of 1400 merks, with their joint consent, sells his right to Mr John Moncreif of Easter Moncreif, and Jane Spens, his spouse. This was confirmed by Charter under the Great Seal, Jun. 28, 1602.—*Reg. Mag. Sig.*, XL111., 262. ¹⁸ *Sh. Rec.*, Jun. 9, 1596. ¹⁹ *Ibid. eod. loco.* ²⁰ It appears, by the Great Seal Register, that, on May 21, 1602, *Robert Ross of Cragy*, in consideration of the price of 4150 merks, sold to Christian Moncreif, eldest daughter of William Moncreif of that Ilk, the Mill of Craigie, with the Mill-lands, and three quarters of the town of Craigie, lying in the Barony of Craigie and Sheriffdom of Perth. This Charter of Sale was confirmed by King James VI, Jun. 28, 1602.—*Reg. Mag. Sig.*, XL111., 261. ²¹ *Sh. Rec.*, Oct. 13, 1598, and Jan 13, 1601. ²² *Ibid.*, Oct. 9, 1591.

To these notices, the following additional information may be annexed.

V. MR ROBERT ROSS of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry:—‘On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross*, *some time of Craigie*, his brother, produced before the Session the said *Mr Robert's* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaurie and delivered to the said *Andrew*, to give this brother.’¹

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own DEPOSITIONS,² however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that ‘it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.’

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—‘Jan. 9, 1621. Mr John Guthrie, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaurie, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] unquihil *Mr Thomas Ross*, before his execution.’³

The Editor has failed in tracing the period when *Ross* was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the REVEREND DR LEE, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

I. LETTER, the King to the Privy Council of Scotland, with instructions as to Mr Thomas Ross.⁴ [*Sine data.*]

RIGHTIE trustie and righte welbeloued cofen and counfellour, and trustie and welbeloued counsellour, WEE greete yow well. WEE fende yow here enclosed, a LIBELLE, (written by a villanous caytiffe, or rather monfter, of our owne contrie,) whiche, in time of Disputations at OXFORDE, was affixed vpon a gate of one of the Colleges, as THESEES to haue bene disputed: And a scholler, hauing taken doune and red the first six lines, (not daring to be confcious to him selfe of reading furdre of such purpos,) presentlie caried to the VICE CHANCELOUR; who, suspecting who mighte be the penner, fente for him; and hauing gotten his CONFESSION, that not onlie he was the author, but likewise, that he wolde maintayne all to be trewh which he had fette doune therein, the Vice Chancellour discretetelie and dewtifullie committed him cloffe prifoner to the Caffe of Oxforde, and fente the Libelle to vs, that WEE mighte declare our pleafour, bothe concerning it and the author. Whiche, his discretete cariage, hath, in our ingement, defered to be, by a Letter of thankes frome our wholle COUNSELLE,

¹ *Mr James Scott*, Minister at Perth's Extracts from the *Kirk Session Records of Perth*, II., 8, &c. ² See this Appendix, p. 588, &c. ³ *Scott's* Extracts from *Kirk Session Records of Perth*, II., 8.

⁴ From the Original draught, preserved amongst the *Dennylne Papers*, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewise fende yow the perfon of the man, to be cenfured by yow, willing yow firft to examine him, and thereafter aduefe of the forme of punifhment whiche yee fall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdom, it be not permitted for to vse extraordinary punifhmentes, yat hath it ener bene lawfulle for the KINGES there, to deuife and inflicte punifhmentes, according to the qualitie and nature of the offence, which in this particulare can be no leffe then Treafon [1] For if no man make queftion but that the writing of an inuectiue¹ againfte THE KING and his progenie is Treafon, in the higheft degree, and in our opinion it is a grevous faulte, (and WEE could more easilie forgiue the writinge againfte our felfe,) then² againfte the wholle Nation from whence WEE ar fprunge. And if it wer a mater capitall in Germanie for STARCOIUS³ (being a German, a mere ftranger to Scotland, and one who, perchance, had bene hardlie vfed by fome particulare perfon there) to haue written againft that wholle Kingdome, how much more maffe it be capitall to this fellow, who, being Scottes borne, hath fo villanouffie, filthilie, yea, and fallie, defamed his owne contrie, by writing in fuch forte againfte his contriemen, the fpecialler of our feruantes, [and perfuaded a courfe to be taken againft them, which poffible could not be performed, without manifet danger and manifet violence againft our felfe,⁴] and fo much the more is his offence greuous, as that, by the fpace of two monethes before, he continuallie vaunted that he wolde do fuch a feate. It is therefor our pleafour, that yee aduife vpon his punifhment, and hauing refolued, that yee aduertife vs with all expedition. So fare yee well.

II. LETTER, *the Privy Council of Scotland to the King.* Jul. 30, 1616.

MOST SACRED SOUERAINE,

We refuued youre MAIESTIES Letter, with the infamons LIBELL writtin be that wretched and unhappie fellow Rosse, and we imparted the fame to youre MAIESTIES COUNSELL; who, with all dew reuerence and moft humble thankis, doe acknowledge youre MAIESTIES fingular cair and prudent directioun, alweill in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTIES Kingdome; and thay haif writtin thair awne thankis to *The Vice Chanceltaire of Oxfoorde*, for his wyfe and kynd refolutioun and proceedingis, in that mater.

We haif aduifed with THE LIBELL, and with the Lawis and Conftitutiounis of this Kingdome, maid aganis the writtaris and fettaris oute of fuche infamons Libellis; and we find the fame to be capitall, and pvnifhable in the heigheft degree. This fellow is not as yitt come heir; and becaus of the approtcheing vacance,⁵ and diffolueing of THE COUNSELL, we haif gevin directioun to THE MAGISTRATIS OF EDINBURGH, howfoone he fall aryve, to committ him cloife prifounair in thair *Irne-Houfe*,⁶ and to lay him in irnis; and vpon thair aduertifement, we fall conueene and examine him; and accordingly, we fall gif directioun for his tryall and convictioun, and fall fupereide the pronouncing of Doome, till we vnderftand youre MAIESTIES forder pleafour, anent the forme of his pvnifhment. Oure opinioun is that he falbe HANGED at the *Mercatt-Croce of Edinburgh*, and his heade affixt on one of the *Portis*. But in this we fubmitt oure felfis to your MAIESTIES directioun; qubairunto we fall conforme our felfis. And fo, praying God to bliffe your MAIESTIE with a lang and happie reigne, we reft

Your Maiefties moft humble and obedyent fubiectis and feruitouris,

AL. CANCELL^r. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, penult July, 1616.

TO THE KING his moft fared and excellent MAIESTIE, &c.

¹ The original words had been 'such an execrable inuectiue.' ² On the margin, 'that one should write against his own countrie.'

³ See the Introduction to *Ross's Trial*, III., p. 445, &c.

⁴ The words within brackets are added on the margin.

⁵ 'Vacance'; vacation.

⁶ Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

III. *Followis* THE THESE, with THE APPENDICES *adionet* thairto, *translated*.¹

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracious MATIE, his sone, and few vtheris,) and that þe INGLISCHMEN ar nichtlielie blindit, deceavit, and fylet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-sichtit, that sufferis fo vnprouffitabill and pernicious a multitude and pudle of raskallis to rage and bear dominion within thair entrallis and bowellis. Of quhilkis blasphemis (3e haif writtin) that 3e wald rander and follow out the maist iust reafones, by Godis grace, at ane vther occasioun, moir lairglie and accuratlie, bothe by profe and verfe. Bot now 3ow put furth 3our finger to schaw only the fontanes, and theafe in few number, be reffone 3e inlaikit lafer² and helpis to performe the samyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis flesche; and trewlie, (as 3e beleve,) for as 3it the flesche whilk the ancient Scottis fwallowd slikis in the jawis and teith of the Courtiours, quhairby thay ar provoikit to fuche ane insatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke against Ap pion, that, in the tyme of Amenophis, King of Ægypt, thair raget and rauaget vp and down tua hundreth thowfeand lipperis in Ægypt, quha, by vnlauchfull meanis, and by meruoullous craftines and subtilitie, emptied and pilleid³ all þe substiance and riches of Ægypt; whilk wald haif bene haillilte vndone, gif this vnhallowit men3ie⁴ had nocht, by the wisdom of the King and Nobillis, bene cassin out and expellit: Sua, peace and peace,⁵ THE KING and COUNSALL OF ENGLAND fall be vndone, and go down, iff this companie or band that robbis Kingdones and landis be nocht sent bak to thair wounged feattis and stallis.

III. THE seaven leane ky⁶ of Pharao confwmet and d'stroit the fevin fatt and weil fed ky, and 3it war nocht fatiseit; and the fevin deaff and toome⁷ earis of corne, blasted with the East wind, swallowed vp the fevin big and fatt eares, and war nocht filled: Swa, these Courtiours, by thair begynning, and offspring, and first estait, being most miserabill, thay distroy, overturmes, and confumes ENGLAND, ane maist plentiefull cuntry; and ar nocht 3it filled with so grit and evill conqueissit⁸ ritches, acquyret by the schipwrak of þe haill Kingdome of England.

IV. THAY quha, in þair south-heid,⁹ war trwbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be fatiat:¹⁰ Sua, it befallis vnto these, quha of maist sklender begynning, by mad mirriement and sport of Fortoun, ar cayreid vp to the heichest top: 3ea, gif þair war gevin vnto his maist bountiefull and liberall MAIESTIE ane thowfeand philofophik stones, quhairby the haill Oceanus might be convertit in gold: 3itt, these wald nocht be filled, gif the Cantabrik or Bilkay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht fasser ane thristie bird to drink ane drope thair of.

V. THAY spend more in þair gairtanes, and ribbens¹¹ in the latchettis of thair schooes, than þair fateris bestowis in þe intertenement of þair haill famelie. O quhat tymes ar these! O quhat maneris be these! O the infamy of the world and reproche of the earth! Now þair is mony Smerde Magiens, but thay vaunt thame selfis fa to be.

VI. THESE Scottis Courtiours (verrie few exceptit) haif the disloyaltie or vnfaithfulness of the Carthaginianis; the menfworne aithes of the Phrygianis or Trojanis; the luxurie of the Persians; the avarice of Mydas, King of Phygia; the crewaltie of the Eilidonis, ane people of Sythia; (quhilk people fingis at þair parentis funeralis, and drinkis in 3air skullis, and eatis þair flesche mingled with vther beistis;) the prophanitie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or clok vnder the wingis of ane Eagle; thay vse the spuizis¹² of Spartacus, (this Spartacus was a Thra-

¹ From the identical copy of the Dittay, which had been transmitted for THE KING'S inspection, preserved among Sir James Balfour's MS. Collections, Adv. Library, Edinburgh. ² Wanted leisure. ³ Pillaged; plundered. ⁴ Train; company; gang. ⁵ So, or in like manner, piece-meal. ⁶ Seven lean kine. ⁷ Empty. ⁸ Il-gotten, or acquired. ⁹ Youth; minority; less-age. ¹⁰ Satiated. ¹¹ Garters and ribands. ¹² Spoils.

cian fenfer¹ quha with Chyfn and Oenomaus brak out of the Fence-Scole of Lentulus, and drestit aue army of servandis, and overcame Clodius Glaber his army, and spuilzeit all Campania, and overthrew Lentulus army and Cassius troupes, bot was defeat by Crassus,) and the fearcenes of Virratus (the Portugall Lusitanus, quha frae pastor become ane hanter, and pairrestir the chiftane of ane army, trublet the Romayne, schaw his self Coriolanus, and nocht Themistocles; that is to say, ane oppin enymie, and nocht ane secreit freind.

VII. VNTO his schyning and royall MA^{TRE}, be vntrublet heath and increse of glorie! Bot God, frae the heavnes, perswe these Courtiours with blak fyre and brimstone! I shall, so long as I leave, for thair distructioun, schaw my self Coriolanus, and nocht Themistocles; that is to say, ane oppin enymie, and nocht ane secreit freind.

VIII. O ENGLISCHE! Inglistche! The most expert and wyfest Natioun in weir,² the terror of the Spanzaird, triumpharis over France and Guyene by so long a tyme, in quhat benumbnes or droufines ar ze fallin? Ze, quha in weir and battell ar intometable,³ now ze fall go doune quiklie by diffait, at vayne appeirances of imaginarie matteris, and by the tois of fals accusaris and delatouris, in quhome thair is nocht so muche favorines or witt as in the quhyte of ane egge! Sit all the wealth and commodities of 5our most flurischeing kingdome, is cayreit away in boittis and crearis,⁴ thiftiounlie, to Scotland; and incontinent, being helpit with 3our awin commoditeis, thay will vterlie trampill vnder fute 5our Natioun and countrie, and will cut 3our throtis with 5our awin suorde, befor ze be awar! Quhat a patient Socrates will indure thease iniures! Quha may nocht snuff or smell gritter schortlie to follow?

IX. ZE haue gottin out of Scotland ane most worthie PRINCE; nocht ane thowfeand Kingis, counterfate Stage-playeris, quhytted tombea⁵ Thair is hingand aboue 5our heidis, or lying vpon 5our schoulderis, ane moir hard servitude and scheepar captiuitie than over Natiounes quhilkis ar subdewid and overcum by weir! For, estir the Romanes had overthrawn, in weir, the Syrianis and the Ægyptianes, thay gawe thame to be governet be thair awin cuntriemen! Thay exactit only tribute dew frae the vanquished! Sall, thairfor, those barbarous people possess and enjoy the first places, in Courte, in Counsale, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of Ingland? Thair furlie, the libertie and glorie of Ingland is evanished! Now, Ingland is baillyly⁶ delyuerit over in the bandis of Scottis Courtiouris, and the Judges haif enterit pair nekis vnder the 5oke of theiffis! O, the World is turned vp syde down! We ar now overturned vnto the auld mafs and chaos of confusioun! Lett sum revenge spring out of my bones, that may chestize with fyre and suord the Scottis Court and her possessours. Geve thankis, ze Scottis Courtiours, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airme nocht all Ingland to cut 3our throtis. Bot the Lord preserve ever more his awin annoynted, both weilbelouit and electit!

X. REMOVE this flinking pompe, pudle, and trifles of the Scottis Court, and pride of this hautie, felkes,⁷ and impotent commontie. Thane, fall thair be few in 3our bonnis that fall be beggeris, nidie,⁸ ragget—than, the treyis, gibbettis, and gallouffis of all the cuntrie fall nocht be laiden with the wecht of the hangit vp carcades!⁹ The Scottisfemen, as loch-leitches, and wormes in coirnes, drinkis out the sap of 3our cuntrie, and soukis out 3our merche,¹⁰ by inlaik quahirof so many ar led and drawin to thift and roberrie! Those Courtiours draw out gritter welthe furth of 3our bowellis, by 3our knowlege,¹¹ than France, Germany, and Spayne, is able to afford; quhilkis guidis, whan thay ar thus pallet¹² away, quhat fall pe maisterfull and niedie cowmontie¹³ of Ingland do or vndertak, bot to cast thame

¹ Fencer; gladiator.

² War; the art military.

³ Indomitable.

⁴ Boats and *crears*. Crears were a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar.

⁵ Whited sepulchres.

⁶ Wholly; entirely.

⁷ Weakly; feeble, &c.

⁸ Needy.

⁹ Carcasses.

¹⁰ Sucks

out your marrow.

¹¹ Without your knowledge; secretly; by stealth.

¹² Perhaps, for 'pilleit'; pillaged;

pounded.

¹³ Destitute and needy 'commonalty,' or common people.

felfis heidlong in ane golff,¹ quhill mycht leave² fufficientlie, without manis hearme, gif thofe howlattis and flymeis³ war fchote⁴ away.

O, worthieft Inglichmen ! Wey the force and reafores of this my Counfall, quhairof I haif fkaيرة recited the tent pairt ; and 3e fall perfave that I am come to sour cuntrey as ane helthfull ftarr, quhill thir Courtiours haif drowned with the fea wallis, as the Lycaonian Starr, or Vrfa Maior, to quhome it war ane villanie to have fo drowned fuche ane ftarr.

Bot we fall nocht all die to day vnrevendget !

IV. *Followis the tennour of THE DEPOSITIONES of Mr Thomas Roifs.*

AT EDINBURGH, the elleviat day of Auguft, 1618. In prefens of Sir Williame Oliphant of Newtown, his Maiefties Aduocat.

MR THOMAS ROISS, humblet on his kneis, and deplie fuorne vpon his folempne oathe, fayis, that he will declair the treuthe in all and everie thing that fall be demandit of him. Demandit, yf THE THESIS, and APPENDICES pairrof, producet and fchawin vnto him, and writtin on thre fydis of paper be his awin hand-writt ? Depones and grantis, that thay ar his awin hand-writt—and that na vther perfone wrait ane word or Lettir pairrof.

Demandit, quhat moved him to wryte them ? Depones, that he, being ane gentilman borne, depryed of all benifit that he micht expect of his fateris eftait, and being reduct to the extreme point of miferie and povertie, and havinge refflauet mony inupportable iniureis of his cuntry men, at Courte ; he, being efchamed to beg, and diflancie to fleill, and havinge no meanis quhairby to intertene⁵ him felf, findinge no comforte nor releif of his contriemen at Courte, he pairfoir, being in difpair and mad, out of his diftemperat humour and frenfyie, and fair aganis his heart, without ony fetled refolutioun, and without ony purpois to do evill, bot to fchaw the greif of his heart, and to move pitie and compaffioun towards him, wrait thir THESES ; thinking, that the wryting pairrof, in this his mad humour and difpofitioun, wald raper procure pitie nor⁶ wraiche, at HIS MA^{TIES} handis ; and that God, peradventure, wald moue HIS MA^{TIES} heart, who is a prudent and wyfe Prince, to think that the deponer was drevin, vpon plane miferie and neceffitie, to wryte thame ; and pat pairfoir HIS MA^{TIES} wald pitie his diftres and miferie, and help him : And he apprehendit that fome weill-myndit Courtiours wald interceid for him, and fchow HIS MA^{TIES} that he quho had done fo weill vpon a evill fubiect, wald do far better vpon a goode fubiect, gif he war employed ; bot, yf it fould pleis God to move HIS MA^{TIES} to think vtherwayis of this matter, and to tak it in evill pairt, it behoooved the deponer to abyde Godis will and THE KINGIS MA^{TIES}.

Demandit, quhat he did with thir THESES, eftir the wryting thairof ? Deponis, that he affixt thame on a dur of the Kirk, callit ST MARIES KIRK, at OXFURDE, vpon Twifday, being a preiching day, in the moneth of July laft, immediatlie as the people war diffloueing frome the Sermon, and as DOCTOR GODWENE, VICE-CHANCELOUR of THE VNIERSITIE of OXFURD, was cuming out of the Kirk. And depones, that immediatlie eftir pai war affixt, ane man, quhome the deponer knowis nocht, tooke thame doun, and cayreid thame to þe Vice-Chancellour. And grantis, that THE THESES now producet and fchowne vnto him ar þe fame verrie Thefes, and that fame Paper quibilk he wrait and affixt, as faid is.

Demandit, yf at ony tyme afoir þe wryting of THE THESES he was in conference with ony perfones pairment ? Depones, that ane moneth afoir the affixeing of THE THESES, he was in conference with þe Vice-Chancellour ; and regrated vnto him his hard eftait and condition, and the vnthankfulnes of his cuntrye men, the Courtiours, quho wer his gritt vnfreindis.⁷ And he febew the Vice-Chancellour that he had a purpois to go to France, and intreated him that he mycht haif a *viaticum*⁸ to transf-

¹ Gulf. ² Who might live, &c.

³ Owls and bats.

⁴ Thrust ; driven.

⁵ Support ; maintain.

⁶ Than. ⁷ Enemies.

⁸ In this sense, *viaticum* seems to have been a term employed to denote a charitable contribution raised by authority, within the Universities, for enabling poor students to undertake journeys to foreign parts, &c.

point him. Quhairvnto the Vice-Chancellour 3eildit. Bot the deponer being efchamed to go through the Colledges to collect the fame, he reffautt only foure or fyve pund Sterling, and fpendit it as he gat it; quhairas, gif he had reffautt all that wald haif beene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottin ony *viaticum* frome HIS MA^{TIE}, he wald nocht haif writtin thir THESES, bot wold haif gone to France.

Grantis also, that he regraited the vnkynnd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, befyde Wyndfoir; bot denyis, vpone his gritt aithe, that he impairted his purpos to wryte THE THESES, outh^r to the Vice-Chancellour or to him.

Demandit, be whose advyfe he wrait thir THESES? Or, yf he had conference with ony perfone thairanent? Depones, vpone his grit oathe, that he had no advyfe, counfall, nor information gevin to him in that matter; bot being at Greenwitche, a littill efir he went to Oxford, he address him selff to one of THE KINGIS Chaipaines, quho is a heiche⁶ tall man, and was walking in Grenewitche Hall for þe tyme. His name he knowis nocht. And he intretted the Chaiplane to tell THE KINGIS MA^{TIE}, that he was borne away; and that he had long waited on, without ony help or suppoirt; and that he was now drevin to grit povertie; and that he wald pray God for the weiffair of HIS MA^{TIE} and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene fo vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor⁵ Themistocles.

Grantis alsua, that afor his passing to Oxford, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Tittler freit; and that he tauld him, that wer not for þe respect and reuerence that he cayreid to HIS MA^{TIE}, he was balsingis iuyndit (yf he gat nocht some suppoirt to carye him to France) to fett vp some THESES, either in Oxfurde or in France, against the Scottis Courtiours, and that it was goode for THE KING to fend some of thame away. And the deponer desyret Johnne Line to acquent THE KINGIS MA^{TIE} heirwith, be Petitioun; and he craved Johnne Lynes advyce, how he micht eschew the wryting of these THESES; bot Johnne Lyn had no advyce in the matter. And fayis, vpone his grit oathe, that he nevir reveillit forder of this matter to ony perfone, bot so far as he lies confest, concerning the Chaiplane and Johnne Lyn. And denyis, vpone his oathe, that evir he gave out or disperfit ony coppeis of thir THESES.

Demandit, yf at ony tyme efir he had meditat vpone the wryting of THE THESES, and afor his affixing of the fame, he communicat the matter to ony perfones, or schew þe THESES vnto thame? Depones, that he only reveillit the matter to his oist⁴ in Oxford, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte something quairfof the haill scolleris of Oxford wald schortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyll, and lett no man trouble me. And this was xxiiij houres afor þe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and fend for the deponer within a quarter of ane hour efir the affixing of the fame, and askit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Quhairvpon the Vice-Chancellour fend him prifoner to the Castell of Oxfurde; quhair he was straitlie keptit ten dayis; till the Scottifmenne of the Gaird war fend to bringe him to Courte. Denyis that, during his abode in Oxfurde Castell, he had speiche with ony perfones anent this matter, bot⁵ with his keipparis and vtheris prifioneris; quho askit of him, the cause quhairfoir he was wairdit? To quhome he anfuert, becaus he had writtin some littill thing aganis his cuntrie-men, the Courtiours, advyfeing THE KING to fend some of thame hame.

Depones, that quhen he come to Courte, he was putt in ane Inne, befyde Charing Croce, quhair he flayed thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,⁶ the Marquis

¹ Either. ² High. ³ Than. ⁴ Host; landlord. ⁵ Unless; except. ⁶ Ludovick, second Duke of Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613.) Earl of Newcastle and Duke of Richmond, (May 17, 1623.) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1623, *ætat* 50, without being survived by any of the issue of either of his three marriages.

of Hamiltoun,¹ the Vicount Fentoun,² the Lord Hay,³ and Sir Williame Alexander.⁴ And pat pair-
 after he was convoyed to (a) schip of Prestoun, lyand at Southwark, be Mr Johnne Broun and Patrik
 Logane, Scottisfenne, and be ane Inglishman of the Gaird. M. T. Ros,⁵ with my hand.
 T. W. OLIPHANT.

No. V.

DOCUMENTS RELATIVE TO THE 'EGYPTIANIS,' OR GIPSIES.

[IN many parts of the preceding Volumes, TRIALS have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of EGYPTIANS. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

¹ James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Ennerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *etate* 36.

² Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633.

³ John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646.

⁴ Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623; and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641.

⁵ MR THOMAS ROSS, present Minister at *Cargill*, obtained a GIFT, under the Privy Seal, OF THE VICARAGE OF CARGILL, with the fruits, rents, teinds, &c., and 'with the Manse and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyftyme.'—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606.

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of BOHEMIANS, GITANOS, ZINGARI or CINGARI, ZIGEUNERS, TZINGANYS, GIPSIES, and EGYPTIANS.

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland, Grellmann, &c.*¹ it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's Magazine*, and also in the *Encyclopædias*. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, THE EGYPTIANS uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of KINGS, DUKES, COUNTS, or LORDS of LITTLE EGYPT; from which country they always pretended they had been expelled by the *Saracens*, on account of their RELIGION. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even THE POPE himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of the *Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

' Jul. 17, 1492. Item, to Peter Ker to passé to THE KING² to the Hwnthall,³ to get the Letteris subscrivit to THE KING OF ROWMAIS, iijj f.

' Jul. 19. Item, to THE KING OF ROWMAIS messinger, at the Kingis command, xx li.

' Maij 2, 1501. Item, to *Peter the Moryene*,⁴ quhen he passit his way to France, iij li. x f.

¹ *Hoyland's Survey of the Gipsies*—Grellman. *Hume on Crimes*. *Mackenzie's Obs.* on the Statutes, &c. See also *Acta Parl.*; *Burnet's Hist.* of Reformation, &c. ² JAMES IV. ³ Of Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. ⁴ It appears by other entries in the Records, that this person, and certain '*More laffes*,' were minstrels and servants to the Queen.

‘ Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij f.

‘ Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

‘ Item, for ane ring of gold, fet with ane dyamant, and tua rubyis, in maner of *fleur de lice*, iiij lib.

‘ Feb. 24, 1503. Item, in Drumfreife, to *Peter the Moriene*, ix f.

‘ Dec. 11, 1504. Item, quhen *the More lafs*¹ wes crifinit, gifin to put in the caudill, ix f.

‘ Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

‘ 1530. Item, to THE EGIPTIANIS that danfit before THE KING, in Halyrudhus, xl. f.’

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno 1506.²

ILLUSTRUSSIME, &c. ANTHONIUS GAWINO, EX PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflictæ et miseranda, dum Christianam orbem peregrinationes studio Apostolicæ Sedis (ut refert) jussu, suorum more peregrinans fines nostri regni dudum advenerat, atque in fortis fæe et miseriarum hujus populi, refugium, Nos pro humanitate imploraverat ut nostros limites sibi impune adire, res cunctas, et quam habet societatem libere circumagere liceret. Impetrat facile quæ postulat miserorum hominum dura fortuna. Ita aliquot menses bene et catholice, (sic accepimus,) hic versatus, ad te, REX et Avuncule, in DACIAM transitum parat. Sed Oceanum transmissurus nostras Literas exoravit, quibus celsitudinem tuam horum certiorum redderemus, simul et calamitatem ejus gentis Regiæ tuæ munificentia commenderemus. Ceterum errabundæ EGYPTI fata, moreque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujusmodi hominum frequentia tuo diversatur imperio. Illustrissime, &c.

II. LETTER, under the Privy Seal, by King JAMES V. in favour of ‘Johnne Faw, Lord and Erle of Little Egypt.’³ Feb. 15, 1540.

JAMES, be þe grace of God, King of Scottis: To oure Schereffis of Edinburgh, principall, and within the constabularie of Hadington, Berwik, Roxburgh, Selkirk, Perth, Forfar, Fife, Clakmanane, Kinrofe, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Invernesse, Linlithq^{re}, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigton; Stewartis of Annanderdale, Kirkcudbrycht, Mentelthe, and Stratherne; Baillies of Kile, Carrik, and Cunynghame; and paire deputis; Provestis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadington, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandros, Kincardin, Abirdene, Banf,

¹ Dec. 2, 1512, she is styled the ‘*QUEENS blak madin*,’ and on Feb. 1612-13, ‘*Blak Elene*.’ And on Jul. 19, 1513, ‘*Blak Margarete*’ gets a payment of xlvij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. ² *MS. Reg.* 13. B. 11. Taken from *Pinkerton’s Hist. of Scotland*, quarto, Lond. 1797, vol. ii. p. 444. ³ *Reg. Secr. Sig.* xiv., 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *MacLaurin’s Criminal Trials*.

Elgin and Fores, Narne, Innernese, Linlithq^m, Striuling, Lanark, Glasg^m, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbright, Quhitterne; and to all v^{er}is Sche-
reffis, Stewartis, provestis, aldermenne, and baillies within oure realme, greeting. FORSAMKILL as
it is humilie merit and schewin to ws be oure louit, JOHNE FAW, LORD and ERLE OF LITILL EGIPT;
That quhair he obtenit oure Lettres vnder oure grete seile, direct to 30w, all and findry oure saidis
Schereffis, stewartis, baillies, prouestis, aldermen, and baillies of burrois, and to all and findry v^{er}is
havand autorité within oure realme, to assit to him in executioun of justice vpoun his cumpany and
folkis, conforme to þe lawis of EGIPT, and in punisshing of all þaim þat rebellis aganis him: NEUIR-
PELES, as we ar informyt, SEBASTIANE LALOW, Egiptiane, ane of þe said Johnnis cumpany, with his
complices and pairt-takariss vndir-writtin, þat is to say, ANTEANE DONEA, SATONA FANGO, NONA
FINCO, PHILLIP HATFEYGGOW, TOWLA BAIL30W, GRASTA NEYN, GELEYR BAIL30W, BERNARD
BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE, rebelliss and conspir aganis
þe said JOHNE FAW, and hes removit þame alluterly out of his cumpany, and takin fra him duerse
sovmes of money, jowellis, clathis, and v^{er}is gudis, to þe quantité of ane grete sovme of money, and
on na wyse will pass þame with him, howbeit he has biddin and remanit of lang tyme vpoun þame,
and is bunding and oblit to bring þame with him all þame of his company þat ar on live, and ane testi-
moniale of þame þat ar deid: And als, þe said JOHNE hes the said SEBASTIANIS Obligatioun, maid
in Dunfermling, befor our Maister houssald, þat he and his cumpany suld remane with him, and on na
wyse depart fra him, as the samin beiris. In contrar þe tenour of þe quhilk, þe said SEBASTIANE, be
sinister and wrang informatioun, fals relationne, and circumventioun of ws, hes purchest our writings,
dischargeing him and þe remanent of þe personis aboue writtin, his complices and pairt-takariss of the
said JOHNIS cumpany, and with his gudis takin be þame fra him, caussis certane our liegis assit to
þame and þair opinioun, and to fortify and tak þair pairt aganis þe said JOHNE, þair lord and maister;
sua þat he on na wyse can apprehend nor get þame to haue þame hame agane within þaire awin cuntre,
estir þe tenour of his said Band, to his hevvy dampnage and skaithe, and in grete perell of tynfall of his
heretage, and expres aganis justice. OUR WILL IS HEIRFOR, and we charge 30w straitlie, and com-
mandis, þat, incontynent þir our Letteres sene, 30 and ilk ane of 30w, within þe boundis of 30ur Offices,
command and charge all our liegis þat nane of þaim tak vpoune hand to resset, assit, fortify, supplé,
manteine, defend or tak pairt with þe said SEBASTIANE and his complices aboue writtin, for na
buddis nor v^{er} way, aganis the said JOHNE FAW, þair lord and maister; bot þat þai, and 30, inlikwife
tak and lay handis vpoune þame quhareuir þai may be apprehendit, and bring þaim to him to be pvnit
for þair demeritis, conforme to his lawis: And help and fortify him to pvnis and do justice vpoune
þame for þair trespassis: And to þat effect, len to him 30ure p^{re}sonis, stokis, fetteris, and all v^{er}
thingis necessar þairto, as 30 and ilk ane of 30w, and all v^{er}is oure liegis, will ansuer to ws þairupoune,
and vnder all hieaft pane and charge þat estir may follow; swa þat þe said JOHNE have na caus of
complaynt heirupoune in tyme cuming, nor to resort agane to ws to þat effect, nochtwithstanding ouy
oure writings sinisterly purchest, or to be purchest, be þe said SEBASTIANE, in þe contrar. AND ALS,
charge all oure liegis, þat nane of þaim molest, vex, inquiet, or trouble þe said Johnne Faw and his
cumpany, in doing of þair lesull besynes, or v^{er} wayis, within our realme, and in þair passing, remanyng,
or away-ganging furth of þe famyne, vnder þe pane aboue writtin: And siclike, þat 30 command and
charge all skippers, maisteris, and marinaris of all schippis within oure realme, at all Portis and Ha-
vynnis quhair þe said JOHNE and his cumpany salhappin to resort and cum, to resave him and þame
þairin, upoune þair expenses, for suring of þame furth of oure realme to þe partis bezond sey: As þai
and ilk ane of þame siclike will ansuer to ws þairupoune, and undir þe pane forsaid. SUBSCRUIT with
oure hand, and under oure Priue Seile, AT FALKLAND, þe fiveteine day of Februar, and of oure reigne
the xxvij 30eir.

Subscript. per Regem.

[JAMES R.]

¹ Reg. Sec. Sig. XIV. f. 59.—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Small.

III. PRECEPT to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May 26, 1540.

PRECEPТУM LITERE JOHANNIS WANNE, filii et heredis quondam JOHANNIS FALL, MINORIS EGIPTI COMITIS ac DOMINI, et MAGISTRI EGIPTIORUM, infra REGNUM SCOTIE existens.—DAN. fibi potestatem predictos EGIPTIOS ad fibi obediend. et parend. plectere et punire, &c. APUD ST ANDROS, Maii 26, 1540.¹

IV. ACT of the Lords of Council, relative to JOHN FAW,² &c. Jun. 6, 1541.

THE quhilk day, anentis the complaintis gevin in be JHONE FAW, and his brether, and SEBASTIANE LOWLAW, EGIPTIANIS, to THE KING'S Grace, ilkane plein;eand vpon vther of diverse falsis and iniuris: And that it is agreit among thame to passe hame, and to haue the same decydit before THE DUKE OF EGYPT: The Lordis of Counsaile, being avisit with the pointis of the saidis complaintis, and vnderstanding perfultie the gret thiftis and scathis done be the saidis EGIPTIANIS vpon our foverane lordis liegis, quhaireuer thai cum or resortis: ORDANIS Lettres to be direct to the Provestis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrofe, Aberdene, Sanct-androis, Elgin, Forrefe, and Inuernefe; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forefe, Banf, Crummarty, Inuernefe, and all vtheris Schirefis, stewartis, provestis, and ballies, quhair it happiniss the saidis EGIPTIANIS to refort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherfedomes, to depairt furth of this realme, with their wifs, barnis, and companeis, within xxx dayis efter thai be charget therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avife of the Lordis, hes dischargit the famin, for the causis foirfaidis; with certificatioun, and³ thai be fundin in this realme, the saidis xxx dayis being past, thai salbe tane and put to deid.

V. RESPITE, granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smail.⁴

ANE RESPITT maid to ANDRO FAW, CAPITANE OF THE EGIPTIANIS, GEORGE FAW, ROBERT FAW, and ANTHONY FAW, his sons; for airt and pairt of the Slauchter of umquhile NINIANE SMAILL, fervand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God Im.Vc. liij yeiris, upon suddantie: and for all actioun and cryme that may follow thairpoun: And for the space of xix yeiris to indure. AT LYNLYTHGOW, the xxij day of March, 1553.

VI. RESPITE to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr. 8, 1554.⁵

ANE RESPITT maid to JOHNN FAW, EGIPTIANE, ANDRO GEORGE, NICHOLAH GEORGE, SEBASTIANE COLYM, GEORGE COLYM, and others EGIPTIANIS, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. AT LYNLYTHGOW, Apr. 8, 1554.

VII. ACT of Privy Council, 'anent some Egiptianis.' Nov. 10, 1636.⁶

APUD ED⁸, 10 Novembris, 1636. FORSAMEIKLE AS SIR ARTHURE DOUGLAS of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut thieves and limmars, callit EGIPTIANIS, he presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburgh, within the constabularie of Hadington, quhair they have remained this month, or thairby; and

¹ This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date. ² *Acta Dom. Con.*, XV., 155. ³ If; an. ⁴ *Reg. Secr. Sig.*, XXVII., 3. ⁵ *Reg. Secr. Sig.*, XXVII., 36. ⁶ *Reg. Secr. Concilii*.

qubairas, the keeping of thame longer within the said Tolboith, is troublefome and burdenable to the town of Hadington, and fosters the saids thieves in ane opinion of impunitie, to the incourageing of the rest of that infamous byke¹ of lawles limmars to continow in thair theivish trade: THAIRFOIR, the Lords of Secret Counsell ORDANS the Shireff of Hadinton or his deputs to pronounce DOOME and SENTENCE OF DEATH aganis so manie counterfoot Theives as ar men, and aganis so manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that sучe of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and Brunt in the cheeke: And Ordanis and commandis the Proveit and Baillies of Hadinton to caus this doome be execute vpon the saidis perfons accordingle.

No. VI.

OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF THE CEREMONIES, &c.
(See Vol. III., p. 558.)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections*, on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphingstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,³ *Mr Alexander Coluile, Justice-Depute, to Viscount Annan.*³
Dec. 20, 1622.

RIGHT HONORABLE,

YOUR Lo. shall be advertiffed that he who is presentlie JUSTICE CLERC, (*the Lard of Ormestoun*,) is so afflicted with extreame aage, blindnes, and vther infirmities, that he is altogether disinabled ather to walk abrod, or discharge his place; and by all appearance, is not long to survive. And becaufe it concernes me so neir, that seruis HIS MA^{TIES} as Justice deput, to be veil or ewill yoked,⁴ in cace it pleis God that I liwe, I haue adventured thir few lynis, being confident of your lo. goodnes, that HIS MA^{TIES}, by your lo. informationn, might be the better prepared aganis the impourtunie of vnfit futurs⁵ for that place (of Justice clerk), quhilk aucht nocht to be giwen to thois that futt⁶ it, bot to thois that

¹ Usually applied to denote a hive or nest of wasps, wild bees, or hornets.

² *Denmylne MSS.* Adv. Library.

³ Sir JOHN MURRAY, a *protégée* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created VISCOUNT OF ANNAND, and Lord Murray of Lochmaben; and afterwards EARL OF ANNANDALE, Mar. 13, 1624-5. ⁴ Well or ill yoked; having a good or bad partner, or coadjutor. ⁵ Suitors; applicants. ⁶ Petition for.

ar vorthlie of it. And as the lywis of men ar mor pretious then their goods, fo lett the vorthlines of him be respected, to quhome the lywis of men ar to be trusted; for if he quho is to be inclofed with Affyfors, (quha for the most ar rud and ignorant,) depending much vpon THE (Lord Justice) CLERC his informatioun; if he, I say, be not a found conscientious man, and frie of baife bribrie, he may prow a pernicious instrument, and be the cawfe that iniquitie may be committed; as wee haue zit in memorie, of on THOMAS SCOT of *Abotishall*, quho was Justice Clerk to KING JAMES THE FYFT, of happie memorie, quho being strukin with a terror of conscience, at the hour of his death, for his ewill cariage in that place, dyed in disperatioun, crying, 'I am damned! I am damned!' Zit among all vperis, 30ung men, and men of great CLANNIS ar most dangerous for that place. Ceasing farther to fache 3our lo. earis, and referring all to 3our lo. prudence; vishing, that, by a happie election of such ane Officiar, God may gett glorie, HIS MA^{TIE} contentment, and the people securitie, by getting right quhen their lywes shall be in question, and 3our lo. praise and thankis for being a good instrument. Thus, resting confident that 3our lo. will tak my boldnes in good part, I rest,

Your lo. affectioned and humble feruitour,

ED^S, 20 Dec. 1622.

A. COLVILLE.

To the right honorable his speciall good lord, MY LORD VICOUNT OF ANNAN.

II. EXTRACT from the Books of Adjournal, Dec. 2, 1625.

(Dec. 2, 1625.)—SIR GEORGE ELPHINSTOUN of Blythifwoid, kny^t, ane of the Lordis of his Maiesteis Previe Counfall, product ane Gift, grantit to him be our lait fouerane lord, James the saxt, of most happie memorie, vnder his hienes Previe Seill, off THE OFFICES of 'CLERK of OUR JUSTICIARIE GENERAL, AND MAISTER of CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther soleme Assembles, quhair honourable Ceremoneis ar accustomed and necessar to be vsed, within this our said Kingdome of Scotland.—Quhilkis Offices ar now vacand in our handis and at our gift and dispositioun, be dimissoun maid thair of in our handis be SIR ARCHIBALD NAPER of Merchitoun, kny^t, thesaurer deput of our said kingdome of Scotland.' Dated 'AT BISSAME, the nyne and tventie day of August, the 3eir of God 1624, and of our regne the 58 and 22 3eiris.'

The said Sir George gaif his aithe *de fidei administratione* in the said Clerkship of Justiciarie, in prefrence of the said Justice depute.

No. VII.

REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had sufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,¹ may be here briefly noted, that 'no fewer than *fourteen* Commissions² for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'de-laited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.³ He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that fum wemen wer tane in *Broichtoun*, as WITCHES; and being

¹ HUME on *Punishment for Crimes*, II., 559.

² Granted by the Lords of Privy Council.

³ *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State*, *Lord Advocate*, *President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.

put to ane Assyfe,¹ and convict, albeit thay perfeverit constant in thair denyell to the end, zit *thay wer BURNIT QUICK,² eftir sic ane crewell maner, that sum of thame deit in despair, renunceand³ and blasphemend; and vtheris, HALF BRUNT, brak out of the fyre, and wes cast in QUICK in it agane, quhill⁴ thay wer brunt to be deid.*

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL'S time. The infamous proceedings, publicly authorized, of HOPKINS *the Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,⁵ it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

¹ Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. ² ALIVE; i. e. without having been previously 'wirreit,' or strangled. ³ Renouncing their baptism. ⁴ Until. ⁵ LETTERS on Demonology and Witchcraft, by *Sir Walter Scott, Bart.* Lond. 1830.

nations of Europe, they will by many be deemed, in some measure at least, of historical importance; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. DEPOSITION of *John Kincaid (Witch-finder)*,¹ relative to the *Devil's mark found on Patrik Watfou and Manie Haliburton*.²

AT DIRLTON,³ of 3eiris. The quhilk day, in preefence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johne Stalker, bailzie thair, James Foirman, Drem, Mr James Achefon, in North Beruik, and Williame Daliell, notar, PATRIK (WAT)SON, in West Fentoun, and MENIE HALLYBURTON, his spous, bruided and long suspect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johne Kincaid*, vnder subfcryvand, wes in the toune of *Dirltone*, and had some skill and dexteritie in trying of THE *DIVELLIS marke*, in the perfonis of fuch as wer suspect to be WITCHES, came to the *Broadhall*, in the *Castell of Dirlton*, and defyrit me, the said *Jo. Kincaid*, to vse my tryall of thame, as I had done on vtheris; whilk when I had done, I fand the *Divellis marke* vpon the bakfyde of þe said PATRIK WATSON, a little vnder the point of his left shoolder, and vpon the left fyde of the said MENIE HALLYBURTON hir neck, a little aboue hir left shoolder; whairof thay war not sensible, nether came furth pair of any bloode, efter I had tryed the famen als exactlie as euer I did any vthers. This I testifie to be of veritie, vpon my credite and confcience. IN witness quhairof, I have subfcryvit thir presentis with my hand, day and place foirsaid, befor thir witnessis aboue spicfeit.

(Sic subscritur.) J. K. ALEX. LEVINGTON, witness. JA. BORTHUIKE, witness.
JOHNE STALKER, witness. JAMES FORMAN, witness. M. J.
ACHESONE, witness. W. DALIELL, witness.

(Indorfed.) Testificat of J(ohne Kincaid), finding the witches mark vpon Manie Haliburtonne.

II. CONFESSION of *Manie Haliburton*.⁴

AT DIRLTON, the 5. of, 1649. In preefence of Johne (Stalker) bailzie of Dirlton, James Levington, thair, Joⁿ in Lawhill, thair, James Speir, Richard Fergusson, Wa. Hanady, and Wa. Daliell. Compeirit MANIE HALLYBURTON, prifoner within the *Castell of Dirlton*, suspect of the cryme of Witchcraft, dilaited guiltie be AGNES CLERKSON, lait fufferrar for the said cryme, as also be PATRIK WATSON, spous to the said Menie, who lykevyfe sufferit thairfoir; and confessit, that auchtein yeir fyne, or thairby, hir dochtir being seik, scho first sent for *Patrik Cryffifone in Abirladie*, to cum and cure hir dochter, and he refusing, went hirself for him, who refused to cure hir; and within 5. dayis thairefter came the DEVILL, in likenes of a man, to hir hous, calling himself a phifition, and said to hir, that he had goode salves (and namelie oylispek⁵) whairwith he wold cure hir dochtir; and aggrieng with him for some of his salves, quhilk he gave hir, sho gave him tuo Inglis shillingis: He than departed, and promised to come agane within eight dayes, whilk accordienglie he did; bot or⁶ he went away the first tyme, sho gave him milk and breade; and *Patrik Watfou* coming in, he sent for a pynt of Ale: Bot at the second coming, he flayit all night, and vpon the morne airlie (*Patrik* being furth) in came the DIVELL and lay down with hir, (scho being 5it in bed), and had carnall copulation with hir, his nature being cold: He defyreit hir to renounce Christ and hir baptisme, and become his servand; quhilk scho did: And sayes, that hir dochter had

¹ From Original, in General Register House, Edinburgh. ² He is elsewhere designed 'the common pricket.'
³ Obliterated in Orig. ⁴ From Orig. Gen. Register House. ⁵ Obliterated. ⁶ Left blank in Orig.
⁷ Oil of spike or spikenard. ⁸ Ere; before.

the wyte¹ of all hir wicid(nefs);² wiffing fho had nevir bene borne.—THIS Deposition was renewed, in all the particulars, by the said *Manie*, in the forsaid place, on Sunday the first of Julij, 1649, before Alex^r Levington of Saltcotts, James³., Johne Stalker,, W^m Dalieil, and Mr Joⁿ M^cGhill, minister at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTON, witness; J. BORTHUIK, JAMES LAUDER, JOHNNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, AT HADINTOUN. Whilk day, THE PRESBITERIE, having red and considered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, find the fameyne a sufficient ground for futing⁴ the Judge competent to grant a Commission for trying and judging her according to Law.

J. STIRLING, Cl^k.

III. ACT OF PRIVY COUNCIL *anent Geillis Johnnstoun, suspected of the crime of Witchcraft.*⁵

ANENT our fouerane lordis Letteris, readit at the instance of GELIS JOHNNSTOUN, relict of v^mquhill Johne Dunecane in Muffilburgh, makand mentioun, That quhair some malicious perfonis, hir vnfreindis, haucing dilaitit her to THE PRESBITERIE OF DALKEITH, as a person suspect of WITCHCRAFT, the said Pr^sbiterie hes thairvpon conuenit hir before thame, and hes haldin hir in proces before them, thir fevin oulkis⁶ bigane; albeit it be of veritie, that the said complenar is ane honest woman, who hes levit thir threttie yeiris in the toune of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir suspected nor bruted⁷ with ony fuche deuelifche and detestabil doingis; and fcho hes at all tymes presentit hir self before the said PR^sBITERIE, quhan they callit for her self to thair tryall-examinationis, and quhatfumeir forme of procedoure they pleast vs^e aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Crowne, proper to be tryit before his Maiesteis Justice and his deputis, and quhairin the said PR^sBITERIE can haue no warrand, auctoritie, nor iurisdiction to cognosce or determine, neuirtheles, thay continewalle fache⁸ the said complenar with citations and summondis to compeir before thame, purpoissie, as appeiris, to bring hir fame, credite, and reputatioun in questioun, and to lay vpoun hir this foull and havi^e slander of fa detestable a cryme, quhairof fcho is most innocent; and gif thay had ony presumptionis aganis the complenar of hir guiltynes of the said cryme, thay sould haue gevin informatioun thairof, outbir⁹ to THE LORD OF REGALITIE quhair fcho duellis, before quhome the said complenar hes fund caution to be anfuerable for this fame deid, quhanevir fcho salbe callit; or then, to his heynes JUSTICE GENERAL and his deputis; and sould haue concurrit, be thair informatioun, to the persute of hir, and sould not haue vsit fuche a prepofterous forme of proceeding before thame selfis, quhich can produce na kynd of sentence nor determinatioun. In respect quhairof, THE MINISTERIS of the said PR^sBITERIE aucht and sould be dischargit of all proceeding aganis the said complenar, in the mater above writtin, for the causis foirsaids. AND anent the charge gevin to Mr Andro Blakhall, Minister at Innesk; Mr Patrik Turnour, Minister at Borthuik; Mr William Penman, Minister at Creichtoun; Nathaniell Harlaw, Minister at Ormestoun; Mr Alexander Ambroise, Minister at Newbotle; Mr Johne Nymbill, Minister at Cranstoun; and Mr George Ramsay, Minister at Lesswaid; all MINISTERIS of THE PRESBITERIE OF DALKEITH, being conuenit for the tyme within the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, sufficientlie instructit, for the rest, before THE LORDIS OF SECRETIE COUNSALE, this present day, to haue hard and sene thame dischargit of all proceeding aganis the said complenar in the mater foirsaid, and of thair officis in that part: Lyke as, at mair lenth is contenit in the saidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the said persewar com-

¹ Blame. ² Wickedness. ³ Obliterated.
General Register House, Edinburgh. ⁶ Weeks.

⁴ Suing; petitioning.

⁷ Reported.

⁵ *Acta Secreti Consilii*,

⁸ Trouble.

O. Fr. *fischer*. ⁹ Either.

peirand, be William Duncane hir sone, and Mr George Ramfay, Moderatour of the Presbiterie of Dalkeith; Nathaniell Harlaw, Minister at Ormeistoun; Mr Patrik Turnour, Minister at Borthuik; and Mr William Penman, Minister at Creichtoun; with some vtheris of the said Presbiterie being personallie present, the reasonis and allegationis of the parteis present being hard and confidit be the Lordis of Secrite Counsaile, and thay rylie aduifit thairwith, the Lordis of Secrite Counsaile DISCHARGEIS the Ministeris of the said Presbiterie of all proceeding aganis the said Gelis Johnnstoun, in the mater foirsaid, and of all thair officis in that pairt; and REMITTIS the said Geillis to be perfwit and tryit, outher before the Justice-Generall and his deputis, or before the Lord of the Regalitie of Dunfermling, as accordis of the Law; but¹ prejudice alwyfe to the said Presbiterie to vse all ordinar and lauchfull meanis, quhairly thay may get tryall, be vtheris, of the said Gelis Johnnstoun hir practiceis and dealing in the said cryme of Witchcraft; and to gif informatioun thairof to the said Justice Generall and his deputis, or to the Lord of the Regalitie of Dunfermling and his deputis, before quhome justice salbe ministrat, conforme to the lawis of this realme.

IV. CONFESSION of *Jonet Watfone*; and *Notices relative to Christiane Wilfone and Jonet Paisfoun, all accused of Witchcraft, June 1661.*²

JONET WATSONE confessed, that in Apryle last bypast, or thairby, shoo being at the buriell of the *Lady Dalhousie*,³ ther was ane rix-dollar given to *Jean Bughane*, to be pairted among a certain number of poore folks, wherof shoo was one. And the said *Jean Bughane* did run away with the said money, so that schoo gott no pairt of it. And schoo come home to hir awne houfe, being verrie grieved and angrie at it, wised to have a mendfe of *Jean Bughane*. Vpone the which THE DEIVILL apeired vnto her, in the liknes of *ane prettie boy, in grein clothes*; and asked, 'What aild her? And what amendfe shoo wold have, he should give her?' And at that tyme THE DEIVILL gaive hir his markis; and went away from her in the liknes of *ane blak doug*:—And constantlie, for three dayis thairefter, ther was a *great bee* come to her; and vpon ane morning, when shoo was cheinging her schirt, it did fit down vpon her shoulder, (shoo being naked,) wher shoo had one of the markis.

As also, about the tyme of the last Baillie-flyre night, shoo was at a Meitting in *Newtoun-dein* with THE DEAVILL, who had *grein clothes* vpon him, and ane blak hatt vpon his head; wher schoo denyd Christ, and took her self to be the seruant of THE DEIVILL. Wherfor shoo acknoeledged that schoo was, from her heart, forrowfull for the doeing of it. And likewise, he then gave her a new name, and called her 'WEILL-DANCING JENOT'—and promised her money at the next Meitting.

And also, that vpon ane vther night, THE DEIVILL was verrie heaue vpon her in her bed. As also, schoo confessed that *Bessie Moffit*, *Elypeth Grahame*, and *Jenet Mikelyohn* come to her houfe, and tooke her away to that Meating; when they all danced together: At which tyme, when schoo renounced her baptisime, THE DEIVILL laid his hand vpon her head, and bad her 'give all ower to him that was vnder his hand,' and shoo did so. Quhilk haill premiffes shoo confessed, in presens of the vnder subfcryvers, without compulsione.

W. CALDERWOOD, (Minister of Dalkeith,) WILLIAME SCOTT, (Baillie of Dalkeith.)

AND. MACMILLONE, witness. ROB^t HARDIE, witness. JOHNE FOORD, witness.

HENRIE WILSONE, witness. JA. CALDERWOOD, witness. ALEX. A: D DICKSONES mark.

WILLIAM BRYSON, witness. JA. VTERSIDE, witness.

¹ Without. ² Original in *MS. Coll. of Society of Antiquaries of Scotland*. This Proof was led under a Commission, June 6, 1661, 'direct be the KINGIS MAJESTIE, with consent of the Estaitis of Parliament,' to Sir William Murray of Newtoun, Sir James Richardson of Smeiton, Patrick Scott of Langschaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. ³ LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of *William, Lord Ramsay*, created *Earl of Dalhousie*, June 29, 1633.

V. DEPOSITION *as to the Devil carrying off a Witch in a Whirlwind, &c.*

AT DALKEITH, the 10 of Junii, 1661.—THE quhilk day, WILLIAM SCOTT, Bailiffe, having ordaind some of the neighbours in the toune of Dalkeith to be in redines, the morrow efter, for guardinge of CHRISTIANE WILSONE, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, said to JENNOT COOKE,¹ that he wes 'goeing the morrow to convoy the said CHRISTIANE to Nidrie,' as afoirsaid, and that he wold goe and mak his gun cleane, for that purpose; to the which Jennot answered, 'Will not yow think it a sport, if THE DEIVILL raise a whirrell of wind, and tak her away from among yow by the gette² the morrow!' And it fell out, that in passing a burne,³ when they wer nigh Nidrie, their arose futeche a sudden tempest of wind, which was like to blow the compagnie off their foot—and it did blow the said Christiane Wilfone down in the water . . . , so that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. WITNESSES, Johne Stevin, James Wilfone, candill maker, Thomas Richardfone, wright, Bessie Waker, Jonett Bruntoun, and James Blaikie, baxter.⁵

JOHNE STIWENE, witnes. James I. W. Wilfones mark.

VI. DEPOSITION *of John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paistoun.*

DALKEITH, 17 Junij, 1661.—THE quhilk day, JONET PAISTOUN, being dilaitit, as is afoirsaid, THE MAGISTRAT and MINISTER caused *Johne Kincaid*,⁶ in Tranent, *the comon pricker*, to prik her—and found two marks upon hir, which he called THE DEVILL his markis, which apared indeid to be so, for shoe did nather find the prein⁷ when it was put into any of the said markis, nor did they blood when they were takin out again. And quhan shoe was asked, 'Quhair shoe thocht the preins wer put in?' Shoe pointed at a pairt of hir body distant from the place quhair the preins wer put in—they being preins of *thrie inches*, or pairabout, in lenth. Quhilk *Johne Kincaid* declairis upon his oath, and verifies by his subcription to be true. WITNESSES pairto, Mr W^m Calderwood, Minister at Dalkeith, and Williame Scott, Bailze: Martin Stevinsone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. CALDERWOOD, Minister. WILLIAME SCOTT, Bailzie.

MARTIN STEVENSON, Elder. THOMAS CALDERWOOD, Elder.

VII. CONFESSIONS *of Issobell Gowdie, spous to John Gilbert, in Lochloy.*

(1.) ISSOBELL GOWDIES FIRST CONFESSION.

AT AULDERNE,⁸ the threttein day of Aprill, 1662 yeiris. IN PRESENCE OF MASTER HARIE FORBES, Minister of the Gospell at Aulderne; WILLIAM DALLAS of Cantrey, Shereffe deput of the shereffdom of Nairne; THOMAS DUNBAR of Graing; ALEXANDER BRODIE, Y^r of Leathin; ALEXANDER DUNBAR of Boath; JAMES DUNBAR, appearant therof; HENRIE HAY of Brightmanney; HEW HAY of Newtowne; WILLIAM DUNBAR of Clune; and DAVID SMITH, and JOHNE WEIR, in Aulderne; WITNESSES to THE CONFESSION efter specifreit, spokin furth of the mouth of ISSOBELL GOWDIE, *spous to Johne Gilbert, in Lochloy.*

THE quhilk day, in presence of me, JOHNE INNES, *Notar Publict*, and Witnesfes abownamet, all vnder subferywand, the said ISSOBELL GOWDIE, appeiring penitent for hir haynows finnes of Witch-

¹ Another Confessing Witch.

² By the way.

³ Rivulet.

⁴ Obliterated—but it looks like '*streyne*.'

⁵ Baker.

⁶ The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence.

⁷ A long pin, or bodkin, which this fellow used for pricking.

⁸ A Parish and Burgh of Barony in the Shire of Nairne, on the Murray Frith.

craft, and that sho haid been ower lang in that service; without ony compulsitoris,¹ proceedit in hir CONFESIONE, in maner efter following, to wit. As I wes goinge betuix the townes² of *Drumdewin* and the *Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him; and I promeisit to meit him, in the night time, in the *Kirk of Alderne*; quhill I did. And the first thing I did ther that night, I denyed my baptisme, and did put the ony of my handis to the crowne of my head and the vther to the sole of my foot, and then renuncet all betuixt my two handis, ower to the *Divell*. He wes in the Readeris dask, and a blak book in his hand.³ *Margret Brodie*, in *Aulderne*, held me vp to the *Divell* to be baptisfed be him; and he marked me in the shoulder, and fuked owt my blood at that mark, and spowted it in his hand, and, sprinkling it on my head, said, 'I baptise the, JANET, in my awin name!' And within a quhill we all remooved. The nixt tym that I met with him wes in the *New Wardis of Inshoch*, and haid carnall cowpulation and dealing with me. He wes a meikle, blak, roch⁴ man, werie cold; and I found his nature als cold wthin me as spring-wall-water. Somtymes he haid buitis and fومتymes shoes on his foot;⁵ but still his foot ar forked and cloven. He vold be fومتymes with ws lyk a deer, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,⁶ in *Belmakeith*, *Douglas*, and I my self, met in the *Kirk-yaird of Nairne*, and ve raised an vchristened child owt of its greaff; and at the end of *Breadleyis* corn-field-land, just opposit to the *Milne of Nairne*, we took the said child, with the nailis⁷ of our fingeris and toes, pikles of all fortis of grain, and blaidis of keall,⁸ and haked⁹ thaim all verie small, mixed altogether; and did put a pairt therof among the muck-heapes¹⁰ of *Breadleyes* landis, and therby took away the fruit of his cornes, &c.; and we paired it among two of our COEVENS.¹¹ When we tak cornes at *Lambes*,¹² we tak bot about two sheaves, whan the cornes ar full; or two stokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew:¹³ And it may be, we will keep yt while *Yewell* or *Pace*,¹⁴ and than devyd it amongit ws. Ther ar thretten perfones in my COVEN.¹⁵

The last tyme that ovr COVEN met, we, and an vther COVEN, wer dauncing at the *Hill of Earlsfeat*; and befor that, betuixt *Moynes* and *Bowgholl*; and befor that we ves beyond the *Meikle-burne*; and the vther COVEN being at the *Downie-hillis*, we went from beyond the *Meikle-burne*, and went befyd them, to the howffis at the *Wood-end of Inshoch*; and within a quwhill went hom to our howffis. Befor *Candmas*, we went be-east *Kinloffe*, and ther we yoked an plewge of paddokis.¹⁶ THE DIVELL held the plewgh, and *Johne Younge* in *Mebeflowne*, our Officer, did drywe the plewgh. Paddokis did draw the plewgh, as oxen; quwickens wer fowmes,¹⁷ a riglen's horne wes a cowter,¹⁸ and an piece of an riglen's borne wes an fok. We went two feuerall tymes about; and all we of the COVEN went still wp and downe with the plewge, prayeing to THE DIVELL for the fruit of that land, and that thiftles and brieris might grow ther.

When we goe to any honis,¹⁹ we tak meat and drink; and we fill wp the barreillis with ovr oven²⁰

¹ Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession; but that she came forward, and voluntarily made her Declaration, bewailing her former offences. ² Farmsteadings.

³ It is a singular circumstance, that in almost all the CONFESIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through.

⁴ Rough; hairy; *hirsute*. ⁵ Throughout this Confession, *foot* is used for *feet*. ⁶ See her Confession, which follows this, (No. VIII.) ⁷ Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of. ⁸ *Kail-blades*; the leaves of colewort. ⁹ *Hacked*; chopped. ¹⁰ Dung-heaps; *middens*.

¹¹ Companies; Witches' Conventicles. Perhaps from Lat. *convenire*. The word *cove* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *clum*, or companion, &c. ¹² *Lammas*: 1st August.

¹³ This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil apparently bore only straw and empty ears; but the real produce was, in due season, conveyed to the barns of the enchanter. The milk of a dairy was taken by means of a hair tether, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by 'milking the tether!' Another method is afterwards recited in this CONFESION. ¹⁴ Until Christmas or Easter. ¹⁵ The number *thirteen* is still proverbially called 'the Devil's dozen,' in Scotland. ¹⁶ Yoked a plough of frogs. ¹⁷ Dog-grass, or *quick-grass*, served for *sowmes* or *soams*; being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The *soyme* (*soyme*) was fastened by a hook to the *soule* or *sole* (swivel.) ¹⁸ The coulter of the plough was formed of the horn of a half-castrated ram, called a *riglen*; q. d. a *ridglet-ram*. ¹⁹ Enter by stealth. ²⁰ *Awin*; *owm*.

pith again; and we put boofomes¹ in our beds with our husbandis, till ve return again to them. We wer in the *Earle of Murreyes*² hous in *Deruway*, and ve gott anewgh ther, and did eat and drink of the beif, and brought pairt with ws. We went in at the windowes. I haid a little horfe, and wold say, 'HORSE AND HATTOCK, IN THE DIVELLIS NAME!' ³ And than ve wold flie away, quhair ve wold, be ewin⁴ as frawes wold flie wpon an hie-way. We will flie lyk frawes quhan we pleas; wild-frawes and corne-frawes wilbe horfes to ws, and ve put thaim betwixt our foot, and say, 'HORSE AND HATTOCK, IN THE DIVELLIS nam!' An quhan any fies thes frawes in a whirlwind, and doe not fancitife them felues,⁵ we may thoot them dead at owr pleasour. Any that ar shot be vs, their fowell will goe to Heven, bot thier bodie remains with ws, and will flie as horfis to ws, als small as frawes.⁷

I was in the *Downie-hillis*, and got meat ther from THE QUEIN OF FEARRIE, mor than I could eat. The *Quein of Fearrie* is brawlie clothed in whyt linsens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weil favoured, and broad faced, &c.⁸ Ther wes elf-bullis rowting and skoylling wp and downe thair, and affrighted me.⁹

¹ *Besoms*; brooms. ² Alexander Stewart, fourth Earl of Moray. ³ THE following remarkable circumstances were communicated to the ingenious *John Aubrey, Esq., F.R.S.*, by one *Stewart*, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, *Stewart* states, he had it, and that his lordship had it from his father, *Alexander*, first *Lord Duffus*, who had, in like manner, heard the tradition from *William Sutherland of Duffus*, grandfather of *James, Lord Duffus*, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of *Isobel Gowdie* and *Janet Breadhead*, in reference to this branch of FAIRY SUPERSTITION. As *Aubrey's* work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

⁴ As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in the *shire of Murray*) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at *Paris*, in the FRENCH KING'S cellar, with a silver cup in his hand. That, being brought into the KING'S presence, and questioned by him, "Who he was?"—and "how he came thither?" He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying "HORSE AND HATTOCK!" (this is the word which the FAIRIES are said to use when they remove from any place); whereupon he cried "HORSE AND HATTOCK!" also; and was immediately caught up and transported through the air, by the FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

⁵ This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present *Lord Duffus's* opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. *There is yet an old silver cup in his lordship's possession still, which is called "THE FAIRY CUP,"*—but has nothing engraven upon it except the arms of the Family.

⁶ The gentleman by whose means I came to know the *Lord Duffus's* sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in the town of FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in the Churchyard, before the door of the Church. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, "HORSE AND HATTOCK WITH MY TOP!" And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. *Mr Stewart* (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.—*Aubrey's Miscellanies*, p. 209.

⁷ Like; even as; in like manner as. ⁸ And; if. ⁹ The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other. ¹⁰ The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions. ¹¹ It is a thousand pities that the learned Examiners have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of *Isobel Gowdie*, much might have been learned of FAIRY-LAND and its Mythology. ¹² It is evident that *Isobel's* gossiping had again been cut short here, as irrelevant. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any coves milk, we pull the tow, and twyn it and plaitt it in the wrong way, in *the Divellis* name; and we draw the tedder (sua maid) in betuixt the coves hinder foot,¹ and owt betuixt the coves forder foot, in *the Divellis* name; and therby tak with ws the koves milk. We tak sheips milk ewin so. The way to tak or giev bak the milk again, is to cut that tedder. When we tak away the streth of anie perones eall,² and givies it to an vther, we tak a litle quantitie owt of each barrell or stand of eall, and puts it in a stowp, in *the Divellis* nam; and, in his nam, with owr awin handis, puttis it amongt an vtheris eall, and givies her the streth and substiance and heall of hir neighbouris eall. And to keip the eall from ws, that we haue no power of it, is to sanctifie it veill. We get all this power from *the Divell*; and when ve feik it from him, ve call him 'owr LORD!'

Johne Taylor and *Janet Breadhead*, his wyff, in Bellnakeith, *Bessie Wilfone*, in Aulderne, and *Margret Wilfone*, spows to *Donald Callam* in Aulderne, and I, maid an pictur of clay, to distroy the *Laird of Parkis* meall³ children. *Johne Taylor* browght hom the clay, in his plaid newk;⁴ his wyff brak it verie small, lyk meall,⁵ and sifted it with a fiew,⁶ and powred in water among it, in *the Divellis* nam, and vrought it verie fore, lyk rye-bowt;⁷ and maid of it a pictur of *the Lairdis* fones. It haid all the pairtis and merkis of a child, fuch as heid, eyes, nose, handis, foot, mouth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its sydes. It was lyk a pow,⁸ or a flain gryce.⁹ We laid the face of it to the fyre, till it strakned;¹⁰ and a cleir fyre round about it, till it ves read lyk a cole.¹¹ After that, we wold rost it now and then; each other day¹² ther wold be an piece of it weill rosten. *The Laird of Parkis* heall maill children by it ar to suffer, if it be not gotten and brokin, als weill as thes that ar borne and dead alreadie. It ves fill put in and taken out of the fyre, in *the Divellis* name. It ves hung wp wpon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay about it.* Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Bessie* and *Margret Wilfones* in Aulderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent¹³ all of it, at owr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and owr poweris quilk we haid befur we wer takin, both.¹⁴ Bot now I haw no power at all.

Margret Kyllie, in, is on of the vther COVEN, *Messie Hirdall*, spows to *Alexander Ross*, in Lonheid, is on of thaim; hir skin is fyrie. *Iffobell Nicoll*, in Lochley, is on of my COEVEN. *Alexander Elder*, in Earleseat, and *Janet Finlay*, his spows, ar of my COEVENS. *Margret Hasbein*, in Moynes, is on; *Margrat Brodie*, in Aulderne, *Bessie* and *Margrat Wilfones*, thair, and *Jean Marten*, ther, and *Elfpet Njstie*, spows to *Johne Mathow*, ther, ar of my COVEN. The said *Jean Mårten* is MAIDEN¹⁵ of owt COVEN. *Johne Young*, in Mebestowne, is OFFICER to owt COEVEN.

Elfpet Chifsholme and *Iffobell More*, in Aulderne, *Magie Brodie*,, and I, went in to *Alexander Cumings* litt-hows,¹⁶ in Aulderne. I went in, in the likenes of a kea,¹⁷ the said *Elfpet Chifsholm* wes in the shape of a catt. *Iffobell Mor* wes a hair, and *Magie Brodie* a catt, and¹⁸ We took a threid of each cullor of yairne that wes in the said *Alexander Cuming* his litt-fatt,¹⁹ and did cast thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, witherfones²⁰ abowt in the fatt, in *the Divellis* name; and thairby took the heall freth of the fatt away,

¹ Feet. ² Strong ale. ³ Male. ⁴ In the nook, or corner, of his plaid. ⁵ Pounded, or powdered it, like meal. ⁶ To make the plaster fine, and free from earthy particles. ⁷ Probably a sort of stir-about, or hasty-pudding, made of rye-flour. ⁸ In another Deposition it is thus expressed, 'lyk a pow or feadge.' A feadge was a sort of scone, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread. ⁹ A flayed sucking pig, after being scalded and scraped. ¹⁰ Shrivelled with the heat. ¹¹ Red like a coal. ¹² Each alternate day. ¹³ Knew. ¹⁴ This is something new in Witch stories, and lets in additional light on these charms. ¹⁵ Each COVEN appears to have had an OFFICER for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them, or to act as messengers, to call them together, does not seem so certain. ¹⁶ Dye-house. ¹⁷ Jackdaw. ¹⁸ This and the preceding spaces are left blank in the Deposition. ¹⁹ Dying-vat. ²⁰ *Widdershins*, contrary to the direction and ordinary course of the sun.

that it could litt nothing bot onlie blak, according to the color of *the Divell*, in quhoes nam we took away the strenth of the rycht colouris that wes in the fatt!

ALL quhilkis of the premisses, swa spokin and willinglie Confest and declairit furth of the mowth of the said *Iffobell*, in all and be all things as is abow fett downe, I, the said *Johne Innes*, Notar Publict, haw writtine thir prententis; and with the saidis Witnesse abow namet, in farder testimonie and witnessing of the premisses to be of writie, We haw subfcrywit the famen with our handis, day, yeir, and place aboue specifeit.

JOANNES INNES, Notarius Publicus.¹

MR HARY FORBES, Minister at Auld Earn, Attestis.

W. DOLLAS of Conrany, Shereff-deput, Attestis.

A. BRODIE, witness to the said Confessione.

HEN. ROSE, Minister at Nairne, Attestis the forsaid

HEW HAY of Newtown, Attestes.

Declaratione, as to the principal substantialis.

W. SUTHERLAND of Kinterie, Attestis these Confessionis.

GEORGE PHINNE, in Kirkmichael, Attestis.

Jo. WEIR, in Aulderne, Attestis.

(2.) ISSOBELL GOWDIES SECOND CONFESSION.

ATT AULDERNE, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efternoone, or therby: IN prefrence of MASTER HARRIE FORBES, &c.²

THE quhilk day, in prefrence of me, *Johne Innes*, Notar Publict, and Witnesse, all vnder-subfcrywand, the said ISSOBELL GOWDIE, professing repentance, &c.³ Efter that tym ther vold meit bot fomytmes a COVEN, fomytmes mor, fomytmes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is threttein perfonen⁴ in ilk Coeven; and ilk on of vs has an SPRIT to wait wpon ws, quhan ve pleas to call wpon him. I remember not all the Spritis names; but thair is on called 'SWEIN;' quhilk waitis wpon the said Margret Wilfson in Aulderne; he is still⁵ clothed in grafs-grein; and the said Margret Wilfson hes an nirknam called, 'PRKLE NEIREST THE WIND.' The nixt Sprit is called 'RORIE,' who waitis wpon Bessie Wilfson, in Aulderne; he is still clothed in yellow; and hir nirkname is 'THROW THE CORNE YAIRD,' [.].⁶ The third Sprit is called 'THE RORING LYON,' who waitis wpon Iffobell Nicoll, in Lochlow; and [he is still clothed] in sea-grein; her nirkname is 'BESSIE RULE.' The fourth Sprit is called 'MAK HECTOR,' quho [waitis wpon Jean] Martein, dawghter to the said Margret Wilfson; he is a yowng-lyk Devill, clothed still in grafs-[green. Jean Martein is] MAIDEN to the Coven that I am of; and hir nirkname is 'OVER THE DYKE WITH IT;' becaws THE DIVILL [always takis the] Maiden in his hand nix him, quhan ve daunce Gillatrypes;⁷ and quhan he vold lowp from he and she will fay, 'Ower the dyk with it!' The nam of the fyft Sprit is 'ROBERT THE [RULE,' and he is still clothed in] fadd-dun, and feimis to be a Comander of the rest of the Spritis; and he waittis wpon Margret Brodie, in Aulderne. [The name of the saxt Sprit] is called 'THEIFF OF HELL WAIT WPON HIR SELFE;' and he waitis also on the said Bessie Wilfson. The name of the sevynth [Sprit is called] 'THE READ REIVER;' and he is my owin Sprit, that waittis on my selfe, and is still clothed in blak. The aucht Sprit [is called] 'ROBERT THE JACKIS,' still clothed in dune, and feimes to be aiged. He is ane glaiked gowked Spirit! The woman's [nirkname] that he waitis on, is 'ABLE AND STOWT!'⁸ The nyynth Sprit is called 'LAING;' and the woman's nirkname that he waitis wpon is 'BESSIE BAULD.'⁹ The tenth Sprit is named 'THOMAS A FEARIE,' &c.¹⁰—Ther wilbe many vther Divellis, waiting wpon [our] MAISTER DIVELL; bot he is bigger and mor awfull than the rest of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

¹ His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. ² As in preceding Deposition. ³ The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. ⁴ The DEIL's dozen. ⁵ Ever; always. ⁶ This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here.

Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. ⁷ Probably a dance then popular among the vulgar. ⁸ Viz. Bessie Hay. ⁹ Viz. Elspet Nishie. ¹⁰ Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts¹ it in water; and we tak a beetle² and knokis the rage³ on a stane, and we fay thryfe ower,

‘ I KNOK this ragg wpon this stane,
To raife the wind, in THE DIVELLIS name;
It fall not lye⁴ vntill I pleafe againe!’

[Whan] we wold lay the wind, we dry the ragg, and fay (thryfe ower),

‘ WE lay the wind in THE DIVELLIS name,
[It fall not] ryfe quhill we (or I) lyk to reafe it again!’

And if the wind will not lye instantlie [after we fay this,] we call wpon owr Spirit, and fay to him,

‘ THIEFFE! THIEFFE! conjure the wind, and caws it to [lye].’

We haw no power of rain, bot ve wyl reafe the wind quhan ve pleas.—He maid vs believ [.] that ther wes no GOD befyd him.

As for Elf-arrow-heidis, THE DIVELL shapen them with his awin hand, [and syne deliueris thame] to Elf-boyes, who whyttis and digitis⁵ them with a sharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I faw them whytting and digiting them. Quhan I wes in the Elfes howffis, they will haw werie them whytting and digiting; and THE DIVELL giwes them to ws, each of ws so many, quhen Thes that digitis thaim ar litle ones, hollow, and bofs-baked!⁶ They speak gowftie⁷ lyk. Quhen THE DIVELL giwes them to ws, he faves,

‘ SHOOT thes in my name,
And they fall not goe heall hame!’

And quhan ve fhoote these arrowes (we fay)—

‘ I SHOOT yon⁸ man in THE DIVELLIS name,
He fall nott win heall hame!
And this falbe alfwa trw;
Thair fall not be an bitt of him on leiw!’⁹

We haw no bow to fhoote with, bot spang¹⁰ them from of the naillis of our thowmbes. Som tymes we will misse; bot if thay twitch,¹¹ be it beaft, or man, or woman, it will kill, tho’ they haid an jack¹² wpon them. Qwhen we goe in the shape of an haire, we fay thryfe owr:

‘ I SALL goe intill ane haire,
With sorrow, and fych, and meikle caire;
And I fall goe in THE DIVELLIS nam,
Ay whill I com hom [againe l]’

And instantlie we start in an hair. And when we wold be owt of that shape, we vill fay:

‘ HAIRE, [haire, God fend thé caire l]
I am in an hairis liknes just now,
Bot I falbe in a womanis liknes ewin [now.]’

When we vold goe in the liknes of an cat, we fay thryfe ower,

‘ I SALL goe [in till ane catt,]
[With sorrow, and fych, and a blak]shot l
And I fall goe in THE DIVELLIS nam,
Ay quhill I com hom againe!’

¹ Wet. ² A piece of flatted wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. ³ Rag. ⁴ Be allayed. ⁵ Shapes and trims them as a carpenter, with edged-tools. ⁶ Boss also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and *hump-backed* creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. ⁷ Roughly; crossly; gruffly. ⁸ Yonder. The preceding and following rhymes are probably *unique*, even in the history of TRIALS for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. ⁹ On life; *alive*. ¹⁰ Jerk. ¹¹ Touch. ¹² A coat of mail; defensive armour.

And if ve [wold goe in ane **craw**, then] we fay thryfe ower :

‘ I **SALL** goe intill a **craw**,
With **forrow**, and **fych**, and a **blak** [thraw !
And I fall goe in the **Divellis** nam,]
Ay quhill I com home again !’

And quhen ve vold be owt of thes shapes, we fay :

‘ **CATT**, **catt**, (or **craw**, **craw**,) [God] fend thé a **blak** fhott ! (or **blak** thraw !)
I wes a **catt** (or **craw**) juft now,
Bot I falbe [in a woman’s liknes evin now.]

Catt, **catt**, (or **craw**, **craw**,) God fend the a **blak** fhott ! (or a **blak** thraw !)

Giff we, in the [shape of an **catt**, an **craw**, an] **haire**, or ony vther liknes, &c., go to any of our neighbouris howffis, being **Witches**, we will [fay,]

[‘ I (or we) **CONJURE**] thé **Goe** with **ws** (or me) !’

And presentlie they becom as we ar, either **cats**, **hearis**, **crowes**, &c., and goe [with **ws** whither we wold. **Quhan**] we wold ryd,¹ we tak **windle-ftrawes**, or **been-ftakes**,² and put them betwixt owr foot,³ and fay thryfe,

‘ [HORSE] and **hattok**, **horfe** and **goe**,
Horfe and **pellattis**, **ho ! ho !**⁴

And immediatlie we flie away whair [eur we wold] ; and leaft our hufbandis fould mis vs owt of owr beddis, we put in a boofom, or a thrie [leggit stoole beyde thame,] and fay thryfe ower,

‘ I **LAY** down this boofom (or stooil,) **IN THE DIVELLIS** name,
Let it not feir [Quhill I] com again !’

And immediatlie it feimis a voman, beyd owr hufbandis.

Ve can not turn in the lik^{nes} of **Quhen** my hufband fold beeff, I vfed to put a **fwellowes** feather in the hyd of the beaft, and [fay thryfe,]

‘ [I] **PUTT** owt this beeff in **THE DIVELLIS** nam,
That meikle **silver** and good **pryce** com hame !’

I did ewin fo [quheneur I putt] furth either **horfe**, **noat**,⁶ **vebs**,⁷ or any vther thing to be fold, and fill⁸ pnt in this feather, and said the [famin wordis thryfe] ower, to caws the comodities fell weil, &c. thryfe ower,

Owr Lord to hunting he [is gone]
. **marble** stone,
He fent word to **Saint Knitt**⁹

[Quhan we vold heall ony for, or brokin limb, we fay thryfe ower,]

.
.

He pat the blood to the blood, Till all vp flood ;

The lith to the lith, Till all took with ;

Owr **Ladie** charmed hir deirle **Sone**, With hir tooth and hir towng,

And hir ten fingeris—

In the name of **THE FATHER**, **THE SON**, and **THE HALIE GAIST** !¹⁰

¹ Ride. ² Bean-stalks. ³ For feet. ⁴ See Note to ‘ Horse and hattock,’ p. 604. ⁵ There is a tradition in **MORAYSHIRE**, that **Witches** could not appear in the shape of a dove or a lamb ; the one being emblematical of **THE HOLY SPIRIT**, the other being the emblem of the **AGNUS DEI**. Perhaps the hiatus might not improperly have been so supplied. ⁶ Nolt, cattle. ⁷ Webs of cloth. ⁸ Uniformly ; constantly ; always. ⁹ After this fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated. ¹⁰ It has been often remarked by the Editor, in the course of the numerous **WITCH TRIALS** which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy women, were actually paraphrases of portions of the *Mass-Book*—and in some cases, such as in the Case of **ANNIE SAMSON**, there appears to have been used doggerel versions of **THE CREED**, &c. ! Others were taken from ancient popular rhymes and songs, such as the above fragment, ‘ Our Lord to hunting he is gone,’ &c., which, unfortunately, is mutilated.

And this we say thryfe over, ftraiking¹ the for, and it becomes heall. 2^{dii}, For the BEAN-SHAW,³ or pain in the heance,⁴—‘ WEE ar heir thrie *Maidens* charming for the bean-straw; pe man of the Middle-earth, blew beaver, land-feaver, maneris of fooris, the Lord fleigged⁴ the Feind with his holy candles and yeird foot stone!—Thair the fittis, and heir the is gon!—Let hir nevir com heir again!—3^{dii}, For the FEAVERIS, we say thryfe over, ‘ I FORBID the qwaking-feavers, the fea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the fydis, owt of the kneyis, owt of the thieghes, fra the pointis of the fingeris to the nebes⁵ of the toes; owt fall the feaveris goe, [fom] to the hill, fom to the hap, fom to the stone, fome to the fok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!’⁶—AND when we took the frwit of the filthes from [the] filtheris, we went to the shore, befor the boat wold com to it; and we wold say, on the thore-lyd, thrie feuerall tymes ower,

‘ THE filtheris ar gon to the sea,
And they will bring hom fishe to me;
They will bring them hom intill the boat,
Bot they fall get of thaim bot the smaller fort!’

So we either steall a fish, or buy a fish, or get a fish from them [for nowght,] an or ma.⁷ And with that we haw all the fruit of the heall⁸ fishes in the boat; and the fishes that the fishermen tham felues will haw, will be bot froath, &c.

The first woyag that ewer I went with the rest of owr COVENS was [to] Plewghlandis; and thair we flot an man betnix the plewgh-siltis, and he presentlie fell to the ground, wpon his neife⁹ and his mouth; and than THE DIVELL gaw me an arrow, and cawfed me floot an voman in that feildis; quibik I did, and the fell down dead.¹⁰ In Winter 1660, quhen Mr Harie Forles, Minister at Aulderne, wes feik, we maid an bagg of the gallis, flesh, and guttis of toadis, pickles of bear,¹¹ pairingis of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We steipit this all together, all night among water, all haked¹² throw vther. And whan we did put it among the water, SATAN wes with ws, and learned ws the wordis following, to say thryfe ower. They ar thus,

‘ HE is lying in his bed,—he is lyeing feik and fair;
Let him lye intill his bed two monethis and [thrie] dayes mair!
2^d, Let him lye intill his bed,—let him lye intill it feik and fore;
Let him lye intill his bed monthis two [and] thrie dayes mor!
3^d, He fall lye intill his bed, he fall lye in it feik and fore;
He fall lye intill his bed [two monethis and] thrie dayes mor!’

Quhan we haid learned all thes wordis from THE DIVELL, as said is, we fell all down [wpon owr] kneis, with owr hear down ower owr showlderis and eyes, and owr handis lifted wp, and owr eyes

¹ Stroking; gently rubbing. ² The *Boneshave* or *Boneshow*, signifies the *SCIATICA*. From an amusing, published specimen of the EXMOOR DIALECT, Devonshire, it appears, that the term is also known in England. The peasantry of that district use a singular *Charm* for its cure. ‘The patient must lie upon his back, on the bank of the river or brook of water, with a straight staff by his side, between him and the water; and must have the following words repeated over him, viz.

“ Boneshave right—Boneshave straight—
As the water runs by the stave—Good for Boneshave!”

They are not to be persuaded but that this ridiculous form of words seldom fails to give them a perfect cure.’ *Exmoor Scolding*. P. 8. Note. ³ Haunch. ⁴ Affrighted; terrified. ⁵ Nibs; extremities. ⁶ It appears very singular to us who live in the Nineteenth Century, that SATAN should have taught his servants to invoke the SAINTS, and even THE HOLY TRINITY. The charms recited by his disciples are usually fragments of ancient Monkish rhymes; and most of them were such as many good Roman Catholics of the lower orders, even in these times, would not scruple to use, for the supposed cure of their bodily ailments. ⁷ One or more. ⁸ Whole. ⁹ Nose. ¹⁰ Issobell previously explained, that these poaching excursions took place, when the Witches were careering in mid-air, mounted on windle-straws and bean-stalks, &c. THE DEVIL usually made them pick up such of the Elf-arrows as fell short of or missed their mark. ¹¹ Grains of barley, or bear. ¹² Hacked; minced into small pieces.

[stedfastlie fixed wpon] THE DIVELL; and said the forsaids wordis thryfe ower to THE DIVELL, striktlie, against Maister Harie Forbes [his recowering from the said seiknes.] In the night tym we cam in to Mr Harie Forbes chalmere, quhair he lay, with owr handis all smeared [. out] of the bagg to fwing it wpon Mr Harie, quhair he wes feik in his bed; and in the day tyme [. ane of owr] nember, quho wes most familiar and intimat with him, to wring or fwing the bagg [wpon the said Mr Harie, as we could] not prevall in the night tym against him; quihik wes accordinglie done. Any of [.] comes in to your howffes, or ar fet to doo yow evill, they will look vncowth lyk, thrawn [.] hurlie lyk, and thair clothes standing owt. The Maiden of owr Coven, Jean Mairten, wes [. We] doe no great mater without owr Maiden.

And if a child be forspoken,¹ we tak the cradle [.] throw it thryfe,² and than a dowg³ throw it; and then shakis the belt abow the fyre [. and then cast it] downe on the ground, till a dowg or catt goe ower it, that the seiknes may com [. wpon the dowg or] catt.

All quihikis wer fwa spokin furth of the mouth of the said ISSOBELL GOWDIE, &c.⁴

[Indorfed] ED^s, 10 July, 1662. Considered and found relevant be THE JUSTICE DEPUTE.

‘Tak cair of this peaper. See the Justice deputis judgement of it. Show this to the Commisioneris.’

HAVEING read and considered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularlie SATHAN, Renunciation of Baptism, with diverse malefices, I find that a Commission may be verie justlie pafs, for hir last Tryall. (Sic subscribiter) A. COLUILLE, (Justice-depute.)

(3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyfteen day of May, 1662 yeiris, IN presence of Master HARIE FORBES, Minister of the Gospell at Alderne, Mr HEW ROSSE, Minister at Nairn; JOHNE INNES of Edingeth; HEW HAY of Newtown; Mr ALEX DUNBAR, Schoolmaster and Session Clerk of Alderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Easie in Alderne; and many vtheris, WITNESSIS to THE CONFESSION efter sett down, spoken furth of the mouth of ISSOBELL GOWDIE, spous to Johne Gilbert in Lochloy.

THE quihik day, in presence of me, JOHNE INNES, Notar Publict, and Witnesfes all vnder subscriwand, the said ISSOBELL GOWDIE, appeiring to be most penitent for hir abominable finnes of Witchcraft, most ingenwollie procedit in hir CONFESSION therof, in maner efter following; to witt. Firft, as I wes going betwixt the townis of *Drumdevin* and *the Headis*, THE DIVELL met with me, and thair I covenanted with him, and promeisit to meit him, in the night tym, in *the Kirk of Alderne*; quihik I did. He flood in the Readeris dask, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptisime; and all betuixt the soale of my foot and the crown of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie*, in Alderne, held me wp to THE DIVELL, wntill he re-baptisid me, and marked me in the shoulder, and with his mouth sucked out my blood at that place, and spowted it in his hand, and sprinkling it wpon my head and face, he said, ‘I baptise ye, JANET, to my self, in my own nam!’ Within a whyll thereafter we all removed. And within few dayes he cam to me, in *the New Wardis of Inshoch*, and therr haid carnal cowpulation with me. He wes a werie meikle blak roch man. He will lye als bewie wpon ws, quhan he hes carnal dealling with ws, lyk an malt-secke. His memberis ar exceding great and long; no mans memberis ar so long and bigg as they ar. He wold be amongst ws lyk a weath horse amongst mears. He wold lye with ws in presence of all the multitud; neither haid we nor he any kynd of shame; but

¹ Bewitched. ² This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular charm in those days. ³ Dog. ⁴ The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

especiallie *he* hes no shame with him at all. He wold lye and hawe carnall dealing with all, at euerie tym, as he pleafed. He wold haw carnall dealing with ws in the fhape of a deir or any vther fhap that he wold be in. We wold never refufe him. He wold com to my hows-top in the fhape of a crow, or lyk a deir, or in any vther fhap, now and then. I wold ken his voice, at the first heiring of it, and wold goe furth to him and haw carnall cowpulationu with him. The youngeft and lwtiefte women will haw werie great pleafour in their carnall cowpulationu with him, yea much mor than with their awin husbandis; and they will haw a exceiding great defir of it with him, als much as he can haw to them, and mor; and never think fhame of it. He is abler for ws that way than any man can be (Alace! that I fould compair him to ane man!) onlie he ves heaue lyk a malt-seck; a hudg nature, verie cold, as yce.

He wold fend me now and then to *Aulderne* fom earendis to my neightbouris, in the fhape of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the fhap of ane hair, and *Patrik Papleyis* ferwandis, in *Kilhill*, being goeing to ther labouring, his boundis being with them, ran efter me, being in the fhape of ane haire. I ran werie long, bot wes forcet, being wearie, at laft to take my own hous. The dore being left open, I ran in behind ane chift, and the boundis followed in; bot they went to the vther fynd of the chift; and I was forcet to run furth agane, and wan into ane vther hows, and thair took leafour to fay,

‘ HAIR, hair, God fend thé cair !
I am in a hearis liknes now,
Bot I fall be ane voman ewin now !
Hair, hair, God fend thé cair !’

And fo I returned to my owin fhap, as I am at this infant, again. The dowgis will fom tymes get fom byttis¹ of vs, quhan ve ar in hairis,² bot will not get ws killed. Quhan ve turn owf of a hairis liknes to owr awin fhap, we will haw the byttis, and rywis, and scrattis³ in owr bodies. Quban we vold be in the fhap of cattis, we did nothing bot cry and wraw,⁴ and rywing, and as it ver, wriering on ane vther; and quhan ve com to owr awin fhapes agane, ve will find the scrattis and rywes on our skins, werie for. Quhan on of vs or mor ar in the fhap of catis, and meitt with ony vtheris owr neightbouris, we will fay,

‘ DIVELL SPEID THÉ—GOE THOW WITH ME !’

And immediatlie they will turne in the fhape of ane catt, and goe with ws. Quhen we wilbe in the fhap of crows, we will be larger than ordinar crows, and will sitt wpon brenches of treis. We went in the fhape of rewkis⁵ to *Mr Robert Donaldfones* hows, *THE DIVELL*, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down wpon the crowk.⁶ It wes about *Lambes*,⁷ in anno 1659; they opened ane window, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to the *Downie-hillis*; the hill opened, and we cam to ane fair and lairge brow rowme, in the day tym. Thair ar great bullis rowting and fkyolling ther, at the entrie, quhilk feared me.⁸

Bot that quibh troubles my confcience most, is the killing of severall perfones, with the arrowes quibh I gott from *THE DIVELL*. The first woman that I killed wes at the *Pleugh-landis*; also I killed ane⁹ in the East of *Murrey*, at *Candmas*¹⁰ laft. At that tyme *Bessie Wilfon*, in *Alderne*, killed on thair; and *Margaret Wilfon*, ther, killed ane vther; I killed also *James Dick* in *Canniecauill*: Bot the death that I am most of all forrie for, is the killing of *William Bower*, in the *Miltowne of Moynes*; *Margaret Brodie* killed ane voman, wathing, at the *Burne of Tarres*; *Bessie Wilfon* killed ane man at the *Bujhe of Strutheris*; *Bessie Hay* in *Aulderne* killed ane prettie man called *Dunbar*, at the Eift

¹ Bites.

² In the shape of hares.

³ Tears and scratches.

⁴ *Caterwaul*, like cats.

⁵ Rooks.

⁶ The *crook*, on which the ‘kail-pot’ hangs, over the fire.

⁷ *Lammas*, the 1st day of August.

⁸ Alarmed,

frightened me. See her *CONFESSION*, Apr. 13, 1662, page 604.

⁹ Ane; one.

¹⁰ The purification of the

blesed Virgin Mary, Feb. 2d.

end of the *Towne of Forres*, as he was coming owt at an gaitt; *Margaret Brodie* in Alderne killed on *David Blak*, in Darnvay. *Janet Breadhead*, spows to *Johne Taylor*, told me, a litle befor she wes apprehendit, that *Margaret Wilfone* in Alderne shot *Alexander Huchoon*, in Alderne; *Janet Breadhead* shot *Johne Falconer*, in the Park. The most of ws all wer ther, at that tyme. *Bessie Wilfone* killed on *William Man*, at Burgie; *Margaret Wilfone* killed on *Johne Lee*, and *Janet Breadhead* killed a fuyrn¹ at Burgie; *Bessie Wilfone* in Alderne, on an first Monday of the Reath, took a bagg maid of hairis lieweris,² the flesh, guttis and gallis of toadis, naillis of fingeris and toes, and fwinged it on an young man called *Thomas Reid*, and he died. *Bessie* and *Margaret Wilfones* in Alderne, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Minister at Alderne, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to shoot at him, quhilik she did; bot it cam short; and *the Divell* cawfed tak it wp again. We desiret to shoot again, bot *the Divell* said, 'No; we wold not gett his lyff at that tyme!' *The Divell* cawfed me to shoot at *the Laird of Park*,³ as he was croceing *the Burne of the Boath*; bot I missed him.

We wold goe to feuerall howffis, in the night tym. We wer at *Candlmas* last in *Graingehill*,⁴ quhair we gott meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN about. That night he desir'd *Alexander Elder*, in Earlseat, to fay the grace befor meat, quhilik he did; and is thus:

'We eat this meat in THE DIVELLIS nam,
With forrow, and fych,⁵ and meikle thame;
We fall destroy hows and hald;
Both sheip and noat in till the fald.
Litle good fall come to the fore
Of all the rest of the litle store!'

And than ve began to eatt. And quhan ve haid endit eaiting, we looked steadfastlie to THE DIVELL, and bowing owrfelwes to him, we said to *the Divell*,

'We thank thé owr Lord for this!' &c.

The wordis which we spak, quhan we maid the pictur, for distroyeing of *the Laird of Parkis* meall-children, wer thus:

'IN THE DIVELLIS nam, we powr in this water among this mowld (meall);⁷
For lang duyning and ill heall;
We putt it into the fyre,
That it may be brunt both stik and stowre.
It falbe brunt, with owr will,
As any stikle⁸ wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve haid learned them, we all fell downe wpon owr bare kneys, and owr hair about owr eyes, and owr handis lifted wp, looking steadfast wpon THE DIVELL, still sayng the wordis thryse over, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midst of the fyre. Efter it had skrukned⁹ a litle befor the fyre, and quhan it wes read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that *the Laird of Park* will ewer gett. Cast it ower an Kirk, it will not brak quhilik¹⁰ it be broken with an aix, or som such lyk thing, be a man's handis. If it be not broken, it will last an hundreth yeir. It hes ane cradle about it of clay, to preferue it from skaith;¹¹ and it wes rosten each vther day, at the fyr; som tymes on pairt of it, som tymes an vther pairt of it; it vould be a litle wat with water, and then rosten. The bairn vould be brunt and rosten, ewin as it wes by ws. It wanted

¹ Sow. ² Hares' livers. ³ John Hay of Park. ⁴ Belonged to Brodie of Lethin. ⁵ Singing; lamentation. ⁶ The rest was probably omitted in writing down the Confession, as being blasphemous. ⁷ It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.' ⁸ Stubble. ⁹ Parched; shrivelled. ¹⁰ Until. ¹¹ Haru; injury.

no mark of all the pairtis of an child, little lippis, &c., and the handis of it folded downe by its fydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Bessie* and *Margret Wilsons* in *Aulderne*, and I my selfe, with *THE DIVELL*, wer onlie at the making of it; but all the multitud of all owr *COEVENS* got notice of it, at the next meitting; for all owr actis and deidis, betuixt grett Meittingis, moft be geven accept of, and notted¹ in his booke at each Grand Meitting—but all my owin *COVEN* gott notice of it werie fchortlie. *THE DIVELL* him self cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the said pictur. All *THE COVEN* did flie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald*, in *Brightmanney*, and I, still² read on an horfe, quihch ve vold mak of a straw or becin-falk.³ *Bessie Wilson* was still in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quahateur, *the Maiden* of each *COVEN* fittis abow the reft, nixt *THE DIVELL*; and the ferwis *THE DEVILL*, for all the old peopill that he cairis not for, and ar weak and wmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and fomytymes a man, bot werie wilfull⁴ in carnall cowpulation at all tymis; and they ewin fo als wilfull and defirows of him. Som tymis, among owr felwis, we wold be calling him 'BLAK JOHNE,' or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and fay, 'I ken weill aneugh what ze wer faying of me!' And then he vold beat and buffet ws werie for. We wold be beattin if ve wer absent any tyme, or neglect any thing that wold be appointit to be done. *Alex^r Elder*, in *Earlfeat*, vold be werie oft beattin. He is bot soft,⁵ and cowlde never defend him self in the leift, bot greitt and cry, quhan he vold be fcourging him. Bot *Margret Wilson*, in *Aulderne*, wold defend hir self fynlie, and caft wp hir handis to keip⁶ the stroakis off from hir; and *Bessie Wilson* wold speak cruftie with hir townge, and wold be belling again to hir flowtie. He wold be beating and feurging ws all wp and downe with cardis⁷ and vther tharp fcurges, like naked gwhaftis; and we wold be still cryeing, 'Pittie! pittie! Mercie! mercie, owr Lord!' Bot he wold haw neither pittie nor mercie. When he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwellow ws wp. Somtym he vold be lyk a stirk, a bull, a deer, a rae, or a dowg, &c., and haw dealing with ws; and he vold hold wp his taill wntill we wold kisse his arce. And at each tyme, quhan ve wold meitt with him, we behoovit to ryfe and mak our curtesie; and we wold fay, 'Ze ar welcom owr Lord!'—and 'How doe ze, my Lord!' &c. Quhan we wold tak the furit⁸ (fruit?) away of anie perfones midden or dunghill, we wold fay thus, (when we wold putt haiked flefh of an vnchristend child, dowgis and sheipis flefh, and pairingis of naillis, &c., all baked throw-vther):—

' We putt this intill this ham,⁹
In our Lord *THE DIVELLIS* nam.
The first handis that handles thé,
Brunt and scalded fall they be |
We fall distroy hows and hald,
With the sheip and nout¹⁰ intil the fald,
And litle fal come to the fore
Of all the reft of the litle-flore!¹¹

We killed an ox, in *Burgie*, about the dawing of the day, and we brougth the ox with ws hom to *Aulderne*, and did eat all amongst ws, in an hows of *Aulderne*, and feasted on it.

THE DEVILL wold giw ws the brawest lyk money that ewer wes coyned; within fowr and twantie hours it vold be horfe-muke.¹² Alace! I deferw not to be fitting heir, for I haw done so manie evill

¹ Noted; recorded.

² Constantly; always; uniformly.

³ Bean-stalk.

⁴ Wanton.

⁵ Uncon-

rageous; simple; unresisting.

⁶ *Kp*; ward off.

⁷ Scourges made of cords—not 'cairds,' or instruments

used in carding wool, flax, &c.

⁸ The Editor never before met with this word; it evidently means strength,

spirit, 'fashion,' (Fr. *foison*); that is, the fertilizing power.

⁹ Home; home; destination.

¹⁰ Nolt;

cattle. ¹¹ The last four lines are the same with the conclusion of the *WITCH-GRAVE*, in this Confession, p. 612.

¹² Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into 'scailt-stanis.'

deidis, especiallie killing of men, &c. I deferw to be reinu wpon iron harrowes, and worfe, if it culd be devyfit!

And quhan we tak away the fruit of cornis, at *Lambes*,¹ we tak an wooll-fheir, and cuttis or clips onlie thrie stakis² of it, and plaitis viber thrie rudis togither, and fayas,

‘ We cutt this corne in our Lord THE DIVELLIS nam,
And we fall haw the fruit of it ham!’

And this thryfe ower; and so we haw the fruit of that field. Ewin so, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewll, Pace*, or *Halie dayes*; and pairtis it among vs, and feafis on that togither.

Wpon the quhilkis all and fundrie of the premiffes, fwa spokin and willinglie Confest be the said *Jffobell Gowdie*, I, the said *Johne Innes*, Notar publict, haw wretten thir presentis, and with the Witnesses abow and vnder namet, haw subfcriuit the famen with our handis, day, moneth, place, and yeir abow fett doun.

JOANNES INNES, Notarius Publicus.³

MR HARY FORBES, Minister of Auld Earn, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the foirsaid Declaratioun, as to the principal substantialis.

HEW HAY of Newtown, Attestes.

Jo. WEIR, in Auldearne, Attestis.

GEORGE PHINNEY, in Kirkmichael, Attestis.

(4.) ISSOBELL GOWDIE'S FOURTH CONFESSION.

AT AULDERNE, the tuantie sevint day of May, 1662 yeiris. IN prefence of MASTER HARRY FORBES, Minister at Aldererne; PATRIK CAMPBELL of Boath; MR ALLEX⁴ DUMBAR, Schoolmaster and Clerk of the Session of Aldererne; GEORGE PHINNEY, in Kirkmichaell; HEW HAY of Newtowne; and JOHN WEIR, in Aldererne; WITNESSES TO THE CONFESSION OF ISSOBELL GOWDIE, spows to John Gilbert, in Lochloy.

THE said day, the said ISSOBELL, professing repentance for hir former finnes of Witchcraft, and that she had bein ower long in THE DIVELLIS service; without ony compulsiftouris, proceidit in hir CONFESSION, in maner efter following: That is to say. I acknowledg, to my great grieff and thain, that fyftein yeiris since I denyed FATHER, SON, and HOLIE GOST, in the *Kirk of Aldererne*; and gaw over my bodie and fowll to THE DIVELL; he standing in the Readeris Dask of *Aldererne*, and an blak book in his hand: *Margret Brodie*, in Aldererne, held me wp to THE DIVELL, qubill⁵ I did this, and qubill he marked me one the shoulder, and fowked out my blood thairat, and spitted it in his hand, and sprinkled it on my head, and baptifed me ‘ JANET,’ in his owin nam. Efter that, he had carnall cowpulation with me, in the *New Wardis of Inshoch*; and still thairefter, fra tym to tym, at owr pleafour.

The names of THE COEVEN ar thes.⁶ *Bessie Wilfone*, in Aldererne; *Janet Burnet*, ther; *Elyfpet Nijlvic*, ther; *Margret Brodie*, ther; *Margret Wilfone*, ther; *Bessie Hay*, ther; *Johne Taylor*, in Belmakeith; *Janet Breadhead*, his spous; *Barbara Ronald*, *Jffobell Nicoll*, in Lochloy; my self, with *Jean Mairten*, our MAIDEN; and *Johne Young*, in Mehestoun, owt OFFICER. THE NAMES OF OWR DIVELLIS, that waited upon vs, ar thes. First, ROBERT, the *Jahis*; SANDERIS, the *Read Reaver*; THOMAS, the *Fearie*; SWEIN, the *roaring Lion*; THIEFFE OF HELL, *Wait upon hir self*; MAKHECTOUR; ROBERT, the *Rule*; HENDRIE LAING; and RORIE. We wold ken them all, on by

¹ *Lammas*, 1st August; *Festum S. Petri ad Vincula*.

² Stalks; stems.

³ The Long Latin *doquet* and motto, before referred to, are annexed.

⁴ Until.

⁵ The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a soleinn Confirmation of her former Declarations; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in fadd-dun, fom in graffe-grein, fom in sea-greio, and fom in yallow. THE NIK-NAMES that THE DIVELL gaw wnto ws wer, PIKELL NEIREST THE VIND, thia was *Margret Wiljones* niknam; *Bessie Wiljones* niknam ves THROW THE CORN-YAIRD; *Eljpet Nijhies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, is OWER THE DYK WITH IT; *Bessie Hayes* nickname is ABLE AND STOUT.

I haw fein the Elf-arrows maid. The *Divell* dights¹ them, and the *Elf-boys* quhythes² them. We got ewerie on (of) ws fo many of thaim from the *Divell*, to shoot at men.³ I my self killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, walhing, at the *Burn of Tarras*. *Bessie Wiljon* killed an man, at the *Bush of Strutheris*. *Bessie Hay* killed on *Dunbar*, at the East end of the town of *Forres*, coming owt at a gait. *Margret Brodie* shot at on *David Blak*. *Morgret Wiljone* killed on *Alex^r Hucheon*, in Auldern. *Janet Breadhead*, now in prison, killed *Johne Falconer*, in Park. Ther were thrie killed East the cowntrie, at *Candlmas* last: I killed on, *Margret Brodie* on, and *Bessie Wiljon* on. I shot on *James Dik*, in Connicavell; *Margret Brodie* killed on *W^m Crukshank*; *Margret Wiljon* killed on *Johne Ley*; *Janet Breadhead* killed a fuyr,⁴ also she killed an vther man at *Burgie*; and *Bessie Wiljon* killed on thair, namet *W^m Man*. We killed an ox, and brought it to *Bessie Hayes* hows, in Aulderne; and we did eat him thair. I shot at the *Laird of Park*, as he ves crossing the Burn⁵ of Boath; bot, thankis to God now, that he preferwit him. *Bessie Hay* gaw me a great cuffe,⁶ becaus I missed him.

Margaret Brodie shot at *Mr Harie Forbes*, at the Standing-ftanes, bot the missed; and speirit, ‘If the fould shoot again?’ And the *DIVELL* said ‘Not!—For we wold nocht get his lyf at that tym.’ We intentit⁷ feuerall tymes for him, quhan he ves feik. *Bessie Hay*, *Jean Mairten*, the Maiden, *Bessie Wiljon*, *Margret Brodie*, *Eljpet Nijhie*, spows to *Johne Mathow*, and I myself met in *Bessie Wiljones* hows, and maid an bag against him. The bag ves maid of the fleth, guttis, and gallis of toadis, the liewer of a bear,⁸ pikles of corn, and pairingis of naillis of fingeris and toes; we steipit all night among water. The *Devell* learned ws to fay thes wordis following, at the making of the bag:—

‘HE is lying in his bed—and he is feik and fair,
Let him ly in till that bedd monthes two and dayes thrie mair I
He sal ly in till his bed, he salbe feik and fair—
He fall lye in till his bedd monthes two and dayes thrie mair!’

And quhan we haid said thes wordis, we wer all on our kneis, our hair about our shoulderis and eyes, holding wp our handis to THE *DIVELL*, that it⁹ might destroy the said *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we fould swing it on him. And becaus we prevailed not at that tym, *Bessie Hay* vndertook and cam in to his chalmer to wifit him, being verie intimat with him; and she brought in of the bag in hir handis, full of the oyll thairof, to haw fswong and casten dropis of it on him; bot ther wer som vther worthie persons with him at that tym, by qulich God prevented *Bessie Hay*, that she got no harm don to him, bot fswang a lid of it on the clothes of the bed quhair he lay.

Johne Taylor and his wyff, *Bessie* and *Margret Wiljones*, and I, maid a pictur for the *Laird of Parkis* maill children.¹⁰ *Johne Taylor* brought hom the clay in his plaid newk; his wyff sifted it; we powred in vater in a cowg¹¹ amongst it, and wrought it for,¹² and maid a pictor of it, lyk a child, als big as a pow. It wanted no mark of the imag of a bairn, eyes, nose, mouth, litle lippies, and the hands of it folded don by its fydis. The vordis that we said, quhan we maid it, ver thes:—

¹ Dresses.² Blocks them out.³ See the CONFESSION of Apr. 13, 1662, where *Issobell* tells us they were licensed to sport, in this manner, when riding on straws through the air; and that they had power to kill all who did not sanctify themselves, &c.⁴ A sow.⁵ On good authority, *Issobell* and her master ought to have known, that the Laird was out of their power while crossing a running stream.⁶ A smart slap, or blow.⁷ Tried; essayed.⁸ A hare's liver.⁹ Viz. Their charmed bag.¹⁰ See the former CONFESSIONS.¹¹ A sort of wooden dish.¹² Sore; extremely.

' We put this water among this meall,
 For long dwyning¹ and ill heall;
 We put it in intill the fyr,
 To burn them vp both stik and flour,
 That be brunt with our will,
 As any stikill² on an kill !'

THE DIVELL fitton on an blak kift. We wer al on our kneis, and owr hair about our eyes, looking on THE DIVELL stedfastlie, and owr handis lifted vp to him, saying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the saidis Witnesse and Notar had the said *Iffobell* CONFES, and most willinglie and penetently speak furth of hir ovin mouth. In witness quhairof, We haw subfryuit thir presenttis, with owr handis, day, yeir, and place, abow sett down.

ITA EST Joannes Innes, Notarius Publicus, in fidem premifforum, rogatus et requisitus, subscribo.

JOANNES INNES, No^{tus} Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attests.

W. SUTHERLAND of Kinsterrie, Attestis.

HEW HAY of Newtoun, Attestes.

ALL DUNBAR, Schoolmaster and Clerk to the Session of Oldearne, Attests.

GEORGE PHINNIE, in Kirkmichel, Attests.

JO. WEIR, in Auldearne, Atteasts.

VIII. CONFESSION of Janet Breadheid, spouse of John Taylor, in Belmakeith.

AT INSHOCH, the fourteenth day of Aprill, 1662 yeiris. In prefrence of PATRIK DUNBAR of Benaferrie,³ Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtoun; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnaferrie; JAMES COWPER, in Inshoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perfonis; WITNESSES TO THE CONFESSIONS and DECLARATION after sett downe, spokin furth of the mowthe of JANET BREADHEID, spouse to Johne Taylor, in Belmakeith.

THE quihilk day, in prefrence of me, JOHNE INNES, Notar Publict, and Witnesse abownamet, vnder subfryuand, 'the said] JANET BREADHEID, professing repentance for hir former sinnes of Witchcraft, and that she haid bein over long in the [lamin] service; without any presuris,⁵ proceidit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my husband, Johne Taylor; andsit wes he, and Elspet Nishe, his mother, that entyfed me to that craft. And the first [thing] that we did wes, we maid some drowgries,⁶ of dowgs flesh and shepis flesh, against Johne Hay, in the Mure; and therby took away his cornes, and killed his horse, noat,⁷ theip, and vther guidis;⁸ and layed it about his hows, to tak away his awin lyffe; and thereafter, he shortlie died. Onlie my mother-in-law and my husband did this, to learne me; and this wes my first [lesson] from them, &c.⁹ When they gott me to consent to this craft; first, they haid me to the Kirk of Nairne, in the nycht [tyme;] and THE DIVELL wes in the Readeris dask, and an book in his hand. And at that meitting, Bessie Wilfone, in Auld[erne;] Margret Wilfone, spows to Donald Callam, thair; Margret Brodie, thair; Barbara Fricce, ther; Helen Inglis, spows to William [. . .] thair; Janet Burnet, thair; Elspet Makbeith, thair; Elspet Nishe, spows to Johne Mathew, in Aulderne; Mariore Taylor, [spous] to Robert Barrie, ther; Bessie Hay, ther; Archibald Man, ther; Mariorie

¹ Pining; lingering sickness; gradual wasting away.

² Stubble.

³ The Dunbars of Balsaferry and Westfield were heritable SHERIFFS of Murrays.

⁴ A considerable part of this paper having been destroyed by mice, the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplied are put within brackets.

⁵ Without the application of TORTURE, or other 'legal compulsi-touris'; voluntarily.

⁶ Drugs; enchanted charms.

⁷ Nolt, cattle.

⁸ Farm stock; 'be.tial.'

⁹ A pretty experiment, indeed, for enticing a novice to be initiated!

Man, his daughter, ther; Elfpet Makhomie, relict [of] wmq¹ Alexander Huchefon, ther; Bessie Friece, spous to Johne Gilbert, ther; Ifsobell Friece, spous to Androw Miller, ther; Agnes Torrie, spous to William Young, ther; Elfpet Chifolme, spous to vmq¹¹ Makhomie, ther; Alexander Elder, in Earleat; Janet Finlay, his spous; Elfpet Laird, in Miltoun of Moynes; Johne Robertson, in Leathin; Grifall Sinklar, his spous; Alexander Sheipheard, in Miltoun of Moynes; Janet Man, his spous; Mariorie Danbar, in Brightmanney; Kyllie, in Vester Kinfray; Alexander Ledy, ther; Elfpet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, spous to Robert Frazer, in Arry; Bessy Peterkin, in Torrich; Alexander Bell, in Drumdewin, a charmer; Ifsobell Nicoll, in Lochloy; Bessie Young, ther; Elfpet Falconer, spous to James Inglis, in Penick; Bessie and Margret Huchoons, ther; Walter Ledy, ther; wer all ther that night. Johne Taylor, my husband, wes then Officer; bot Johne Young, in Mebestoune, is now Officer to my COE[VEN.] Quhan I cam first ther, THE DIVELL called tham all be thair names, on the book; and my husband, than [OFFICER,]¹ called thame at the dore. And when that was done, Bessie Wilfon, in Alderne, fat down nixt THE DIVELL;² [Bessie] Hay, thair, fat nixt him, on the vther sid; Janet Burnet fat nixt hir; and Elfpet Nithie, spous to the said Johne [Mathew,] fat nixt Bessie Wilfon, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the rest fat downe [as] they to cam.³

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then for me, my husband prefented me, and he and Margrat Wilfon, in Alderne, held me vp to the [DIVELL to] be baptised: And efter I had put my on hand to the foallis of my foot, and the vther hand to the [crown of] my head, and renunced my baptisme, and all betuixt my two handis to the Divell, the Divell [marked me] in the shouler, and fuked out my blood with his mouth, at that place; he spowted it in his hand, and [sprinkled it] on my head. He baptised me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howffis. Within fyw dayes thairefter, he cam to me to my bows, quhan my hufb[and] was furth, in the morning, at the plewgh, to sie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and had carnall cowpulation with me; and gaw me ane piece of money, lyk a testain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as spring-well-water. He promeisit to sie me again, within eight dayes, quhilk he did, and had carnall cowpulation with me again, and gaw me an vther piece of money, lyk the first; bot they both turned read,⁴ and I got nothing for thaim. He cam again within twantie dayes, and still⁵ once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay⁶ nixt that, and thair we did eat and drink, &c. Efter that, we vold still meit [euerie] ten, twelve, or twantie dayes continually.

Whan we had Great Meittingis, Walter Ledy, in Penick, my [huf]band, and Alexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my self, the deceasit Jean Suthirland, Bessie Hay, Bessie Wilfone, and Janet Burnet wold rale thaim. The first thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongst ws. 2dly, We thost noat⁷ in plewghes. 3dly, Agnes Grant, who wes brunt on the hill of,⁸ gott hyre from Elfpet Monro, to destroy the Lairdis of Park and Lochloy, and thair [posteritie.] And then I and my husband, Elfpet Nithie, and Bessie and Margret Wilfones, in Alderne, con[veened] our selwes with THE DIVELL, in Elfpet Nithies hows; and then touk downgis flesh, and sheipis flesh, and [haked] it werie small with an aix, and seithed it in an hail furnace in a pot, among water: And than I took it ow; and THE DIVELL, with his awin hand, did put it in a sheipis

¹ See *Isobell Gowdie's Confessions*; where it is stated that this worthy was OFFICER to a Coeven. ² She being MAIDEN to the Coeven.

³ As they happened to come in; promiscuously.

⁴ Red.

⁵ Uniformly;

constantly.

⁶ The seat of the EARLS of MORAY. See *Isobell Gowdie's Confessions*.

⁷ Shot not, or

cattle, in ploughs, with elf-arrows.

⁸ Left blank, in the original.

bagg, and he steiring it fill¹ abowt with his handis. We wer wpon our kneyes, owr hair about owr eyes, and owr handis lifted up, and ve looking stedfastlie wpon THE DIVELL, praying to him, repeating the vordis quich he learned vs, that it fould kill and destroy the Lairdis of Park and Lochloy, and thair meall-children and posteritie. And then we cam to Inloch, in the night tym, and fskatered it wpon, and down, abow, and about the gait, and vther places quair the Lairdis and thair fones wold most haunt; and then ve, in the lyknes of crows and rewkis stood abow the gait, and in the treis opofit to the gait. It wes apointed so, that if any of them fould twitch² or tramp wpon any of it, als veill as it or any of it to fall on thaim, it fould strik thaim with byllis,³ &c. and kill them: Quhilk it did; and they thortlie died. We did it to mak that hows airles.⁴ It wold wrong non els bot they. And it wes Keathren Sowter, that wes brunt,⁵ that [shot] William Hay, the laft Laird of Parkis brother, for⁶ on Gilbert Kinley. It wes only that bagg that wes the death of both the laft Lairdis of Park,

Alfo, four yeir sence, I and my husband, Ifobell Gowdie, spows to Johne Gilbert, in Lochloy, and Bessie and Margret Wilfones, in Alderne, maid [a pictur] of clay, lyk the Laird of Parkis eldeft fone. My husband brought hom the clay in his plaid [newk. It] ves maid in my hows; and THE DIVELL him self with ws. We brak the clay werie small, lyk meil, [and] sifted it with a siew, and powred in vater amongft it, with wordis that THE DIVELL learned vs, [in the Di]VELLIS nam. I brought hom the water, in a pig,⁷ out of the Rud-wall.⁸ We wer all wpon owr [kneyes,] and our hair about owr eyes, and owr handis lifted vp to THE DIVELL, and owr eyes stedfast looking [vpon him,] praying, and saying wordis which he learned ws, thryfe ower, for destroyeing of this⁹ Lairdis [meall] children, and to mak his hows airles. It wes werie fore wrougth, lyk rye-bowt. It was about the bignes of a feadge or pow. It was just maid lyk the bairne; it wanted no mark of any mail child, fuch as heid, face, eyes, nose, mouth, lippes, &c., and the handis of it folded downe by its fydis. It ves putt to the fyre, first till it scrunked,¹⁰ and than a cleir fyre about it, till it ves hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and sometimes vnder a chift. Each day we vold water it, and then roft and bek¹¹ it; and turn it at the fyre each other day, whill¹² that bairne died; and then layed it vp, and steired¹³ it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and roft it at the fyre, each other day once, as ve did againft the vther that ves dead, wntill that bairn [died] also. ALL quhilks of the premisses, swa spokin and willinglie Confessit and declarit furth of the mouth of the said JANET BRED[HEID,] in all and be all thingis as is abow sett downe, I, the said JOHNE INNES, Notar Publict, haw writtine thir presentis, and with THE WITNESSES abownamet, in farder testimonie and witnessing of the premisses to be of veritie, We haw subscryuit the famen with our handis, [day, month,] yeir, and place abow spcifeit.

JOANNES INNES, *Notarius Publicus*.¹⁴

HEW ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.

MA HARY FORBES, Minister of the Gospel at Old Earn, Attestis.

ARCHIBALD DUNBAR, witness, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.

[JOHNE WE]IR, in Alderne, Attestis; Confessed in my presence, Apryll 15, 1662.

J. COOPER, Attestes. W. CHALMER, witness to the premisses, confest in my presentis, 15 of Apryll.

HEW HAY Attestes the premisses, Confest 15 Apryll, 1662.¹⁵

¹ Ever; constantly. ² Touch. ³ Boils. ⁴ Heirless. ⁵ For Witchcraft. ⁶ At the instigation of. ⁷ Earthen jug, or jar. ⁸ The ROOD, or HOLY-CROSS, well. ⁹ The present Laird's male children. The last two Lairds are stated to have been destroyed by the charmed bag. ¹⁰ Got parched, or shrivelled; *shrunck*. ¹¹ Bake. ¹² Every alternate day, until that child died. ¹³ Stirred. ¹⁴ The long Latin docquet is annexed. ¹⁵ Some farther marking had at one time been on the margin; but only a few of the letters at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the ⁶ JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.

No. VIII.

CONTINUATION OF No. XVIII. OF THE GENERAL APPENDIX OF
DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(See VOL. II. pp. 299 to 313.)

WHEN the Editor was in the progress of completing his collection of materials for illustrating the truth of the EARL OF GOWRIE'S CONSPIRACY against KING JAMES VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repertory of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and THE KING, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of KING JAMES VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) LETTER, *Mr Robert Bruce* to THE KING.¹

PLEAS 3OUR MAIESTIE,

Wpon the directione fend to me by 3our hienes CONSELL, I thocht it meitt be my awin letter to testifie my resolucione to 3our M. in that mater of GOWRIE. 3our M. can not be ignorant in quhatt termes I passit my resoluciuon at *Sanct Jonnestoune*.² That resoluciuon is as 3itt extant, subferywitt be monie honest vitneffis. To that resoluciuon, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be GOD his grace. This resoluciuon gauē 3our M. perfytt contentment than, and I doubt nott bott itt vill do the lyke 3itt. So luing that 3our MAIESTIS scruple falbe fullie satisfed, in that mater, I reft,

3our M. his most humble and obedient subiect,

ROBERT BRUCE.

TO HIS MAIESTIE.

(19.) LETTER, *Mr Robert Bruce* to THE PRIVY COUNCIL.³

PLEAS 3OUR HONORIS,

I RECEAWED 3OUR Letteris on Setterday the 13 off this infant; and for satisfacioune thairoff I haue directed my Letter, containing my awin⁴ resoluciuon in that mater, unto his M. My resoluciuon is relative to my resoluciuon att *Sanct Jonstoun*, quhilk vas dyttit⁵ by HIS MAIESTIS selff, and subferywett by monie honest vitneffis (befyde me) quha ar 3itt liewing. This resoluciuon gauē his M.

¹ From Orig. preserved among the *Denmylne MSS.* Adv. Lib. A. 2. 52. No. 25. It is undated. ² Perth, having been dedicated to St John as Patron Saint, was long known by this name. ³ From the same Coll. No. 26; also undated. ⁴ Own. ⁵ Edited, composed.

perfyt contentment then, and I doubt nott bot itt will do the lyk sutt; for vnto thatt resolouion I adhear both in matter and maner; and I am reddie to testife the same, so oft as his M. pleases, by my awia haad wreitt. Sa, luing that your honoris fall not be forder trublit in that mater, I rest,

Your honoris to be commandit to his povar, in God,

To HIS M. most honorable PRUIE CONSELL.

ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce to THE KING.*

MAY IT PLEIS YOUR M.

HEIRING that my cuming to *Aberdeine* was interpret to spring of contempt, I thoct it my bundin dewtie to purg my selfe to be vttermost thairof, for I compt contempt of GOD and his Lewtennent þe heighest cryme that is; And thairfoir, for purgation, I say, that quhatfoever is done with ane warrant of GOD and man can nocht incur þe suspition of a contempt, lat be ane actual; and in deid, gif thair had bene ane prescription or limitation of tyme in any Licience, I had failzeit in passing þe boundis thairof; 3ea nocht onlie that, but I avaitit upon þe proper tyme quharfoir my Licience wes gevin me, and tuik þe benefeit quhen þe necessitie of my infirmitie constanit me; and being moir respectiue than that, I tuik it nocht quhill THE BISCHOP OF MURRAY brocht me þe adwyse of þe BISCHOPPIS OF SANCT ANDROS and GLASGOW to do so: And gif I had refaut þe meifest signification that culd be, that þe embracing of þe benefit at that tyme wald nocht stand with your HIENESS contentment, I wald most glaidlie haiff abitanit thairfra; for I haiff layed my compt, be GODIS grace, never to involue me in that giltines. So, to end, thair is no thing done be me quhairfoir my former benefeit fuld be retrenchit; and most humilie I creave that your M. censure go nocht befor my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may stand with your M. faour. So resting ever,

Your M. most humbill subiect and orator,

INDERNES,¹ ye 20 viij of Merche (1606 ?)

ROBERT BRUCE.

To THE KINGIS most excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce to THE PRIVY COUNCIL.*²

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humblie menis and schawis I, your feruitour, MR ROBERT BRUCE, Minister, That quhair, the last day when I wes brocht befor your ll., I wes commandit and ordaneit be your ll. to addresse my selfe to the burgh of *Invernes*, and thair to remane and within four myllis abute the same, dureing his MAIESTEIS will and pleasour; lykeas, the tyme for my addresse thair daylie approtchis; quhairvnto, althocht I acknowledge my selfe bundin in confidence befor GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane, to gif all dew obedience, as by GODIS grace I mynd neur to be disobedyent to HIS MAIESTIE or your ll., in ory of your ll. directionis, in this kynd; yitt, the indispositioun and inhabilitie of my persone, conioynd with my grite aige, forceis me humblie to schew vnto your ll. how vnable I am to vndertak and to vaderly fuche a jorney and charge; for I am become so feible and waik,³ and my aigeit and weyryed⁴ persone is so far worne and waisted with greif, cair, and vtheris visitationis quhairwith it hes pleast THE LORD in his mercye to chaffice me, that hardlie dow⁵ I travell any quhair, without haifard of my lyff: And yf it fall pleas GOD to visite me with feiknes, outhat at *Invernes* or be the way, it is not liklie that I fall overcome⁶ the same. And tutching the inputatioun layed vpon me, whilk wes the caus of HIS MAIESTIES offence,⁷ and of this hard course tane with me, I thank GOD I wes frie and innocent thairof, and I cleirit my selfe of the same in your ll. preface, it being a poynt verrie far fra my professioun to be a movair or steirair⁸ vp of Seditioun, as HIS MAIESTIE wes informed of me; and fra my hairt I deteast fuche Seditious practizes, as being most impious and wicked, and repugnant to the

¹ Invernes. ² It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance. ³ Weak.

⁴ Weary; spent.

⁵ Am I able to travel.

⁶ Survive, recover.

⁷ Displeasure.

⁸ Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our superioris. And as I schew vnto your ll., my coming to this burgh the tyme of the Parliament wes vpon a meere necessitie, and to efchew the danger of horneing, quhairwith I wes threathned, for xxij merkis. And dureing the schorte tyme of my aboade heir, whilk wes not xxxvj hours, I spak not with a Parliament man, except *the Lord Kilfayth*,¹ whome I employed to be cautioner for me; and had no kynd of meddling with the affairis of the Parliament, becaus thay concerneit me not; bot keptit my selff very quyet till my away-going. And dureing the tyme of my Warding in *the Castell of Edr*, my cariage wes so modest, calme, and peceabill, withoute meddling with thir matteris of THE KIRK now in questioun, as I hoip nothing can be obietit vnto me. And yf HIS MA^{TIE} wald be gratiounlie pleast to suffer me spend the few remanent of my aigeit and weyrysome dayes at my awne houfe, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairabout; and I fall neair tranfend that boundis, nor medle with ony matter concerneing the pollicie and government of THE KIRK. Most humble beseking your ll. to haif consideratioun of this my estate; and outhere be your selfis, or be your intercessioun at HIS MAIESTIES handis, to grant me some ease and releiff in this heaue charge layed vponne me, whilk wilbe my vtter ouerthrow and wrak. And your ll. anfer.

(22.) LETTER, *The Archbishop of St Andrews*² to THE KING.

MOST SACRED SOVERAINE,

It may please your most excellent MA^{TIE}, I haive seene your MA^{TIES} directioun sent to THE EARLE OF DUNBAR about MR DAVID LYNDSEYE his intemperance in preaching. I haive tane baldnes to give anfer and avyse, in maist humble and submissie maner. The man vas input³ be your MA^{TIE} vpon my rasche and oft repeated fute. He hes oft done veill aganes the feditious, albeit inconflantlie. The vordes he spak, to my gryt greiff, wer to reprehend your MA^{TIE} for toleratioun and advancinge off PAPISTES, quha ever focht your MA^{TIES} wrak; and this wes after þat I had congratulato the peipill your MA^{TIES} lait wonderfull dellyverie.⁴ Efter Sermon, I couened the *Baillies*, and *Counfall*, and sent þame to him to querrell him for his vnreverent usage; quhilk wrocht this effect that the daye followinge he preached ane palinod,⁵ fa impudentlie flatteringe to your MA^{TIES} praife, and vilipendinge all the Princes of Europe be name, in your MA^{TIES} respect,⁶ that all men esteimed he vas makand penance for the former dayes insolence, with supererogatioun.

This his foolie⁷ is nocht worthie of your MA^{TIES} wrathe; and as for me, I will nocht give advyse to honour sick ane⁸ with publick censure, at sic ane tyme. I haive advyfed with your MA^{TIES} most trustie servantis of our societie, quha thinkes meit to transport him, but noyce,⁹ to a landwart¹⁰ Kirk; and to asume to me ane¹¹ mor ryfe¹² and fast,¹³ quhilk your M. fall ease accomplished, but your MA^{TIES} empfechement.¹⁴

My Lord of Dunbar hes employed him selff fa faythfullie, eafaldlie,¹⁵ and fortunatlie, in this lait service, that I presume to advyse your MA^{TIE} to give him credit in your MA^{TIES} service, in our gryteft turne, in this Parliament; for quhatsumever is glaused to your MA^{TIE} in the contraire, is aither *panici terrores*, or prevaricatioun.

SIR, I lacke moyen to do quhat I wald in your MA^{TIES} service. I heir, daylie, foule vanities quhilkis I think I am called to repressie. I want formall rycht and rent. Supplie this, SIR, in this your approachinge Court, and than se fall nocht neid to wreit hither; but the punished fall feik thither toward your MA^{TIE} for obteneinge pardone. Finallie, your MA^{TIES} erandis in the credit off *the Earle of Dunbar*, or of ane off lyk dispositioun, is heir possibill and ease. *Non debet sub tali tantoguo*

¹ Sir William Livingstone, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentombarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661.

² George Gladstones, translated from the See of Caithness anno 1606, but not consecrated till anno 1610. Died May 2, 1615.

³ Inducted, put in.

⁴ From the Earl of Gowrie's Conspiracy.

⁵ Lat. *palinodium*, recantation

after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts.

⁶ In comparison to the King.

⁷ Folly.

⁸ Such a one.

⁹ Translate him without bustle or noise.

¹⁰ To a country or landward Parish Church.

¹¹ One, viz. another Minister.

¹² Wise.

¹³ Steady, sure.

¹⁴ Without hindrance or trouble to your Majesty.

¹⁵ Sincerely, without duplicity, (q. d. *one-foldly*;) in contradistinction to *twa-fald*, double, deceitful. The word is now nearly obsolete.

principe precarium esse imperium. This,¹ I humble recommend your MATIES perfou and esfait to God his mercifull Providence, I remaine,

Your MATIES maift humble oratour and obedient fervant,
EDINBURGHE, nynt of Februar, 1606(-7.)

To THE KINGIS most excellent MATY.

SANCTANDROIS.

No. IX.

BOND by JOHN fifth EARL OF CASSILLIS, to his Brother HEW KENNEDY, commonly called THE MASTER OF CASSILLIS, to pay him and his accomplices 1200 Merks yearly, &c. to commence from the date of their taking the Life of THE LAIRD OF AUCHINDRAYNE.

(See VOL. III. pp. 124, 581, &c.)

[In the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,² all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of Sir WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Lairds of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and heir apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, Tutor of Cassillis, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

The MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.³ The occurrence of the *Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "but (as 'the Historie' quaintly informs us) the cuntry thocht that he wald not be eirnist in that cause, for the auld luiff betuix him and Auchindrayne."⁴ The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular Bond!

Judging by the Earl's former and subsequent history, he probably thought that, in either event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quondam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his bonds, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Obliss ws, that howfovrn our broder HEW KENNEDY of Brounfoutn, with his complices, taikis the LAIRD OF AUCHINDRANEIS lyf, that we fall mak guid and thankfull payment to him and pame of je sowme of twelf hundreth merkis, zeirle, togidder with corne to sex horfis, ay and quhill⁵ we refflaw⁶ pame in houfhold with our self: Beginning je first payment immediatlie after pair committing of je said deid. ATTOUR,⁷ howfovrn we refflaw pame in houfhold, we fall pay to je twa ferwing gentillmen je feis, zeirle, as our awin houfhold ferwandis. And heirto we Obliss ws, vpon our honour. SUBSCRIVIT with our hand, AT MAYBOLE, je ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

¹ Thus. ² The Quarto Edition, Edin. 1830. ³ For the confessed purpose of taking his life, in following out their deadly Feud. ⁴ Historie of the Kennedies, p. 59. ⁵ Aye and until. ⁶ Receive. ⁷ Moreover.

GENERAL INDEX.

GENERAL INDEX

TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF

KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

* * THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, * 1, * 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

- ABBOT OF UNREASON, I. * 116, * 121, * 123 ;
Insurrection in Edinburgh, * 409 ; in the
Mearns, &c., I. 5, 81. See Robin Hood, &c.
Abbreviator of the King's Household Books, I.
* 313.
- Abduction, Forcible, I. * 104, * 180, * 182 ;
Kincaid, &c. * 421 ; Oliphant, 24 ; Carnecroce,
244 ; Gray, 297 ; Aikenhead, 362 ; Fleming,
377 ; Laird of Corhouse, 378 ; Laird of Thor-
nydykes carried off, when 14 years old, and
married against his consent, III. 402. See
Rape, Forcing, &c.
- Aberbrothock, Abbot of, I. * 127 ; David, * 136,
* 185 ; Ambassador to France, 281 ; Geo., 16 ;
John, 89 ; Ja., II. 575.
- ABERCORN, LORD (EARL OF), Ja., II. 496, 544 ;
III. 138 ; his activity as to the Laird of Auch-
indrane's being brought to justice, *ib.* 168, &c.
Abercomby of Gourdy, Dav., I. * 405 ;—of that
Ilk, Alex., I. * 441 ; Tho., II. 60 ; III. 318 ;—
of Ley, Alex., slain by Witchcraft, I. 206 ;—of
Murthlie, Tho., II. 49 ;—of Pitmedden, Alex.
Bigamy, Adultery, I. 110 ; his place burnt,
160 ; most barbarously Murdered, III. 78 ;—

- Mr Ro., Jesuite, I. 312, &c.;—of Straruthie, And., II. 534;—of Westhall, Hector, III. 78.
- Aberdeen, General Remission to Inhabitants, I. * 113; Bailies and community remitted for abiding from the Armies of Solway and Werk, &c., * 242; Bailies deforced, * 250; burgesses exempted from Assises of Barons, &c., * 377; III. 379; absolved for not taking Mr Ja. Gordon, &c. I. 343;—Bishop of, Wm., I. * 162; Elect (Bishop of), I. * 263;—Raid of, I. 183.
- ABERNETHY, LORD, of Saltoun. See Saltoun.
- Abertarf, Raid of, I. * 392.
- Aberncill, burnt, III. 232, 250, 566.
- 'Able and Stowt,' a Witch's nickname, III. 606.
- Achallader, Castle of, burnt by the MacGregors, III. 114, 232, 249.
- Achannane of Murdochat, Gilb., III. 118.
- Acheson of Gosford, Alex., I. 2, 156;—of Inveresk, Jo., portioner, III. 9, 452.
- Achyle, Baron of, III. 552.
- Adam, Geo., beheaded, I. 95.
- Adamesoun of Scouringburne, Gilb., III. 480.
- Adder's-skin, used in Witches' charms, I. 245.
- Adiesoun, Dav., hanged for horse-stealing, &c., II. 357.
- Adjournal, Books of, I. * 477, *et passim*.
- Administering the Holy Sacraments, in the Popish manner, &c. See Sacraments, &c.;—enchanted drink, III. 68.
- Admiral, Lord High, his jurisdiction, I. * 129, 93.
- Adois, business, II. 185, &c.
- Adreiche, III. 265.
- Advocate, King's, I. * 315, 101;—Faculty of, not liable to pass on Assises, II. 112;—for the poor, I. * 315.
- Adultery, James Davidstone, I. * 27; Mr John Elphinstoune, * 356, * 459; Lady Elphinstoune and Drummond of Medope, * 465; Pat. Vrhuard, 11; Wm. Carnebye, 13; Amullekyne, 78; banished, 80; Eliz. Prestoun, 83; and Poisoning, And. Glencorse, burnt, 84; Abercrombie, 110; Ja. Myllar and Marjory Blaikie, 167; Hay of Dalgattie, II. 46; curious pleadings recorded in this case, *ib.*; Gray banished, 369; Norwall banished, 387; Heislop and Gray carted through Edinburgh, and banished the burgh, 401;—and Child-Murder, Ryburne of that ilk, 415; Roise of Dunsellie beheaded, 481; Jardine of Birmok, 491;—and Incest, Ja. Stewart, 'wirreit and brunt,' III. 248; Jo. Guthrie, hanged, 428; Alex. Thomson and Jonet Cuthbert, banished, *ib.*
- Afald, sincere, &c., III. 275, 395, *et passim*.
- Afflek. See Anchinlek.
- Agnew, Patrick, Sheriff of Wigtoun, taking bribe to discharge a Murderer, I. * 63; Oppression, &c., * 89; prevents Court being held, * 91; remitted for Slaughter, * 252, 141;—of Mureis-haith, Gilb., III. 328;—of Trong, Alex. *ib.*
- Aguirre, Mr Fra., Spaniard, I. 329.
- Abannay of Kirkdail, Pat. Provost of Wigtoun, slaio, III. 119, Pat. *ib.* 477;—of Sorby, I. * 95; Jo., Provost of Wigtoun, II. 540; Marg., stealing a purse, III. 552.
- Aiken, Bessie, condemned for Witchcraft, II. 25; pleads pregnancy, and is, after long imprisonment, banished for life, 29, 52.
- Airdry, Laird of, III. 245; his lands in Lewis burnt and wasted, *ib.*
- AIRLY, LORD. See Ogilvy.
- Airth of Smetoun, Geo., I. * 201.
- Aitchison of Aitchison's haven, Mark, denounced, I. 276;—of Gosford, Alex., 2, 156;—of Inveresk, Jo., portioner, III. 9, 452.
- Aitchison's haven, Witch convention there, I. 245.
- Akergill, Fortalice of, besieged by E. of Caithness, &c., I. * 394; taking, 283.
- ALBANY, Alex., DUKE OF (brother of K. JA. III.), Intercommuning with, I. * 16, * 17, * 18, * 40, * 71; John, Governor of Scotland, * 231; fielding against, near Glasgow, * 237, * 238, * 241, * 264; sends a great horse to the King, * 275;—Arthur, PRINCE, (youngest son of K. JAMES V.,) his birth, I. * 309; baptism, death, *ib.*; cups and chalice made at his birth, *ib.*; Albany Herald, III. 86.
- Alchymy, I. * 120.
- Aldermen (Bailies of burghs), a term formerly in common use, in Scotland, I. * 10, * 418, &c. &c.
- ALDOBRANDINE, CARDINAL, II. 589.
- Ale, price of, I. * 389; enchanted, II. 524; Witches' mode of taking, III. 605.
- Ale-cellar, King's, yeoman of, I. * 313; grooins of, *ib.* See Yeoman, &c.

- ALEXANDER, PRINCE OF SCOTLAND, I. * 232;—
of Drummeldrie, Tho., portioner, II. 368;—
of Menstrie, Sir Wm. (the poet), III. 590.
- Allakayis (lackeys), I. * 289.
- Allan of Corsfurd, Ro., I. 35.
- Allanedonnand, burning Castle of, I. * 256.
- Allerdes of that ilk, Jo., II. 362; Jo., fiar, fined,
363;—of Skadowie, III. 453.
- Allhallowmass, I. * 391, &c.
- Almerie, what, III. 239.
- Almosar, Master (Elemosinar or Almonar), I.
* 289.
- Almous-gowns, the King's public Almous, I.
* 278, * 305, * 312, &c. See Bedesmen.
- Allouris (allars), cutting, II. 522; III. 221.
- Alschunder, Jo., swindler, a curious case, III.
209.
- Altar, King's and Queen's, I. * 320.
- ALTRIE, LORD, I. 178; Ro., 283, 284; II. 50.
- Ambassadors from Almane, I. * 283;—Emperor,
I. * 304, * 306;—of England, I. * 273, * 276,
* 283;—expenses, * 285, * 284, * 301, * 318;
—at K. James VI. baptism, * 479;—to demand
redress for Kinmout Will being taken by force
from Castle of Carlisle, 364;—from Q. Eliz. as
to Gowrie's Conspiracy, II. 313, 315;—of
Flanders, I. * 243;—of France, I. * 262,
* 263, * 274, * 281, * 283;—at baptism of K.
JAMES VI. * 479;—Palsgrave, I. * 301.
- Amisfield burnt, I. * 348.
- Amullekyne of Dempstartoune, Cuth., Adultery,
I. 78; banished, 80; Jo., hanged, III. 223.
- Amzerk wine, I. * 389.
- Ancrum Mure and Moss, Army of, I. * 332,
* 359; Raid of, I. * 332.
- And, an', if, III. 75, &c.
- Andersmes, II. 437.
- Andersoune, Jonet, drowned, I. * 162; Thomas,
hanged for coining, * 397.
- Andesoune, Paul, hanged, I. * 400.
- Angel-nobillis, III. 178.
- ANGUS, EARL OF, Stouthreif of his horses, I. * 23;
of his lance, * 25, * 78; Raid against Border
Thieves, * 134; raising Siege of Newark, * 139,
* 188; battle of Kitticrocehill, * 237, * 238,
&c.; * 266, * 269;—Arch. * 382, 75; Treason,
96; outlawed, 97; Forfeited for Raid of Ruth-
- ven, 119, 178; Arch., bewitched to death, 216,
240, *note*, 243; III. 61;—Wm., I. 275; Con-
mission of Justiciary, &c., to use fire and sword
against the Clanchattan, &c., 280; act to ap-
prehend him as a Conspirator against 'the trew
Religioun', 281; Offers presented by him, 301;
to abide trial, &c., 303, 306; trial for Conspiring
against the Religion, 310; summons of Treason,
314; doom, 316; the 'Spanish Blanks,'
&c., 317; II. 67; his Raid of Dumfries, 105,
371, 423, 474, 510; III. 318;—Da. (7th Earl),
390; his daughter La. Marg. married to Sir
Walt. Scott of Branxholm, *ib.*; Bond by Border
Barons to assist, I. * 127;—Bell the Cat,
* 187, &c.; Intercommuning with and assisting,
* 160, * 187, * 201; John Mathesone, behead-
ed, * 202, * 209, * 243, * 244, * 246, * 254;—
COUNTESS OF (Dame Jean Lyon), charm to
secure her favour, 240; accused of Witchcraft,
241, *note*; 242;—MASTER OF, Geo., * 78;—
Wm., his liferent forfeited, 258;—of Hoprig,
Alex., * 84.
- ANNAN, VISCOUNT, Jo., III. 595.
- Annandale, Portuys (Porteous-roll) of, I. * 321.
- ANNE of Denmark, QUEEN, impeded by storms
on her passage to Scotland raised by Witches,
I. 211, 218, 222, 236; taxation of 100,000*l.* on
account of her approaching accouchement,
306; her pearls and jewels abstracted; curious
trial of Marg. Hartsyde, II. 544.
- Ansenje (Royal Standard), I. * 268, * 324;—
bearing one called the 'Haly Gaist,' * 330.
- Anstruther of that ilk, Jo., I. * 141, 60, 72;
younger, 255;—Magistrates of, assisting E.
of Bothwell, 310.
- ANTRIM, MARQUIS OF, III. 2; Randal, *ib.*
- Anysle, Ralph, Intercommuning with D. of Al-
bany, I. * 17.
- Ape, I. * 285.
- Apotesyde, Place of, burnt, &c., II. 510.
- Apparel, curious list of, carried off from Kilbirny,
II. 508; III. 478. (See also under each ar-
ticle of dress.)
- Appeal to the Deity, in cases of Murder, III.
184; form of the ceremonial, *ib.* &c.
- Apprising, Forgery of, I. * 255.
- Aqua vitæ, flagon of, I. * 308.

- Aquaviva, Claudius, General of the Jesuites, III. 378.
- Aqueus, Stephanus, French Ambassador, I. * 281.
- Archers of the King's Guard, I. 299;—do. of France, II. 380; duel in France, *ib.*
- Archery, I. * 272, * 274, * 278; trial of skill between King JAMES V. and 5 English Archers. * 283, * 285; pellok-bows, * 293, * 297; cross-bows, &c., * 305; English bows and arrows, * 307; gainzies (bolts for cross-bows), * 309; bow, arrows, &c., to Q. MARY of Guise, * 324.
- Archibald of Blackhall, Wm., I. * 404.
- Armorial bearings embroidered on King's robes, &c., I. * 301;—of Forfeited Traitors, publicly torn and defaced, * 490; II. 241; their dead bodies exhibited in Court at forfeiture, *ib.*, &c.
- Armour. See under each separate article; South-reif of Horse and, II. 453.
- Arm-pits, a girl tortured by burning under, &c., to detect Theft, II. 45.
- Arms, banners, &c., at Funerals, I. * 288, * 297; &c. &c.
- Arras-werk (Tapestry), I. * 274, * 293, &c.; New Tapestry from Flanders, * 298, * 310; 'Chalmer of the antique Historie,' * 312, * 318, * 320.
- ARTHUR, PRINCE, son of K. JAMES V. See Albany;—Sir Ja., baptizing, &c., in fashion of Papistry, I. * 420.
- Armstrang of Hairlaw, Ade, I. * 398; Christie callit *the Bull*, I. * 398; Ro. callit *Rattas*, III. 396; Wm. callit *Bald*, *ib.*;—of Gilnockie, Jo. I. * 152, &c. See Johnnie A.;—of Quithauch, Simon, hanged, I. * 251; Simon, murdered, * 137; 93; Simon, yr. tried for Raids of Falkland, &c. 293; denounced, 306; Lanie, III. 396;—of Kimmont, Wm., freed from irons in Castle of Carlisle, and carried off by Buckcleugh, I. 363; Q. ELIZ. demands redress by her Ambassador, 364; Relations of this event, II. 504; Fra., III. 396; Wm. his son, *ib.*; Tho., son to 'Sandeis Ringane,' Murder of the Warden of the West Marches, II. 363; his right hand struck off and hanged at Cross of Edr., and his body gibbeted in irons on Burrowmure, 364; Da., son to 'Sandeis Niniane,' hanged, 441; Ingrie and 12 others burn Castle of Langholm, &c. 450; 479; Ringane, callit *New-maid Ringane*, Resisting King's Guard, hanged, 452; Tho., called *the mercheand*, 567; Niniane's Thome hanged for Intercommuning with Lord Maxwell, III. 223;—of the Langholme, Johnne, II. 451; Burning Castle of L., &c. *ib.*; And., slaughter, 567;—of Rowanburne, Will, hanged for Resisting King's Guard, &c. II. 452; Alex., hanged for Murder of Warden of the West Marches, 505; of Flaskholme, Archie, Fire-raising, &c. II. 479;—of Arkiltoune, II. 491; his wife ravished, *ib.*;—of Tweidane, Ninian, Slaughter, &c. II. 509;—of Kirktonehill, Ebbie, Slaughter, II. 567; And., III. 396;—of Cannabie, Ja., Slaughter, II. 567;—of the Gyngeilis, Wm., III. 11, 43; Tho., 396;—of the Holme, Jo., his purse stolen, III. 441; Arch., Intercommuning with, I. * 17, * 101, * 172, * 271; Richard, Resetting, I. * 34, * 36; *Blak Jok*, hanged, I. * 152; John hanged, * 172; Francis, &c. 93; *the Lairdis Jok*, II. 520; Christopher and 16 others, I. * 171; Simon hanged, I. * 172; gift of his escheat, * 250;—Clan of, respited for a year, I. * 235;—Johnnie, notices relative to, I. * 152; gift of his escheat, * 245;—of Mangertoune, Thomas, I. * 152, &c., * 171, * 245; II. 509.
- Armstrang's 'Good night,' II. 505.
- Army of Norhame, I. * 35.
- Armitage (see Hermitage), Castle of, I. * 284; Captain of, III. 220.
- Arbitration, Judicial, to compromise Feud between Lairds of Playne and Cammismort, I. * 167.
- Ardross, Laird of, tears the King's Letters, I. * 271.
- Ardendrauch, Place of, burnt, I. * 98.
- Ardochbeg, burnt, I. * 225.
- Ardwell, burning of, I. * 56.
- ARGYLE, EARL OF, Colin, I. * 2; Arch., * 78; Remitted for Resetting the Master of Montgomery, &c. I. * 105; appointed Justice-General and Master of Household, * 244; remission for Fire-raising in Mull, &c. 247; * 263; resigns Mackane's lands in Isles to the Crown

- * 312, * 353, * 441, * 461, * 478, * 503, * 505, &c. * 512; Colin, 88, 114, 116; Arch., 263, 289; Commission of Fire and sword against Jeauites, &c. 336; Lieutenant, 342; liability for the Campbells and Macgregors, II. 62, 63; sits as Justice-General, 428, 491; his conduct in reference to the Clan-Gregor, 431; shamefully betrays MacGregor, 434; flight to Spain, III. 3; proceedings against those who opposed him as King's Lieut., 79;—**MARQUIS OF**, alleged prodigies at Dunone, III. 199; detail of infamous barbarities committed by his followers, *ib.*
- Arrow-schot, II. 536.
- Arran, Office of Justiciary of, I. * 103; the Bastard of, (see Hamilton,) * 227, &c.
- ARRAN, James, EARL OF, I. * 227; respited, * 232, * 237; 'held furthe' at the Netherbow Port of Edr., * 241; arraying Battle against Duke of Albany, *ib.*; Gift of monastery of the barony of Hamilton, * 255; Gift of nonentry of Finnart, &c. *ib.*;—**REGENT**, * 267, * 268, * 310; * 462, 116;—(Stewart,) Ja., slain by Sir Ja. Douglas of Parkhead, III. 66.
- Artillery, breaking King's, at Glasgow, I. * 234; firing against King, &c. * 255; dragged by oxen, * 260, &c. (see Oxen); stones formerly used in place of metal-bullets, *ib.* * 263, * 265, * 267, * 295; imported, * 307, * 310; sent to Hermitage, * 324;—Master of, I. * 268, * 286; his fees, * 315.
- Arrot of that Ilk, Geo., I. * 180.
- Arnot of Chapel, Da., III. 9;—of Fairny, Ro., III. 316;—of that Ilk, Jo., I. * 94; Jo., Provost of Edr., I. 170; Sir Jo. examined as to Logan's Treason, II. 288; Treas. depute, III. 10;—of Wodmylne, Jo., yr., Slaughter, Shooting Pistoleta, &c. curious arguments recorded, II. 53; finds caution for 10,000 *l.*, 60, 73;—of Incheok, Da., II. 63.
- Arbutnot of Lyntusk, Jo., I. 119;—of that Ilk, Ja., I. * 402, 284; Ro., *fiar*, II. 362;—of Brichtie, Jo., I. * 402;—of Fyndowrie, Dav., II. 362;—of Carnedaw (Carnegaw), Jo., II. 387; III. 478.
- Archattan, Commendator of, Jo., invaded, I. * 465; Prior of, III. 14.
- Aroy, Peter, Highland robber, tortured to discover his accomplices, III. 195.
- Arroquhar, Burning of, I. * 240.
- Assessors to the Justice-depute, II. 3; declined on account of relationship, deadly feud, &c. *ib.*, 82.
- Assises, Exemption from, pleaded, I. * 418; granted to Inhabitants of Perth, * 418; burghesses of Aberdeen exempted from Assises of Barons, &c., * 577; III. 379; Ministers claimed exemption, 24; protest for expenses, 94; Advocates exempted from, II. 112; full exceptions against an Assise, 143; three of King's Guard sit on Assise, 559; instance of a large number (19), III. 57; trial of a *fact* remitted to Assise, 'and the Probation to be vlet befor thame,' 574; two 'chirurganes' sit on Assise, *ib.*; Proof led by Assise *after they were enclosed* in the Assise-house, 575.
- Assise declared Infamous and Perjured for Wilful Error, I. * 72; Protestation against a Verdict, * 449; Assise tried for acquitting a Witch, 244; see *Error*; confined till Verdict returned, * 131; imprisoned for year and day, I. * 203; wine brought to, at Sir Jas. Hamilton's Trial, * 305; Great (*Magna Assisa*), * 391; often considered as witnesses in the cause, III. 60, and *note*, 107, 280, &c.
- Assoinjie (Fr. *essoyné*), excuse for absence, &c. II. 65.
- Asound, swooning, II. 525.
- Asainlosa of that Ilk, Ja., I. * 420.
- Aslowne, Laird of, I. 65;—of Garroche, III. 253; Mr Geo. his son, assists in a Mass, *ib.*
- Assurance, judicial, I. * 144.
- Assythment, for Mutilation, I. * 335; for Slaughter, * 371; for cutting off the ears, * 475; II. 74, 403; III. 537.
- Ashintullie, Place of, besieged, II. 63.
- Assisting Thieves and Rebels, I. * 144; Traitors, * 160, * 187, * 201, * 202, * 205; the English, * 332, * 337, * 338 See *Intercommuning*, &c.
- Askomell, in Kyntyre, burnt, III. 5.
- Assembly of the Kirk, convoking an unlawful, II. 3; Moderator and Ministers tried, 494; banished, 503, &c.

- Assignment, Forging, Perjury, &c. III. 208.
 Assolzie, II. 466, &c.
 ATHENS, ARCHBISHOP OF, and of the Isles of Scotland, I. * 387.
 Athole, Royal Hunting in, I. * 279.
 ATHOLL, EARL OF, John, I. * 78, * 190, * 391, * 469; appointed Justiciar of Atholl, 83, 178, 284, 309; denounced, 310; Commission of fire and sword against Jeeuits, &c., 336; II. 63, 97, 235, 297, *note*; III. 14, *note*, 22.
 Atkinson of Sleichhoussis, Henry, Oppression, &c., I. * 179.
 AUBIGNY, LORD, present of horses and hounds to him and 'Madame Dobinze' sent by the King to France, I. * 277; Esme, * 337.
 Auchinames, Laird of, waylaid, I. * 204.
 Auchincassel burnt, I. * 348.
 Auchincraw of East Restoun, Geo., I. 270;—Wm. and Hary, tried for Slaughter of Geo. Home of Spott, II. 99.
 Auchindonne, Mass celebrated, II. 530. See Gordon.
 Auchindrane, Laird of (John Mure), I. * 130, * 138, &c.;—And. Sinclair, his half-brother, III. 139;—bond betwixt Earl and Master of Cassillis for Murdering him, 622;—Lady, III. 138, 149. See Mure.
 Auchinleck of Balmanno, Geo., I. 57; wounded, 98, 100; III. 207; Sir Geo., III. 562;—(Afflek) of Cumlege, Arch. I. 99;—of that ilk, Gilb., I. * 404, 74;—of Schethin, Wm. * 454; of Tuedy, Ja., * 404.
 Auchinloss of that ilk, Ja., I. * 420.
 Auchinsoill burnt, III. 176.
 Auchmowtie, Ro., surgeon, curious case of trial for, II. 112; beheaded, 113, *note*, 124.
 Auchnacoy. See Gordon, I. * 150.
 Auchterallane, Laird of, II. 453.
 Auchterlony of Cairny, Wm., Resetting Johnnie Faa, III. 307.
 Alderne, remarkable proceedings against Issobell Gowdie, &c., for Witchcraft, III. 602, &c.;—Kirk of, the Devil initiates Witches in 'the Readeris dask' there, III. 602, &c.
 Auldjoyes, Jonet, Forcible Abduction of, I. * 421.
 Aurum potable, I. * 120.
 Auto da fé, I. * 209, &c. (See Heresy.)
 Avenger of blood, III. 183.
 Avery, King's, Yeoman of, I. * 313.
 AVONDALE, Andro, LORD, I. * 78, * 224; respited, * 237; Keeper of Dumbarton Castle, * 241, * 268.
 Ayfald, what, II. 30, *et passim*.
 Ayr, Insurrection between inhabitants and neighbours, I. * 204; Justice-aire of, I. * 56, * 73; Doctrines of Reformation preached at, I. * 407; Sheriff of, slays the Earl of Cassillis, I. * 136; Intercommuning with him, * 137. See Campbell of London.
 Aysoun, 'Baron' of Tulymet, Jo., slain, I. * 334.
 Aytoun, of Dinmure, And., II. 53, 60;—(of that ilk) Laird of, Warden Depute of East Marches, I. * 323;—Raid of, I. * 110, * 112, * 117.

B.

- BACHILLANE naig, what, III. 78.
 Bags, for Witch-charms, &c., III. 609 *et seq.* 618.
 Bahr-recht, or law of the bier, touching the corpse of murdered persons to discover the murderer, III. 183, &c. See Corpse and Touching.
 Bailie-Court, drawing knives, and stabbing in, I. * 330.
 Bailies of Edinburgh tried for freeing a Homicide, I. * 442 to * 450; Jurisdiction of, II. 43;—of Leith wounded, I. * 403;—of Renfrew wounded, * 458.
 Baillie (Bailzie) of Bagbie, Wm., I. * 127; Feud with Lord Somerville, * 382;—of Carphin, James, yr., * 385, 35;—of Chapelgill, Ja., * 81;—of Cormestoune, Tho., slain, * 175; Wm., * 404;—of Gervestoun (Jerristoun), Ro. * 167; Tutor of, Tho., 36, 87; Ro., II. 541;—of Hillis, Ja., II. 562;—of Lamington, Wm., I. 36, 87;—of Littlegill, Alex., 149; and Rachaell, his daughter, slain, &c., 184; II. 491; Math., *ib.*, 555; III. 54, 101, 264, 478, 493; Mr Ja., his son, *ib.*; Slaughter,

- 498;—of St John's Kirk, Jo., II. 368;—Wm. one of King's Guard, slain, II. 559.
- Baird of Auchmaddy (Auchmedden), Geo., I. * 454; Gilb., II. 394; Hen., beheaded for Slaughter, III. 499;—of Kilquhinzie (Cullenzie), III. 119; Jo., his brother, Slaughter, *ib.* 172, 475;—of Posso, Geo., I. * 81, * 87, * 133.
- Baiser-stanes, what, III. 100.
- Balance, Ordeal of the, III. 184.
- Balcasky, Martin, using Heretical books, I. * 219; remitted, * 252.
- Balcanquhall, Mr Walt., one of the banished Ministers, I. * 137; II. 5, &c.
- Balcomie, Laird of, III. 245; his lands in Lewis burnt and wasted, &c., *ib.*
- Balfour of Bandone, Peter, I. 27, 255;—of Bello, Da. I. 255;—of Burley, David, remitted, I. * 240; Mich. * 345; Sir Mich., 280; Da., brother to Laird of, II. 135; Mr Wm., brother to, Housebreaking, &c., 383, III. 9; Sir Ja., his brother, *ib.*; Mich., 391. See Burley;—Geo., Prior of Charterhouse, I. 48; Treason, 86;—of Kirktonne, Dav., 28;—Laird of (of that Ilk), 74;—of Makcormastoune, Geo., 392;—Marg., Witch, 373; Alison, 374; tortured with the 'caschielawis,' 375; the inhuman torture of her husband, son, and daughter to extort confession, *ib.* 376; her declaration at the place of execution, *ib.*;—of Mountquhanie, III. 82;—of Pitcolloch, Mr Pat., II. 343, 430;—of Pittendreich, Sir Ja., Captain of Edr. Castle, I. * 479, * 512; and Dep. of 'French Paris,' &c.; Intercommuning with, 33;—Mr Wm., Rioting to restore Popery, * 416.
- Bale-Fires, 'Balis' of Fire for raising the country, in case of invasion, I. * 269, * 280, &c.
- Balbagartye, Laird of, I. * 454.
- Ballagane, Laird of, (Dunc. Hunter,) Intercommuning with, I. * 369.
- Ballatt against King of England, I. * 295.
- Ball-cod, III. 496.
- Ballenden of Auchnoll, Sir Lonis, Justice Clerk, I. 142; Sir Jo., II. 459, *note*; Sir Jo., Justice-Clerk, III. 391;—Sir Ja., II. 413. See Bannatyne and Bellenden.
- Ball-green, III. 214; playing 'the boilspell,' *ib.*
- Ballingall of that Ilk, Wm., I. * 404, * 425; Arch., his brother, slain, *ib.*; of Riggis, Ja., * 404.
- Ballogy, fortalice of, destroyed by King's command, I. 344.
- Balmane, Laird of, I. * 284.
- Balmanno of that Ilk, Alex., I. 100.
- BALMERINOCHE, LORD, Ja., Secretary, II. 274, 456;—496, 542, 544; tried for treasurable correspondence with THE POPE in King's name, 568; his Declaration and Confession, 575; sentenced to be beheaded, 580; Documents illustrative of his Trial, *ib.*; Narrative by himself, 588; his Speech when convicted, 600; Calderwood's account, 601, &c.;—Jo., restored in blood, 569.
- Balnnoon, Laird of. See Collese.
- Balrines (or Glenlivet), battle of, I. 361.
- Balsonit, sorit, horse, I. * 400.
- Band (Bond), General, breaking the King's, I. * 208, 205; liability as to, II. 521;—of Association, by the Rebels in Orkney, III. 293; torn by Ro. Stewart, 304, 395.
- Bandene, alias Ruthvene of that Ilk, Wm., yr., II. 397; funeral of, 473.
- Bandis (bans), proclamation of, III. 413.
- Band-mutns, what, (perhaps Lat. *mutus*, implying secrecy,) III. 83;—of Manrent, I. * 373; III. 83, *note*, &c.;—betwixt the Scotts, III. 381; betwixt them and the Kerrs, 390; the Border Berons, &c., 394.
- Bannachra, Castle of, Sir Humphrey Colquhoun Murdered at, by the MacFarlans, II. 431.
- Bannatyne of Coig, John, I. * 405;—of Corhous, Jo., Slaughter, I. * 179; respited for Mutilation, * 241, 65, 72; Wm., Forcible abduction, 378; II. 108, 131; III. 145;—of Gairsey, Wm., slaughter, I. 393; III. 82;—John, exempted from Hosts, warding, &c., I. * 247;—Ja., in Chapel Donald, Murder of the Laird of Culzeane, II. 461, &c. See Muir of Auchindrain and his Trial, III. 127, &c.; proposal to murder him when in Ireland, 139;—Tho., Lord Newtyle, I. 9; Tho., Justice-depute, 41, &c.; Alex., Justice-depute, 58, &c.;—of Kames, Hector, Slaughter of Laird of Wes-

- ter Kames, II. 131; III. 144;—of Newtyle, Tho., I. 9; Mr Ja. II. 460; appointed Justice-depute, III. 426. See Bellenden and Ballanden.
- Bane, King and Queen of. See Bene.
- Banner, Royal, I. *114, *267;—to the Trumpets, I. * 308, &c. See Standard.
- Bannerman (Heritable Banner-bearer), I. * 268.
- Banishment to county of Aberdeen, I. *203;—from Cranstoun, III. 540;—from Edinburgh, I. * 399;—from Scotland, * 157, * 161, * 366, * 375, * 388, * 394, * 396, * 402, * 406; and right hand struck off, * 432, *ib.*; for Adultery, 80; shooting in King's palace, 187;—England, Ireland, and the Isles, II. 40; III. 541, 542, &c.;—beyond sea, I. * 160;—from Stratherne, * 346.
- Baptising, in the fashion of Papistry, I. * 420; after excommunication, 189;—a cat (by Witches) 218; a more remarkable instance, 237; II. 543.
- Baptism of PRINCE JAMES (eldest son of King James V.), I. * 302; painting his arms, &c., *ib.*;—of PRINCE ARTHUR, * 309;—KING JAMES VI. at Stirling, * 479;—of PRINCE HENRY, 338; preparations for, and expenses of, 339, &c.;—renouncing, III. 601;—form of Witches' baptism, &c., *ib.*, 603, 610, 614, 617, &c. See Witchcraft, *passim*.
- Bar of Justiciary Court, how kept, I. * 2.
- Barbarous slaughter and maiming of sheep, III. 380.
- Barbed harnessing for King's Horse, I. * 321.
- Barclay of Cullarnye, Dav. I. 60;—of Johnstoun, Jo., III. 268;—of Ladyland, Da., I. * 451; Hew, 281;—of Matheris, Dav. * 190, * 199;—of Rynd, Tho., * 158;—of Stercovy, Rob., * 88;—of Strowy, Jo., 25;—of Towie (Tollie), Walt., 65; Pat., slaughter of a Messenger-at-arms, 381; acquitted, 385; Sir Pat., II. 348; his brother Wm. tried for Perjury, hearing Mass, &c. *ib.*; Walt., III. 486; Tho. Dempster of Muresk beheaded for Forging a Bond in his name, *ib.*; Sir Pat. and Pat. yr. *ib.*;—of Touche, Wm., remitted, I, * 250;—of Vuthank, Andrew, III. 564;—of Syde, Alexander, I. * 404; Geo., II. 130; Jo., his son, tried for Slaughter, *ib.* 134;—of that ilk, Walter, * 441.
- Bardowy, Laird and Lady of, &c. See Hamilton.
- Barholme, Laird of, slain, I. 81; II. 523.
- Bark, King's a little, a ship, I. * 298.
- Barmkine, (barmekyne), what, III. 13, 17, &c.
- Barnehill, burnt, III. 223.
- Barras See Tournament, III. 42.
- Barrett, Capt., English Pirate, III. 100.
- Barroune of Kynnaid, Geo., II. 128;—Jo. *alias* M^cDuff, Officer of Strathbraan, banged for Gowrie's Conspiracy, II. 153, &c., 246. See Macduff, and 394, *note*.
- Barsalooch, burning of, I. * 104.
- Barskeocht, attempt to restore Popery at the Place of, I. * 430.
- Barry, Tho., forging Regent's signature, right hand struck off, I. 19.
- Basane (Bison) skins, I. * 321.
- Basin of solid gold, weighing 10 lb. 1½ oz. I. * 295. See Gold, &c.
- Bass, Laird of. See Lauder.
- Bassoned-meir, a soird, III. 265.
- Bastie, Sir Anthony D'Arcie de la, Guardian and Lieutenant of Lothian and the Merse, &c., slain, I. * 235, * 261, * 265, * 267.
- Batard, what, III. 293.
- 'Batounnis and rounigs', striking with, a Minister, II. 416; naked people, 454, &c. See Hurting and Wounding.
- Battery, *pendente lite*, I. * 73.
- Battiesoune, Jo., alias *Jok of the Scoir*, *Priket up Archie*, and Adie, his brothers, hanged for Slaughter, Horse and Cattle-stealing, II. 443.
- Battle, Dunkeld, I. * 98; Stirling, 100; Glasgow-Muir, * 114; Corrichie, * 183; Kitty-crocehill, near Glasgow, * 237; Haddenrig, * 324; Ancrum-muir, * 332, * 359; Pynkie-cleuche, * 360, * 378, 51; Langside, I. 1, 5, &c.; Inveresk or Musselburgh, 51; Barringnes, or Glenlivet, 361; Dryffe-Sands, III. 30. See Field; Fight, &c.
- Bauche straikis, what, II. 84; III. 485, &c.
- Bauld, Bessie, a Witch's nickname, III. 606.
- Baver (beaver hat) to K. JAMES V, I. * 305.
- Bawbeis (Balbeis), forging, I. * 364, * 365, * 392;

- Forbes of Monymusk and Pitsligo, * 442.
See Forgery.
- Baw-field, III. 277.
- Baxter, King's master, I. * 313.
- Bayne of Logie, Alex., II. 98; III. 252;—of Wester Logie, Alex., II. 484;—of Tullich, Dun., yr., I. 200, 204; Alex., 353; Dun., III. 134.
- Beads, golden, for K. JAMES V., I. * 301; amethyst, * 307; pearl, *ib.*, &c.
- Bean-shaw (boneshawe), charm for, III. 609 and *notes*.
- Bear-leader of England, I. * 118.
- Bear-tooth for THE PRINCE, I. * 307.
- Beatoun (Betoune, Bethune), Abbot of Abbirbrothok, Ja., II. 575;—of Bailiescraigs, Jo., I. * 137;—of Balfour, Ja., * 136, 60, 191; Da., II., 60;—of Capildra, Arch., * 328;—CARDINAL, * 310, * 318; goes to France, * 323; Murder of, * 337;—of Creich, Ro., * 345; Dav., 60; Ja., 308; Jo., III. 394, *note*;—Mr James, aiding English at Broughty, I. * 345;—Lady Buckleuch, Janet, III. 394; of Falay, Jo., 264;—of Melgund, Ja., I. * 136, * 157; David, 79;—of Westhall, (*alias* Belouche), Ro., a declared rebel, 74.
- BEDFORD, EARL OF, at K. JAMES VI. baptism, I. * 479.
- Beds, the King's 'Lettcamp' (*Lit de camp*), I. * 273; price of, at Justice-aires, * 390, &c.
- Bedesmen, the King's, I. * 263, &c.
- Beef, price of, at Justice-aire, I. * 390.
- Beggars, 'strang and idill,' I. 303.
- Behheading, capital punishment, see Treason, Murder, &c. *passim*;—with a sword, I. * 425.
- Beill, House of, to be kept against the English, I. * 280.
- Beil-Fyres. (See Bale-fires), I. * 262.
- Beirope of that ilk, Ro., II. 515.
- Bek, Jo., Slaughter, II. 523.
- Bell, alarm, II. 31;—of Alby, Wm., I. * 431;—the Cat. See Angus;—for Prince's Chapel, * 306;—Wm., hanged for Rape, II. 475.
- BELLARMINÉ, CARDINAL, answers K. JAMES VI., II. 570, &c. See Balmerinoch.
- Bellenden of Auchnoul, Mr Tho., Justice-Clerk, I. * 254;—of Ewie (Evie), Tho., 377; Sir Pat., III. 82;—Maister John, translating of the 'Cronykil,' I. * 274, * 276, * 279; 'Titus Lenius,' * 279, * 282;—Jo., Slaughter, III. 497. See Ballenden and Bannatyne.
- Belts, I. * 307, &c.
- Ben, what, III. 509, *note*.
- Bene, King of, I. * 115, * 278; Queen of, * 278.
- Bernardino, Seigneur Don, I. 332.
- Berge, Jaques de la, a Fleming, robbed betwixt Edinburgh and Leith, II. 441.
- Bernehill, Burning of, I. * 36.
- Bertoun of Over Barntoun, Robert, absence from the Armies of Arran and Angus, the 'King's Lieutenants,' I. * 237.
- BERRIEDALE, MASTER OF, Jo., I. 368;—LORD, Wm., 368; III. 231; Feuds between E. of Caithness and E. of Sutherland, *ib.*; imprisoned, &c., 310. See Caithness and Sinclair.
- Berwick, English Herald, I. * 283.
- Berwickshire, Inhabitants of, get Remission, I. * 14; Barons fail in their Bond, * 146.
- Besieging house of Summerdall, I. * 225. (See Dumbarton, &c.); Frenkraucht, * 328; Coldingham, * 331; Lochmaben Castle, * 332; Dumbarton Castle, * 334; St Andrews, *ib.*; Langholm, * 338; town of Haddington, * 342; Akergill, * 391; house of Penkill, * 403; Wauchbroune, &c. Jo., Leyis beheaded, 8; Dupplin, 25; Edinburgh, 30; House of Strechin, 65; Warriston, 81; Kirkhill, 174; Fedderat, 205; King, &c., in Tolbooth of Edinburgh, II. 29; Place of Ashintillie, 63; Auchmedden, and deflowering the Laird of Vrinoch's daughter, 394; Tower of Newbie, &c., 464.
- Besetting the way. See Umbesetting.
- Bestiality, Jo. Jak, *alias* Scott, 'wirreit and brunt in ashes,' II. 491.
- Beverage, John, a Dominican Friar, burnt for Heresy, I. * 210, * 211, &c.
- Bewes, Mons., Ambassador, I. * 281, * 283.
- BEWLIE, LORD, Ja., II. 581, 604. See Hay.
- Bible, in English, persons burnt for using. See Heresy, Reformation, &c.
- Bie-skeppis, robbing a garden of, III. 555.
- Bier, law of the, *Bahr-recht*, III. 183, *et seq.*
- Bigamy, I. 110; Jo. Guttrie hanged, III. 428;

- Alex. Thomson and Jonet Cuthbert, banished, III. 428. See Adultery, Incest, &c.
- Biggar of Woolmot, Major Jo., III. 601, *note*.
- Bikkertoun of Casch, Wm., shooting Laird of Balmanno near King's person, I. 98;—Hen. beheaded, * 162.
- BINNING, LORD, Tho., III, 14, 312, 452, &c., *passim*. See Haddingtoun and Hamilton.
- Bintoich, Fight of, III. 112. See Clan Gregor.
- Birgeame, Raid of, I. * 338.
- Birlingis, what, III. 368.
- Birmie, of Browbrie, Ja., III. 475.
- Birsay, Palace of, III. 273, &c. See Trials of E. of Orkney and his base son, 272, 308, and illustrative documents.
- Birth-pains, Witch-charm to allay, I. 237.
- Bishop of Brechin, Alex., I. 392;—Captain, English Pirate, III. 105.
- Bischoptoun, Laird of, invades Provost of Glasgow, I. * 361.
- Bissett, Habakkuk, W. S., assaulted, &c. I. 286; his curious form of process, *ib. note*, 298.
- Biting off a finger, I. 34. See Demembration and Mutilation.
- Black, Henry, hanged, Common Theft, &c., I. * 413; Hen., Captain of the Castle of Kirkwall, and 11 others, Slaughter, III. 53; Tho., chamberlain to E. of Orkney, 273; hanged, 283; his Deposition, 296; John, Dominican Friar, disputation with Willox the Reformer, I. * 417; Freir, John, wounded, in the Cowgate of Edr., * 475;—Saturday, what, I. 56, *note*.
- Blackadder of that Ilk, And. (Laird of), I. * 42; Felony and Slaughter in the King's Palace, * 100;—Hume of, * 413, &c. See Hume;—of Tulliallan, Johu, beheaded, * 151; * 271; * 275; * 347;—Castle of, besieged by the English, * 269;—Capt. Wm., invaded for his slaughter, * 488; hanged and quartered for K. HENRY (Darnley's) Murder, * 489, * 509;—of Taisiss, Wm., 59.
- Blackhall of that Ilk, Alex., I. 382.
- Black-mail, Scott of Tuschelaw beheaded, I. * 145; Johnnie Armstrang, * 153; Messengers taking, hanged, * 356. See Skatt.
- Blaiklok, Adam, hanged for Perjury, &c., III. 358.
- Blackness, Castle of, its Dungeon and kitchen—Tower, I. * 312.
- Blair of Adamtoun (Edentoun), Dav., yr. I. 71; Da., II. 106;—of Ardblair, John, I. * 371; And., 166; Pat., II. 63;—Athole, Castle of, man starved to death in the Pit of, III. 491; dead body hanged on a gibbet, *ib.*;—of Bagray, Alex., umbesetting, &c., II. 103;—of Balgillo, Wm., I. * 157; II. 49; Jo., 105;—of Balthayok, Alex., yr., Deposition as to Gowrie's Conspiracy, II. 188, 241; Tho., remitted, I. * 254, * 343; Feud with Laird of Kinfawns, &c. * 424; Alex., * 452; Alex., yr., II. 49, 60, 166;—of Freirtoun, Alex., I. * 452;—of Fynnech, Walt. II. 439;—of Gairdrum, And., III. 443; Peter, his brother, slays young Laird of Monyvaird, &c., *ib.*;—of that Ilk, John, I. * 331, 50, 71, 87, 282; II. 390, 433; Jo., yr., *ib.*;—Ja., bailie of Ayr, III. 345;—of Melgynche, Jo., I. * 452; of Middle Auchindrain, Jo., * 457, 71;—of the Stroud, 56.
- Blanerne, Laird of, I. * 413.
- Blanks, the Spanish, Trials for conspiring against the Religion, &c., I. 310; Tract as to, 317, &c.
- Blantyre, Commendator (Prior) of, Walt., I. 267, 372; II. 496, 581;—LORD, Walt., II. 3, 273, 274, 327, 496.
- Blawin-hornis (for the chase), &c., sent by K. HENRY VIII. to K. JAMES V., I. * 270.
- Bleeding of Corpses, on the touch of the Murderer, III. 143, 165; curious illustrations of this superstition, 182, &c. See Corpse and Touching.
- Blind Harry, the Minstrel, I. * 116.
- Blinkscale, Dav., hanged for Theft, I. * 151.
- Blood, opinions of the ancients as to the *life* residing in, III. 182, &c. See Touching;—alleged spring of, at Dunoon, 199;—Devil baptizes his converts with, 602, &c. See Witchcraft;—'steming of,' Jasp-stane for, III. 564, &c., and *note*.
- Blood-hound, III. 548.
- Bludwyte, what, II. 468.
- Bluidie-hand, II. 376, *note*.
- Bluid-stane, used as a charm for 'bleeding of the 'nese,' III. 564, *note*.

- Blynschelis, Mr Humph., Justice-Depute, I. 179, *et seq.* &c.
- Bodin in feir of weir, what, I. 49, *et passim.*
- Bodies, dead, of Traitors produced in Judgment before passing sentence of Forfeiture, II. 241, 277, 405;—man starved to death, and his dead body afterwards gibbeted, III. 491.
- Boig of Geicht, Mass celebrated, II. 530.
- Boird-stane, used in Witchcraft, I. 252.
- Boilspell, the, III. 214.
- Boitkyn, hett, the tongue pierced with, for Perjury, &c. III. 539.
- Bone bleeding on a Murderer's touch, III. 183. See Touching, &c.
- Bonar of Balgirscho, Alex., II. 65;—of Kelty, Walter, remitted, I. * 240; Wm., 28;—of Rossy, Wm., I. * 408; II. 103;—Ja., burnt for Incest with his sister, I. 22;—Wm., Murderer, acquitted, II. 531.
- Boice, (Boece), Mr Hector, Pension to, I. * 279.
- Bonnet-caice, III. 478.
- Bonspeill, what, III. 214.
- Bonyalla, III. 2.
- Bonyngtoun, Laird of, I. * 470. See Wylie, Wod;—house of, broken into by the young Laird; title-deeds stolen, II. 340; is hanged, 347;—Laird of Latoune remitted, *ib.* note; accomplices hanged, *ib.*
- Bonkle, Tho., beheaded, &c. I. 158;—Jos., beheaded, II. 417.
- Bontyne of Ardoch, John, I. * 178, * 361; II. 439; III. 114, 233, 250.
- Bonfires, for rejoicing, I. * 262;—to alarm the country, * 269, &c. See Beil-Fyris.
- Books, using heretical, I. * 209, * 216, * 217.
- Border Barons, Bond by, to assist Earl of Angus, I. * 127; neglected to be fulfilled, * 146;—Bonds betwixt them, III. 381, 390, 394;—expedition to, I. * 307, 302;—by King in person, 303;—Thieves, Raid against, I. * 184;—Resetting, * 208.
- Borderers, complaint of, against the English, I. * 279; received as Cautioners, * 467.
- BOTHWELL, (*Ramsay*), LORD, John, Treason, I. * 3, * 4, &c.;—(*Hepburn*), LORD, Patrick, * 188; remitted, * 243; Gift of nonentry, * 255, * 379;—James, * 412;—EARL OF, James, Conspiracy to seize on person of MARY QUEEN OF SCOTS, * 461; notices of his first marriage to Lady Jane Gordon, *ib.*; his summons of Treason, * 462; challenged by Arran to Judicial combat, * 463; breaks ward from Castle of Edr., * 464; Laird of Quhitsum's protest against outlawry, * *ib.*; his servant slain, * 468, * 470; tried for K. HENRY'S (Darnley) Murder, * 489; Narrative written by him after his flight from Scotland, * *ib.*, 95, 145;—Francis, High Treason, 171; Forfeited, 181; uses charms and Witchcraft to take the King's life, 240, note; acquitted, 258; forfeited, 259; proclamation for his pursuit, 260, *et seq.*; forfeited for invading King in Holyroodhouse, &c. 272, 274; his posterity forfeited, *ib.*; his resetters and assisters, &c. 287; tried for Conspiracy against the King at Holyroodhouse and Falkland, 293; doom of forfeiture, 297; Act that none backbite him, &c. 302; again charged with Treason, 303; denounced, *ib.*; Proclamation, 308; another rehearsing his Treasons, 340; taking Leith, II. 21; Resetting one of his adherents, 124;—COUNTESS OF, Dame Mary Douglas, convicted for High Treason, I. 218; ordered to be apprehended, 281; her Letter recalled by the King, 350, 362, &c.;—Mr Fra., (brother to Jo., L. Haliruidhouse), II. 92; III. 9, 264, &c. See Lord H.
- BORTHWICK, LORD, Wm., I. * 78, * 311; John, * 336, * 363, * 412, * 425, * 454, 27; Adultery, 83, 84;—Ja., feud with Lairds of Craigmillar and Bass, 352; Riot at his apprehension, &c.;—Jo., III. 482;—Tutor of, Wm., Murder committed by him, II. 423;—of Johnstounburne, Wm., III. 539;—of Newbyres, Ja., III. 497;—MASTER OF, Thomas, remitted for Intercommuning with Rebels, I. * 242, * 468;—LADY, Incest and Adultery, I. 84;—of Cruikstoun, Wm., I. * 143; Assise for, * 266;—Ro., the celebrated founder of Cannons, (artillery), I. * 267;—of Adestoune, Da., I. * 425;—of Collielaw, Bern. I. 381;—of Pryncado, T., I. * 166, * 434;—of Glengelt, Mich., I. * 434;—of Raschaw (Rilischaw), Ro., I. * 166;—Jo.,

- 27;—Mr Mark, Justice-depute, I. 349;—of Lochhill, Da., King's Advocate, I. 47;—Ja., III. 252;—of Gordonishall, Jo., I. 60;—of Middleton, Tho., I. 84.
- Borthwicksheills, Place of, burnt, I. * 37.
- Boswell of Auchinleck, David, I. * 201, * 369, 148;—Ja., 46;—Jo., 72;—Ja., fear of, II. 130;—Jo., 355;—Ja., 390;—of Duntrine-
Zemen, Jo., II. 130.
- Boss-baked, hump-backed, III. 606.
- Boun, what, III. 466.
- Bourdeaux, Piracy committed there, I. 37.
- Bourtrie-buss, what, II. 458.
- Bouskat, (Bukkat), Captain Johanne, Commis-
sioner of the Artillery, I. * 261, 262.
- Bower, Laird, concerned in the foreknowledge of
Gowrie's Conspiracy, II. 257, &c. See
Sprott and Logan.
- Bows and Arrows, &c. See Archery.
- Bowmaker of Cardone, Ja., I. * 166;—English,
* 278.
- Boy, Slaughter by a, of eight years, I. * 16;
Silver, belonging to K. James V., * 302.
- Boyman, Jonet, Witchcraft, burnt, I. 38.
- Boyd, And., brother to Kilmarnok, II. 555;—of
Banhaihe, Ro., I. 171;—of Boneschaw, Sir
Tho., III. 345;—Jo., acquitted of Poisoning,
I. 399;—Quintin slain, II. 515;—of the
Kypis, Ja., I. 171; wounded, 187;—Lord,
Rob., I. * 451, * 453, * 478, 53, 171; III.
339;—MASTER of, Tho., Slaughter, I. 171;
—of Peukill, Adam, besieged in his house by
Laird of Bargany, I. * 403, 55;—of Pet-
kindy, Rob., I. * 88;—of Portincorse, Ro.,
I. 420;—Mr Ro., Principal of Glasgow Col-
lege, III. 338.
- Boyes, heavy irons for the legs, III. 3.
- Society of the, II. 532; Jo. Forbes behead-
ed, 535, 581.
- Boyle of Kelburne, Jo., II. 430;—Ja., scourged
through Edr., and branded on the cheek, for
Suborning witnesses, III. 358.
- Braemar, stealing wild horses from, I. * 247.
- Braidis, Andro, hanged, III. 382.
- Bracelets, I. * 295, * 307, * 321, &c. See New
Year's gifts.
- Brakanhill, supplying the English at, I. * 344.
- Branding, punishment of a female, I. * 346;
three persons scourged, branded, and banished
for Perjury, &c. III. 358, 445, 595. ✓
- Brand, Mr Jo., Minister, I. * 500, * 511; Jo., stu-
dent, his son, beheaded for Slaughter, III. 360.
- Breach of Trust, pleadings relative to, II. 549, &c.
- Brechin, Feud between citizens of, and Tenants
of Balmamoon, I. * 431;—BISHOP OF, And.,
II. 261, 274.
- Bread, selling light, I. * 360.
- Breadhead, Janet, Witch, III. 614; her Confes-
sions, 616 *et seq.*
- Breadhouse, Yeomen of the King's, I. * 313.
- Breame, Mons. de, French Ambassador, I. * 479.
- Breaking on the Wheel (or *row*), I. 241.
- Bribe, taking a, to discharge a Murderer, I. * 63.
- Bridal, Slaughter at a, III. 471; Jo. Swyne, be-
headed, *ib.*
- Bridge of Dee, Army at, I. 176.
- Bridles, scourging with, I. * 454; barbarously
scourging naked people with bridles, &c., 455,
&c. See Scourging.
- Brigancy, I. * 91, * 469, 145; II. 70, &c.; Tho.
Cuninghame, sword-slipper, hanged, 359, 458.
- Brigantynes, I. * 289.
- Bringing in the English, I. * 17, &c. See En-
glishmen.
- Brisbane of Bishoptoun, John, I. * 163, * 382;
—of Raslene, Math., III. 134;—of Middil
Walkenschaw, Jo., slain, I. 69.
- Broadick Castle, burnt, I. * 139; Capt. of, 286.
- Brocheing, what, III. 526.
- Brodestar (Embroiderer), King's, I. * 315,
* 320, &c.
- Brodie of that Ilk, Alex., Feud with the Laird of
Altyre, I. * 356, 68;—Dav., II. 71;—Cham-
berlain of Kinloss, Alex., III. 485;—of Lea-
thin, Alex., yr., 602;—Margt., Witch, 606,
614, &c.
- Broke, Ja., Murdered, III. 565.
- Broken men, outlaws of no clan, &c., II. 70, 432;
III. 364, 537. See Sorners, &c.
- Bronkard, Sir Hen., sent as Ambassador from Q.
ELIZ. to JAMES VI., to congratulate him on
his escape from Gowrie's Conspiracy, II. 315.
- Brood-mares, King's, I. * 316.
- Brothersyde, Wm., beheaded, I. * 160.

- Broughton, Regality of, I. 185; barbarous treatment of Witches at their execution, III. 598.
- Broughty-craig, supplying English at, I. * 344, * 345, &c. * 361.
- Broune, Thomas, beheaded for Slaughter, I. * 15; Ro., Brigancye, * 469; Jo., beheaded for Slaughter, III. 493; Jo. and three others hanged, &c., for Piracy and Murder under Trust, 569;—of Carslatyre, Jo., yr., 477;—Bessie, murdered by her husband, 481; Jo. Moitt beheaded, 482.
- Bronnfield (Brunnfield), Adam, Slaughter, II. 506;—of Eastfield, 480; Nicol, his son, Slaughter, *ib.*;—of Greenlawdene, Steph., yr., slain, I. * 451; Steph., II. 405;—of Hardaikeris, Adam, I. * 451; Alex., Slaughter, II. 480;—of Qulytelous, Nicoll, 480;—of Todrig, Ro., far, 480;—Geo., beheaded, I. 77; Stephen, Captain of Tamtallon, slain, 113, *note*; 'Singular combat' between his brother and Jo. Carmichael, *ib.*; Jo., yr., slain, II. 480.
- Brown of Colstoun, Mr Wm., Tutor of, I. * 243; Geo., * 388, * 426; Jo., brother to, II. 456;—of Cultermannis, Rich., I. * 76, * 175;—of Carsleuch, Jo. Langside, I. 10; Slaughter, 81;—of the Land, Jo., II. 492;—Jo., baillie of Musselburgh, II. 555;—Geo., hanged and forfeited for Horse and Cattle stealing, 98;—Jonet, hanged for Child-Murder, III. 269;—Jo., scourged and branded for stealing a purse, 445;—of Coulter, Ro., slain, 54; the Laird of Birnok and his son beheaded, 58;—of Mullenis, Jo., 93.
- Bruce of Airth, Jo., slain, I. * 98; Ro., Stouthreif, * 132, * 167; Sir Alex., 304, 351; Feud with Lord Levingstoun, &c., 352; II. 297; Sir Jo., 457;—of Bofark, And., III. 475;—of Braklamuir, And., I. * 148;—Brakanhill, supplying the English at, * 344;—of Bynning, Ro., * 204; slain, * 399; Ro., 27, 155;—of Carnok, Geo., II. 457; Sir Geo., III. 479;—of Clackmannan, Sir Dav., I. * 42; Ro., 276; quarrel with Bailies, &c., of Perth, 277, 292; Sir Ro., III., 318;—Colin, Intercommuning with MacGregors, II., 456; banished, under pain of 5000 merks, 457; banished of new for life, III. 437;—of Colp-
- malindeis, Hector, I. * 88; Laurence, Feud with Lord Oliphant, * 488, 375; Mr Alex., far, 457; III. 82; Laur., yr., and Alex., his brother, Slaughter, &c., 443, 465; Offers for reconciling Feud with Laird of Monievaired, 480;—of Earlshall, Sir Wm., I. * 427; Peter, 24;—Mr Edward, Justice-depute, 110; Capt. And., II. 484;—of Fyngask, Jo., I. * 158; Pat., Slaughter, II. 427, 457;—Capt. Harie, Duel while on foreign service, a remarkable case, III. 502; illustrative Papers, 504;—History of the Valiant, 448;—of Kinloss, Edw. See Kinloss;—of Kynnaired, David I. * 343; Mr Ro., Minister, 261, 304; reprimands the King, 360; II. 9; his conduct as to Gowrie's Conspiracy, 234, 299, &c.; III. 619, &c.;—of Mungowellis, Ja., I. * 132;—of Pitfowlis, Arch., 382, —Mr Ro., Seminary Priest, 167, 328, 329, &c.;—Helen, burnt for coining, &c., II. 74.
- Bruier, Ralph, the English Captain of the Castle of Roxburgh, I. * 379.
- Brunstoun, Laird of, sent with horses to KING of FRANCE, I. * 322.
- Bruntsland, Pirates' heads affixed there, III. 572.
- BUCCLEUCH, LORD, Walt., II. 581; his Regiment, III. 164. See Scott.
- BUCHAN, LORD JA., Tresson, I. * 2; Jo., * 190; Rob., 88;—EARL OF, II. 133; Jo. III. 486;—(Bucquhane) of Auchnacoy, Alex., I. * 454;—MASTER OF, Ja., II. 413; Ja., his son, Slaughter, *ib.*
- Buchanan of Auchmar, Pat., yr., III. 564;—of Balloch, Ro., I. * 451;—of Blairlosk, Tho., I. 285;—of Buchlyvie, Jo., murdered by Macgregors, II. 432;—of Camroune, J., I. * 441;—of Drumnakill, Rob., * 167; Jo., yr., *ib.*; Walt., * 441, * 451;—of Drumfoild, Jo., 285;—of Gartnavertane, James, remitted, * 253;—Mr George (the Historian), * 290; dress, &c., to him on Q. MARY of Guise's entry into Edr., * 294;—of Ibert, Jo., II. 438;—of that ilk, George, I. * 150; besieging Castle of Dumbarton, &c., * 236, * 344, * 385; Geo., 289, 306; Jo., III. 318; Geo., yr., 550; Offers to submit the case of torture and Murder of one of his Clan, *ib.*;—

- of Lany, I. * 441, * 453;—of Spittal, Edmund, * 386; Robert, 306;—of Stanyflat, Pat., *166;—Robert Walterosonne, II. 439;—Jo. (Sir), 544; his wife (Margt. Hertsyde) tried for abstracting Queen's jewels, *ib.*; declared 'Infamous,' 556; sentence recalled, 557; Jo., servant to L. Madertie, III. 250; Marg., her Deposition as to Orkney Rebellion, 304; Wm., barbarously tortured, and then Murdered, in the most savage manner, by MacFarlanes, 545, &c.
- Bucht, what, III. 221.
- Buckholme, Keeping House of, I. * 338.
- Buist, a box or chest, I. 253;—' to keip hostis in' for the PRINCE'S Chapel, * 306.
- Buitis, boots or bootikins, instruments of torture, I. 219, 222, 376; 57 strokes inflicted, *ib.*
- Bukkat, Capt. (See Bonskat.)
- Bullets, using *poisoned*, I. * 90; Lord Maxwell traitorously murders the Laird of Johnstone with two, 337.
- Buntene. See Bontyne.
- Burgundy, Herald, I. * 277.
- Burne, Simon, executed, I. * 264.
- Burning of Minto, I. * 19; Place of Fastheuch, * 23; a 'Pele' in Bothill, * 25; Covantoune, * 26; Hirdmanstoune, * 27; Qubitslaide, * 30; Place of Riddale, * 34; Town of Selkirk, * 35; Borthuikscheillis, * 37; Town of Dumfries, * 39; Drumskey and Ardwell, * 56; Newby, * 60; Blindhauche, * 61; Branxholme and Ancrum, * 69; Dunskey, * 95, 103; Ardentraucht, * 98; Thurestoun, * 99; Lochfergus, * 100; Kirk of Monyvaird, * 101; Lochaber, *ib.*; Weyme, * 103; 107, 116; Barsallock, * 104; Innermessane, * 124; Broadick Castle, * 139; Consland, * 141; Lag, * 160; Howpaslot, * 172; Davy, Dykes, Ardrossir, &c., * 175; Cungearstoun, * 201; Ardochbeg, * 225; Grenok, * 232; Town of Bute, * 240; Arroquhire, *ib.*; Craigy, *ib.*; Peill of Knockschenoch, * 242; Roseneath, the Lennox, and Craiginche, * 246; Mull, Tyree, and Morvern, * 247; Kirkmaquho, * 249; Castle of Allanedonnan, * 256; Balbegys, * 334; Town of Durrisdier, Amisfield, &c., * 347; Newbottle and Dalkeith, by the English, * 349; corus of Sprowstoune, * 375; Kirkmichael, * 405; Dornoch, 68; place of Littlegill, 108; place of Pitmedden, 160; Moit, Davidshaw, and Littlegill, 184; place of Dunnibersell, and Murder of the E. of Murray, 284; Babertoun, 290; Kirk of Lochmaben, 305; Luss, &c., by the Macgregors, II. 432; house of Langholm, &c., 450; Littlegill, 491; Askomell, III. 5; Castle of Achallader, 114; Glenlochie, *ib.*; Tolbooth of Lauder, 116; Auchinsoull, 176; Barnehill, 223; Auchallader, Glenlocha, &c., 232; Aberchill, *ib.*, 250, 566; Island of Lewis burnt and wasted, 244; Comerie, 537; 27 houses belonging to the Archdean of Ross, 540.
- Burning of Corns, I. * 27, * 375, * 405; Wm. Donald, hanged, 45.
- at the stake, punishment of death, for Females, I. * 190; husband, for murder of his wife, 14; Jo. Bonar, burnt for Incest with his sister, 22; And. Thomesoun, Burning corns, 70; Andro Glencorse, for Poisoning and Adultery, 84; —Mr Adam Colquhoun, hanged and burnt for Poisoning, &c., * 419. See Murder, Witchcraft, &c.
- Burnet of Barns, Wm., I. * 422; II. 430; Ja., III. 565;—of Leyis, Alex., I. * 470;—Janet, Witch, III. 614, &c.
- Burntisland, Expenses of King's Ships there, I. * 324.
- Burdeous (*Bourdeaux?*) Wines, I. * 349, * 377; price of, * 389.
- Burriow, an executioner, III. 474, 548, &c.
- BURLEY, LORD, Mich., II. 274, 587; III. 9; Sir Ja., his brother, *ib.*, 370. See Balfour.
- Busche, what, III. 101.
- But the house, what, III. 509.
- Bute, Remission to Inhabitants, I * 113; Town burnt, * 240;—Pursuivant, * 277, * 278, * 286, * 305.
- Butter of Gormok, Pat., I. * 88; Jo., Slaughter, * 367; * 371; Pat., II. 63; besieging the place of Assintullie, 67.
- Bylis, a game, I. * 117.
- Bynnies of that Ilk, Tho., I. * 127.
- Bynning, Jo., hanged and quartered for the Murder of K. HENRY (Darnley), I. 95. See K. Henry, &c.

C.

- Caball, Geo., hanged and quartered for uttering forged money, I. * 137.
- Caber, ane grit, III. 567.
- Cache-puill, (Tennis,) game of, I. * 271.
- Cacher, (Cashet,) King's, counterfeited, I. 157.
- Caddell of Aslowne, Ja., I. * 172; Jo., * 454.
- Cadgearis, what, II. 385, 444.
- Cadenhead, Wm., hanged for Horse-stealing, I. * 411.
- Cage, or Iron-house for felons, III. 293, &c.
- Cairns, what, III. 204, *note*.
- Cairns of Barnbauchill, Rich., I. * 85;—Wm., of Orchardtoun, * 131.
- Cairletoun, Agnes, wife of the Laird of Benschaw, Incest with her husband's brother, Jaffray Irvine of Robgill, who was beheaded, III. 576.
- Cairncross of Allanschaw, Ja., I. * 432;—Robert, callit *Mekill Hob*, 'Ravisching' or Forcible abduction of Lady Warreistoun, 244;—of Calfhill, Nic., * 2, 244; II. 368;—of Birk-sneip, Cha., III. 453.
- CAITHNESS, BISHOP OF, And., I. * 79, 149;—Robert Bishop Elect, * 337; seizing Teinds, &c. *ib.*; his Bailie imprisoned, * 395;—Commissary of, imprisoned, * 222;—Postulate of, Alexr., * 337;—hawks brought from, * 297, * 298;—EARL OF, George, Murder, &c. * 394; Imprisoning his brother David, * 395; Convocation at Water of Elmsdene, * 395, 200, 367; III. 12, 31; assaults Geo. Lord Gordon on the streets of Edr., 32; betrays his kinsman Lord Maxwell to the Privy Council, *ib.*; Submission betwixt him and E. of Sutherland, 231; appointed King's Lieutenant for quelling Rebellion in Orkney, (*q. v.*) 273; dispatches to the King, &c. from Orkney, 286; got pension of 1000 Crowns for his services, 309, *note*; sketch of his career, *ib.* 310; stripped of his ill-gotten fortune, and dies in obscurity, *ib.*; Murder under trust, 498; fugitated, 499;—COUNTS OF, (L. Jean Gordon,) III. 32;—MASTER OF, Jo., I. 368.
- CALJETANE, CARDINAL, II. 576, 589.
- Cake, charmed, made of meal got from 9 *maryit madyinis*, &c., II. 537.
- Caldcleuch, Mr Jo., Letter from the King to him as to Gowrie's Consp. II. 317; III. 97.
- Caldwell, Laird of, Intercommuning with, I. * 357; slain, 17, &c. (See Muir.)
- Calder, Wm., scourged and banished, II. 94.
- Caley, Oppressing Laird of, (Lennox,) I. * 53.
- Callandar of Ballinloiche, Ro., I. * 130.
- Calnis, (moulds for casting base money,) II. 75.
- Calp paid by Laird of Ardincaple to MacGregor, II. 436, *note*.
- Calumnious speeches against the King, an Englishman hanged, I. 385. See K. J. A. VI.
- Cambuskenneth, Adana, Commendator of, I. 88, 119.
- Cambusnethane, Laird of, I. * 480.
- Cameroun of Glennevas, Allaster, slain, III. 258;—Jo., alias Bodache, slain, III. 258;—of Locheldy, (Lochzell or Lochell,) Allan, II. 68;—Allan M' Eandowie, Murder, &c. III. 258. See Clan Cameroun.
- Cammiskeyth, attempt to restore Popery at the Place of, I. * 430.
- Campbell of Abernchill, Colin, II. 438; III. 223; Hereschip and burning of Abernchill, 232, 250, 566;—of Ardkindlas, Colin, I. * 224, * 229, *note*;—Ja., * 431, 68, 100;—Jo., 285; assaulted, 286; acquitted for slaughter of Laird of Calder, 263; tried and diet deserted, 391; betrays Laird of MacGregor, II. 433; Argyll attempts to get MacGregor to slay him, 436;—of Ardgarnthay, Arth., I. * 223;—of Ardoch, Jo., * 164;—of Auldornok, Jo., * 138;—of Ardintinny, Don., * 227; Sir Arch., III. 22, 23;—of Auchinbrek, Sir Doug., III. 10, 23, 26;—Prior of Ardchattan, 14;—of Auchinvelling, Jo. I. 285;—of Areis, Vthreid, III. 477;—of Bothe, Dun., I. 68;—Colin, II. 528; III. 258;—of Bargon, Charles, I. * 353;—of Blairskaitth, Alexr., respited, * 241;—of Blairnerne, Colin, 392;—of Breachlie, Mr Wm., his cattle

- houghed, &c. III. 251;—of Balnagowne, Hew, 252;—of Clwnes, Colin, 251; his Place burnt, &c. *ib.*; his horses houghed, &c. 257; taken prisoner, &c. 266;—of Crwnan, Geo., II. 63;—of Cesnock, Geo., I. * 84, * 352; John, * 136; George, II. 106;—of Calder, (Caddell,) Sir John, * 217, * 224; Archibald, * 359; John, 68; Sir John, slain by Laird of Ardkinglas, 363; trial, 391; Jo., II. 517; III. 12, 14, 22; King's Lieutenant in Yla, 364, 370; Archibald, brother to Laird, 553;—Captain of Carrik, Dunc., 233;—of Clewis, Ja., I. * 84;—of Dowchall, Geo., I. 46;—of Clovingall, Dav., * 58;—Mr Dougall, Dean of Brechin, 285;—of Easter Denhead, Da., II. 63;—of Glenurquhar, (Glenorchy,) Jo., * 223; Sir Duncan, 282; Colin, yr., II. 433; Robert, son of Sir Dun., slays Duncan Abroch MacGregor, and others of the Clan, at the Chase of Ranefroy or Fight of Bintoich, III. 112; Colin, yr., 233;—of Glenlioune, Arch., I. * 223; Colin, 260, 263, II. 403; Dunc., Murder, &c. III. 481;—of Glenca. I. 263;—of Horscleuche, Geo., (Chaco?) II. 128; Charles, 129, 426; III. 54;—of Gelt, Geo., II. 406;—of Glenfalloche, Ro., III. 233; Hereschip and burning of his property, *ib.*;—of Innerlevene, John, I. 68;—Commendator of Halywod, Tho., II. 507;—Hew, (son of Commendator of Halywod,) Slaughter, II. 507;—Mr Jo., Justice-depute, I. 366;—of Garallane, Hew, III. 54;—of Innerlewir, Dunc., I. 391;—of Glencarradale, Arch., III. 481;—of Innerraw, Tutor of, II. 62; Mr. Jo., Jesuite, resetting, III. 371; Ro., Slaughter, 465;—of Kingeanleuche, Ro., I. * 369, * 407, * 485;—of Knokwane, Alex., I. 31;—of Kethik, Pat., II. 63; slays Laird of Gourdie's son, 80;—of Kilberrie, Colin, taken at Dunnievaig by Macgillespie, III. 363; retaken, 364;—of Laweris, Ja., I. * 223; Sir Jo., III. 22; Sir Arch. his brother, *ib.*, 23; Colin, 223; Ja., 233; Sir Ja., 443; Mr Ja., his son, 543;—of Lochinyell, I. 263;—of Loudoun, Hew, slays Earl of Cassillis, * 136, * 148; respited, * 267; remitted, * 242; Mathew, younger of, * 352; Sir Hugh, * 403, * 428; Sir Math., * 455; Hew, feud with Laird of Calder, &c. 352;—of Lundy, Sir John, * 168, * 185; Ambassador to Flanders, * 243, * 276; to the Emperor, * 306, * 307; Colin, II. 63;—of Muretoun, Jo., slain, I. 264;—of Persie, (Persar,) Arch., I. 263; II. 63;—of Shankstoun, John, I. * 11; Ro., * 83; Jo., * 405; Ja., * 491; Jo., II. 106; Geo., yr., Slaughter, 461;—of Skeldoune, Geo., I. 20; Cha., 31;—of Skellingtoun, (Skerrington,) Alex., I. * 82; Cha., * 352; II. 426;—of Skipniche, Arch., marries Lady Glammis, I. * 188; falls over rocks of Edr. Castle, and is killed, * 194; Jo., * 382, * 386;—of Soutarhouse, Wm., slain, I. 264;—of Terringean, Sir Ilew, II. 109;—of Walwoid, Wm., II. 426; slain, III. 54; the Laird of Birnok and his son beheaded, for that slaughter, 58.
- Canogate, daft Queen of, I. * 124.
- Canochson, of Dunnevaig and Glynnnes, Alex. John, Fireraising, &c., I. * 246; James's brother, * 305;—Alex., * 278;—Jo., * 281.
- Cannell, what, III. 100.
- Cant of the Grange, Mr Jo., III. 574;—of Wastmylne, Walt., 475.
- Canna, burnt, I. 228.
- CANTERBURY, ARCHB. of, Geo., II. 262; his Account of Sprott's Trial and Execution, *ib.*, &c.; Bancroft, 586.
- Cannane of Killochie, Jo., III. 229.
- Captive, Taking, I. * 171, * 205, * 437; II. 423, 450; III. 552;—and strangling, 553.
- Capons, price at Justice-aires, I. * 389.
- Carcere*, famishing a man *in privato*, III. 479.
- Carbraithe, Mr. Wm., Perjury, &c. See Galbraithe.
- CARDINAL, The, See Beaton.
- Cardines, Lady, oppression of, I. * 52.
- Cards, playing, I. * 310, &c.
- Carey, Sir Jo., governor of Berwick, III. 316.
- Carkannis, I. * 299. See New Year's Gifts.
- Carkettill of Fynglenne, John, stealing a gold chain, I. * 336;—of Marcle, (Markill,) Jo., I. 10; Pat., Mutilation, &c., II. 456; III. 134.
- Carlisle, English Herald, I. * 275, * 276, * 278;

- Castle of, broken into by Laird of Buckleugh, and Kinmont Will freed from irons, I. 363; redress demanded by Queen ELIZ. 364, 365;—LORD, presents a horse to the King, I. * 300.
- Carmichael of Balmadie, Dav., I. 60;—Eliz., mistress of K. JAMES V., I. * 311;—of that Ilk, (Laird of,) remitted, Wm., I. * 243; Jo., * 323, * 386, * 426, * 437; Jo., yr., 8, 72, 119, 122; Sir Jo. resigns Wardenship of the West March, 275, 350; II. 11, murdered, 363; Armstrong hanged in irons, 364;—of that Ilk, Alex. Armstrong of Rowanburne, hanged, 504; Sir John, Capt. of Crawford, I. * 87, * 311; III. 480;—of Meadowflat; Jo., I. * 229, 48; Sir Jo., III. 392, 480;—of Pityschaw, Ja., II. 105, Jo., yr., 491;—of Rowntreicross, Wm., I. 119; II. 1; III. 54; Wm. yr., 139;—of Spothie, (Spott.) Jo., III. 123; Ja., his son, slain, *ib.*;—of Vderine, II. 517; Ja., his son, slain, *ib.*;—of Wrightislandis, Gaw., I. 149.
- Carstairs, Jo., false weights and measures, 88; absurd vacillation of J.A. VI. in granting and recalling precepts, *ib.*, &c.
- Carmylie, Ro., hanged for Falsing, I. 87.
- Carneburgh, (Carnebog,) siege of, I. * 121, * 231.
- Carnebye, Wm., Adultery, I. 13.
- Carnegie of Colluthie, Mr Dav., I. 242, 304;—of that Ilk, Jo., I. 297, his daughter carried off by Ja., son of Lord Gray, *ib.*;—of Kinnaird, Ro. I. * 180; Sir Jo. 27;—of Seatoune, Jo. I. 27.
- Carpentry, (Fr. *Carpendu*?) I. * 310.
- Carrick, Bailie Court interrupted, I. * 58;—Castle of, Lochfyne, III. 233.
- Carschore (Gartischore) of that Ilk, Jo., III. 345.
- Carruthers of Dormont, Jo., slain, III. 472; Fra. his brother, *ib.*;—of Holmends, (Howmaynes,) John, Feud with Laird of Closeburn, I. * 430; II. 559; Jo., Slaughter of Laird of Raskarrell, III. 115;—of Mousewald, heirsch found caution not to marry a traitor or 'brokkin man,' I. * 434;—of Rammerseallis, Jo., III. 436;—of Wadfute, Jo., III. 477;—of Warranbie, Cha., Slaughter, II. 475; Wm., hanged for Burning Newby, Slaughter, &c., I. * 60.
- Cartels, III. 504, 505. See Duel and Singular Combat.
- Carterhaugh, Hereschip of, I. * 37.
- Carting, punishment of, II. 401.
- Carvers, the King's, I. * 313.
- Carnall, Laird of, I. * 457. See Wallace.
- Casar, Francis, Italian, I. * 375.
- Caschielawis, (or caspicawis,) an instrument of torture, I. 375, and *note*.
- Cashett, King's, II. 597; III. 425, and *note*.
- Cass, passionate, III. 249.
- Cassanzeis, Raphael, Spaniard, I. * 315, * 320, * 123.
- CASSILLIS, EARL OF, DAVID, Just. Depute, I. * 87; Gilb., * 191, * 199; Slaughter, * 130; Slain, * 136; Oppression, * 181; Gift of his moveables escheated for Wilful Error, * 142; Slaughter of, * 242; passes in Pilgrimage, * 245; Treason, * 271, * 339, * 384; Treasurer, * 417, * 453, * 454, * 456; Hew, 30, II. 39; Jo., 461; Feuds with the Kennedies, III. 124, &c. 171; Bond betwixt him and his brother as to Murdering Laird of Auchindrayne, 622;—Tutor of, (Abbot of Crossragwell,) I. * 245; Tho., 472. See Kennedy of Culzeane;—COUNTESS OF, Marg., I. 119; Jean besieged by the Muirs, &c., in Auchinsoull, which they burnt, III. 177;—MASTER OF, I. 94; Tho., 141; Hew made prisoner by Laird of Drumurquhie, after burning of Auchinsoull, III. 178; bond betwixt E. of Cassillis and his brother to murder Laird of Auchendrayne, 622.
- Casting a boy into the fire, I. * 59.
- Casting down a Mill, I. * 179.
- Castleary, Laird of, slain, I. * 149.
- Cathkyn, Ja., librar., (bookseller,) III. 66.
- Catslack, Cap. Ja. Stewart, (E. OF ARRAN,) slain there, III. 66.
- Cat, baptized by Witches, I. 218; a very remarkable instance, 237; Witches assume shape of, II. 524; drawn through a 'crnik,' 542; Christened, 543; Witches take form of, III. 605, 607, 611, &c.
- Cattle-stealing, I. * 27, * 28; McClellan of Gilestoun beheaded, I. * 64; Pott, hanged, I. * 87, * 171, * 218; barbarous slaughter of, * 336;

- houghing, * 431; and slaying, * 433; cutting the backs of, * 455; Stealing, Wm. Donald, hanged, 45; and Perjury, Arch. Croser, hanged, 111; Battiesons, hanged, II. 443; Beirope of that ilk, II. 515.
- Cattle, bewitched, how restored, I. 238.
- Cattle, houghing of, I. * 103, * 431, * 433; cutting their backs, * 455.
- CATHCART, LORD, Allan, I. * 333, 88, 178; II. 106, 572;—of Carbeistoun, Allan, I. 72, 101; —of Carleton, Robert, mutilated, I. * 336, * 343, * 350; Jo., * 457; II. 106; III. 171; Jo., *yr.*, *ib.*;—of Clowlynan, Allan, * 74;—Ro., writer, slain, II. 109;—of Drummisnodane, Wm., I. * 458;—of Drumgowane, (Drumjowan,) Allan, I. * 58, * 458; II. 110; III. 180;—Kirk of, attempt to restore Popery at, I. * 450;—Ro., writer, slain, II. 109, 445;—of Waterhead, Wm., I. * 458;—of Woodhead, Wm., I. * 458.
- Caton, King's, I. * 313.
- Candle at Baptisms, I. 3, * 302, * 309, &c.
- Caution found by an heiress not to marry a Traitor or 'broken man,' I. * 434;—Borderer's surety taken, * 467.
- Caution of 'Colleraith,' what, I. 23, 186.
- Caverhill of Foulage, Jo., I. * 87.
- Cecil, Sir Wm., Englishman, I. * 510; Sir Ro., Secretary of State to Q. ELIZ., II. 313; his death, 581, and *note*.
- Cedrons and garnets for the King, I. * 320.
- Ceremonial of touching Murdered Corpses by persons accused or suspected of the crime, III. 184; opinions of ancient and modern authors, 182, 187.
- Ceremonies, Master of, III. 558, 595.
- Ceremony, singular, at meeting of Makconeill and Coll M^cGillespie, III. 20.
- Cesford, Laird of, Warden of the Marches, I. * 264. See *Kerr*.
- Chains, gold, of KING JAMES V., I. * 292, * 295; great gold, * 301, * 302. See *New Year's gifts*, * 321; one of xvij ounces, * 322;—stealing a gold, I. * 336; and pearl, &c., III. 564.
- Chains, hanging in, I. * 137, * 358.
- Chalices, Eucharistic, &c., spoliation of, I. * 353. See *Reformation*.
- Challenge, Judicial, of the Master of Forbes as a Traitor, I. * 185; III. 505, &c. See *Duel*; *Singular Combat*.
- Chalmer of Antique Historie, (Tapestry Work,) I. * 312;—of dace, (dais,) II. 341;—Yeomen of the King's, * 313; Grooms of, *ib.*;—of Drumlochie, Wm., * 371; II. 63;—of Fedderauche, Wm., I. * 470;—of Gaitgirth, Ja., * 428;—of Seggydene, Wm., * 452;—of Strathie, Dav., * 88;—of Tulykerye, Tho., * 470.
- Chalmers, (ordnance,) I. * 306.
- Chamberlain, King's, his Jurisdiction, II. 91.
- Champanzee, French Herald, I. * 268.
- Champion, the King's, (Kemp,) I. * 271.
- Champley, Sir Rich., I. * 122.
- Chamrone, Jo. Moir M^cEane Chere, and Dunc. Moir M^cEane, Slaughter, &c., beheaded, III. 537. See *Cameron*.
- Chancellor of Quodquene, Wm., I. * 169; acquitted of Slaughter, * 175;—of Scheihill, Ro., II. 474.
- Chandelaris, for the PRINCE'S Chapel, I. * 306.
- Chapel-Royal, Oppressing Sacrist and Sub-dean of, I. * 96; stand of cloth of gold for, * 297; 'geir' for, * 320.
- Chapel-graith, * 278; reliques, *ib.*, * 308.
- Chaplane, Peter, hanged for coining bauweis, I. * 364.
- Chariot, Queen MAGDALENE'S, I. * 291; Queen MARY of Guise's, * 293, * 320.
- CHARLES IX. K. OF FRANCE, Embassy from, at K. JAMES VI. Baptism, I. * 479;—PRINCE OF WALES, III. 502; *Duel in Flanders* between his Tutor, Capt. Bruce, and Capt. Hamilton, *ib.*
- Charletoun of Emmetishauch, Will., III. 568;—of Hisliesyde, Wm., 569.
- Charming, III. 508, &c. See *Witchcraft*, *Sorcery*, &c.
- Charms for Witchcraft, &c., remarkable, to take life of K. JA. VI., I. 218; for healing diseases, 230, 237; corpses disinterred and 'junted' to prepare, 233, 237, 239; baptizing a cat, 218; another remarkable instance, 237; charm to allay birth-pains, *ib.*; bewitched cattle, how restored, 238; to take away a man's life, *ib.*; by E. Bothwell, to take

- King's life, 240; with a toad to take the King's life, 245; shirts, clothes, &c., 250; 'boird-stane,' 252; wheat, worsted, &c., II. 25; worts, woodbine, &c., 26; dipping shirts, slaying a red cock, and baking a 'bannock' with his blood, *ib.*, and 27; South-running water, *ib.*, and 422, III. 556; fring water, burning straw, &c., *ib.*; garland of woodbine, 27; broom and camomile, *ib.*; quicksilver, 28; nettles and 'alschinder,' *ib.*; salt water, *ib.*; live coal, *ib.*; sheep's dung, *ib.*; 'Spainjie' seed, 29; roasting a goose with 4 or 5 kittens sewed in it, *ib.*; Ja. Reid, 421; grease, *ib.*; raw flesh, 422; silk points, *ib.*; wax picture, *ib.*; hair belt, with Devil's 'clawis,' 478; 'sayneing and croceing,' *ib.*; 'tailjie of raw incbantit flefche,' 524; drinking with the Witch, 526; charmed water, 536; charms for witched cattle, *ib.*; 'Rovne-trie,' *ib.*; cakes of 9 'carneis' of meal got from 9 'maryit madynnis,' 537; fochsterrie leawis, 538; coloured silk and worsted, III. 511; drawing 9 times backwards and forwards by the leg, 554; hasp of yarn, &c., *ib.*; red-hot coulter of a plough, 557; burning a live fowl, *ib.*; unchristened child, 603; a remarkable series of charms and superstitions, *ib.* to 618.
- Charter, Forging, erasing, and falsifying, I. * 387; a Notary and two others hanged, II. 104.
- Charteris (Charterhous) of Amisfield, Jo., I. * 88; Ro., * 148; Feud with Laird of Kirk-michael, * 132, * 166; Jo., 97, 304; Sir Jo., II. 509;—of Astrowane, Ro., I. * 455;—of Cuthilgurdy, Patrick, Fire-raising, &c., * 141, passes in pilgrimage beyond seas, * 244;—of Kinfawnis, Tho., using a forged Instrument, * 222; Jo., Feud with the Laird of Balthayock, * 424.
- Charterhouse of Perth, Prior of, II. 166.
- CHATELERAULT, DUKE OF, Ja., I. * 439; Intercommuning with, * 466, * 478; III. 390.
- Chaud-mele, III. 579.
- Chekkar-hous door, Usher of, I. * 316.
- Chennen of Chennentoune, Ro., III. 9.
- Chepman, Walter, printer, I. * 118.
- Chere, mouse-coloured, III. 537, &c.
- Chess, game of, I. * 263.
- Chestanis, III. 570.
- Chesting, or coffining, ceremony of, III. 197.
- Cheyne, Alex., beheaded for Perjury, Oppression, &c., II. 453;—of Arnage, Wm., I. * 470;—of Essilmonthe, Pat., I. * 470, 286, 375, 382; II. 394, *note*;—of Pennan, Ja., Rapt and Ravishing, Besieging House of Auchmedden, &c., II. 394; Banished, 400;—of Straloch, Ja., I. 286; feud with Laird of Barrauch, 353, 382; II. 41, 423.
- Cheys-wayme, I. 173.
- Chipre, King of, I. * 277;—Prince of, * 278.
- Child, unchristened, III. 603;—forespoken, 610.
- Child-Murder, I. * 412, * 421; Meg Dow burnt, 186; Jonet Pollok, *ib.*; Issobell Pratt, hanged, 371; Agnes Cowan, hanged, II. 402, 463; Issob. Thomson, hanged, 540; Jonet Brown, hanged, III. 269; Bessie Duncan, hanged, 430. See Murder.
- Chirnesyde of East Nisbet, Sir Pat., a remarkable case of the Orrible Abduction of the Laird of Thornydykes, (14 years old,) and marrying him to Jean, his daughter, III. 402; Alex., yr., 414;—of Posso, Da., 250.
- Chisholme of Cromlix, (Crumlecks,) Ja., I. 28, 173; Sir James, II. 569, *note*;—of Dundorne, Sir James, I. 267; denounced, 283; offers presented by him, 301; II. 569, *note*;—Ja., Commandator of Inchaugray, I. 267;—of that ilk, Geo. * 133; III. 391, 396;—Mr Jo., Jesuit, I. 328, 329, &c.;—Wm., 331;—Wm., Bishop of Vaison, II. 569;—B. of Dunblane, *ib.*, *note*, 575, &c.
- Christeson, Friar John, Heresy, &c., I. * 407.
- Christie, Ro., E. of Gowrie's porter, his Deposition, II. 187; And., Forcing (Rape) and shamefully abusing, III. 439.
- Churches, Parish, destroyed, I. * 353. See Reformation;—Witch-meetings and initiations held within, and in consecrated ground, III. 603 and *note*, &c.
- Clairschaw, a kind of harp, I. 282.
- Clam-she l of silver for the King's hawks' meat, I. * 305, * 320, * 322.
- Clan-Anveriche, II. 432; III. 537;—Buchanan, barbarous torture, &c., III. 345;—Cameron, Captain of, I. * 355, fire and sword against,

- 280; II. 432. See Chamrone;—Donald, III. 1, 19;—MacFarlan, murder Sir Ham. Colquhoun, &c., II. 431; two of the Clan slain, barbarous torture of a Buchanan, III. 545;—Gregor, I. * 164; Commission of fire and sword, 282, 289; Murder and Reiff on Laird of Lusse's lands, II. 413; Intercommuning with, 414; seven score persons murdered in the Lennox, 315; 3 persons hanged, *ib.*; Field of the Lennox, or Conflict of Glenfruite, 430, &c.; Fight of Bintoich, or Chase of Ranefray, III. 112; Jo. McEwin and 4 MacGregors hanged, 115, &c. See MacGregor;—Intercommuning with, II. 414, 456; III. 112, 232, 254, 437, 537;—Gun slay the Laird of Duffus, I. * 149;—Hamerone, II. 432;—Ian Averiche, (Clan-Anveroch, or Abroche,) 432; III. 537;—Lawrene, II. 440;—Layne, I. * 106; Feud with Clanranald, I. * 169; III. 1;—Qubattane, I. * 81; * 243; fire and sword against, 280;—Ranald, Feud with McLeans, I. * 169; Captain slain, 33; fire and sword against, 280; Captain of, III. 19, 25, 542;—Tarlich, 19.
- Clans of Armstrong, Tailour, and Clans of Liddisdale (then in Debateable Lands and in the Woods) respited for a year, I. * 235; Clans to keep 'guid reule,' 302; Armstrong, II. 504.
- Clarenceux, English Herald King at Arms, I. 264, * 270.
- Clark, Jonet, Witch, 'wirreit' and burnt, I. 206.
- Clasessie, Sea of, Assint, III. 489.
- Clay figures, made by Witches, to torment or take away life, III. 605, &c.; how used, *ib.*
- CLEMENT VIII., POPE, II. 570.
- Clelland (See Kneilland) of Fermlaw, Ro., III. 429;—of Fessaucl, Jo., I. 71;—of Monkland, Sir Ja., Resetting Jesuits, III. 376.
- Clephane of Carslogie, I. 60, 309;—of Pitcorphy, And., 60.
- Clenge, to pronounce a verdict of innocence; to 'assoijsie' or acquit a pannel, II. 155, &c.
- Cleuche, what, III. 383.
- Clipping and cutting coin, I. * 233.
- Clifford, Sir Tho., I. * 189; Letter to K. HENRY VIII., * 198.
- Clock. (See Knok.)
- Cloaks, velvet, &c., stolen, III. 541.
- Closeburn, Laird of, I. 178. See Kirkpatrick.
- Cloth of Gold, presented by King of England, I. * 266; given to English Ambassador, * 273, * 289; Coronation Robes, &c., * 301.
- Cloths of State, I. * 320.
- Clout, black, a woman burnt for 'casting of Wichcraft,' with a, I. 400.
- Coal-pits, Fire-raising in, III. 361; Jo. Henrie hanged, and his head fixed on a spike, *ib.*
- Coat-armour, to Heralds, I. * 301.
- Cochrane of Balbachlaw, Ja., I. 27, 155, 169;—of that ilk, Jo., I. * 150; Wm., 133; Alex., III. 377;—of Pitfour, Jo., I. * 88; Da., 279.
- Cockburn of Clerkingtoun, Tho., I. * 169; Mr. Rich., yr., Secretary, 267, II. 10; Sir Rich., 274, 496, 568; III. 208, 312; Lord Privy-Seal, 418;—of Choslie, Wm., I. * 223; II. 441;—of the Glenne, Jo., I. * 424;—of Henderland, Wm., beheaded, I. * 144, * 270;—of that ilk, Wm., I. * 147; Alex. 107;—John, Piracy, I. 93;—of Langtoun, Ja., I. * 134; John, * 366, * 480; Ja., 35; Pat., Tutor of, 190, 265; II. 98;—of Newbigging, Pat. I. * 143;—of Newhall, I. * 143;—of Newholm, Jo., I. 190;—of Wester Newton, Jo., I. * 473;—of Ormiston, Wm., Oppressed, I. * 140; John, * 171; breaks ward from Edr. Castle, * 334, * 339; John finds caution, * 486, 107; Sir Jo., Justice-Clerk, 261, 267; Clerk-Register, II. 3, 367, 442; his marriage, 459; Justice-Clerk, 581; III. 87, 208, 312; resigns his office, 558; Singular Letter in regard to, 595;—Mr. Ro., Justice depute, II. 521;—of Scraling, (Skirling,) Sir William, Stouthrief, I. * 25; Slaughter and Mutilation during Parliament, 26; Wm., Stouthrief, &c., I. * 174; remitted, * 249, * 453, * 455, * 473; Keeper of Edr. Castle, * 479, 71, 190;—of Templehall, Mr. Sam., I. 149;—of Tretoune, Dav., I. * 137;—Will., Hamesucken, I. * 15; Stouthrief, Killing Hares, &c., *ib.*
- Cocleus, sends a book to K. JAMES V., I. * 284.
- Cockpen, Poor's-box stolen, II. 387.
- Coena Domini, I. * 263. (See Bedesmen.)
- Coffer, stealing one with writings, II. 93; Grissell Mathow drowned, and her accomplice scourged and banished, 94.

- Coffing or chesting, ceremony of, III. 197.
- Cokkie, Ja., Treason, hanged, I. 45.
- Cokkylzeis, Collar of, I. * 265.
- Coining. See False Money, Uttering, &c.
- Coin, clipping and cutting, I. * 233.
- Coinje-house, Mint, II. 399, &c.
- Coiners, false, I. * 324, * 440. See False Money, Forging, &c.
- Colpna, Laird of, Slain, I. * 470.
- Colpland of Udauche, Tho., I. * 150.
- Collese of Balnamoon, Ro., his tenants oppressed by citizens of Brechin, I. * 431;—of Pitforquhie, Tho., a man banished for hurting his ox in the plough, II. 127.
- Colquhoun of Camstrodane, Ro., I. * 451; Jo., yr., II. 426, 432; Adam and Ja. slain by MacGregors, 432;—of the Glenne, Pat., I. * 42;—of Kirktoon, Tho., I. * 150;—of Luss, Sir John, I. * 78, * 170, * 178; besieging Dumbarton Castle, * 236, * 344; Jo., * 451, * 453; Alex., 289; Feud with Lord Levingston, &c., 352; Laird of, slain by Jo., his brother, who was beheaded, 359; Murder and Rieff by Laird of Macgregors, II. 414, 418, 419, 430. See Field of Lennox; Alex. 418; Sir Humphrey Murdered, 431; Sir Alex. *ib.*, 540; III. 318; Alex. 537;—of Barnehill, Walt., slain by MacGregors, II. 432; Jo., far also slain, *ib.*;—of Traseill, Pat., III. 250.
- Colville of Blair, Mr. Alex., Justice-Depute, III. 508, &c.;—Alex., Commandor of Culrose, II. 527;—Mr. Hary, Parson of Urquhart, slain, I. 386; Gilb. Pacok beheaded, 388; Master of Orkney outlawed, 392; Sir Pat. Bannatyne of Stenhouse, &c. 393; Wm. Bannatyne of Gairsay, &c., acquitted, 397; Mr. Alex., (of Blair.) Justice-Depute, II. 527; declinature, III. 422; remarkable Letter from him as to appointment of Justice-Clerk, 595;—of Ravinniscraig, Wm., Oppression done to, I. * 32, * 87;—of Strathurdie, Mr. Jo., I. 270;—of East Wemyss, Treason, &c., I. * 255, * 257, 148; Ja., Treason, 278, 320, 409, *note*;—of Uchiltrie, Sir Wm., I. * 32, * 33; slain, * 65, * 68; Sir Ja., I. * 167, * 172, * 185.
- Coldinghame, Abbey of, Spuilzie of Teind-sheaves, I. * 208; demanded of the Pope for a natural son of K. JA. V., * 311; ordered to be defended, * 324; Prior of, John, natural son of K. JA. V., I. * 311; Raid of, I. * 331; besieging Place of, * *ib.*
- Colleyath, caution of, I. 23, 186.
- Collars given to KING JAMES V., 'Cokkilzeis,' I. * 215; the Empriouris, I. * 277; invested with Order of the Garter, * 283, * 289; the Golden Fleece, *ib.*; St. Michael, *ib.*; of Steel, (armour,) I. * 317; to deer-bounds, of purple velvet, with gilded chains, &c. I. 312.
- Collier, King's, I. * 313.
- Colour of Evil Spirits' Dresses, &c. III. 606.
- Colkitto, (Coll Keitach,) III. 25.
- Colston, Tho., Englishman, slain, II. 539; Alex. Keith beheaded, 540.
- Colbrandispath, House of, taken, I. * 237.
- Colping, I. * 230. See Forestalling, &c.
- Colt, Mr. Oliver, yr., Justice Depute, II. 562.
- Comerie, house of, burnt, and Ja., the Baron's brother, slain by the MacGregors, III. 537.
- Combat, Judicial, (under a Special Licence,) I. * 185, *note*, &c.; Bruntfield and Carmichael, II. 113, *note*, III. 164;—Singular, II. 112. See Duel.
- Comeray, Isle of Little, I. * 232.
- Compter, the King's, I. * 315.
- Congiltoun of that Ilk, Henry, I. * 85, * 159; assisting Lord Hume, * 241; Robert, * 369; Robert, yr. of, slain by poison, * *ib.*; Pat., 107; Wm. II. 343;—Tutor of, I. * 366; Hen. Langside, 5;—Mass and Sacraments in Popish form celebrated at Place of, I. * 428.
- Congil of that Ilk, Pat., I. 154.
- Con of Auchry, Wm., I. * 453; Pat., 389, 390; II. 94; III. 444.
- Conspiracy, Master of Forbes, beheaded, I. * 183;—LADY GLAMMIS, beheaded, * 187, &c. See Forbes and Glammis; JOHN EARL OF GLAMMIS sentenced to be hanged, * 198; acquitted and restored by Parliament, * 199;—to seize on person of Mary Queen of Scots, * 461;—against the Regent, 32, 40, 70. See Bothwell, Falkland, Witchcraft, &c.;—against Protestant Religion, 310. See GOWRIE, &c.;—Concealment of, I. * 198, 199; John Lyonne beheaded, * 202; Alex. Makke banished, * 203;—Geo. Sprrott for Gowrie's Consp., 256;

- hanged and quartered, 259; Execution, and behaviour on the scaffold, 260, &c.;—against King's life by Witchcraft, I. 209, 230, &c. See Witchcraft, &c.
- Convocation of the lieges, I. * 201, * 203, * 206, * 207, * 238; in Orkney, and Slaughter of EARL OF CAITHNESS, * 253; in Cupar-Fife, * 367; at Elmsdene Water, by Earl of Caithness, * 395, * 409, * 410, * 413; in Edr., * 436; in fenced Sheriff Court of Ayr, * 456; of an unlawful Assembly, II. 3.
- Convocation of Witches. See North Berwick, &c.
- Connell, Ja., and 12 others, forfeited for abiding from Raid of Stirling, II. 85.
- Conjuration, Witches', for healing Diseases, I. 230, 237; III. 608, *et seq.*
- Confession extorted by 'waking' Witches, &c., I. 50; Ogilvie, a Jesuite, III. 331, 332.
- Consecrated ground, Witch-meetings held there, and in Churches, III. 603, and *note*.
- Constable, Lord High, his Jurisdiction, I. * 351, * 476, 98; II. 91.
- Conspeckell, II. 99.
- Corbet of Ardbo, (Arboill,) Jo., II. 555.
- Corroche, hasty, precipitate, III. 249.
- Coroners, I. * 418, &c.
- Corn, stealing, III. 564;—exporting, I. * 365;—burning, * 127, * 375, * 405; And. Thome-son burnt, 70, 110.
- Corrichie, Battle of, I. * 183.
- Coronation of KING JAS. IV., I. * 114; Queen MAGDALENE, * 287; of Queen MARY of Guise, * 299, &c.; new Crowns, *ib.*; Lords and Ladies warned to attend, * 300.
- Corpus Christi Play, I. * 121.
- Corpses disinterred by Witches, and 'junted' for charms, &c., I. 233, 237, 239; of Traitors disinterred, and bones produced at Forfeiture, II. 241, 246, 277, 405; inspected by Surgeons, to report if deceased died by wounds, III. 62; Superstition as to the Murderer's touch causing the corpse to bleed, III. 143, 165; curious illustrations of, 182, &c.; corpse of a murdered man raised and inspected seven days after his burial, 574.
- Corry of Kellwood, Tho., I. * 86, * 127, * 138; Geo., * 457, 89; Jo., II. 106; III. 172;—Laird of, I. * 62.
- Cornwall of Bonhard, Nich., I. 268;—Arch., Exhibiting King's picture on the gibbet, II. 349; hanged, and his body exposed 24 hours with a paper on his forehead, 351; gibbet taken down and burnt, *ib.*
- Corstorphin, College of, I. * 333.
- Cordiner, King's Master, I. * 315.
- Covens, Witches', consisted of 13 in each, III. 603, &c.; each had a Maiden and an Officer, 605; grand meetings, 606.
- Covantounne, Burning and Hereschip of, I. * 26.
- Cousland, Burning of, I. * 141.
- Courschet, wheat, II. 392.
- Cook, King's Master, I. * 310, * 313; Court, *ib.*; Stealing from Queen Dowager's chief Cook, * 406.
- Countler of a plough, Witch-charm with, III. 557.
- Cowper, Justice-aire of, I. * 272;—insurrection against the Bailies, &c., I. * 367;—man burnt for Heresy, I. * 297;—Magistrates of, assisting E. of Bothwell, I. 310;—LORD, JA., II. 600, *note*.
- Cowart, Capt., English Pirate, III. 100.
- Cowdene, Sir Ja., false Notary, I. * 459.
- Cowie, Army at, I. 175;—Pat., and four others, starving a man to death in *privato carcere*, III. 479.
- Cradle, State, PRINCE JAMES's, I. * 302.
- Craftsmen, Insurrection of, against Bailies of Cupar, &c., I. 367.
- Craiganis, Laird of, slain, I. * 44.
- Craigy, Tutor of, respited, I. * 237;—Lady (Jonet Logan), pension to, * 305, * 312; Dule dress to, * 320.
- Craiginche, Burning and Hereschip of, I. * 246.
- Craignethan, Castle of, keeping, I. 316.
- Craig of Craigisfrinay, Jo., I. * 454; his wife's Incest and adultery, * 459;—of Craigistoun, Wm., II. 64; Slaughter of the Laird of Carnehill, 105;—fortalice of, ordered to be demolished, I. 348;—Jonet (aged 11), ravished, II. 566; Jo. Errole, hanged, 567;—Tho., Justice-depute, I. * 477, &c., 1; Sir Lewis, II. 568.
- Craig, the throat or neck, III. 573.
- Craingelt of that Ilk, John, I. * 216, * 339; he and his son Robert mutilated of their left arms, * 383; Tho., III. 268;—Geo., tried for Gow-

- rie's Conspiracy, II. 151; hanged, 155; his Deposition, 157, 246.
- Crail, Magistrates of, assisting the E. of Bothwell, I. 310.
- Crames of Edinburgh, I. * 416.
- Cranstoun of Burnecastle, Alex., III. 402; remarkable case of Forcible Abduction, &c., *ib.*, 413;—of Corsby, Jasper, I. * 147; Pat. III. 69; Jo., his brother, slain, 222; Tutor of Thornydykis beheaded, *ib.*; Gilb., uncle to Laird, hanged for Stouthreif, &c., 252; Pat., 569;—of Maynis, Cuth., I. * 337;—of Doddiss, Cuthb., Assisting the English, * 338;—of Doddo, Sir Wm., Slaughter, 20;—of that Ilk, (Laird of.) Destroying Woods in Ettrick Forrest, * 71; John, * 147, * 166, * 167; * 336; Wm., * 414; houghing and slaying cattle, * 433, * 434; Jo., 20; Mr Wm., yr., feud with Laird of Edmonstoun, 353, *ib.*; Gilb. Lauder slain, 362;—Sir Jo., Resetting a declared Traitor, II. 124; Mr Tho., his brother, hanged for Gowrie's Conspiracy, 155; his Deposition, 156; behaviour on the scaffold, 155, *note*, 246, 506; Wm., III. 391; Tho., 396;—of Ladyside, Wm., I. 84,—LORD, Wm., III. 226; Jo., his brother, 402; proceedings in duel between his son Ja. and Sir Gideon Murray's son, 505; with E. of Lothian, 507;—of Mains, Cuthbert, Assisting the English, I. * 337;—of Monktonhall, Ja., II. 467;—of Morestowne, (Mureistoun,) Tho., I. 107, 270, 306; Resetting him, when a declared Traitor, II. 124, 517; Jo., III. 116; Jo., his son, remitted, *ib.*; Alexander, 410, 539;—MASTER OF, Jo. 414;—of Skaittisbuss, Richard, Murder of David Riccio, I. * 486;—of Thirlestane mains, Cuthbert, * 451; III. 396;—of Thornydykis, Jo., III. 539;—Sir Peter, pursued for his Slaughter, I. * 400; Mr Tho. See C. of that Ilk, and GOWRIE;—Sir Wm., II. 517.
- Craw of Restoune, Geo., I. * 139.
- Craudoche, what, II. 437.
- Crawford of Auchincross, Geo., I. 49;—of Auchinsoull, Dunc., III. 179; his house burnt and Countess of Cassillis, &c., besieged therein, VOL. III.
- ib.*, &c.;—of Auchinvie, Hew, I. 49;—Tho., of Auchnames, * 205; * 164;—of Baithlem, (Baidland?) And. 58; of Barquharrie, Andrew, III. 475;—of Beircrofts, II. 105;—of Beaux, George, I. * 84;—of Birkhead, * 331;—of Camlarg, Jo., invaded in a fenced Sheriff Court, in Ayr, * 456; Assaulting in the same Court, * 458, 49, 72;—of Caverhill, Ro., II. 454;—of Clolellane, Robert, I. * 405, * 457;—of Corbishill, Edward, 205;—of Crawfordland, John, * 385, * 420, * 428;—Tho., Captain of Crawfordjohn, remitted, * 254;—of Craiglynsche, Jo., 19;—COUNTESS OF, Mariota, and 18 others, Oppression, &c., * 178;—of Drongane, Jo., * 74, * 88, * 136, * 137, * 150; Insurrection, &c., * 204, * 242, * 369;—of Drummiskoy, Wm., * 458, 71;—EARL OF, John, I. * 78; David, * 185, * 198; Alexander, dies, * 266, * 270; Treason, * 271; David, * 408, 75; slays the Lord Chancellor Glammiss, 79, 85, 116; High Treason, &c., 171; feud with Laird of Guthrie, 352; eating flesh in time of Lent, 369; II. 274, 380, 396, 574; III. 15; Slaughter of Laird of Balgaweis, 248;—of Farme, Gawin, 87;—of Fedderett, Geo., 206;—Feud with Kennedys, * 150;—of Giffertland, * 331;—of Haining, Archibald, * 132;—of Heidmark, Jo., 49;—of Jordanehill, Capt. Tho., 171; Hew, III. 345;—Ja., goldsmith, barbarously torturing a girl to detect a supposed theft, II. 44;—of Kerse, David, I. * 55; hindering the Court of the Bailie of Carrick, * 58, * 86; Barth., * 130, * 136; * 350, * 458; feud with Sheriff of Ayr, &c., 352;—of Kilbirnie, * 82; Laur., remitted, * 255; Hugh, * 361, * 385, * 451; Jo., II. 508;—Place of, broken into, *ib.*; curious list of, carried off, *ib.*;—of Kerehill, Jo., I. * 150;—of Lefnorijs, (Lochnoreis,) Wm., taking Castle of Lochdoune, &c., * 73; Geo., 136; Geo., 349; Ravishing of Lady Lefnorese, *ib.*, * 369; Slaughter of Laird of Corsintoun, * 82; Geo., * 413, 49;—MASTER OF, David, * 346; Wm., * 347; Da. kills Mr Walter Lindsay, III. 62; is wounded by young Laird of Ed-

- sell and his friends, but recovers, *ib.*;—Nicol of Oxgangs, Justice Clerk, sworn, I. * 126, * 168, * 272;—of Previck, Jo., slain, * 170;—of the Schaw, Jo., 72;—of Sillihole, Quint., yr., III. 172.
- Crawfordjohn, K. JA. V. visits, I. * 310; Tapestry, &c., removed to, *ib.*, * 311; QUEEN there, *ib.*
- Crawford-Mure, Gold mines at, I. * 298; QUEEN'S Crown made of Scottish gold, *ib.*; present of unwrought Scottish gold to Duke of Guise, * 300, * 322. See Gold.
- Creichtoun of Bellibocht, Ninian, I. * 199, * 229; remitted, * 244;—of Brunstoun, * 339; Ja., yr., 169; Jo., 372;—of Blackburne, Jo., * 88;—of Benestonne, 27;—Tho., of Auchnanes, * 205, * 164;—of Bodumcraig, Tho., slain, III. 473;—of Conzie, Geo., I. * 329;—of Cranstoun-Riddell, Sir Pat., * 62;—of Crawfordtoun, And., Treason, &c., * 134; Jo., Slaughter, II. 71; III. 247;—of Camnay, Pat., I. * 178;—of Carco, Ja., 191; Mr Ro., II. 71;—of Cluny, Ro., I. 307; Sir Ro., Slaughter, II. 76, 493;—of Drylaw, Wm., I. 393; Alex., 155;—of Darnehauche, Wm., II. 491;—of Eliok, Mr Robert, Queen's Advocate, I. * 408, &c., 13, 47;—of Fedderat, Geo., * 184;—of Forgound, Alex., III. 583;—of Frenkraucht, Sir Ja., I. * 126; Wm., his house besieged, &c., * 329, * 455, 209; Ja., 284;—of Hartwode, Jo., * 55;—of the Hill, Wm., III. 475;—of Innernytie, Jo., II. 49, 76; 'Umbeset' by Laird of Bagray, 103; Sir Jo., 105, 112; Mr And., his brother, declines jurisdiction of King and Council, III. 87; sentenced to be *hanged*, 89; banished for life, 90; Ro., his brother, 363, 453;—of Kilpatrick, Ro., slain at the horn, I. * 77; Jo., * 134;—LORD (of Sanquhar). See SANQUHAR;—of Lugtounne, Pat., 10, 136, 137;—Lady Newtown, Jonet, Rape of, * 258;—of Nauchtane, David, Captain of Edinburgh Castle, * 258;—of Newhall, Alex. * 127, * 174, * 424; hearing Mass, 38, 155;—of Peiltoun, Edw., III. 247;—of the Quarter, Rob., I. * 81; Jo., Slaughter, 190;—of Ryllhill, Jo., * 455; Wm., III. 93;—of Ruthvennis Jo., I. 178, * 191; Adam, banished for life for Slaughter, 165; Ja., shooting with pistols, &c., 371; II. 60;—of Scottistoun, Wm., slain, I. * 172;—of Strathurd, Jo. * 367; Sir Pat., II. 343; Jo., yr., 430;—Sheriff of Dumfries, Ninian, I. * 165;—Tutor of Sanquhar, Jo., * 397, * 398;—Mr Wm., Jesuite, 311; engaged in trafficking against the Religion, &c., *ib.*, &c.; Letter as to King's correspondence with the Pope, II. 582.
- Creich, Laird of, married to Madame Gressmore, I. * 298, * 297, * 305.
- Cressonis of mail, I. * 317.
- Crearis, a sort of Highland galley, III. 20, 587.
- Crechdow, Margaret Montgomery, Lady of, oppressed, I. * 57.
- Creation of Earls, Lords, and Barons, Master of Ceremonies at the, III. 558.
- Crissall, King, I. * 274, * 277.
- Crimen Falsi*, I. * 346.
- Crows, Witches take form of, III. 607, 611, *et seq.* See Witchcraft, &c.
- Crowbache, deformed, III, 249.
- Crossar, Andrew, drawn and hanged for Slaughter, Hereschip, &c., I. * 61; Arch., hanged for Cattle-stealing, &c. 111.
- Crownar of Renfrew, hurt in execution of his office, I. * 106.
- Crowns (coins), forged, II. 99.
- CROWN and KING'S Jewels stolen, I. * 133; the QUEEN'S Crown made, * 298; the KING'S Crown made, * 299; Crowns for KING and QUEEN, * 322.
- Crossragwell, Abbot of, Wm., I. * 138; passes in Pilgrimage with Earl of Cassillis, I. * 245.
- Crowne-bennet, order of, (Batchelor's degree?)
- Croque, Monsr. de, I. * 504.
- Crosses, funeral, of white satin for velvet pall, I. * 287; silver for Prince's Chapel, * 306.
- Cross-bows, K. JAMES V., I. * 305. See Archery; maker to the King, * 316.
- Cross, Ordeal of the, III. 184.
- Cross, fyrie, to raise the country, III. 23, &c.
- Crowetts, for Prince's Chapel, I. * 306.
- Crossned, Ordeal of, III. 184.
- Cruickshank of Durlee, Dav. I. * 150.
- Crucifixes, I. * 320.

- Cruikshank, Ro. III. 371.
- Crummy of Carribdin, Pat., I. 270.
- Cuffis, dry, III. 544.
- Cuik, Alex., False notary hanged, III. 418;—of Vrinoch, Wm., II. 394; his daughter Marjorie ravished, Ja. Chene of Pennan Banished, 400.
- 'Culzeouris,' to be punished, I. * 66.
- Cultellar, King's, I. * 315.
- Culrose, Abbot of, And., I. * 42; Ja., slain, * 151; Alex., 267, 293; II. 527; his son appointed Justice-depute, *ib.*
- Cultermanis, Laird of, I. * 426. See Brown.
- Culverin, double, engraved with the King's arms, Vnicornes, Thrisillis, and Fleurdelyces, I. * 325.
- Cumming of Alter, (Altyre), Alex., Caution for his sons, I. * 227; barbarous Slaughter of cattle, * 336; Feud with the Laird of Brodie, &c., * 356;—Ja., fiar, Slaughter, II. 427;—Ja., III. 258;—of Culter, John, I. * 184; Mr Arch., 87;—of Erneside, Alex., I. * 391;—Jo., II. 41; Wm., fiar, 427;—Wm., III. 75;—the Monk, hanged for false writs, I. 362.
- Cummoris, feuds, &c. III. 404.
- Cumnock, Kirk of, Slaughter of the Laird of Corsintoun there, during Mass, I. * 82.
- Cumray, Remission to Inhabitants, I. * 113.
- Cunache, Laird of, I. * 454.
- Cuneistoun of Etradour, Geo., II. 63.
- Cuninghame of Akinbar, Wm., respited, I. * 252;—of Auchinamys, Tho., yr., I. * 133;—of Auchinharvie, Edw., slain, I. * 132, * 133; Ro., * 164; Ro., * 420;—of Barnis, Jo., yr., I. 60; Ja., uncle to Laird, II. 534;—of Boningtoun, Jo., I. 97; Wm., Tutor of, 379; II. 108;—of Birkschaw, And., I. * 456;—of Bartaneholm, Dav., I. * 137;—of Craiganis, Wm., slain, I. * 44, * 87; Gabriel, * 164; Wm., Tutor of, * 361; II. 390;—of Cuninghamehead, Rob., Oppression, &c., I. * 57, * 164; Wm., * 382, * 420, * 423, * 428, * 450; II. 390;—of Capringtoun, Jo., I. * 137, * 148; Slaughter, * 148, * 164; Mutilation, * 201, * 428; Wm., yr., * 457, * 491, 29; Wm., 91, 355; II. 107, 367; III. 120;—of Camlarg, Jo., I. 19;—of Clovinbayth, I. 69;—of Chapell, Adam, III. 268;—of Craignestane, I. * 456;—of Cochrane, Cuthbert, I. * 385;—of Cloncaird, Wm., I. * 457;—of Croy, Jo., I. * 385;—of Clavanis, Adam, I. * 148;—of Dalbeyth, Daniel, II. 106;—of Dolphingtoun, Wm., III. 365;—of Drumquhassill, And., I. * 170, * 441, * 451, 71; Jo., executed for Raid of Ruthven, &c., 139;—of Enterkin, I. * 457;—of Fenyk, (Fenwick), Wm., I. * 170;—of Forresterhill, And., slain, I. 95;—of Glogarnok, Wm., I. * 137, * 148; Oppression, * 148; Feud with Sempills, * 164, * 385, * 428; Wm., * 441; Jo., * 451, 69; his 'oy' and natural son slain, 183; Ja., yr., feud with Laird of Houston, 354; II. 367; Slaughter, 389; Sir Ja., III. 9;—of Hacket, (Aikit) Rob., I. * 137, * 164; Wm., * 420, 17; poisoned by his wife, 80; Alex., 355;—of Knokdone, And., III. 179;—of Kildonnane, Harie, III. 477;—of Lagland, Alex., I. * 148; Adam, Tutor of, * 164; Wm., * 375; Hew, II. 106;—of Mountgreenan, Ro., I. * 358;—of Markinsche, Adam, III. 493;—of Monk-tounhall, Alex., I. * 458;—Provost of Dunbarton, Cuthbert, III. 264;—of Polquhirne, Da., I. * 458; Alex., 355; Wm., II. 130; III. 475;—of Powtoun, Alex., III. 477;—of Rawes, Jo., III. 345;—of Ross, James, I. * 358; Jo. slays Earl of Eglintoun, 355;—of Robertland, David, I. * 148, * 164, * 177, * 385; II. 13;—Tho., hanged for Hame-sucken, Foraying, Oppression, &c., II. 359;—of Tourlands, Wm., I. 265; II. 359; Treason, &c., 366; his Confession, 368; beheaded, and his estate forfeited, 369;—of Waterstoun, Hew, I. * 428.
- Cuninghames, Feud between them and the Mures, I. * 57; with the Sempills, * 164, * 282.
- Cuninghamehead, house of, kept against the King, II. 366; Wm. C. of Towerlands beheaded and forfeited, 369.
- Cunynburgh of Skowlag, Wm., respited for Field of Linlithgow, I. * 241.
- Cupar. See Cowper.
- Cup-bearers, King's, I. * 312.

- Cupboard of Silver, the little, I. * 307.
 Curragh, a light boat of the Isles, III. 5.
 Currou of Logymegill, And., I. * 88, * 405;
 one of his sons slain, and another mutilated,
 * 408; Steph., shooting with pistols, &c.,
 371.
- Curses, Witch, II. 526. See Witchcraft, &c.
 Cuthbert, Jonet, Adultery, banished, III. 428.
 Cut of yarn, what, III. 556.
 Cutting growing timber, &c., I. 71; II. 522.
 Cunzeartoune, Burning of, I. * 201.
 Cunzeok wynis, (Cogniac?) I. * 349, * 377.
- D.
- DACRE, LORD, I. * 121, * 122, * 260, * 261,
 * 263.
 'Daft' person, curator to, I. * 254.
 Dalgarno of that Ilk, Gilb., I. * 150.
 Daggs, shooting with, I. 371; II. 370.
 Dalgleish, Mr Nicoll, publicly praying for the
 banished Ministers, I. 136, 369;—of Deuchar,
 Jo., III. 455; Adam, his son, mutilated, *ib.*
 Dalglese, (Dalglich,) John, hanged for Burning
 Branxholm and Ancrum, &c., I. * 69; Geo.,
 hanged and quartered for K. HENRY (Darn-
 ley's) Murder, * 490; his Deposition, * 495.
 DALHOUSIE, EARL OF, Wm., III. 601; Lady
 Dalhousie's Funeral, *ib.*
 Dalhoussy, House of, I. * 336.
 Dalkeith, Q. MARGARET's horses, &c. burnt at,
 I. * 118; burnt by the English, * 349.
 Dallas of Cantray, Wm., Sh. depute of Nairne,
 III. 602, 606.
 Dalmahoy, (Laird of,) of that Ilk, Alex., I. * 127,
 * 159, * 166, * 469, 34; Besieges house of
 Warriston, 81, 83, 107, 154; Sir Jo., III.
 497.
 Dalrymple of Enoche, Malc., III. 501;—of
 Schallocke, Jo., III. 475;—of Stair, Ja., I.
 * 352, * 405; Jo., II. 106; III. 139;—of
 Wattersyde, Malc., III. 387, 475;—Wm.,
 II. 391; Murdered on the sands of Girvan
 by the Laird of Auchindrain, *ib. note*. See
 also Trial of Mure of A., III. 129, &c.; his
 corpse bleeds on being touched by Mure's
 grandchild, 196.
 Dalzell, 'the Barroune of,' I. * 62, * 414. See
 Nesbit;—of Elliok, Sir Ro., III. 501;—of
 that Ilk, Laird of, William, I. * 53, * 65,
 * 82, * 85; Ro., * 382; Wm., his brother,
 slain, * 387; Ro., 35, 71; Ro., yr., II. 506;
 —of Kype, Alex., I. 35.
- Dames of Honour, I. * 293.
 Damiet, Mr Jo., an Enchanter, &c., II. 27.
 Damyostage, I. * 290.
 Dances, Witch, III. 603; 'Gillatrypes,' 606,
 &c. See Witchcraft Trials, *passim*.
 Dancers. See Morrice-dancers, I. * 114, * 119.
 Dänd or Dandy, familiarly used for Andrew, I.
 65, &c.
 Danielstoun of Dalquherne, Jo., III. 538.
 Darg, a day's work, &c., II. 451;—red-skinned,
 III. 251.
 Darlochis, II. 432; III. 245.
 Darnaway, Witches' revels there, III. 604, 617.
 Darne, to lie in ambush, hid or concealed, II. 410,
 428; III. 124, 128.
 DARNLEY, HENRY. See King Henry.
 Darleith of that Ilk, Jo., III. 538.
 Darsy, Sir Anthony, I. * 261, &c. See Bastie.
 DAUPHIN OF FRANCE, Hackneys and hawks
 sent to, I. * 306, * 307.
 Davidson of Camis, Harrie, I. * 432; Dav.,
 Slaughter, &c., II. 370;—Thomas, hanged, I.
 * 142; John, hanged in chains for Piracy,
 * 358; Jo., Piracy, hanged within flood-
 mark, III. 244; Peter, hanged, 265; Alex.,
 and his four sons beheaded for Slaughtbr, &c.,
 362.
 Davidsoun of Callelie, Walt., hanged for horse,
 cattle, and sheep stealing, II. 441;—of Penny-
 glene, Jo., II. 106; III. 172.
 David's Tower, I. * 265, * 306. See Edr. Castle.
 Davy, Besieging and Burning house of, I. * 175.
 Daw, Tho. and Alex., breaking into Bonning-
 toun, and stealing Title-deeds, &c., II. 347;
 Alex. hanged, *ib.*
 Day-Foray, II. 453.
 Dead body of a traitor produced in Court at pass-
 ing sentence of Forfeiture, II. 241, 277, 405;

- Fra. Mowbray's dead body gibbeted, drawn, and quartered, &c., 407.
- Deadly Feud, I. * 138, * 143, &c. See Feud.
- Dean, Alex., hanged for breaking Gardens, &c., III. 555.
- Deanis, Pat., hanged for Murdering a pregnant woman, II. 517.
- Dearth, I. 351.
- Deboischet, III. 529.
- Decapitation, capital punishment of, in cases of Murder, Treason, &c., *passim*; with a sword, I. * 425.
- Declinature of jurisdiction, I. * 443, &c. See Jurisdiction, Assessor, Assise, Privy Council, &c. —Mr And. Creichtoun sentenced to be hanged, III. 89; banished for life, 90; —of King's authority, 330.
- Deer, ABBOT OF, I. * 414; —chasing and wounding deer, &c., I. * 139; slaying, 48; —deer-dogs, I. * 312; collars of Purple velvet, gilded chains, &c., to them, *ib.*
- Defloiring a girl of eleven years of age, III. 507. See Rape and Forcing.
- Deforcng a Messenger, &c., I. * 71, * 157, * 334, * 356, * 437, * 484, 59. See Wand of peace, Messenger, &c.
- Deid-straik, III. 510.
- Deidthrawis, what, III. 384, 573.
- 'Deill among us,' Robert Henry, beheaded, I. * 368.
- Delgatye, Laird of, I. * 454.
- Delirium, ad*, Witches 'waked' to extort confession, &c. I. 50; —Ogilvie, a Jesuite, cruelly used, III. 331, 332; hanged, *ib.*
- Demembration, I. * 94; '*de suis testiculis*,' 253; of the ears, * 475; II. 509. See Mutilation of the nose, *ib.*; of three fingers, III. 58; —And. Henderson banished for life, 60; Forrester, 112; thumb and three fingers, &c., 491.
- Dempster, And., hanged for Theft, I. * 179; —of Auchterless, Jo., I. * 150; Ja., * 454; Jo., Slaughter, * 148; Ja., III. 486; —of Balraye, Cha., I. 29; —of the Court of Justiciary, * 8; form of a Forfeiture pronounced by him, * *ib.*, * 47, * 184, &c. —of Muresk, Tho., beheaded for Forgery and Falset, III. 486; —of Murehouse, Jo., I. * 150.
- Denmark, Ambassadors from, I. * 281; to, III. 562, 563; —gunpowder and cannon brought from, I. * 295; —Herald, * 268, * 277, * 28; —KING OF, Christiern, II. 268; Letter from, as to Earl of Little Egypt, III. 592; —QUEEN OF, her picture set in gold and diamonds, III. 563.
- Dennistoun of Colgrain, Robert, I. * 361; Ja., II. 438.
- Dennum (Denholm) of Crechane, Peter, I. * 456.
- Deserting the diet, on account of Plague, II. 426, &c.
- Desserts, King's, grooms of, I. * 313, * 314.
- Devil. For various popular superstitions, see Witchcraft *passim*; —assumes the shape of 'ane naikit infant bairne,' &c., II. 524; his feet cloven, III. 603; his amours with Witches, *ib. et seq.* See Witch Trials.
- Devil's mark, pricking Witches to discover, III. 599, 602.
- Witch-grace before meat, III. 612.
- Devoiret, destroyed, applied to a *felo de se*, III. 576.
- Dewar of that Ilk, Wm., I. * 143.
- Diamonds, target of gold with marmadyne of, I. * 293; golden cross to set, * 294.
- Dice, playing at, I. * 264.
- Dick, Mr Alex., Provost of Orkney, Convocation, &c., I. * 413; —of Barbesburie, (Barbestoun,) Jo., III. 172; taken prisoner by Laird of Drummurquhie, 179.
- Dickson of Belchester, John, I. * 398; Murdered—John, his son and heir, broken on the wheel for the parricide, 241; —Pat., II. 515; —of Bouchrig, (Buchtrig,) Ro., I. * 398; II. 442; —of Hassingtonne-maynis, Ro., II. 336; his son, Mr Alex., slain, *ib.*; —of Wynkstoune, Jo., slain, I. 34.
- Diksoun of Hirdrig, Ja., II. 534.
- 'Dik the Devillis bairnis,' bringing in, I. * 174.
- Dilaschet, fired or shot off, II. 409, 485; III. 70, 78, 128.
- Dingwall, Castle of, keepership, I. * 232; —LORD, I. 178; —Pursuivant, I. * 272, * 273.
- Dirge and saul-mess, I. * 293, * 297.
- DIRLETOUN, LORD, Tho., II. 246. See Erskine; —Castle of, Witches pricked for Devil's mark, in the Broad-hall, III. 599.

- Dischington of Ardross, I. * 156; Wm., * 402.
 Discord, fomenting, between King and Barons, Wm. Scot hanged, I. * 206.
 Dittay, (Indictment,) unduly executed, I. * 452.
 Divorce, sentence of, on ground of impotency, I. * 460.
 Doctor, the French, returns home, I. * 310.
 Dog, Devil appears in form of a, I. 235.
 Dogs, hunting. See hounds;—horrid torture and Murder of a Gentleman, and slaughter of his four dogs, &c. III. 548.
 Dolace, (Doles, Dallas?) of Buddet, Wm., yr., I. 201;—of Cantra, * 359.
 Donald of the Grange, Da., II. 63;—Wm., hanged, I. 45.
 Donaldsoun, Da., hanged for Falset, Perjury, &c., III. 208.
Doli capax, III. 238, &c.
 Dollar, Vicar of, burnt for Heresy, I. * 210.
 Dorche, (Droiche, Dallas?) of Dwarf, J. Maister John, I. * 278; dresses to, * 282; Jane the French, * 296; the Little Turk, * 308.
 Dorloch, (dorlache,) a short sword, dirk or dagger, II. 70, &c.
 Dornoch, Town of, burnt, I. 68.
 Dor-schot, II. 536.
 Dosell, the Lord, Lieut. of K. of France, I. * 375.
 Dougal, Robert, beheaded for Slaughter, I. * 15.
 Douglas, Mr. Alex., Provost of Elgin, his widow slain, II. 42, 557; Alex., B. of Murray, her son, *ib.*;—Mr Alex., Provost of Elgin, I. * 391;—of Annatroche, Wm., Slaughter, &c.; III. 443;—of Bone-Jedburgh, Geo., I. * 43; * 147; Wm., Oppression, &c., * 176, * 181; Mr Robert, Slaughter, Burning, &c., * 201, * 328;—Mr Arch., Parson of Glasgow, I. 95; Darnley's Murder, 142; remitted by the King, 147; acquitted, 154;—of Borg, Fra., mutilated, I. * 465, 154;—of Boncle, Wm., I. 119;—of Baitford, Wm., III. 90; Wm., his eldest son, beheaded, 95;—of Belliebocht, Hew, III. 93; Pat., his son, slain, 442;—of Brokhollis, Mr Rich. his servant slain, III. 271;—Baillie of Dalkeith, Ja., III. 431;—of Caveris, Ja., (Sh. of Teviotdale, *i. e.* Roxburghe,) I. * 142, * 147, * 208, 265, 293; II. 125, 375, 442; Wm., III. 396, 501;—of Cunzeartoun, Wm., I. * 181;—Castle of, withheld against the King, I. 97;—of Cowthroppill, Ja., III. 569;—Captain of, I. * 263;—of Caschogill, Arch., I. * 166, 242, 244; Ro., 265; Sir Ro., III. 270; Wm., 435; Wm., yr., *ib.*; Ro., 443; Ro., his son, loses his left ear, 500; Sir Ro. invades Laird of Drumlanrig at Moss of Knockconnie, Slaughter, &c., *ib.*;—of Cruick, Wm., I. * 456;—of Dalweine, (Dalvene,) Hew, slain, III. 270; his cattle, &c., stolen, *ib.*; Hew, *ib.*, 271, 435;—of Drumlanrig, Wm., I. * 39; Sir Wm., * 62; Slaughter of the Laird of Kilpatrick at the horn, * 77, * 78; Ja., * 187, * 142, * 151, * 269, * 328, 480; his cattle of Kirkhope stolen, * 348, * 370, * 442; Sir Ja., 259, 265, 304, 572; III. 9, 62; Sir Wm., III. 164; Wm., yr., Invasion, taking captive, &c., 212, 318; Sir Ja., *ib.*; barbarous maiming and slaughter of his sheep on Howpaslet by the Scotts, 381; three Scotts hanged, 389; illustrative Papers, *ib.*; Jok *the Sukler* hanged, 396; Sir Wm., 381; Sir Ja., 394; Wm., Slaughter and Dementation at the Moss of Caschogill, 590;—Earlsmill, David, I. * 391; Wm., II. 72, 80; Wm., his son, slain, *ib.*; 85, 110, 368; III. 485;—Gawin, Provost of St Giles, (the Poet,) I. * 79;—Ro., Provost of Lincluden, I. 142;—Slaughter, 167; Theft in his chambers, III. 92;—of Glaspene, Jo., I. 119;—Geo., slaughter, II. 1; Jo., Resetting a stolen purse, III. 552;—Geo., 'wirreit' (strangled) for Forging base money, II. 353; Tho., alias Blak, Rebellion in Orkney, III. 273; hanged, 283; his Deposition, 296;—of Glenbervy, Arch., I. * 328;—of Harwood, Leonard, I. * 424;—Jonet, wife of Sir David Lindsay, I. * 275, * 292, &c.;—Jane. See Lady Glammis;—of Kelheid, Arch., III. 433;—of Killievarrene, Jo., slaughter, III. 500, 501;—Arch. of Kilspindie, (*Greysteill*), I. * 195, * 197, * 239, * 256, * 258, * 393, * 398; Wounding him, *ib.*, * 415, * 443, 3; Sir Pat. II. 49;—of Langnudrye, Fra., I. 27; Geo., yr., 170; II. 1;—of Lyncluden and Grenelaw, Wm., III. 90; beheaded, 95;—of Lache, Wm., III. 93;—of Lugtonne, Ja., portioner, III. 452;—of Lochleven, Sir Rob.,

- I. * 78, * 198, * 328, * 496, 36; Ro., yr., II. 9;—of Moirinache, Dunc., (MacGregor, Tutor of Glenstray,) III. 250;—of Mouswald, (Moussell,) and 5 others, Ja., Slaughter, III. 472, 500, 501;—of Moirtoun, (portioner of Gogar,) Ja., III. 473;—of Mania, Alex., I. * 130; Math., * 339, * 344; Malc., hanged and quartered for Raid of Ruthven, &c., 139; Alex., III. 546;—of Nevay, Jo., II. 145;—Patrick and two others hanged, I. * 151;—of Pennyland, Geo., I. * 201, * 226;—of Punfeith, Arch., I. 87;—of Park, Geo., I. 119;—of Pinzerie, Wm., III. 90; Treasonable Theft and Stouthreif, &c., *ib.*; beheaded, 95;—of Preistoun, And., III. 569;—of Parkheid, James, assisting, I. * 205; his son found caution, * 226; summoned for Treason, * 306; Geo., outlawed, 97, 122; Sir Ja. alays Capt. Ja. Stewart, (E. OF ARRAN,) III. 66;—of Pettindreich, David, remitted, I. * 239; Lady P.'s servants wounded, * 408, * 454;—of Pumfraystoun, (Pompharstoun,) Rob., I. * 166, * 333; Jos., 155; bewitched, 251; III. 417;—of Qubittinghame, Wm., I. * 159; respited for Field of Linlithgow, * 241; remitted for assisting E. of Angus, * 243; freed from ward, * 330, 57, 142, 280; Sir Ja., II. 496; Sir Arth., III. 594;—of Reidhouse, Wm., III. 213;—of Spittall, Fra., I. 11;—of Stanypath, Arch., I. 155; his widow tried for oker (usury), II. 101;—of Spott, Ja., I. 270, 347; II. 21;—of Thortherwald, Ja., slays the Laird of Newtowne, II. I, 107; slays Capt. Ja. Stewart, (E. of Arran,) III. 66; is slain on the High street of Edr., *ib.*; Letter of Privy Council to the King, 67;—of Todhoill, Ja., yr., shot in the belly, II. 378; III. 227; Ja., 268;—Mr Tho., Minister, struck, &c., II. 416; Slaughter, III. 473; Walt. Graham scourged, and his right hand struck off, 417;—of Todhills, James, I. * 382, 36, 119;—of Walterstoune, Jo., I. 21;—of Wellis, Ja., I. 34.
- Douglasses, Intercommuning with, I. * 177.
- Douking, &c., Murder by, III. 488; to give up Douking merks, 490.
- Dove, Witch-superstition as to the, III. 608, *note*.
- Dow, Meg, burnt for Sorcery, Child Murder, &c. I. 186, 237?
- Doward, Castle of, delivered to King's Lieut., III. 368. See MacLean.
- Downe of Raty, Rob., I. * 150.
- DOWNE, LORD, Ja., I. 116; III. 72; Jo., his son beheaded for Murder under trust, 74.
- Dragon, enamelled, I. * 304.
- Dress. See Apparel, and under each article.
- Drink, administering enchanted, III. 68.
- Drinking pieces of fine gold, 15 lbs. 5 oz. to be coined, I. 339; another of 12 lb. 5 oz. to be coined, *ib.*; with a Witch, to remove enchantment, II. 526.
- Drowning, punishment of death, I. * 162, *ex speciali gratia*, * 394, II. 94, III. 208, 561;—a servant, III. 55; under colour of law, 206; murder by, 489.
- Drowis, birth or labour pains, throes, I. 252.
- Drowgries, III. 616.
- Drugs to K. JAMES V. and the Lady Margaret, I. * 323.
- DRUMLANRIG, VISCOUNT, WM., III. 381.
- Drummond of Auchtermuthill, Mr Moreis, II. 555;—of Auchterarder, Ja., I. 28;—of Abernytie, Wm., I. * 158;—of Blair, Geo., I. * 371, 74, 91; Harie, II. 433;—of Balloch, Wm. I. * 441; Geo., yr. 15; Geo., 76;—of Ballyclone, * And., forging a charter, his right hand struck off, &c. I. * 387;—of Bordland, Malc. I. 28, 77;—of Culcherie, Mr Moreis, II. 438;—of Cattis-elbok, Geo., III. 431;—of Carnok, Alex., I. * 158, * 166; remitted for assisting Earl of Angus, &c. * 242; Ro. * 453; Pat., yr. 119; Sir Ro., II. 569;—of Coquhalzie, Jo., slays Laird of Gourdie's son, II. 80;—Da., Chamberlain to Lord Da., (Perth,) II. 528, III. 233, 250;—of Drill, Ro. I. 382; Sir Ed., II. 569, 575, &c.;—Geo., 'wirreit and brent in assis,' for uttering forged money, II. 365; Pat., do. do. 383;—Jo., Chamberlain of Stratherne, III. 233;—'Genealogie' of the family of, I. * 196;—of Innermaith, Da., III. 552;—of Innerpeffry, Jo., I. * 158, * 169, * 189;—LORD, Justice-depute, I. * 19; John, * 78, * 387, *note*; violence done to a Herald, I. * 268; David,

- * 379; Pat. 116; Da., III. 22;—of Leidcreif, George and his son Wm. slain, I. * 366; papers relative to, * 371;—Letchill, Ja., II. 187;—of Megour, Alex., I. * 441;—of Medope, Alex., wasting Lord Elphingstoun's goods and adultery with Lady D., I. * 465, 91, II. 54; Sir Alex., III. 169, 312, 418; declined as an assessor, 424;—of Monzie, Pat., I. 77;—of Pitkennectie, Jo., I. 76;—of Pitcairns, Ja., deposition as to Gowrie's consp. II. 189;—of Ricartoun, * Hary, I. * 388, 91;—of Slipperfield, Jo., I. 255, 'Ischar to his Math.' II. 92.
- Drumskey, burning of, I. * 56. (See Dunskaith.)
- Dryburgh, David, Comm. of, I. 119.
- Dryffe-Sands, battle of, III. 30; 700 of the Maxwells slain, *ib.*
- Dryhope, house of, to be destroyed, I. 276.
- Ducats, Portugal, III. 178, 563.
- Duchall, Place of, treasonably detained, 70.¹
- Dudley, Sir Andrew, English Captain of Broughty, I. * 346.
- Duel or 'Singular Combat,' without *Licence*. (See also Judicial Combat;) curious case and pleadings on trial for, II. 112; Auchmowtie beheaded, 113, 124; Bruntfield and Carmichael, 113, *note*; between Glaffer and Hepburn, 114, *note*; in France, Cap. Jo. Rig, 'Archeour of the Gaird of France,' 382; while in foreign service in Flanders, Capt. Harie Bruce, III. 502; between E. of Lothian and Lord Cranstoun's sons, 507.
- Dudingstoun of Sandfurd, Stephen, I. * 404;—of Pitkapol, Arch., I. * 404.
- Duff of Glenelwart, Tho., III. 363; his wife's right arm cut off, *ib.*
- DUFFUS, LORD, Alex. and Ja., III. 604, *note*; Fairy-cup belonging to, *ib.*;—KING, Murderers of, III. 191;—Laird of slain, I. * 149.
- Duggeoun Stokkes, I. * 320.
- Dule-Dresses, I. * 287, &c., (Mournings).
- Dummy Carpitane, I. * 301.
- Dumbreck, Place of, taken and kept against the King's Guard, II. 429.
- Dumfries, Burning Town of, I. * 39;—Convention at, I. * 360;—Justice-Aire of, I. * 39;—Raid of, at Lammas Eve, I. * 75, 155; E. of Angus's Raid, II. 106, 130, 134.
- Dumbarton, Castle of, besieged and taken, I. * 232, * 236, * 238, * 334.
- Dumb young man, barbarous Murder of, II. 388.
- DUMBLANE, BISHOP OF, Wm., I. 185, * 275; Ro., 264, 332; Geo., II. 325; Wm., 569, *note*.
- Dunbar of Blantyre, Jo., invaded, &c., I. * 181;—of Barcurroch, Adam I. * 458;—of Barmuir, Jo., I. 36;—of Bennagefield, David, I. * 376;—of Baldtone, Gawane, I. * 428;—of Baldork, Da., II. 95, 143;—burgh of, Remission to inhabitants, * 243;—of Burgye, Ro., II. 145, 484;—of Blairie, Pat., II. 484;—III. 200;—of Bothe, Ja., III. 252; Alex., 602; Ja., *yr.*, *ib.*;—of Baluaferrie, Pat., III. 616. See D. of Westfield;—of Camnock, Alex., I. * 357, * 359; James, *ib.*; Pat., *yr.*, * 370, * 374, * 391; Sheriff of Elgin, * 392;—of Conze, Alex., I. * 376, * 391; Pat., II. 71;—of Clune, Geo., his house burnt, and horses and cattle houghed, &c., II. 68; Roise of Ballivot tried, 138; Wm., III. 602;—Captain of, I. * 311;—Castle of, freeing a prisoner from ward, I. * 81, * 261, * 263; MARY Q. OF SCOTS carried to, I. * 480;—of Corsingtoun, Pat., slain, I. * 82;—of Craichlaw, Jo., *yr.*, II. 143;—of Durris, Robert, I. * 357, * 391;—of Enterkyn, Wm., II. 96, 105, 106, 143;—EARL OF, GEO., II. 267, 273; L., High Treas., 274, 387, 496, 568; his death, 581, *note*; III. 92, 621;—of Grangehill, Robert, I. * 359;—of Grange, Tho., III. 602;—Mr Gawin, the Archdean of St Andrew's, I. * 79; KING JAMES V. Master, * 265, * 266; Treasurer of Ross wounded, * 328; Mr Gawin, Archdean of Murray, III. 200; Ja., his son, slaughter, *ib.*;—of Hempriggis, Wm., II. 484; Ninian, his son, slaughter, III. 200;—of Knockschinnoch, Geo. III. 57;—of Kilbowak, Alex., *yr.*, Slaughter, &c.; III. 200; Ro., his brother, *ib.*, 399;—of Leacht, Jo., II. 95; his son Pat. tried for bearing Pistolets, and slaughter, *ib.*;—of Lochieils, Da., kept prisoner for 12 'ouk-kis', (weeks), II. 516; two of his servants slain, *ib.*; Alex., *ib.*;—of Mochrame, John, I. 141, 398, * 428, * 491; Sir Jo., III. 477; Alex.,

- yr., *ib.* :—of Moyness, Jo., I. 285; II. 68, 143, 368;—of Mynniewiek, Jo., III. 75;—Pat., Sheriff-dep. of Elgin and Forres, II. 143;—Sheriff of Murray, nobly slain with the Earl of Moray, I. 358; II. 143; Alex., 528, 564; maltreats a messenger, *ib.*;—of Tarbert, (Tarvet,) Ja., I. * 357, * 376, * 391, * 392; Mr Ja., II. 484;—Wm., the Poet, I. * 117;—of Westfield, (and Balnaferrie,) Sheriff of Murray, Alex., slain, III. 200; Jo., his brother, *ib.*, 399; Ja. and Tho., his brothers, *ib.*; Pat., 616.
- Dunavertiche, Castle of, keeping, I. * 316.
- Dunbrek of Frefield, Wm., I. * 391;—of Urcane, Wm., I. * 391. See Dumbrek.
- Duncane, Geillis, Witch, I. 215, 236; Bessie hanged for Child-Murder, III. 430; Mr And. Minister, &c., tried, II. 494; banished, 503; Jo., elder, and yr., Mutilation, &c. 539; Jo., Slaughter, beheaded, III. 484.
- Duncansoun of Standandstones, Dav., I. * 184. See Robertson.
- Dunduff of that Ilk. See Stewart.
- Dundas of Arnestoun, Sir Ja., wearing Pistolets, II. 67;—of Breistmiln, Gaw., I. 155;—of that Ilk, James, Feud with Wauchopes, I. * 144; keeping Inchgarvy, * 281; Geo. * 424, 10, 72, 136, 137, 159; Walt., II. 10;—of Newliston, Jo., I. 155; Striking a person while King was sitting in judgment, II. 358; fined 1750 merks, 359;—of Priestinch, Da., Incest with Countess of Eglinton, I. 100, 345, 346; II. 22, 555.
- Dundee, Constable of. See Scrymgeour;—Justice-Aire of, I. * 115, * 263; Bailies and community remitted, * 240; Reformation preached, * 406.
- Dundervisheid, Fishing of, violently occupied, I. * 177.
- Dundrennan, Abbot of, Oppressing bis officer, I. * 54; Theft from him, * 75; Oppressed, * 163.
- DUNFERMLING, EARL OF, Alex., L. Chan., II. 274, 325, 496; III. 312, 579.
- Dunfermling, Commendator of, Ro., (Pitcairn,) I. * 436, 88, 101.
- Dunkiesoun, Mr Jo., Minister, I. 261, 304.
- Dungeon (Donjon) Tower, and kitchen, in Castle of Blackness, I. * 312.
- DUNKELD, BISHOP OF, I. * 393; Peter, II. 159; Field of, I. * 98, * 106.
- Dunnyvaig, Castle of, Arch. Stewart, Captain, I. * 258, * 305; Surrendered, III. 3; taken by Sir Ja. MacConeill, 17; detained by Angus Og, 363; Surrendered, 364; Angus hanged, 365. See MacConeill.
- Dunlop of Auchinskyech, Arch., I. 57;—Bessie, remarkable case of Witchcraft, I. 49; burnt, 58;—of Crawford, Hew, I. 58;—of Hapland, Jo., I. 63;—of that Ilk, (Laird of,) I. * 82; Alex., * 360; slays his son Andrew, * 402; Ja., * 457, 63, 67, 169; III. 122, 264;—of Powmylce, Jo., III. 345;—Ro., hanged for Perjury, III. 358.
- Dunnyne, Kirk of, I. * 240.
- Dnnoon, Kirk-yard of, alleged prodigies, a spring of blood, &c., III. 199.
- Dunrobin, Mass celebrated, II. 530.
- Dunskath, (Dunskey,) Place of, burnt, I. * 95, * 103; Castle of, besieged, I. * 231.
- Dunwedy, Robert, Stouthrief, I. * 41; Slaughter of Laird of, I. * 40.
- Dupplin, Place of, besieged, &c., I. 25, &c.
- Duric of Hielare, Da., III. 57.
- Dry of that Ilk, Robert, gift to, I. * 256; Dav., 60;—Dean John, Convocation, &c. I. * 436; Mr Ro., Minister, tried, II. 494; banished, 503.
- Durrisdeer, Town of, burnt, I. * 348.
- Durhame, Archdean of, Ambassador, I. * 283;—of Duntervie, Mr Ja., III. 264;—of the Grange, Ro., I. 74.
- Durk, slaughter with a, III. 471, 481; torture and barbarous Murder of a Gentleman, and slaughter of his four hunting dogs, 548.
- Dotch Miners, at gold mines, I. * 298.
- Dutch horse, I. * 301.
- Dutchman to 'pley' before the Lords, I. * 307; Shipwrecked, * 308; given to Servants of Lord of the Fair, * 309.
- Dwarf, the King's. See Dorche.
- Dwne, Robert, of Rate, unjustly acquitted, I. * 169;—Peter, Slaughters, Fire-raising, &c. I. * 362.
- Dysart, Kirk of, Slaughter at, I. 24; Magistrates, assisting E. of Bothwell, 310.
- Dyvoor, a bankrupt, III. 154.

E.

EAFALD, III. 275, *et passim*.

Ears, cut off, punishment, I. * 157, * 206; De-
membration, by cutting off a man's, * 475.

Edgingbuckling-brae, abiding from the Host at, I.
* 345.

Edingtoun of that Ilk, Jo., I. * 164.

Edinburgh, Burgh of, besieged, I. 30; furnishing
victual to Rebels, *ib.*, &c.; St Andrew's
Port, * 351; 'lang walpynniss' ordered to be
kept in 'buithis,' &c., * 362; Butter-tron,
* 396; Insurrection, Robin Hood, &c., * 409,
* 410; Cramers, * 415; Tumult to restore
Popery, * 416, &c.; at Holyrood-House,
* 434, * 435; Magistrates tried for freeing a
Prisoner, * 442, to * 450; Magistrates ob-
structed in apprehending Lord Borthwick,
354; KING, &c., besieged in the Tolbooth, II.
29; Ro. Auchmowtie tries to escape from
Tolbooth, beheaded, 113, *note*, 124; Gowrie
Conspiracy proclaimed at the Cross, II. 238;
public rejoicings, 244, 245; Plague in Edr.,
426; young Lairds of Edzell and Pittarrow,
and their 'complices,' fight several hours at
the Salt-tron, 61;—Castle, Captainship of, I.
* 258; the Lord's Hall in David's Tower,
* 265; the Gun-house, *ib.*; the Captain's
Tower, *ib.*; victualled against the English,
* 270, *ib.*; sums expended on repairing for-
tifications, munitions, &c., * 298, * 306;
Chalmers taken from head of David's Tower
after Coronation, * 306; Register-House,
* 312, * 323; munitions, &c., * 317, * 322;
Captain escapes from ward, * 331; proceed-
ings against the Rebels, detainers of the
Castle, 33, &c.; Guns fired for KING's deliv-
ery from Gowrie's Consp., 238; remarkable
escape of Lord Maxwell and Sir Ja. Mak-
concell from the Castle, III. 37, 28, &c.;
Servants in Edr. Castle exempt from Assises,
III. 281;—Bailies and Sheriff of, Jurisdiction
of, I. * 129; Stabbing in their fenced Court,
I. * 330;—Justice-aire of, I. * 26, * 38, * 60,
* 72, * 76;—Magistrates of, their Jurisdic-
tion, I. * 129, 98; tried for freeing a prisoner,

* 442, to * 450; mode of delivering over a cri-
minal for execution, III. 98;—Ministers of,
conduct as to Gowrie's Conspiracy, II. 234,
235, 299, &c.; III. 618;—Provost of, search-
ing him for his slaughter, I. * 393; Wounded
with a quhingar, * 399; a culprit asks pardon
at the Cross of Ed. in linen clothes, bare-
footed, &c., *ib.*;—Raid of, I. * 356.

Edringtoun, Castle of, Caution to keep, I. * 158,
* 324.

Edmistoune, Lady, Horse-stealing from, I. * 476.

Edmonstoun of Ballintoun, Ja., I. 28; Arch., II.
540;—of Burnhoussis, Da., II. 18;—of Ed-
nem, Ja., I. * 85;—of Duntreithe, Wm., * 88,
* 166, * 167, * 170; James, respited, I.
* 244, * 453; executed for Raid of Ruth-
ven, &c., 139; Sir Ja., 266, 392; Convok-
ing an unlawful Assembly, II. 3; 105, 366;
Sir Ja., elder, III. 345;—of that Ilk, (Laird of,)
Jo., Feud with Laird of Niddry-Marischall, I.
* 143, * 144, * 190; Assise to, * 286;
young Laird, * 456; Jo., 107; Sir Jo., 154,
169; remarkable consultation of a Witch,
235; Sir Jo., I. 265, 266; feud with Laird of
Cranstoun, 352, 396;—of Newton, Jacob, I.
* 266; II. 438;—of Wowmsett, (Woolmot,)
Da., I. 168; Jo., his brother, slain, *ib.*, 265;
the Laird slain, II. 52, 403; Mr Pat. III. 260.

Edmonstoun-Edge, Raid of, II. 21.

Edzare of Blaikshaw, Ro., II. 490;—of Creaken,
I. * 95;—of Inglitoun, Jo., I. * 456, 107?
Slaughter, II. 71;—of Kirkblane, Clem., II.
490;—of Weddirle, Oliver, Tutor of, I. * 147;
Jo., * 393, * 413, 107? Ro., III. 569.

Edzearstoun, caution to keep Castle of, I. * 179;
besieged, * 286.

Edzell, Castle of, III. 63.

Egg, Island of, burnt, I. 228; III. 19.

Eggs 'to bikkir the Castle,' &c., I. * 271;—
price of, at Justice-aires, * 390.

EGLINTOUNE, COUNTESS OF, Jean, Incest with,
I. 100; Helen Kennedy, complaint on her
husband's slaughter, 354;—EARL OF, Hew,
Spuilzie, Oppression, &c., * 59; Oppression,

- Stouthreif, * 74; Slaughter, * 132, * 133, * 185; keeper of Little Cumray, * 232; respited, * 237; abiding from Solway, * 254, * 381, * 466; Langside, 5, 114, 116; slain by the Cuninghames, 355; Hew, *ib.*; III. 419; Feud with Earl of Glencairn, 580;—**MASTER OF, Arch.**, I. * 132; Hew, * 199; remitted, * 233, 133; Ro., feud with the Laird of Honstoun, 352; feud with E. of Glencairn, 354, 355.
- Egypt, Earl of Little, III. 591; Letter from K. of DENMARK as to, 592; from K. JAMES V., *ib.*; Precept to him to punish all Egyptians within Scotland, 594.
- Egyptians, dance before the King, I. * 273; King Cristall, * 274; King of Cypre, * 277; expelled from Scotland, * 310; consulted for poisoning, 196; following them punished with scourging and banishment, III. 99; Moyses, Dav., Ro., and Jo., *alias* Willie Fa, hanged, 201; Resetting Johnnie Faw, 307; Jo. Faw and 3 others hanged in default of caution, 397; Capt. Jo. Faw and 7 others hanged, 559; Helen Faw and 10 others, their widows and daughters, 560; sentenced to be drowned, 561; they, along with Alex. Faw and 4 others, their sons, ordered out of the Kingdom, under pain of instant death, 560; Documents and notice relative to Gipsies or Egyptians, 590; dance before the King at Holyrood, 592; Letter from K. of DENMARK to K. JAMES IV. in favour of the E. of Little Egypt, &c., *ib.*; ditto from K. JAMES V. in favour of Jo. Faw, 'Lord and Erle of Little Egypt,' *ib.*, &c.
- Ekils of that Ilk, Muogo, I. * 138; James, * 369;—of Kildonane, Jo., III. 171.
- Elder, Henry, hanged for Sacrilege, I. * 394.
- Eldermen, (Aldermen, or Bailies.) I. * 423, &c.
- Eleist, an eye-sore, grudge, &c., I. 349; II. 157.
- Elf-Arrows, I. 192, 193, 198; how made, III. 607, &c.; how shot, *ib.*, 615;—boys, 607, 615;—bulls, 604, 611, *et seq.*;—folk, in the hills consulted, I. 196;—grippit, 53;—land, III. 607;—shot, I. 231;—charm for, II. 536.
- Elfes-howssis, III. 607.
- Elgin, Cathedral of, Sacrilege committed there, I. * 376;—and Fores, Justice-aire of, * 389; Proclamation of, *ib.*;—Sheriff of, * 392.
- Elmosinar, the King's Master, I. * 312, * 313, &c. See Almous; his Priest, * 313; Prince's, * 314.
- ELIZABETH, QUEEN, Embassy from, at Baptism of K. JAMES VI., I. * 479; Letter to, as to French Paris's execution, * 511, 348; demands redress for Laird of Buckcleugh's carrying off Kinmont Will, by force, out of Carlisle Castle, 364; sends an Ambassador to congratulate K. JAMES VI. on his escape from Gowrie's Consp., II. 315; expostulates with JA. VI. as to his correspondence with the POPE, 571;—PRINCESS, married to the Palsgrave, III. 322.
- Ellen of Butterdene, Alex., I. * 147.
- Ellendonnan, Burning of Castle of, I. * 256.
- Ellen-na-Muk, Island of Muk burnt, I. 228.
- ELLESMERE, LORD, (Sir T. Egertoun,) Lord Chan. of England, II. 591; his speech as to L. Balmerinoch's Treason, *ib.*
- Elliot of Bellelie, Ro., I. * 434;—of Burngranes, Jo., II. 559; Wm., his son, Slaughter, and resisting King's Guard, has his right hand cut off, and then hanged, 560;—of Copschaw, Jo., 473; acquitted of Masterful Theft, &c., 474; Breaking Torwodlee, &c., 520; Murdering the Laird, &c., *ib.*; Ro., III. 220;—of Dunlabyre, Ro., III. *ib.*;—of Fallinesche, Wm., called *Gawenis Willie*, I. * 466; Ro., yr., II. 509; Wm., 521; Jo., III. 396;—of Fiddeltoune, Gawin, II. 509; Demembration, *ib.*; Wm., 559; Niniane, his son, resists King's Guard, &c., *ib.*; his right hand struck off and he hanged, 560;—of Horsliehill, Wm., slays the Laird of Hassindene, I. * 456; sentenced to be beheaded, *ib.*; Gawane, same Slaughter, * 466; Wm.'s sentence of Banishment recalled, *ib.*;—of Lamestone, Wm., * 466;—Jo., in Redden, *alias* of Rynsiegill, *felo de se* in Hawick Steeple, III. 219; Gilb., *alias Gib the Galzart*, scourged and banished, 442;—of Reidheuche, Ro., II. 522; III. 568;—of Stobbis, Gilb., III. 539;—Will 'callit Woddir-nek' hanged, I. * 413; David of the Heuchona hanged, 65.

- Elmere, Slaughter of the Laird of, I. * 17, 22.
- Elmisdene, Water of, Convocation at, against Queen's Lieutenant, I. * 395.
- Elphame (Faerie), Court of, I. 52, 56, 162; Queen of, 162. See Faerie, &c.
- Elphinstoune of Balnaglak, Jo., II. 507;—of Barnthouse, Sir Ja., Secretary, 159;—of Blythiswod, Sir Geo., I. 393; present to his wife, II. 238; III. 134, 345, 491, 494, 512; appointed Justice-Clerk and Master of Ceremonies, 596;—of Glenskisbarneheid, Geo., 219;—of Glak, Ja., I. 48; Mr Ro., Tutor of, III. 230, 478;—of Henderstone, Jo., I. * 81, * 87; Dionese, * 424, * 469;—Mr John, Murder, Adultery, &c., * 359;—LORD, Alex., * 78, * 167; Ro., * 465; his Lady's Adultery with Laird of Medope, *ib.*; II. 63; Alex., 496;—MASTER OF, Alex., I. 116, 381, 393; II. 62, 63, 131, 159, 496;—of Schank, Jo., III. 243, 539.
- Elva, a name given the Devil, I. 235.
- Elvands, (eln-wands,) II. 90; III. 529.
- Elwald, John, (*Jok Unhappy*), hanged, I. * 167; And., hanged, * 151.
- Elwalds, I. * 263.
- Elyde, what, III. 409, 535.
- Embassy, to THE EMPEROR, I. * 304, * 306;—to England, * 273, * 318, * 320;—France, * 273;—Italy, *ib.*
- Embroidery, of Crowns, Scottish Thistles, &c., I. * 301; Armorial bearings, *ib.* See also Tapestry, &c.
- Emerald, great, in Scottish Crown, I. * 299.
- EMPEROR, THE, I. * 271; gives a Collar to K. JAMES V., * 277; Ross, Herald, sent to, * 304; Sir John Campbell, Ambassador, * 306; dispatches from, * 308.
- Enchanted drink, administering, III. 68.
- Enchantments, seeking, &c., I. 70. See Incantation, Witchcraft, &c.
- England, Ambassadors to and from. See Ambassador, Henry VIII., &c.;—Admiral of, I. * 303;—defence of the realm against, * 280;—Commissioners of, * 300;—no one to pass into, without license, * 264;—Protector of, swearing fealty to him, * 378.
- English Army, &c., Supplying, I. * 344, * 379;—corresponding and trafficking with, I. * 400; Symone Heryng hanged, *ib.*;—taking pay from the, * 348;—Pirates, *eight* hanged, III. 99; *thirty* hanged, 103; Papers as to Pirates, 108; *two* hanged, 244;—Thieves, suffering to escape, I. * 223; guiding, * 432;—selling victual, flesh, &c. See victual, &c.
- Englishmen, bringing in, I. * 17, * 34, * 61, * 144, * 181, * 393, * 405;—that 'nane be fey cumand be reffaut, becaufe of the Pefilience,' I. * 294; banqueted at Yule, * 300.
- Ennoche, Laird of, I. * 62.
- ENSENZE, Royal Standard. See Ansenze.
- ENZIE, EARL OF, Geo., III. 25.
- Epilepsy, charm for, II. 29.
- Equipage, crew of a vessel, III. 571, 572, &c.
- Eresche Willie, I. * 310; Marioun, II. 542, &c.
- Ermine, spotted, to line KING's kirtle, &c. I. * 300.
- Ernside, Tower of, broken into, I. * 223.
- ERROL, COUNTESS OF, Helen, dule weid (mournings) for Prince JAMES, I. * 310; Agnes, 260; tried for Intercommuning with Earl Bothwell after his forfeiture, 366; Eliz., 389; Agnes Sinclair, II. 411; her dresses, &c., stolen, *ib.*; banished, Writ of Error against Assise, 412;—EARL OF, Wm., I. * 78; Justice depute, * 82; 'gaddering' between him and Lord Gordon, * 263; George, * 337; Lord High Constable's jurisdiction, * 351, * 392; Francis, 209, 262; denounced, 283; Offers presented by him, 301; to abide Trial, 303, 306; tried for Conspiring against the Religion, 310; Summons of Treason, 314; doom, 316; Tract regarding 'the Spanish Blanks,' 317; Trial ordered, 363; And., 367, 389; Fra., II. 133; II. 428; III. 419, 444;—Jo., hanged for Forcing a child of 11 years old, II. 567;—the LADY, Marriage Dresses to, I. * 321.
- Error, Wilful, on Assise, punished by imprisonment for year and day, and declared Infamous and Perjured, I. * 72; Laird of Phillorth, &c., * 148, * 165, * 166; Imprisonment for year and day, * 203, 219, * 253; form of

- Protestation against a verdict, * 449; for acquitting a Witch, 244; absolved by KING in person, 247; Milligan, &c., II. 79.
- Errosie, heresy, II. 499; III. 533, &c.
- Erskine of Auchterforfar, Arth., Slaughter, II. 101;—of Brechin, Sir Tho., Secretary, I. * 185;—Dav., Adam, Wm. See Dryburgh, Cambuskenneth, Paisley;—of Dun, John, the Reformer, I. * 210, &c., * 347; Justice depute, * 389, * 407, * 431; Ro., yr., 74; Jo., yr., III. 261; notice of family, *ib.*; his son tried for Poisoning, &c., *ib.*; beheaded, 264; Helen, Isobell, and Annas also tried, 266; condemned to be beheaded, 269; Helen banished for life, *ib.*; Da., Jo., and Alex., his grandsons, poisoned by their uncle, Ro. E., 262; Jo. dies, 263;—of Gogar, Sir Alex., I. 120; Sir Tho., II. 152, 166, &c. See Gowrie Conspiracy; his deposition, 181; created Lord Dirletoun, 246; Viscount Fentoun, 582; E. of Kelly, *ib.*, *note*;—of Inner-teill, Sir Geo., III. 475, 508; gets a Commission of Justiciary, 558;—of Logy, Jo., (apparent of Dun,) 261; Ro., his son, tried for Witchcraft, Poisoning his two nephews, &c., *ib.*, &c.;—LORD Robert, Justice depute, I. * 62, * 78, * 165; John, * 168, * 185; one of the Guardians of K. JAMES V. in his infancy, * 259; John, * 382; Guardian to K. JAMES VI. * 479;—of Little Sauchy, Ro., 119, 126.
- Escape, suffering English Thieves and Captives to, I. * 223. See Prisoner, Murderer, Thief, &c.
- Escheat, valuable, of Wm. Hume, I. * 307.
- Eskdale, Thieves of, I. * 40;—Raid of, * 104, * 181;—Porteous Roll of, * 117.
- Esplene of Newbigging, Tho., II. 555.
- Esson, Captain, English Pirate, III. 105.
- Eton College, III. 589.
- Ettrick-Forest, destroying Woods in, I. * 71.
- Everis, Sir Wm., sends for Hawks, I. * 274; Dispatches from, * 295; writings to, * 304; horse taken from him, * 323, * 324; Sir Ralph, * 359.
- Evidence of Witnesses in exculpation of Slaughter refused, III. 467.
- Evil Spirits, nicknames of, III. 606; colour of their dresses, &c., *ib.*
- Evil-willit Sandy, I. * 173;—blast of wind, 53, 233.
- Eviot of Balhoussey, Pat., I. * 432, * 452; Colin, II. 159; Pat., his brother, forfeited in Parl., *ib.*, 234; murdered by his wife, Jonet Ross, who was hanged and burnt, II. 409, and *note*; III. 449;—of Mwretoun, Pat., 265; his servant hanged for stealing Title-deeds, *ib.*
- Examinations, remarkable, for Witchcraft, Sorcery, &c., III, 596.
- Excommunication, receiving Holy Sacrament while under, I. * 365, * 375; Priest baptizing, &c., after, 189.
- Execution, curious, of letters against the E. of Orkney, III. 86, 281.
- Exemption from Hosts, warding, &c., I. * 247; from Assises, see Assise.
- Expeditions to the Isles, &c. See Isles, &c.
- Expenses, Clerk of the King's, I. * 313; Assise protests for, 94.
- Eye-leist, what, I. 349; II. 157; III. 506, and *note*.
- Ey-schot, II. 536.
- Eyes of a Murdered corpse, superstition that they open on the touch of the Murderer, &c., III. 188; case of Johan Norkott, 193.

F.

- FA (FAW) Moyses, Da., Ro., and Jo., *alias* Willie, hanged, III. 201; Resetting Jo. Fa, 307; Letter from K. JAMES V. in favour of 'Johne Faw, Lord and Erle of Little Egypt,' 592.
- Faerie, Court of, I. 49, 52, 53, 162;—Queen of, III. 604;—King of, *ib.*;—Faerie-cup, belonging to Lord Duffus, *ib.*, *note*.
- Fair-folk, (Fairies,) carried off by, I. 57, &c.; II. 25, 537.

- FAIR, LORD OF, present given to two Dutchmen, his servants, I. * 309.
- Fairbairne of West Gordoun, Ja., III. 539.
- Fairley (Farneley) of Braid, Arch., yr., I. * 166; Rob., * 368, * 424, 11; Alex., 255; II. 124, 343, 397, 467;—David, of Colmiston, waylaid, I. * 178; Jo., 72; II. 343, 397.
- Fairlye of that Ilk, Jo., I. * 420;—Mr Ro., Justice depute, III. 541.
- Falahill, Laird of, slain, I. * 68, * 69.
- Falcons, I. * 294. See Hawks.
- Falconer of Ballandro, Ro., I. 29; II. 363; III. 200, 264;—Barbara, K. JAMES V. gives her tocher, I. * 324;—of Findowne, Geo., * 347;—of Halkertoune, Alex., II. 430; Sir Alex., III. 318, 436;—of Innerlochtie, Hew, Slaughter, 435; Hew, yr., *ib.*; Alex. Sandiesoun, his servant, slain, 484; Ja. Reoche beheaded, *ib.*;—of Kilhill, Pat., II. 362.
- Falconer, King's Master, I. * 315.
- Falconers sent with 'merlezeonnis' and Hawks to France, I. * 266; to K. of England, * 284; to France, * 295, * 317; to K. of England, *ib.*, * 318; setting King's hawks, * 323.
- Falkland, Palace of, I. * 312; wild-boars sent to, *ib.*;—KING assaulted there, 275, 358; houses of assailants to be demolished, 276;—Raid of, *ib.*; E. of Bothwell tried, 293; forfeited, 297;—Assault between the King's Master carver, &c., 291; a Court of Justiciary held there, *ib.*, &c.; Keeper of, 308.
- Fallasdail, Da., with Tho. and Ja., his sons, slain by MacGregors, II. 432; Tho., 433, 439;—Tho. of Ardochbeg, III. 114.
- Falsing of evidents, Ja. Sowtare hanged, I. 85. See Forgery, Notary, &c.
- False Notary, hanged, II. 35. See Notary.
- Falset, II. 453, &c. See Perjury.
- False money, Making or forging, Symontoun of that Ilk, and others, I. * 76, * 324; Henry Wynd beheaded, 'ex gratia,' * 393, * 396. (See Loranes, Hardheids, Bawbeis, Testanis, &c.)—* 440; Lions, * 487; Hardheids, 64, 82; half merks, 133; Testanis, three women strangled and burnt, II. 74; Walt Murray and two others burnt, 100; Tho. McAlexander of Drummocheyne and three others 'wirreit' (strangled), and two more hanged, II. 353; Allan Napier 'wirreit and briot,' 403; Dow and McClaren hanged and forfeited, 418; importing, I. 66.
- Famines in Scotland, I. 51, 351.
- Famishing a man to death, *in privato carcere*, in pit of Tulliallane, III. 479; in Pit of Castle of Blair, 491.
- Famous witness, what, III. 74.
- Fameand, foaming, III. 576.
- Farny of that Ilk, And. I. * 408.
- Farnylaw, Sir Geo. Chaplain, slain, I. * 20.
- Farquarson of Innerchald, Jo., &c., Slaughter, III. 203;—of Newtowne, Jo., I. * 476.
- Fastheuch, Burning Place of, I. * 23; Hereschip of, 35.
- Fastcastle, Heiresses of, I. * 179; correspondence as to Gowrie's Conspiracy. See Logan and *Sprott*.
- Fasternis-evin, I. * 123; II. 78; III. 468.
- Fausyde, Jo., slain, III. 415; Ro. Robertson beheaded, 416.
- Fawside of that Ilk, I. * 166; Geo., remitted, * 243; Tho., 6, 10, 107; Mr Ro., yr., 149; Mr Ro., III. 9; Ja., yr., 415.
- Fawlow of Wallis, Geo. I. * 147.
- Fayette, Monsr. la, I. * 264.
- Feadge, what, III. 605, *note*.
- Fealty, swearing, to Protector of England, I. * 378.
- Feane, *alias* Cunningham, Jo., 'Secretar to the devill,' conspiring KING's death by sorcery, &c., burnt, I. 209; 'newes from Scotland,' &c. 213; strangled and burnt, 223, 236.
- 'Fearie, Thomas à,' an evil spirit, III. 606, 614, &c.
- Febill Hob, Stouthreif, * 182.
- Fedderat, place of, besieged and taken, I. 205.
- Felony, forethought, James Spottiswood, j^r. I. * 15; Laird of Spottiswode, I. * 16; Robert Kilgour, hanged, I. * 134; * 148, * 159.
- Female, burning, I. * 190;—fool, Queen's. See Fool and Dwarf;—female culprits, punishment of death by drowning, I. * 162, * 190.
- Fencing a court, what, I. 46.
- Fentoun, John, of that Ilk, slain, I. * 61, * 106,

- * 121 ;—of Ogill, I. * 404, David, *fiar*, * 405, Ja., * 408, Dav., 27 ;—VICOUNT, II. 582. See Erskine of Gogar, III. 590.
- Feid, feud, III. 543, &c.
- Feir of weir, what, II. 70, &c.
- Fellis (hills) II. 519.
- Fergusone of Auchinsoule, Wm. I., * 457 ;—of Belnacult, Jo., III. 491 ;—of Ballewchane, Tho., II. 528 ;—*alias* Barroune, &c. See II. 394, *note* ; also Macdaff ;—of Craigdarroche, Jo., I. * 79, Tho., *yr. ib.*, * 140 ; Tho., remitted, * 248 ; Jo., 241 ;—of Dirlullych, *alias* Barroune, F., I. 39 ;—of Glenbowar, Dunc., I. * 457 ;—Fergus, * 10, of Kilkerran, Duncan, *yr. of*, oppressed, I. * 58 ; Bernard, con-vocation, &c. * 456, II. 106 ;—of Mackillies-toun, Ro., III. 118 ;—of Stroyruk, Pat., I. 39 ;—of the Yle, Jo., II. 355, 360, Alex., III. 225 ;—of Crochedow, Ja., III. 225 ;—of Thraif, Geo., 172.
- Fernie of Nig, Alex., II. 104 ; Finlay, his son, hanged for forging his father's signature to a charter, 105.
- Ferry-men ordered, under pain of death, not to raise their fare to persons passing to the army, I. * 270 ; tried for persons drowned, 185.
- Ferries stopt against deserters from the army, I. * 273.
- Fethye, David, perjured notary, declared infamous, his right hand struck off, I. * 402 ;—of Incheok, Dav., I. * 137.
- Fend, deadly, I. * 138, * 143, * 144, * 150, * 163 ; betwixt inhabitants of Ayr and neighbourhood, * 204, * 244, * 251 ; Earl of Marischall and Lord Gordon, * 263 ; and Lord Forbes, * 264 ; Lord Uchiltree, * 352 ; Lairds of Brodie and Altire, &c. * 356 ; Gordons and Stewarts, * 366 ; Lindsay and Somervilles, * 369, * 383 ; Dunbars and Cmnyngs, 370 ; Drummonds and Blairs, * 371 ; Dunbars and Inneses, 376 ; Baillies and Somervilles, 382 ; Lairds of Whiteford and Pollock, * 384 ; Charteris and Blairs, * 424 ; Citizens of Brechin and Tenants of Balnamoon, * 431 ; between Gordons and McClellans, 453 ; Stir-lings and Kincaids, 458 ; Laird of Colpnal-ludeis and Lord Oliphant, * 488 ; Rosses and
- Oliphants, 25, &c. ; Maconeill and Maclean, &c., 224 ; Lairds of Pitfour and Kinfawns, 276 ; E. of Meenteith and Leckie of that ilk, 282 ; Colquhouns and Galbraiths, 290 ; Laird of Closeburn and Lord Maxwell, 298 ; E. of Montrose and Lairds of Calder and Slamanno, 347 ; list of persons under deadly feud, *in anno* 1595, 352 ; Lord Maxwell and Laird of Johnstone, 360 ; narrative as to history of, and the subsequent feud, III. 29 ; Lairds of Gardyn and Guthrie, 373 ; Lairds of Grange and Pbairnyhirst, II. 4 ; Lairds of Auchin-drane and Culzeane, (see Mure and Kennedy) 35, 37 ; Master of Spynie and the Master of Ogilvie, 130, &c., fined 5000*l.* each, &c., 146 ; Kerrs and Turnbills at Jedburgh, 370, 421 ; battle of Dryfe Sands, III. 30 ; Lairds of Drumlanrig and Johnstone, 31 ; young Lairds Edzell and Pittarrow, 61 ; Lord Thorthorwald slain by Lord Ochiltree, &c., 65 ; Kennedies and E. of Cassillis, 124, 170, 172 ; Earls of Caithness and Sutherland, 231, 235 ; Lairds of Pitfodells and Monymusk, 258, 259 ; E. of Caithness and L. Forbes, 310 ; Scotts and Kerrs, agreement of their quarrels, &c., 390 ; Lairds of Ormiston and Cessford reconciled, 393 ; Lairds of Culmaluudie and Monievaird, 480 ; the Buchanans and MacFarlanes, and barbarous torture and murder of a Buchanan, 545 to 552 ; Earl of Glencairn and Master of Wintoun, Papers illustrative of, 579 ; Earls of Eglintoun & Glencairn and Lord Sempill, 580.
- Fian. See Feane and 'Newes from Scotland.'
- Fidder of lead, what, I. * 310.
- Field (see Battle) of Melrose, I. * 133 ; Lin-lithgow, * 228 ; the Lennox, or Conflict of Glenfruite, II. 418, 424 ; and notice to Trial of Laird of Glenstra, 430 ; III. 223, 537.
- Fife, Sheriff of, invaded in a fenced Court, I. * 136. Fifty-shilling pieces forged, II. 99.
- Findoune, Craig of, Hawks' nests preserved there for the King, III. 204.
- Fingask, Laird of, his lands in Lewis wasted and burnt, III. 245.
- Finlawson of Killeyth, Jo., I. 10 ; Matho, II. 376, 480.
- Finlayson, Mr Jo., Sheriff-depute of Orkney,

- III. 274; taken prisoner, 277; hated by the people, 289; complained against, 292.
- Fire and sword, Commission of, II. 559, *et passim*.
- Fire-Ordeal, III. 184.
- Fire-raising. See Burning;—a 'Pele' in Bothill, I. * 25; and Hereschips in Badenoch, * 45, * 162, * 176; Balbegys, * 334; female branded and banished, * 346; Durrisdeer, &c., Rich. Latimer of that ilk hanged, * 348, * 370; Robert Paterson hanged, * 375; Hume, * 405; Commendator of Saul-seat, &c., 12; at Auchinleck, 72; at Littlegill, 108; at Horstoune, 109, 110; Pitmedden, 160; Moit, Littlegill, &c., 184; Mull, Tyree, Coll, Kintyre, &c., 226; Dunnibersell, 284; Crwvy, II. 41; Field of the Lennox, 430, &c., 441; Apotesyde, 511; Turnbull of Wauchope, &c., *ib.*; Sir Ja. Makconell, III. 1; Don. McAngus of Glengarie, 540;—in Coal-pits, Jo. Henrie, hanged, and his head put on a spike, 361.
- Frie-Cross, to alarm the country, III. 23, 369, &c.
- Fishing. See Salmon-fishing;—Violent occupation of, I. * 177, * 395.
- Fishings, how Witches took the fruit of, III. 609, &c. See also Witchcraft and Charms.
- Fisnowme, what, II. 478.
- Five-pund pieces forged, II. 99, 354.
- Flaconis, for Prince's Chapel, I. * 306.
- Flagranti crimine*, person taken in, III. 421. See also Red-hand, &c.
- Flaillis, Murder with 'kentis' and, III. 488.
- Flanders, Embassy to, I. * 243; tapestry brought from, * 298;—exporting wheat and corn to, * 365;—Herald of, * 277.
- Fleming of Barrochane, Wm., I. * 170; Alex., Pat., and Ja., his sons, Forcible abduction, &c., 377;—Chronicle MS., extracts from, II. 247, &c.;—Jo., Rape of Earl of Lennox's daughter, I. * 60; Jo., hanged for 'tressonable, blasphemous, and damnable speiches' against the King, III. 359;—of Kilmacolme, Geo., I. * 170; Ja., 69, 70;—Lord, John, slain, * 61, *note*, * 131, * 141, * 236;—Malcolm, * 141, * 149, * 185; respited for Resetting English Traitors, * 239; appointed Sheriff of Tweedale and Peebles, * 246; one of the Guardians of K. JAS. V., in his infancy, * 259; Assise between him and Lord Drummelzar, * 272; Tocher given to his sister, * 272, * 310; denounced, 291, 293. See WIGTOUN; Jo., III. 339, 472;—of Moness, Alex., II. 528; Slaughter, &c., III. 443, 465;—of Persielandis, Wm., III. 270;—of Spittal, Ja., II. 467;—of Torbeddo, Jo., slain, I. * 72.
- Flesh, selling to the English, I. * 379; in time of Lent, 369. See Lent.
- Fletcher, And., Lord Milton, I. 257.
- Fleurie, Mons. Ambassador, I. * 283.
- Flewd, James, Englishman, I. * 282.
- Flisk, Parson of, John Waddell, I. * 471; Ja. Balfour, *ib.*
- Flood-mark, eight English Pirates hanged within, III. 99; thirty others hanged, 103; two more, 244. See Piracy, &c.
- FLORENCE, DUKE OF, Letters to, II. 571.
- Foirspoken, what, II. 536; a child, III. 610.
- Fool of England, I. * 114; THE KING'S, * 115; Gillemowband, * 271; Malcolm the Fule, * 273; John Lowise, * 317, &c.;—THE QUEEN'S (Mary of Guise) Serat, a female, costly dresses of satin, &c. to her, * 293, * 294, * 301; dress of green and yellow velvet, * 307, * 322.
- Foot-Band, I. * 268.
- Foot-ball, game of, II. 364.
- Foot-mantles, I. * 288.
- Foray, day, II. 453.
- Foraying, 'rynnng of ane forrow,' II. 360; Tho. Cuninghame hanged, *ib.*
- Forbes of Ardmurdo, Wm., I. * 186; Jo., his son, murdered, 77;—of Blaktoun, Abr., 382;—Barh., Adultery with the Laird of Dalgettie, (her husband,) II. 64, 104;—of Burnegranes, Jo., III. 258;—of Brux, Alex., I. * 175, * 208; Lady Brux slain, *ib.*; Jo., III. 490;—of Bannagask, Mr Dunc., 540;—of Corssinday, Wm., I. * 163, * 175, 382; Jo., his brother, one of 'the Societe of the Boyis,' Slaughter, &c., II. 532; beheaded, 535, 581;—of Carnebo, Ja., I. * 186;—of Corse, Wm., 284;—of Carnehill, Pat., slain, II. 105;—of Craigievar, Mr Wm., III. 490;

- of Dalmanache, Alex., I. * 172;—of Drumtochty, Jo., * 186;—Sir David, knt., slain in ward, * 406;—of Fynzeak, Jo., * 454;—of Haughtoun, Mr Ja., III. 485;—Mr Jo., Moderator of Assembly, II. 494; banished, 503;—LORD, Alexander, I. * 3, * 6, &c.; John, Slaughter of Laird of Meldrum, * 150, &c.; Fire-raising, &c. * 163; Feud, * 263, * 274; Wm., 263; Jo., Commission against Jesuites, &c., 336; Lientenant, 342; Arthur, III. 76;—MASTER OF, Jo., Slaughter of Laird of Meldrum, I. * 149, * 163, * 175; beheaded, * 183; Papers illustrative of his Trial, * 185; remitted, * 246; gift of his escheat, * 249, * 279, 65, 119; Jo., 284;—of Monymusk, Duncan, coining 'Bawbeis,' * 441, * 454; Wm., 284; III. 200; Slaughter, &c., 204; Wm., yr., 230; Wm., 258; Ro., Jo., and Mr Ja., his sons, *ib.*, 259;—of Mylnebowie, Jo., II. 494; his son, Jo., yr., slain, *ib.*; Ro., his son, Slaughter, III. 227;—of New, Jo., II. 555;—of Pitlithie, Da., III. 76;—of Petslego, John, Mutilation, * 172; coining 'Bawbeis,' * 442; gift of his escheat, 248; Alex., 40;—of Portlethen, Wm., III. 206;—of Reres, Arthur, I. 40;—of Sonnahony, Arth., III. 242;—of Tolleise (Toweis), Alex., I. * 208; III. 489, 490;—of Tolquhone, Wm., I. 284.
- Forcing, II. 405. See Rape, &c., 463;—Wm. Bell hanged, 475; Jo. Errole hanged, 566; III. 439; Ja. McNight and Tho. Weir, 499; And. Wischert of Muretoun, 507.
- Fordoun, Kirk of, Minister struck at designation of Manse and Glebe, II. 362.
- Forestalling and Regrating, I. * 227, * 230, 139, 351; II. 527, &c.
- Forfar, Justice-aire of, I. * 272.
- Forfeiture, John, LORD BOTHWELL, I. * 4; John Ross of Mountgrenane, * 8; John, EARL OF LENNOX, recalled, * 12; Mathew, MASTER OF LENNOX, recalled, *ib.*; Robert, LORD LYLE, recalled, *ib.*; Torquill Makcloide of the Lewis, * 45; John Lindsay of Wauchope, * 48, &c. &c. (See High Treason);—Armorial bearings of forfeited traitors torn and defaced, * 490; Corpses of Traitors produced in Court, and bones disinterred, previous to sentence, &c., II. 241, 277.
- Forgery of the King's Sign-manual, I. * 113; Regent's, 19; of the King's Cashet, 157;—of Apprising, * 255; of an Instrument, * 222, 45; John Soutare hanged, 85; Ro. Carnylie hanged, 87; of a Charter, a Notary, and two others hanged, II. 104; of an Assiguation, &c., Jo. Donaldson hanged, III. 208;—of a Discharge, I. * 375; Jo. Halyday and five others hanged, II. 34;—of a Bond, &c., Tho. Dempster of Muresk beheaded, III. 486; forger hung in chains, I. * 137. See False money, Coining, &c.
- Forgiveness publicly asked at Cross of Edr. barefooted, in linen clothes, &c. I. * 399.
- Forman of Rutherford, Sir John, I. * 42, * 107;—Mr Ro., Deap of Glasgow, * 79, * 156;—Dean Wm., Heresy, * 330.
- Forres, Kirk of, Sacrilege, stealing chalices, &c. from, I. * 393.
- Forrester of Boquhane, Ro., I. * 453;—of Corstorphin, (Laird of,) II. 10; yr. of, III. 73;—of Durrisdale, Walt., I. * 404;—Dav., burges of Stirling, slain, 351; Edw., Commissary of Kirkcudbright, III. 329;—of Garden (Carden), Alex., 351; feud with E. of Man, &c., 352, 354; Sir Ja., II. 502;—of Killemuke, Alex., I. * 216;—of Meadowfield, Ja., * 176;—of Myethill, Alex., 354;—of Paldoir, Dunc., 354;—of Strabenrie, Sir Ro., III. 112; Ja., his nephew, tried for Demembration, *ib.*;—Rob., burnt for Heresy, I. * 210, * 211, * 216;—of Gammelscheills, John, * 414;—Tho., murdered, * 350;—Wm., escheated, * 253.
- Forret of that Ilk, John, I. * 408;—Dean Tho., burnt for Heresy, * 210, * 214, &c.; Memoir of, * 213.
- Forster of Skipinche, Sir Dunc., I. * 62.
- Forsyth of Dykes, Dav., I. 36.
- Fotheringham of Powrie, Tho., I. * 4, 74.
- Fountainhall's MS. Abridgement, I. 257; his Narrative of Auchindrayne's Case, III. 181.
- Four-half-about, objected against an Assisor, II. 50. See Assise, &c.
- Four-pound-pieces, forging, &c., II. 354, 365.

- Four-merk-pieces, II. 353.
- Foulis of Brownesyde, Tho., I. 35;—of Colintoun, Ja., * 252, 35; II. 10;—of Ravelstoun, Geo., 'Maister Cungeour,' III. 459;—Ja., Clerk Register, I. * 168; Ja., Justice-depnte, 372.
- Fowlis, Lady. See Roise and Monro.
- Fowls (poultry), poisoning, punished by banishment for life, II. 336; Witch-charm, burning a live fowl, III. 557.
- Fram, Tho., hanged for Cattle-stealing, II. 541.
- France, Ambassadors from, I. * 262, * 263, * 265, * 274, * 281, * 285, * 321, * 322;—Heralds of, * 268, * 296;—Ipotygar returns to France, * 322;—KING OF, bonfires and rejoicings 'for nouelties of the Triumphe gat in Lumbardy,' * 262; presents of Hawks, &c., sent to, 266, * 295; hackneys and hawks sent, * 306; present of a horse from, * 306;—Licence to pass to, * 244;—Lord Maxwell's Herald, * 85;—miners from, employed at Scottish gold mines, * 298.
- Fraser (Frisell) of Creichie, Jo., II. 104;—of Durres, Ro., III. 478;—Ja., &c., Rioting, Choosing a Lord of Inobedience, &c., I. * 410;—of Kilboig, Hu., III. 365;—of Knok, Jo., I. * 133;—of Kynnell, I. * 424;—LORD FRASER, of Lovat. See LOVAT; And., II. 600, *note*; Tutor of, Tho., I. 68, 285;—of Mukallis, And., yr., III. 539; his infant son And. slain, *ib.*;—of Phillorth, Alex., I. * 148, * 199, 284;—of Ro., Herald, slain, III. 79;—of Staniewoid, And. III. 478.
- Freind, blood-relation, III. 129, 151, &c.
- Freland of that Ilk, Js., I. * 170.
- French Army, Stouthrief of part of their pay, I. * 361;—Ladies and Gentlemen in the Suite of QUEEN MAGDALENE, I. * 287, * 288, * 289, &c.; Q. MARY of Guise, * 292, &c.;—Soldiers, Slaughter and Wounding of, I. * 377;—Wines, purchasing high-priced, * 349, * 377.
- Freuche of Frencheland, Ro., yr., II. 467;—of Thornydykes, Rob., I. * 147; Feud with E. of Montrose, 352; II. 83; Jo., Tutor of, III. 69, 72; Ro., *ib.*; Jo., the *Bastard*, *ib.*; Alex., brother to the Tuter, Hurting and Wounding, *ib.*; Remission to, 116; Alex., Tutor of, Slaughter, 222; beheaded with Ja. Wicht, his nephew, *ib.*; Adam (14 years old) carried off and married against his consent, &c., 402; remarkable case of Forcible Abduction argued at length, *ib.*, &c.; Ro., his father, 404; Ja. and Jo., his uncles, *ib.*
- Frendraught, besieging Place of, &c., I. * 328.
- Frontellis, I. * 320.
- Fullerton of Ardoch, Wm., I. * 158; II. 430;—of Crosbie, Jo., I. * 137; Da., II. 106;—of Crago, Wm., jr., I. 79;—of Dreghorne, Jo., I. * 428; Wm., 183;—of that Ilk, Alex., I. * 177.
- Funeral Ceremonies, I. * 120, * 259, * 287, * 288; 'pow-penny,' * 293; Dirige and Saul-mess, *ib.*; Arms, torches, candles, &c., used at, * 297; Offering, * 304, &c.;—of James Duke of Ross, I. * 120; Slaughter at a funeral, III. 439.
- Funt-stane, the baptismal font, I. 52.
- Furious person, Slaughter by, I. * 363.
- Furrier, King's, I. * 315.
- Futhie of Futhie's-miln, Pat., I. 268.
- Fyete, La., D. of Albany's messenger. See FAYETTE.
- Fyrie-Cross, to alarm the country, III. 23, 24.
- FYVIE, LORD, ALEX., II. 159; Provost of Edr., 244, 417, 457. See Dunfermling.

G.

- Gaberlenzie, Adam Turnbull called, slain, I. * 61.
- Gaingies, (bolts for cross-bows,) I. * 309. See Archery.
- Gairdin of Bandoch, Tho., slaughter of Laird of Guthrie, I. 372; feud, 373;—of Blairtounne,
- Mr Ro., yr., II. 528; III. 80;—of that Ilk, Pat., I. * 157; feud with the Laird of Auld-bar, 352; slain, II. 528; III. 77;—of Latonne, Geo., II. 103; Da., III. 437;—of Legatstoun, Tho., Hamesucken and Slaughter,

- II. 103;—of Leys, Dav., I. * 138, * 347; II. 135, 235;—of Tullois, Ro., slain, II. 528; III. 80.
- Gairdner, Marg., inhumanly tortured, II. 44; Grissell 'wirreit' and 'brunt' for Witchcraft, &c.; III. 95.
- Gairne of Blakfurd, Ja., III. 478.
- GAIRLEIS, LORD, Alex., II. 572; III. 475.
- Galbraith of Balquharne, James, I. * 386;—of Culcreuche, hanged, I. * 13; Humphrey, Tutor of, * 166; Andro, respited, * 240; James, * 385, * 386; Ro., 289, 291;—of Gartscadden, Walt, I. * 150, * 385; attempting to restore Popery, * 427;—of Polgavie, Jo., I. * 166;—Mr Wm., Minister of Penny-cuik, Banished for Perjury, II. 476; Ja., beheaded for Murder, III. 565.
- GALLOWAY, BISHOP OF, Dav., I. * 79; Stouthreif from, I. * 94, * 99, * 272; Alex., * 387; Gawin, II. 261, 274;—Mr Norman, burnt for Heresy, I. * 210, *note*. See Gourlay;—Mr Pat., I. 304; Minister to the King, II. 156, 187; in Sermon on Gowrie's Conspiracy, in Edr., 248; another in Glasgow, 252.
- Gall, James, Fire-raising, &c., I. * 334.
- Galt, travelled, III. 232.
- Gallayis, Highland vessels, III. 368.
- Gallowsheills, Guidwife of, bewitched, I. 236.
- Galzart, (Galliard,) what, III. 441.
- Galzeart, Captain, his Company, * I. 377.
- Game, Killing, with culverings and pistols, I. * 395.
- Gardens, breaking, III. 555; two men hanged, *ib.*
- Gareoche of Kilstair, Ja., I. * 184; Wm., yr., III. 76; Ja., 489; Wm., his son, Oppression, &c., *ib.*, 496.
- Garscadden, attempt to restore Popery at, I. * 429.
- Garnets in Scottish Crown, I. * 299; and 'cedronis,' * 320.
- Garter, Order of the, I. * 283, * 289.
- Garlies, Laird of, I. * 414. See Stewart.
- Garthland, Laird of, Burning Ardwell, &c., I. * 56. See Macdowall.
- Garytour, or warder, I. 8.
- Garron, what, III. 276.
- Gartshore (Carschore) of that ilk, Jo., III. 345.
- Gascony wine, Stouthrief of, I. * 54, 55.
- Gawin, Anth., E. of Little Egypt, III. 592; Letter to K. JAMES IV. from K. OF DENMARK as to, *ib.*
- Gawistoun, (Galstoun,) Laird of, I. * 278, * 491.
- Geddes of Cuthilhall, Geo., I. * 131;—of Rauchane, Cha., I. 353; Capt. Cha., III. 229.
- Geese, price of, at Justice-Aires, I. * 389.
- Geikie, Wm., acquitted of the barbarous Murder of a Dumb young man, II. 388.
- Gemmill of Templehouse, Pat., I. 19.
- General Band. See Band.
- Gentill John, the English Fool, I. * 115.
- Gentillwomene, presents given by K. JAMES V. to, I. * 297, &c.
- Gib, Ja., Shooting at the Laird of Kyppis in Holyrood, I. 187, &c.; King's Warrant to put him to death, *ib.*: Banished for life, 189; Jo., 'wirreit and brunt' for uttering base money, II. 356; Jo., Murdered under trust, III. 74;—of Carribber, Ja., yr., II. 502.
- Gib the Galzart, scourged and banished, III. 442.
- Gibbet. See Cornwall; taken down and burnt, II. 351.
- Gibbetting in irons. See Irons.
- Giffen of Cardrono, Jo., I. * 133.
- Gifford of Sberiffhall, Wm., I. * 384; Ja., and his brother Jo., slain, 168.
- Gift, New-Year's, I. * 115.
- Gigba, Island of, Gift of lands of, I. * 246; burnt, 229.
- Gillatrypes, a Witch-dance, III. 606.
- Gilbert, Mr Tho., Justice-depute, I. 73.
- Gilchrist, Jo., and two others, hanged for falset, I. 362.
- Gilding false money and vending it, Allan Napier 'wirreit and brint,' II. 403.
- Gillespy, Thomas, hanged, I. * 87.
- Gille-mowband, a Court Fool, I. * 271.
- Gilmour, Wm., Witchcraft, &c., I. 101.
- Gilnockie, Tower of, I. * 152, &c. See Johnnie Armstrang.
- Gilzeam of Monachtie, Tho., II. 145.
- Girdle of Solid Gold from the mine at Crawfordmure, set with a Sapphire, I. * 299.
- Girdill, (girdle,) burning a woman on a red hot, II. 391; Alex. Rowan hanged for this barbarity, &c. 393.

- Girnego, Place of, I. * 394.
 Girnalling of Victual, I. * 181.
 Girth, (Sanctuary,) Slaughter within, I. * 258.
 Girth-Sting, what, III. 259.
 Girvan, Sands of, Wm. Dalrymple murdered there, III. 181, &c. See Mure.
 Gissene, (gizzene or jizzen,) child-bed, I. 51.
 Gladstnure, Raid of, I. * 331, * 339.
 Gladstanes of Coklaw, John, I. * 414; Ja., yr., II. 512; Ja., III. 396;—of that ilk, Walt., I. 166; Ja., Slaughter, II. 472; Jo., III. 391;—of Quhytelaw, Walt. * 396;—of Wynnyngtoun-hauch, Jo., II. 472, 523.
 Glalked, gowked, III. 606.
 GLAMMIS, LORD Jo., Justiciar, I. * 19, * 136, * 158; condemned, * 198; restored by Parl., * 199; found caution, 10,000 merks, * 327, * 346;—Jo., Lord Chancellor, slain, 79; Pat., II. 105; Slaughter, &c., 386, 496; Jo., III. 61. See KINGHORN;—MASTER OF, I. 78; Tho., of Baldukie, 117, 119, 174; his 'base son,' Ja. Lyoun, III. 323; Tho., 409;—LADY Jonet, I. * 157; Using Charms, &c., 158; Assisors refuse to pass on her Assise, * 157, * 158; Licence to pass beyond seas, in Pilgrimage, * 244; her defence, * 192; case reported to the King, * 193; her execution, * 194; Burnt, * 187, &c.; Papers illustrating her Trial, * 191; her husband, trying to escape from Edr. Castle, is dashed to pieces, * 194, * 197, &c.; John Lyoun beheaded for concealing Conspiracy, * 202; Alex. Makke banished for do. * 203; Gift of her escheat, * 246; her two daughters, * 291.
 Glammis, Castle of, I. * 306;—Keeper of, and Baky, * 290.
 GLASGOW, ARCHBISHOP OF, Rob., Protection to his Tenants until his return from Rome, I. * 41; Ja., * 79; Gav., Chancellor, * 185; Ja., 55; Ro., * 264; Archb. Ja. Spottiswood, II. 261, 274; Ja., 584, 585; Jo., 596; bufets Ogilvy the Jesuite, III. 330; Geo., *ib.*, note, 339; curious notice of his death and funeral, Ja., 406, 508, 620;—attempt to restore Popery at, I. * 430;—Castle and Town, taken, I. * 234;—Mure of, * 114; Raid of, * 331;—Provost of, invaded, * 361;—Raid of, * 331; Riot by Laird of Minto and the Townspeople, III. 580;—Regality of, 508, 513, &c.
 Glass, Tho., 'wirreit and brunt' for uttering forged money, II. 355.
 Glen of the Bar, James, I. * 382, * 385, * 451;—of Lyntlills, Hew, II. 439.
 Glenarknay, Hunting of, I. * 278, * 298.
 GLENCAIRN, Sir Wm., MASTER OF, I. * 137; * 184, * 190, * 199; his son wounded, * 207; * 238; Alex., Governor and Justiciary of Kintyre, * 258; Assise on, * 264, * 306; Wm., * 229, * 456; Ja. 69;—EARL OF, Cuthb., * 62, * 78; respited, * 238; Raid of Kintyre, * 319; Raid of Glasgow-muir, * 331; Alex., * 350, * 386, * 466, * 478; Ja., 91, 114, 116, 265; feud with Laird of Glengarnock, 352; feud between him and the Master of Eglintoun, 354; Earl of Eglintoun slain by Ja., C. of Ross, 355; his servant slain, II. 426; III. 207, 316; Feud with Master of Wigtoun, Papers illustrative of, 579; with E. of Eglintoun, Lord Sempill, &c., 580.
 Glenchamrowne, II. 435. See Clan Cameron.
 Glencorse, Andro, burnt for Poisoning and Adultery, I. 84;—of that ilk, Jo., II. 507.
 Glendinning, Laird of, slain, I. * 60;—of Partoune, Ninian, * 85;—Simon, Messenger-at-arms, slain, * 48.
 Glendonning of Drumrasche, Jo., Slaughter of Laird of Dunduff's brother, II. 604; III. 121, 538; taken captive by Laird of Earlstoun, 552;—Mr Ro. Minister of Kirkcudbright, 329.
 Gleneviot, field of, II. 48, note.
 Glenfruine, Conflict of. See Field of Lennox—II. 430; III. 537, &c.
 Glengarnock, Laird of. See Cunioghame.
 Glengarrie, III. 20. (See Makangus.)
 Glengore, (*Lues Venerca*,) vid. Grantgore.
 Glenfinlas, Hunting of, I. * 295, * 298.
 Glenislay, Hereschip of, I. 263.
 Glenlivet, (or Balrinnes,) battle of, I. 361.
 Glenlocha, burnt, III. 232.
 Glenquhome of the Wra, And., I. * 81.
 Glomning, (gloaming,) III. 3, 75, 384.
 Glorat, Laird of, murdered, I. * 170.

- Gloves of plate, I. * 308, * 317.
- Godwene. Dr, Vice Chan. of Oxford, III. 451, 588.
- Gold Mines, I. * 298; Dutch and French miners, * 298; present of unwrought Scottish gold to Duke of Guise, * 300; a piece purchased by the King, * 306; by Queen, * 311.
- Golden Fleece, Order of the, I. * 283.
- Goldsmith's work, I. * 284, * 295, &c.; great Basin of solid gold, weighing 10lb. 1½ oz., * 295; gold whistles for King, * 304; hawk-bells, &c., * 321; drinking pieces, weighing 15 lb. 5 oz., 339; another piece, weighing 12 lb. 5 oz., ordered to be coined, *ib.*
- Goose, green, roasted with kittens stuffed in it, a Witch-charm, II. 29.
- Gorbals, man wounded there, &c., III. 491.
- Gordon of Auchnacoy, I. * 150;—of Auchanachie, Jo., yr., 284, 393; III. 402;—of Auldtonleyis, Jo., I. 284;—Mr Alexander, (Postulate of Caithness,) departs to France, * 308, * 337;—of Auchindoune, William, I. * 150, * 454; Sir Patrick denounced, 283, 284; Offers presented by him, 301, 307; Trial for Conspiring against the Religion, &c., 310; doom, 316; Tract as to the 'Spanish Blanks,' 317; III. 371;—of Abirjeldie, Alex., I. * 470;—of Auchinye, Wm., * 150;—of Airdis, Jo., II. 558;—of Blalak, Jo., I. 94;—of Buckie, Jo., 175;—of Barskeoche, John, * 366, * 398; attempting to restore Popery, * 427, 81, 84; Geo., III. 477;—of Boigis, Jo., Sh.-dep., of Aberdeen, II. 387;—of Bannernie, (Barnerino, Bairnairny,) Ro., III. 121, 173; suspected of Murder, &c., *ib.*; slain, 460;—of Boighoillis, Adam, 401, 488;—of Craigmilm, Ja., I. 94;—of Culquha, Jo., 159;—of Cluny, Sir Tho., 284; III. 79?; Alex., 228, 318, 418; Sir Alex., 436, 460;—of Craig of Auchindoir, Wm., I. 284; deleted from Summons of Forfeiture, 300;—of Cairnburrow, Jo., yr., 284; Wm., fiar, III. 428;—of Corrachrie, Pat., I. 284;—of Crechye, Ja., 470;—of Culquhodilstane, J. * 150;—of Collindach, II. 558;—of Chirnes, Mr Gilb., III. 88;—of Crago, Tho., 118;—of Clubisgoule, Jo., Sh.-depute of Aberdeenshire, Murder under colour of law, &c., 399;—of Dalpersye, Wm., I. 94;—of Dawane, Tho., 94;—of Dorth, (Dort,) slain, 361;—of Earlstoun, Jo., III. 247; Alex., yr., Usurping King's authority, &c., 552;—of Geycht, Geo., yr., I. * 453; Wm., 284; slain at Balrines, 361; Wm., II. 42; Geo., Murder under colour of law, &c., III. 399, 402; Jo., Alex., Ro., and Pat., his brothers, 402, 418; found caution, 5000 merks, 428; Jo., 581;—of Garlarg, Roger, I. * 75;—of Glenluce, Laur., III. 9;—of Glwne, (Clunie?) Sir Tho., III. 79;—of Golspitour, Jo., wounded, III. 231; Jo., yr., *ib.*; Slaughter of the Lairds of Stirko and Dyn, 235;—of Grange, Herd, 328;—of Halheid, Ro., I. 94;—of Hillis, Alex., III. 121, 173;—of Haddo, Harie, Murder under trust, 488;—Capt. Jo., beheaded, I. 358;—Lady Jane, her marriage to Ja., E. Bothwell, * 461;—of Kandmoir, Geo. 94;—of Kilsture, Harie, III. 247;—of Knokaspek, Ja., 258;—Lord, Alex., Field of Dunkeld, I. * 98; respited, * 231; Feud betwixt him and Earl of Erroll, * 263; John, * 387; Geo., assaulted on streets of Edr. by the E. of Caithness, III. 32;—of Lesmoir, Jo., yr., I. 284;—of Letterfourie, Pat., 284;—of Lochinvar, John, Oppression, * 53, * 75; James, * 199; remitted, * 252, * 274; John, * 366, * 384, * 398, * 428, * 453, 114; Sir Jo., 141, 184, 304; II. 14; Sir Ro., married to Lilius Ruthven, 297, *note*; Slaughter of his page, 558, 572; III. 121, 318, 433;—of Leichestoun, Jo., 78, 79; his son, Ja., tried for a barbarous Murder, *ib.*; pleads Remission, and finds caution, 80;—of Little Mondurk, Alex., 328;—of Pitlurg, Jo., I. 136, 141;—Mr Pat. III. 446;—of Park, Jo. I. * 453;—Sir Ro., (brother of Jo., 7th E. of Sutherland,) III. 231;—of Rothemay, William, 428;—of Strathdoun, (Strathowne, or Strathdon,) Alex., I. 260, 367, 418;—of Scheves, Sir Geo. * 453;—of Sydra, (Siddeday,) Jo., III. 231; Jo., yr., *ib.*;—of Traquhane, Alex., I. * 453;—of Zelstou, II. 558.
- Gorgets, I. * 303. See also Armour, &c.

- Gourlay, Mr Norman, burnt for Heresy, I. * 210 ;
—of Kincairaig, Wm., * 156, * 253; Alex.,
invaded, &c., * 347.
- Gorme of Slaitt, Donald, I. 348; Donald, (*SAS-
SENACH*), III. 19, 25, *note*; Sir Don., 541; his
sister forcibly carried off, &c., 542.
- Gormock, Laird of, (John Butter,) I. * 367, * 371.
- Gotterby ford, where the routed Maxwells were
drowned, III. 30.
- Gonzolles. See Grossolez and Duke of Milan,
I. * 269.
- Govane, of Cardrona, Jo. III. 569;—Jo., Theft,
I. 15.
- Gowdie, Tho., Slaughter, III. 544; Issobell, her
four remarkable Confessions of Witchcraft,
&c., 602 to 616.
- Gowdis of French Crowns, I. * 307.
- GOWRIE, EARL OF, Wm., I. 107; Raid of Ruth-
ven, 111, 116; nicknamed Greysteel, II. 287;
family left by him, 297, *note*; Ja., *ib.*; Jo.,
Provost of Perth, 293; killed at Perth, II.
148, &c.; See Gowrie Conspiracy; Wm.,
his brother, &c., forfeited in Parl., 159; was
educated by Mr Ro. Rollock, 215; Jo., his
traffic in Magic, 218, 219, 220; his and his
brother's corpses, 233; transported to Edr.,
241, 247; his armorial bearings torn and de-
faced, 241; their quarters affixed at Stirling,
Perth, and Dundee, *ib.*; bodies hanged and
quartered in Edinburgh, 246; Original Let-
ters by him, 329;—COUNTESS OF, Dorath.,
I. 119; II. 167.
- GOWRIE'S CONSPIRACY, II. 146; trial of Cran-
stone Craingelt and McDuff, 148; hanged
at Perth, 155; their Depositions, 156, &c.;
the Forfeiture of the Earl of Gowrie's bro-
thers in Parliament, 159, &c. See Gowrie.
- ABSTRACT OF THE LEADING FACTS.
- A. Henderson of Latoune, Chamberlain of Scone,
and A. Ruthven, sent by E. OF GOWRIE a
private message to the KING at Falkland, at
4 a.m. of the morning of the Conspiracy, II.
165, 168, 175, 221; they return in haste to
Perth, 175; deliver their message to GOWRIE
at 10 a.m., *ib.*;—THE MASTER OF RUTH-
VEN also goes privately to Falkland to the
KING, on the same morning, II. 164, 171;
his interview with THE KING, 175, 209;
rides back to E. OF GOWRIE in haste, 172;
—THE KING invited to go *secretly* to Perth,
to be accompanied by a few domestics only,
165, 211;—story of the man with a hoard of
gold, 164, 171; more particular details, 210;
KING is lightly dressed in a hunting-suit,
without a dagger or arms of any kind, 185,
passim;—has only a hunting-horn, 215;—
the Noblemen and Courtiers in his suite
clothed in green hunting-dresses, and unarm-
ed, saving their side-arms, 214, 220, 315;—
THE KING is induced by the Master of Ruth-
ven to go to Perth, 153, 164, 165, 169, 171,
210, &c.;—is engaged in hunting from Falk-
land to Perth, 171, 174, 212;—slays a buck,
ib.;—is met by E. OF GOWRIE on the Inch of
Perth, 172, 176;—the Earl sends out for
dinner, 157, &c.; had dined previously, 172,
176; the dessert consisted of strawberries,
&c., 157, 172;—KING'S suite dine after the
King, in another apartment, 172, 214;—
GOWRIE comes from THE KING into the
Hall, and drinks his '*scoll*,' 172, 214, &c.;
he leads out the suite, after dinner, to the
gardens, 172, &c.;—he and his servants re-
port that THE KING had '*ridden away*,' 150,
151, 153, 156, 165, 169, 173, 183, 185, 187;
—KING'S servants cry to horse, ('*horsis !
horsis !*') 173, 216;—GOWRIE'S porter, in
spite of his master's threats, denies that THE
KING had departed, 181, 186;—the porter's
Deposition, 187;—THE KING is drawn by
THE MASTER OF RUTHVEN into the Gallery
Chamber, and turret, 149, 153, 184, &c.;—
all the doors are locked by the Master of R.,
149, 151, 153, 165, 177, 186, 214;—Andro
Hendersoun, the Chamberlain of Scone, was
'the man in armour,' 149, 151, 153, 165,
169, 177, 214, 222;—his dagger is seized
upon by the Master of R., 149, 153, 177,
215, 222;—and used against THE KING,
149, 153, 215, 222;—but is at length wrench-
ed from the Master of R. by Hendersoun,
149, &c.;—Henderson's Depositions, 174,
179; his Letter to THE KING *in anno* 1608,
321;—the Master of R. tries to bind THE

KING's hands, 149, 151, 169, 178, 184, 216, 223;—grasps THE KING by the mouth and beard, 149, 151, 169, 178, 216;—threatens to take THE KING's life, 149, 151, 153, 165, 169, 215, 216;—THE KING screams for help out of a window, 149, 151, 153, 165, 169, 173, 178, 181, 185, 186, 189, 223;—his cries are heard by the Duke of Lennox, E. of Mar, &c., 152, 165, 168, 173, 217, &c.; their Depositions, 171, 174;—KING is seen by his suite struggling at the window, 165, 173;—his face red, and a hand seen grasping him, *ib.*, 216, &c.;—Sir Jo. Ramsay hastily enters by a back stair, 150, 151, 153, 165, 169, 178, 217;—the door is opened to him by And. Henderson, 150, 152, 153, 165, 169, 178, 223;—Ramsay, after a mortal struggle, drives the Master of R. out of the chamber, 150, 152, 165, 169;—Death of the MASTER OF RUTHVEN, 154, 156, 158, 166, 169, 173, 182, 197, 217;—the Master had on a *pyne-doublet*, and King cried, 'Fy strik him laich,' &c., 158, 183;—Ramsay had the King's hunting-hawk on his fist, at his first outcry, 179, 183;—King sets his foot on the hawk '*leische*,' 183;—King pushes the Master of R. down the 'blak turpyke,' 183, 217;—The Earl had *two* drawn swords, 150, 152, 154, 156, 159, 166, 169, 179, 181, 182, 190, 191, 197, 198, 199, 217;—his company have drawn swords, 150, 152, 154, 156, 158, 166, 169, 188, 190, 194, 195, 196, 217;—Cranstoun ascends 'the Black turnpike' with THE EARL, 150, 169; he is wounded, 151; run through the body by Ramsay, 156; also by Herries, *ib.*, 182;—Tullibardin's servants resist THE EARL's entrance, 156, 197;—Door defended by Ramsay, Erskine, and Herries, 150, 156, 166;—THE EARL forces an entrance, 154;—is armed with a steel-bonnet, 156, 158, 179, 182, 190, 191, 200, 217;—gets a '*py-doublet with tail-pieces*' made, before THE KING's visit, 158;—THE EARL slain in the Chamber, 151, 156, 166, 173, 190, 217;—Craigingelt, &c. keeps the back gate with a two-handed sword, 152, 158, 197; where he got that sword, 158, 159;—Erskine, Ramsay, and

Herries, wounded by THE EARL's accomplices, 152, 170, 182, 217;—Lennox, Mar, &c., attempt to burst open door of Gallery chamber, 173, &c.; they do not succeed until E. OF GOWRIE and his brother are slain, *ib.*;—threats to hang and kill KING's servants, 152, 192, 198, 217;—and to blow up the house with gunpowder, 152, 154, 189, 190, 192, 194, 196, 197, 198, 200, 236;—a joist is brought by EARL's assisters, and gate forced, 152, 154, 174, 181, 188, 195, 196, 197, 198, 199, 200, 236;—the Bailies of Perth ring the alarm bell, and come to KING's assistance, 186, 189, 195, 218; they demand to see the KING, &c., 187, 197, 198, 200;—called to account for their conduct, 236;—KING makes an oration at Cross of Edr., 246, 248;—Anniversary ordered to be observed, 237, 243, 246; public Thanksgivings, 240; public rejoicings, 243, 244, 245, &c., 247.

DEPOSITIONS OF WITNESSES:—D. of Lennox and E. of Mar, 171, 184;—And. Henderson, 174, 179, 221;—Abbots of Inchaffray and Lundores, 180, 181;—Sir Tho. Erskine, 181;—Sir Jo. Ramsay, 182;—Graham and Moncrieff, 184;—Ray, 186;—Gowrie's porter, 187;—Blair and 19 others, 188;—Wemyss of Bogie, 218;—Mr Wm. Rynd, 219.

APPENDIX OF ORIGINAL CONTEMPORARY DOCUMENTS, viz.

- I. Depositions of 329 Witnesses as to Conspiracy, II. 171.
- II. Interrogatories put to Witnesses, 191.
- III. Report by Bailies of Perth of Examination of 355 Witnesses, 192.
- IV. The Earle of Gowrie's Conspiracie, called 'the King's Narrative,' printed in 1600, 208.
- V. De Execrabili et nefanda fratrum Rvvenorum, &c., Conjuracione, printed 1601, 223.
- VI. A short Discovrse, &c., printed 1600, 231.
- VII. Extracts from the Records of the Privy Council, 232.
- VIII. Extracts from Lord High Treasurer's Accounts, 237.
- IX. Extracts from Records of Burgh and Sheriff of Perth, 242.
- X. Extracts from Records of City of Edr., 244.

- XI. Extracts from Birrel's MS. 'Diarey,' 245.
- XII. Extracts from Fleming's MS. Chronicle, 247.
- XIII. Discourses, Sermons, and Orations, 247 ;
1. Mr Pat. Galloway, preached in Edr., 248 ; 2. Mr Wm. Cowper, do., 251 ; 3. Mr Pat. Galloway, preached in Glasgow, 252 ; An Oration delivered in Glasgow, 255.
- XIV. Trial of Geo. Sprott, Notary in Eymouth, 256 ; his Deposition on the scaffold, 260 ; Archb. of Canterbury's account of, 262 ; narrative of his execution, 275.
- XV. Forfeiture of Logan of Restalrig, 276 ; his Letters to the E. of Gowrie, 281 ; Depositions of Witnesses, 287 ; Letters, &c., 292.
- XVI. Johnston's MS. Narrative of the Conspiracy, 293.
- XVII. Another MS. Narrative, 297.
- XVIII. Papers as to Conduct of Mr Ro. Bruce and Ministers of Edinburgh, 299 ; additional Papers, III. 618.
- XIX. Original Letters, &c., illustrative of the Conspiracy, 313.
- XX. Original Letters of Earl of Gowrie, 329.
- XXI. Facsimile of his subscription, 332.
- XXII. Additional Documents, III. 619, &c.
- Grace, Witch, before meat, III. 612 ; after meat, *ib.*
- Grahame of Arduathie, Dav., III. 483 ;—of Balgowan, Jo., in King's Suite at Gowrie's Conspiracy, II. 166, 172 ; his Deposition, 184 ;—of Balvie, Wm., I. 282 ;—of Bankell, Ja., I. * 130 ;—of Calandare, Jo., I. 76 ;—of Claverhouse, Jo., I. * 136 ; Wm., 282 ;—of Craig, Da., Slaughter of Spens, the E. of Cassillis's servant, II. 400 ; Gilb., yr., do., 480 ;—Da., beheaded for Fintrie's Treason, I. 359 ; Walter scourged, and his right hand struck off, &c., II. 417 ; Alex., Slaughter, III. 483 ; Anna, Lady Monyvaird. See Toscheauch, &c. ;—of Fyntrie, Sir Dav., Walt. and Ja., his brothers, Oppression, &c., I. 74, 111 ; Da., 173 ; beheaded, 257, 258, 311 ; II. 97 ; Ja., his brother, tried for slaughter, *ib.* ;—of Gillesbe, Rob., I. * 85 ;—of Gormok, (Garvoek?) I. * 373 ;—of Hospitalscheillis, Rich., Oppression, &c., III. 496 ;—of Halgairdis, Mr Jo., Justice-depute, I. 80, &c., 282 ; slain, 359 ;—of Knokdoliane, Robert, I. * 130, * 369, 136, 141, 255 ; Jo., 266, 282 ; II. 86, 433, 445 ;—of Langboddome, Ro., Suborning Witnesses, and Perjury, III. 354 ; hanged, 358 ; his accomplices beheaded, hanged, scourged, and branded, *ib.* ;—of Leuchland, Ja., III. 437 ;—Da., his son, slain, *ib.* ; Ro. Symmer, beheaded, *ib.* ;—MASTER OF, Robert, I. * 332 ;—of Morphie, Hen. I. 28 ; Sir Ro., III. 437 ;—of Panhollis, Wm., I. 282 ;—Richard, Warlock, I. 235, 241, 243, 244, 245, 249 ; burnt at the Cross of Edr., 358 ; Christian, Witch, burnt, 509 ;—of Southfield, Alex., yr., I. * 346 ;—of Thornik, Ro., I. 111, 282 ; II. 166 ; Deposition as to Gowrie's Consp., 188 ;—of Urquhill, Jo., in King's suite at Gowrie's Consp., II. 166, 172 ; his Deposition, 184, 366 ;—of Westraw, II. 541 ; Jo., his brother, *ib.* ;—of Westhall, Jo., slain, I. * 179 ;—Wm., called ' Singand Willie,' I. * 398.
- Grant of Ballindalloch, John, I. * 175, * 357 ; Intercommuning with Norman Leslie, * 358 ; Fire-raising, * 370 ; Jo., yr., III. 491 ;—of Carroun, John, I. * 370 ; Pat., III. 554 ;—of Cardellis, Tho., wounded, III. 435 ; Pat., his son, slain, *ib.* ; Jo., yr., 436 ;—of Calceabok, I. * 175 ; remitted, * 247 ;—of Davachmoir, Pat., House-breaking, Stouthrief, &c., III. 490 ;—of Freuchy, James, Slaughter, I. * 175, * 244 ; respited, * 245, * 247 ; Jo., 285 ; III. 316 ; of Gartmoir, Gregour, III. 371 ;—of Glenmoriestoun, Jo., his house of Belmacaene plundered, III. 490 ; taking a man captive and strangling him, 553 ;—of that Ilk, Jo., III. 14 ; note, 370 ; Jonet, Witch, ' wirreit at ane stail' and burnt, I. 206 ;—of Wester Elcheis, Lauch., Slaughter, &c., III. 435 ; Jo., his son, *ib.*
- Grantgore, or ' glengore,' *Lues Veneva*, I. * 110, * 117, 252.
- Grand Jury, I. * 391.
- Gratz, Jesuites' College there, III. 336.
- Grawie, Jonet, Witchcraft, II. 1.
- Gray of Ballegaran, Alex., remitted, I. * 246 ;—of Baldarran, Gilb., I. 148 ; II. 514 ;—of Ballegernocht, Pat., I. 28 ;—Dav., Adultery, banished Edr. for life, and fined L.40, II. 369 ;—

- of Dunnynald, And., I. 148;—of Kinggornie, And., II. 362;—LADY, (of England,) I. * 118;—LORD, (of England,) I. * 378, * 379;—LORD Andrew, Justiciar, I. * 3; on the South of the Forth, I. * 22, * 56, * 67; Justice-General, I. * 51, * 61, &c., * 78; Pat., Oppression, &c., * 177, * 375, * 414; Resetting rebels, 41, 266, 348;—JO., hanged for taking Black-maill, I. * 356;—MASTER OF, I. 74; Pat., 144, 148, 153; Counterfeiting the King's Stamp or Casbet, 157, 267, 275, 348;—of Schiellhill, Geo., I. 74.
- Gray-Steill, I. * 116, * 124. See Douglas;—also a *soubriquet* for Wm. E. of Gowrie, II. 287.
- Gray-meill, Jockie, (John Gordon,) a Warlock, I. 235, 236, 239, 240, 246; II. 542.
- Graves, remarkable Superstition practised by alleged Witches, I. 202; opened by Witches, for charms, 218, 233, 237, 239.
- Greave, Tho., burnt for Witchcraft, &c., III. * 555.
- Grene webbis, what, III. 528.
- Greece, the Friar that 'come furth of,' I. * 308;—the Earl of, III. 592; ane Knight of, *ib.*
- Greenside, Rood of, Heretics burnt at, I. * 210.
- Greenock, Burning gates and doors of, I. * 232.
- Greynslaw of Newtown, I. * 147;—of Little Newtown, Jo., II. 442; his six sons slain by Turnbills, *ib.*
- Greenshelis of that Ilk, Wm., I. 36.
- Greis-defendant, what, III. 424.
- Greir, (Grierson,) of Barjarg, Tho., I. 298; III. 217; Ja., his brother, *ib.*; Tho., 384;—of Crawfordtoun, I. * 132;—of Drum, Gilb., I. 298;—Gilb., &c., Fire-raising, I. * 160, * 167;—of Isle, I. * 132;—of Pitfillan, Ja., III. 271.
- Griersoun of Beochane, Gilb., III. 387;—of Haly-dayhill, Jo., scourging naked people, cutting the backs of cattle, &c. I. * 455;—of Inglis-toun, Jo., III. 93;—Isobel, Witchcraft, Sorcery, &c., a remarkable case, II. 523; 'wir-reit' and 'brunt in assis,' 526;—of Lag, John, I. * 165, * 166; remitted, I. * 248; Roger, 111, 178; Wm., 304; Sir Wm., III. 217; Ro., yr., Slaughter, 500.
- Grey-Friars of Edinburgh, Theft of Plate stolen from KING revealed in confession to, I. * 271.
- Gresmore, Madame, marriage presents to, I. * 297; sewing gold to, * 298; Tocher given with her to the Laird of Creicht, * 305.
- Grievances, Articles of, presented for the Kirk, II. 9.
- Griffon, (Grifound,) James, Welshman, 'propy-nit,' I. * 281; sent to Flanders, * 284.
- Grooms of King's Chamber, Wine-cellar, &c., &c., I. * 313.
- Grozolez, one of the King's Keepers, I. * 269. See Gonzolles and Duke of Milan, * 270.
- Grote, John, freight of his ship to Orkney, I. * 305;—of Wairis, Don., slain, III. 53.
- Grundistounne of Kyngask, Tho., I. * 404, 60.
- Gryce, flain, III. 605.
- Grynter, '*granitarius*,' I. * 382; II. 385.
- Guards, King's, Resisting, II. 452; Ringane and Will. Armstrang hanged, 453; two Elliotts have their right hands struck off, and then hanged, 559; three of the Guards sit as Assisors, *ib.*;—Scots, in France, Capt. Jo. Rig, tried for a Duel in France, 382.
- Gudelaitt of Strabrok, Jo., I. * 424;—of Uphall, Harie, II. 555.
- Gude-wychtis, (good-neighbours, brownies,) I. 52, 162, &c. See Faerie, &c.
- Guidame, what, III. 96.
- Guidschir, what, II. 520; III. 404.
- Guid-nychtbouris, I. 162.
- Guild, Ja., Theft by an alleged idiot, I. * 415.
- GUISE, DUKE OF, I. * 296; present of unwrought gold from the mine at Crawford-mure, * 300; hackneys and hals sent to, * 306.
- Gullane, Jo., hanged for taking Black maill, I. * 356.
- Gunner, King's master, I. * 314, &c.
- Gunpowder-Plot, II. 572.
- Gun-powder, I. * 295, &c.; King's Miln for, * 325;—gun-'stanis,' formerly used for Artillery, * 260, * 363.
- Guns, I. * 295. See Artillery; Iron, * 325; first mention of, in Criminal Records, II. 461.
- Guthry of Balnabreich, Jo., respited, I. * 254;—of Colestounne, Hen., I. 74;—of Gagye, Ja., 372;—Ja., Capt. of Creichtoun, * 143;—Mr Ja., his head fixed on Netherbow Port, III. 196; drops blood on Middleton's coach, *ib.*; Jo., hanged for Bigamy and Adultery, 428;—of

that Ilk, Alex., Justice depute, I. * 72, 74 ; slain, 372 ; Isobel Wood, his relict, pursues the Laird of Bandoch, *ib.* ; Alex., Slaughter, II. 101 ; Ja., son of Alex., senr., slain, *ib.* ; Alex., the old Laird, slain, 103 ; Alex., fiar, III. 78, 80 ;—of Kincoldrum, Alex., I. 15 ; Da., yr., 74, 258 ; Slaughter, II. 101 ;—of Kinblakmonth, Pat., III. 437 ;—of Kynbach, Tho., I. * 411 ;—of Langlands, Wm., Slaughter, II. 101 ;—of Pitnowes, Pat., Slaughter,

130 ; discharged, 131 ;—of Ravensbie, Wm., Slaughter of the Lairds of Gairdin and Tullois, II. 528 ; III. 77, 80.

Guvane of Cardrono, Wm., I. * 147.

Gypsies. See Egyptians ; following them punished with scourging and banishment, III. 99.

Gyre-Falcons, I. * 320.

Gysaris, I. * 114, * 118, * 123.

Gyves, heavy irons, called *boyes*, III. 3. See Irons, Torture, &c.

H.

HABIRGEOUN, (Haberschounes,) of mail, I. * 289, * 270.

Hackneys, (horses,) sent to KING of FRANCE, &c., I. * 306.

Haddenrig, Battle of, I. * 324.

Haddington, Raid of, I. * 356 ;—Supplying English in, * 350, * 353.

HADDINGTON, EARL OF, (Sir Tho. Hamilton,) III. 21, &c., *passim* ;—VISCOUNT, (Ramsay,) Jo., II. 91.

Hagbuts, (Hawkbuttis, hacquebutis,) importation from Holland, I. * 307, * 310, * 321 ; Act anent wearing, 299 ; lang, II. 70, 103, 128 ; shooting with, 485. See Pistolets ; III. 213.

Haig of Bemerside, I. * 87 ? * 144 ; Robert, * 242 ; II. 419.

Haitlie, Ja., one of King's Guard, sits on an Assise, II. 559 ;—of Lambden, * 451 ;—of Mellestanes, Jo., I. * 229, *note*, * 359 ; Tho., his brother, *ib.*, 2.

Hall and feir, III. 260, 467.

Hakket of Pitfirrane, Patrick, I. * 351.

Halberts, I. * 289.

Halcro, Pat., engaged in the Rebellion in Orkney, III. 274, 289, 291 ; is present when Ro. Stewart tears the Bond of Association, 304 ; his Deposition, 307 ; his life saved, 311 ;—Ro. of Cava, III. 296.

Halden, (Haddene,) of Bellysoule, Ro., I. 15 ;—of Glennageis, Ja., II. 426 ; Tutor of, Da., 430, 439 ; Ja., III. 318 ;—of that Ilk, Geo., II. 467 ; Jo., III. 391 ;—of Kelour, Sylvester, I. * 157 ; Wm., * 424.

Halibrouton of Inchearne, I. 231 ; Wm. II. 355 ; Mr Ja., Provost of Dundee, Intercommuning with, I. * 467 ; Mr Ja., alias Moffatt, Jesuite, III. 331, 371, 377 ; banished, 379 ;—Menie, Witch, pricked for Devil's mark, 599 ; her Confession, *ib.* ;—of Moreislaw, II. 425 ;—of Muirtoun, (Mertoun,) Walt., I. * 147 ; And., yr., * 230 ; Ralph, * 432 ; Hen., 107 ; Jo., II. 515 ;—and DIRLETON, LORD, Pat., II. 283, *note* ;—of Petcur, Geo., I. * 180, 74 ; Sir Ja., II. 49 ;—of Walstruther, Geo., I. * 469.

Haliday, Jo., and five others, hanged for Forging a discharge, II. 34.

HALIS, LORD, Pat., Master of the King's Household, I. * 2 ;—MASTER OF, Patrick, * 160 ; remitted, * 243, * 263.

Hall-door, Usher of the King's, I. * 313.

'Halie Lyg,' the, (Spanish Armada,) I. 228.

Halket, attempting to restore Popery at the Place of, I. * 430.

Halkerstoun, Colonel, I. 334.

Halkryggis, with 'head-geir and teslotis,' I. * 317.

Hall, And. and Wm., (*Fat-sow* and *Wantoun-pyntill*), I. * 181 ; slain, * 201 ; Lyell hanged for Horse-stealing, &c., * 432 ; Andro of the Sykis, and Perseis Jok, Slaughter, 37 ;—of Foulbar, Adam, I. 66 ; Ja., Slaughter of the young Laird of Scottistoun, III. 236.

Hallowmes, III. 568.

Halsclath, neckcloth, I. 253.

Haly-water-fatt, in Prince's Chapel, I. * 306.

Hamesucken, William Cokburne, I. * 15, * 58,

- * 59, * 172, 176, * 180; during the Plague in Perth, * 219, * 347, * 366; in Monastery of Paisley, * 382; in Provost of Edinburgh's house, * 399, * 403, * 410, * 412; William Fergusone beheaded, * 425; Lord Saltoun, * 476; Oliphant, 24; Montgomery of Scottistoun, &c., 60; Bonkle beheaded, 158; II. 37, 70; and slaughter of Laird of Guthrie, 103; Tho. Cuninghame hanged, 359, 464; Irving of Moncoffer, &c., 493; Jo. Henderson banished, III. 58; and Slaughter, 362; Alex. Davidson beheaded, *ib.*; Tho. Meldrum of Idene, 431; and unmerciful Slaughter of a woman, 485.
- Hamiltoun of Auchinhowy, Alex., yr., slain, I. * 150;—of Ardie, Gav., 36;—of Auchnaglen, Jo., 378; his daughter carried off, *ib.*;—of Bardowy, Alan, Intercommuning with, * 150; Mariota Maxwell, Lady of, *ib.*, * 204, * 250, * 257; Jo., 22; Ja., yr., 378—of Bordland, Geo., Tutor of, 19;—of Bairfurd, (Bairfute,) Sir Ja., * 431; Archb., II. 405; his wife ravished, *ib.*;—of Bynning, I. * 471; Jo., 155;—of Briggs, Ro., * 399;—of Bothwellhauche, Da., * 404; his widow charged for REGENT MURRAY'S Murder, 23; his servant hanged, 31; Arthur tried, 87; Da., 88; Arth., 119; Da., (alias of Monkton-mains,) 266;—of Blair, Jo., II. 600, *note*;—Castle of, detaining, I. * 234; breaking ward for escape of a Heretic, * 352;—of Crawfordjohn, Sir James, knt., * 414;—of Caudor, Mr Ja., 378;—of Corse, Ro., 119;—of Crawford, Sir Ja., Incest with Marion, his natural daughter, 167;—Commissary of Lanark, Archb., III. 495;—Capt. Jo., slain in a duel in Flanders, 502;—of Cruikwell, Ja., I. * 450;—of Cochno, (Colchnöch,) And., * 450, * 451, * 480; Claud, 71;—of Cammiskeith, Laird of, * 82; Jo., * 137; Wm., Tutor of, * 427;—Claud, ('son to my Lord Duke,') * 450, 69, 89, 331; Sir Claud, III. 143;—of Cumnock, Jo., slain, II. 419;—David hanged for Regent Murray's Slaughter, I. 31; Jo., Parson of Craufordjohn, Mutilation, &c., II. 474; Jo., Murdered under trust, III. 123;—of Dalsersf, Pat., I. * 385; Wm., II. 61;—of Drumcairn, Tho., Lord Advocate, I. 366; II. 3, &c., *passim*; his brother, Pat., Under Secretary, III. 293, &c. See Binning, Haddington, &c.;—of Evandale, Sir Ja., beheaded, I. * 195; Ja., III. 234;—of Finnart, Sir Ja., I. * 152, * 172, * 227; beheaded, 228; Respited for Fielding against D. of Albany, * 237; Captain of Dumbarton, * 241; Gift of his non-entry to E. Bothwell, * 255; Gift of part of his escheat, * 256; keeping Castle of Craignethan, * 316;—of Ferguslie, John, * 361, * 382;—of Grange, Thomas, * 424; Jo., present in KING'S suite at Gowrie's Conspiracy, II. 172;—of Gairewis, Dav., I. 19;—of Gartlavoeh, Pat., *ib.*;—of the Grange of Kilmarnok, Jo., II. 555;—of Garene, Ja., *ib.*;—of the Hill, Gav., I. 36; Wm., 378;—of Henschaw, John, * 410;—of Haggis, Ja., 119;—of Hairshaw, Jo., Slaughter, III. 119; his sons, &c., *ib.*;—Sir Ja., Sheriff of Liolithgow, confiscated for Heresy, I. * 211; present to furnish him furth of the realm, * 309; his wife, * 311;—of Innerwick, Ja., respited, * 240, * 413, * 468; Alex., * 486; Sir Alex. III. 494;—of Inchemauchane, Ro., I. * 471, 139; II. 3, 13, 390;—Jo., scourged and branded for Perjury, III. 358. (See Branding, Perjury, &c.)—Kath., accused of Heresy, escapes through the King's influence, I. * 211;—of Kincaple, Jo., * 414;—of Kinglass, Mr Alex., III. 453;—of Libberton, Ja., I. 191; Sir Ja., his servant, killed, II. 453, 485;—LORD, I. 178; Jo., 285, 298;—of Lettrik, Sir Jo., III. 495;—of Lekpreveck, And., I. * 404;—of Samuelstoun, Ja., 27; Jo., yr., 270; Pat., II. 82;—MARQUIS OF, Jo. III. 31; Ja., 206, 207, 318, 339, 590;—of Newhouse, Ro. I. 36;—Patrick, Martyr, * 211, * 228;—of Philipstoun, Math, Langside, &c., 21, 22;—of Parkhead, Arthur, 36;—of Portmanno, Wm., 59;—of the Peill, (of Leviogstoun,) Ja., 345; Claud and Alex., his sons, denounced, *ib.*;—of Pedderisburne, Jo., * 404;—of Pedderistoun, Jo., 36;—of Pardovane, Wm., his son slain, * 476;—of Prestoun, * 477; Geo., yr., 36; Geo., 149, 286;—of Priestfield, Tho., * 486;—Mr Pat.,

- Under-Secretary of State, III. 293;—of Rottenyards, Wm., I. 19;—of Roploch, Gawin, II. 195;—of Reidhouse, Sir And., III. 418; declined as an Assessor, 424;—of Stanehouse, Ja., Slaughter, I. 179; remitted, 247; escape from Castle of Edr., * 331; Jo., * 450, 36;—of Sanqubar-Lindesay, Wm., * 149, * 172; Sir Wm., 30;—of Sorne, Wm., 141;—of Schawtoun, Jo., 69;—of Silvertonehill, And., * 414; II. 540;—of Spittelscheill, Ja., yr., II. 540; Murder under trust, *ib.*; beheaded, 561;—of Scheirell, Ja., 540;—of Woodside, Ja., I. * 420;—of Woodhall, Ja., 36.
- Hand, right, struck off, (punishment), I. * 388, * 402, * 431, 20, 372; II. 363, 417, 421, 560; III. 198, 454.
- Hanging Image of St Francis, I. * 286;—in chains, punishment of death, * 137, * 358.
- Haugtschaw, Hereschip of, I. * 35.
- Hannay, Rob., &c., Choosing Abbot of Unreason, Insurrection in Edinburgh, &c., I. * 409.
- Hares, killing in forbidden time, I. * 15;—Witches take form of, III. 605, 607, &c.
- Harehead, Hereschip of, I. * 18.
- Harlaw, Wm., Heresy, &c., I. * 407.
- Harden, house of, to be destroyed, I. 276.
- Hard-heads, (*hardits*), or Lions, coins, forging them, I. * 440; what, * 487, 64, 82.
- Hardie of Bounnylnerig, Ja., II. 441; Tho., his son, hanged for Masterful Stouthreif, *ib.*
- Harnessing, I. * 295. See Tournament, &c.; * 317, * 320, * 321, * 323.
- Harn-pan, skull, II. 384.
- Harrett of the Coittis, Geo., Slaughter, II. 423; denounced, *ib.*
- Hart of Livielands, Wm., I. 366; Lord Advocate, II. 2; Justice depute, 18.
- Harvie, Capt., English Pirate, III. 104.
- Hasp of yarn, what, III. 556; Witch-charms with, 555, 556, &c.
- Hastiludium, III. 42.
- Hathway, And., and his wife banished for Resetting a Jesuite, III. 541.
- Hat-pieces, forging, II. 99; uttering, 365.
- Hattit kit, what, II. 285.
- Hattok, horse and, III. 604, and *note*, &c.
- Haubert, Nicholas, alias French Paris. See Paris.
- Haw, Robert, hanged, I. * 70.
- Hawick, Raid of, I. 10.
- Hawking, Laird of Pitmedden barbarously murdered whilst, III. 78.
- Hawks, Stouthreif of, from rock of Erneceraig, I. * 106; sent to France, * 266; to England, * 274, * 284, * 285; from the Isles, * 294; sent to France, * 295; from Caithness, * 297, * 298; Hawk-hoods, * 305; silver clamshell for King's Hawks' meat, *ib.*, * 320, * 322; sent to K. of France, &c., * 306, * 317; K. of ENGLAND, * 317, * 318;—Hawk-bells of gold, * 321; brought from Norway, * 322; setting (entering) the King's, * 323.
- Hay, Mr Andro, Parson of Renfrew, I. * 456;—Sir Alex., Secretary of State, II. 328; his Letter of appointment, 585, *note*;—of Ardletbame, Geo., III. 400; Fra, his son, Murdered under colour of Law, *ib.*, &c.; he received six strokes with the axe on the shoulders, head, and neck, before decapitation, 401, 402, 418;—of Barro, Mr Wm., Commissary of Glasgow, III. 339;—of Brunthillis, Wm., fiar, 418;—of Dalgattie, Wm., I. 66; Alex., Adultery with Eliz. Clark, &c., II. 46; with Barbara Forbes, (his wife) 64, 104, 112, 130;—of Easter Kennet, Alex., I. 268;—Father Edmund, I. 333;—of Edinvaill, Tho., slain, II. 427;—of Gourdie, Wm., I. 262; his son Ja. slain, *ib.*; his son Wm. slain, II. 80, 85; And., *ib.*; Geo. Rattray, &c., beheaded, 85;—Jo., Slaughter, III. 242; acquitted, 243;—of Kynmwdie, Mr Alex., II. 528;—of Lynplum, Wm., I. 337; II. 105, 467;—of Logyruiff, Wm., III. 400;—of Lochloy, Witch-plot to cut off him and his male-issue, 617, &c. See Hay of Park;—of Melgynche, Peter, I. 3;—of Mukhaldis, John, * 392;—of Mayne, Ja., * 408; Wm., his nephew, slain, II. 41; his left hand mutilated, 42; Wm., 557; his uncle slain, *ib.*; Ja., yr., *ib.*; Wm., 435; Fra. and Alex., his sons, Slaughter, III. 435; Ja., yr. 436;—of Myuzeanne, Geo., I. * 143, * 166;—of Monktonne, Geo., II. 467;—of Nethertoun, Geo., Prior of Charterhouse, 166; his Deposition as to Gowrie's Conspiracy, 188;—of Nether Liff, Sir

- Geo., his property in Lewis wasted and burnt, III. 246;—of Newtown, Hew, 616;—of Park, Jo., I. * 391, 68; Witch-plot to take lives of his male children, III. 605, 612, *et seq.*;—Mr Peter, Deposition as to Gowrie's Consp., II. 188; Bessie, a Witch, III. 606, &c.;—of Qubithburgh, Sir Alex., 312;—of Rannes, Mr Ja., False imprisonment, II. 43;—of Smithfield, Jo., I. * 148;—of Scroggie, Tho., II. 368;—of Tallo, Wm., remitted, I. * 243; Jo., yr., hanged and quartered for K. HENRY'S (Darnley's) Murder, * 490; his Deposition, * 496; his Confession, * 500; Jo., 27, 145;—LORD OF JESTER, Jo., * 62, * 78, * 141, * 147, * 149; remitted, * 243; Wm., 146; Ja., 262; Jo. III. 590, and *note*.
- Head of a Thief sent to Edr., I. * 274.
- Hearts of gold, rings, &c. I. * 295.
- Heart-shot, II. 536.
- Heart-pypes, III. 485.
- Heer (hair) of yarn, what, III. 556.
- Heiress, caution found by, not to marry 'ane cheif Tairour' or 'brokkin man,' I. * 434. See Abduction.
- Hempisfield, the Lady, III. 122.
- Henchmen, King's, I. * 114.
- Henderland, breaking Kirk of, I. * 98. See Cockburn.
- Hendersoune of Beogoure, Jo., I. * 471;—of Dryden, Ja., yr., 169; Ja., II. 405;—of Fordell, Ja., I. 60;—Geo., cutting growing timber, &c., II. 522;—Mr Hen., Heresy, I. * 255; Christ., hanged, * 173; Jo., hanged, * 206;—of Latoune, Andro, Chamberlain of Scone, employed at Gowrie's Conspiracy, II. 149, &c. *q. v.*;—his Depositions, 174, 179, 221; Letter to the King as to Lord Scone, 321;—of North Rannaldsay, Mr Ro., III. 280.
- HENRY II., KING of England, his dead body bleeds on the approach of his son, &c., III. 192;—VII., I. * 5, * 262;—VIII., * 2; Embassy from, * 265; present of cloth of gold, * 266; of 'blawin bornis, leschis, and dog-collaris,' * 270, * 272; Embassy to, * 276, * 277; complaint as to the 'brek of the Bordouris,' * 279; solemnly confirms peace with Scotland, * 283; present of Hawks to, * 482; ballast against, * 295; writings from, * 296; advertised of Birth of PRINCE JAMES, * 302; Ross Herald sent to, * 312; hawks sent to, * 317, * 318; Embassy to, * 320, * 321;—IV., KING, of FRANCE, * 77, *note*; II. 380; KING (DARNLEY), I. * 466, * 478; his Marriage to MARY QUEEN OF SCOTS, * 478, * 488; Murdered at the Kirk of Field, * 479; Trials for his Murder, * 488 to * 492; Documents illustrative of, * 493 to * 513; Wm. Tailor and Andro McCaig murdered along with the King, * 492;—Murder of the King and the two REGENTS, 35; Jo. Byming hanged and quartered, 95; Geo. Hume of Spott, 101; acquitted, 107; EARL OF MORTON'S Trial, 114;—Mr Arch. Douglas, Parson of Glasgow, 142, &c. See Treason;—PRINCE, (eldest son of K. JA. VI.,) born, 360; his baptism at Stirling, 338, 361; his death, III. 322, *note*.
- Henrie, Jo., hanged for Fire-raising in Coal-pits, III. 361; his head fixed on a spike, *ib.*
- Henrysoune, Mr Ja., Justice Clerk, I. * 79;—Rich., slain, * 408.
- Henslie (Ainslie?) of Fawlay, Wm., I. 37.
- Hepburn of Alderstonue, (Sir) Ro., Lieut. of King's Guard, II. 453, 559;—Sir Alex., I. * 62;—of Athelstonford, Geo., 9;—of Beynstoune, Pat., * 73;—of Boltoun, Pat., * 359; Jo. hanged and quartered for Murder of K. HENRY (Darnley,) * 490; his Deposition, * 498; his Confession, * 500, 114, 145;—of Bonbard, Adam, II. 405;—of the Craggis, Sir Adam, I. * 62, * 78; III. 72; Ro., his brother, *ib.*;—of Fortoune, Hary, I. 9, 107;—of Gilmerton, Wm., * 462, *note*; Mr Pat., 156, 169; Mr Jo., III. 271;—of Kirklandhill, Pat., I. 9, 155;—of Lufnes, Sir Pat., II. 60, 74;—of Markill, Ro., 368;—of Qhittsum, suffering English Thieves to escape, I. * 223; Alex., protests against Bothwell's outlawry, * 464;—Richard, alias *Red Richie*, slain, * 365, * 366; Marion burnt for forging base money, II. 74;—of Richardtoun (Riccartoun), Pat., I. 290; II. 340;—of Smetoun, Adam, I. * 364; Mr Pat., 156,

- 169;—II. 84, 343;—of Waughtoun, Sir Pat., I. * 159; Waylaying, * 169, * 172; gift of his own escheat, * 249, * 347, * 356, * 395, * 468, 114; Slaughter, III. 271, 316;—of Whytecastell, Sir Pat., knt. tried for Murder of K. HENRY (Darnley), I. * 489.
- Heralds, Danish, I. * 268, * 275, * 277;—English, * 275, * 283, * 296;—of Flanders, * 277;—King's, allowances to, * 114, * 118; their Coats-armorial, * 301;—of the Nobility, * 86;—striking one, * 268;—assaulting, in execution of their duty, 175; Ro. Fraser slain, III. 79; Ro. Winrahame taken prisoner in Orkney, his coat of arms torn, &c., 278.
- Heres of Cowsland, Sir Hugh, defends the KING at Perth, II. 152, &c. See Gowrie's Conspiracy, 172.
- Hereis of Kirktonne of Essie, Geo., II. 355, 430, 559.
- Hereship, of the Place of Spittale, I. * 17; Mynto, * 18; Harehead, *ib.*; Quhytmure, * 19; Hangitschaw, * 23; Covantoune, * 26; Syntoune, * 31; Fastheuche and Hanging-schaw, * 35; Town of Selkirk, *ib.*; Merecleuche, * 36; Carterhanch, * 37; Bade-noch, * 45; Innermefane, * 51; Blindhauche, * 61; Cruickstoun, * 70; Davy, Dyke, Ardroseir, &c., * 175; Towghe, * 240; Kildrummy, * 246; Lennox, Rose-neath, and Craiginche, *ib.*; Kenlochow and Trouternes, * 256; Dullady, * 344; Durrisddeer, Amisfield, &c., &c., * 348; Cummer-girthe, * 393; Wintercleuche, * 398; Glenislay, 263; II. 453; and 'Day-Foray' by Armstrongs, *ib.*; Torwodlie, 5000 merks worth carried off, and Laird slain, &c., 520; by the MacGregors, III. 232, &c. See Burning, Stouthreif, &c.
- Heresy, prosecutions for, I. * 209; Memoirs relative to early Martyrs, * 209 to * 216, &c.; Richard Pollok restored, * 252; gift of Cousland and Cant's escheat, *ib.*, * 255; man burnt at Cwpper, * 297; Dean Forman, * 330; Paul Methven, * 406; Friar John Christeson, Wm. Harlaw, John Willock, * 407.
- Heretical books, using, I. * 209, * 216, * 217, * 252.
- Heretics burnt at the Rood of Greensyde, &c., * 210, &c.; to search for, in the Westland, (Lollards of Kyle,) * 287; Stirling, &c. * 296; escape from Hamilton Castle, * 352.
- Heriot, Geo., goldsmith, I. 270; II. 159; waits on King to intercede for Mr Ro. Bruce, 310;—of Ramorny, Walt., I. * 425;—of Tra-broune, Andro, * 143; respited for the Field of Linlithgow, * 241; forfeited, * 261; James, * 395, * 425, * 451, * 468, 72; his brother slain, 158, 190.
- Hering of Drimmy, Arch., II. 63;—of Glas-clune, Ja., I. * 367;—of Lethindie, Jo., (Da.?) II. 433; Laur, brother to the Laird, III. 437;—of Little Blair, And., Slaughter, I. 262;—Capt. Pat., Sorcery and Witchcraft, II. 23, 355, 368; III. 487.
- Hermitage, Castle of, I. * 284, * 300; artillery sent to, * 324, * 494; Capt. of, III. 220.
- Heroun of Chipchese, Wm., III. 568;—of Kierochtrie, Pat., Slaughter, 460.
- HERRIES, LORD, And., I. * 55, * 78; Herb., * 224; Wm., * 242, * 327, 184, 304; II. 386; Jo., 465, 596; proposal to marry his daughter to young Laird of Johnstone, III. 51, 91, 115, 316;—Andro, Fire-raising, &c., I. * 242; Ro., abiding from Raid of the Isles, III. 227.
- Hertsyde, Margt., (Mrs, afterwards Lady, Buchanan,) remarkable Trial for Abstracting pearls and jewels from QUEEN ANNE (of Denmark,) her mistress, II. 544; declared 'Infamous,' and doomed to pay 4800 *l.*, and to be Banished to Orkney for life, Aug. 10, 1608, 556; recalled by the KING, by special Warrant, Nov. 15, 1619, 557.
- Hervie, Alex., Slaughter, III. 444;—of Elrig, Ja., 478; And., his brother, *ib.*
- Heryng, Symone, hanged, I. * 401; John, his son, hanged, *ib.*; both of them put to the torture, *ib.*, *note.*
- Hett-fever, what, III. 260.
- Highlands, Procl. for invasion of, I. 303, 355.
- High-school of Edr., Riot at, when a Bailie was shot by Wm. Sinclair, one of the boys, I. 195, *note*, 349, 362. See Sinclair of May.
- Hill, Tho., and others of the King's Guard, sit on an Assise, II. 559.
- Hirdmanstonne, burning of, I. * 27.

- Hodge, Ro., Murder, III. 488.
- Hog, a year old sheep, III. 56, 396, &c., *passim*.
- Hogings, (armour), I. 317.
- HOLYROODHOUSE, LORD, Jo., (Bothwell,) II. 261, 273, 496, 505, 506; III. 9;—Keeper of, I. * 314; Park of, enlarged, * 321;—Slaughter committed within the Sanctuary, or Girth, I. * 258; Organs for the Chapel, * 321; David Riccio Murdered, * 478; Shooting within, punished by banishment for life, 187; King invaded, 272, 357; E. of Bothwell tried, 293; forfeited, 297; King's Master Stabler slain, 357; II. 505; Gypsies dance before K. JAMES V. there, III. 592;—Abbot of, Robert Cairncross, I. * 185, I. 254.
- Hollywood, Robert, Abbot of, Lord High Treasurer, I. * 287, *note*, * 288.
- Homage done to the Devil by Witches, I. 210, 217, 239; III. 609, *et seq.* See Witchcraft, *passim*.
- Home, Alex., beheaded, Treason, I. * 201;—of Aytoun, Geo., I. 11, 136; Pat., II. 10, 379, 381; Wm., III. 116; Ro., his son, remitted, *ib.*; Jo., yr., 414;—of Argaties, Pat., I. 119; Dav., 136, 369;—Black John, 140;—of Blackadder, found caution for 20,000*li.*, I. * 230; remitted, * 247; expelling him, * 272, * 413;—of Bassendyne, Geo., and And. his brother, wounded, &c., III. 69; wounded again, 252;—of Barro, Cristell, I. * 405;—of Broxmouth, Geo., I. * 413, 154; II. 379; Sir Geo., 402;—of Ballicass, Wm., Slaughter, II. 336;—of Balandyne, Wm., II. 336;—of Coldaneknowis, Jo., I. * 180, * 182, * 184, * 190, * 199, * 229, * 360, * 393; Sir John, * 405, * 432, * 468, * 487; Ja., yr., 11; Jo., yr., 244; Wm., II. 12; Sir Jo., married Beatrix Ruthven, 297, *note*;—Castle of, recovering, I. * 237; supplying English in, * 360;—of Carrolside, Jo., I. * 432, 2; Ro., II. 442;—of Cranstane, Jo., I. 37;—of Crammiecruiik, Geo., 205;—Cuthb., hanged for uttering base money, II. 353;—of Deans, Alex., I. 155; Geo., II. 502;—Elizabeth, Tocher to, I. * 317;—EARL OF, II. 494; Alex., Remission to, III. 116, 318;—Gilb., Wm., and Tho., Hamesucken, &c., I. * 180;—of Godscroft, Mr Ja., II. 442;—of Hardeismylne, Wm., Forcible Abduction, &c., (a remarkable case), III. 402, 539;—of Hutounhall, Alex., I. * 487, 48; Sir Jo., Remission to, III. 116; Mr Sam., his brother, also remitted, *ib.*; Sir Jo., 377;—of that ilk, Alex., Great Chamberlain, I. * 2;—of the Hauch, Ro., I. 107, 270; II. 368, 474; his son tried for Slaughter of Lord Spynie, 529;—of Johnnescluche, Gawin, II. 502;—LORD, (EARL OF,) Geo., I. * 143, * 166; Feud with Laird of Edmonstoun, * 180; Spuilzie, &c., * 208; Remissions for assisting him, * 233, * 243; Summoned, * 310; Alex., beheaded, I. * 233; his head taken down from Tolbooth of Edr., * 242; his forfeiture, * 259, * 261, * 262; Assise to, * 296, * 351; Alex., * 393, * 398, * 432, 308; II. 394; III. 396;—Marg., Prioress of North Berwick, I. * 347;—of Manderstoun, Alex., I. * 442, * 487, 5; Slaughter of Lord Methven, &c., 30, 102; II. 13; Sir Geo., III. 403, 414;—MASTER OF, I. * 15;—of Ninewells, And., escheated for Wilful Error, I. * 253, * 432;—of North Berwick, Alex., I. 289, 304; II. 81; Sir Jo., 502; III. 403, 414;—of Pendergaist, Wm., I. * 365; his five sons invaded, &c., *ib.*, 269;—of Polwart, Alex., I. * 146, 159; Pat., 205; II. 402; Sir Pat., 572;—of Rentoune, Alex., II. 582;—of Redheuche, Rob., I. * 413; Cuthb., his son, hanged for vending base coin, II. 353;—of Rowiestoune, Da., II. 403;—of Spott, Geo., I. * 43, * 140, * 272, * 413; tried for Darnley's Murder, 101; acquitted, 107, 149; slain, II. 98; Sir Geo., 218;—of St Leonards, Wm., III. 116; three of his sons remitted, *ib.*;—of Slegden, Jo., III. 416;—of Swanscheill, Mr Jo., III. 529;—of Wedderburn, Geo., I. * 15, * 195; treasonably assisting, * 237, * 239, * 265, * 267, 154, 205, 289; Da., his brother, II. 397; Da., yr., III. 414;—(Tutor of,) Alex., I. * 140;—Mr Wm. beheaded, I. * 233, *note*; taking down his head from Edr. tolbooth, * 243; his gold and jewels escheated, * 307.
- Homicide set at liberty, I. * 442; Magistrates of Edr. tried for so doing, * *ib.* to * 450; Culpable—see Slaughter.
- Hood, Robin, I. * 117, * 275; his banner,

- dresses, &c., *ib.*; the King's, *ib.*; Insurrection in Edr., * 409; in the Mearos, &c., 15.
- Hope, David, hanged, Treason, I. * 142.
- Hopkins, Math., Witch-finder, III. 598.
- Hopper of Bairhoussis, Ja., III. 460.
- Hoppringle of Blyndley, Rob., I. * 230; Assisting the English, * 338; Geo., II. 83;—of Buckholm, Jo., I. 265;—the Clan of, * 71;—of Craigleithe, Alex., * 374, * 433, * 434;—of Heriote-mylne, Ja., III. 452;—of that Ilk, Geo., I. * 433; Ja., 265; Tho., III. 393;—of Muirhouse, Jo., I. * 432;—of Newhall, Alex., * 433;—of Torwoodlee, Dav., * 24; George, * 230; Assisting the English, * 337, 265; Murdered, II. 520; Place of, spoiled, *ib.*; Geo., *ib.*;—of Trynlieknewis, Alex., I. * 374, * 414; John, yr., * 433; Alex., * 434;—of Tynnes, James, * 166, * 339;—of Smallerraig, Jo., * 230;—of Whitebank, Ja., 84, 265, 349; II. 376, 403;—of Woodhouse, Ja., I. 89, 107.
- Horn, being at the, Laird of Kilpatrick slain, while I. * 77; Discussion by Lords of Privy Council, and Act anent Reset of Rebels, &c., I. * 78, * 80. See Rebel, Treason, &c.
- Horne-Hunter, Laird of, I. * 38.
- Horns, 'blawin,' I. * 270; for PRINCE JAMES, * 307.
- Horse and armour, Stouthrief of, II. 453.
- Horse and hattok! a Witch-cry, III. 604; and *note*, 608, &c.
- Horse-racing, I. * 121; III. 447.
- Horses, King's, I. * 301. See Stud.
- Horse-stealing, I. * 22, * 23, * 41, 96. See Stouthrief, &c.; wild horses and mares, * 247; Paul Andesoune hanged, * 400; Wm. Cadenhead hanged, I. * 411; Lyell Hall hanged, * 432; Moffat hanged, 386; Moffat and Adiesoune hanged, II. 357, 359; Davidson of Callelie hanged, 441; Beirope of that Ilk, 515; Alex. and Ja. hanged, III. 241; Peter Davidson and two others hanged, 265.
- Horseburgh of that Ilk, Alex., I. * 133, * 424;—of Harkes, Alex., II. 128, 355;—Tho., hanged, and afterwards decapitated, and his right hand struck off, &c., for Murder and Robbery, II. 422.
- Horslie, John, Englishman, I. * 273.
- Houghing of Horses, I. * 103;—of Cattle, * 431, * 433; Rose of Kilravok, II. 67;—of Oxen, &c., Jo. Johnstoun of Lochhouse, beheaded, 425; III. 251; three men hanged, *ib.*
- Hounds sent to France, I. * 277; expense of the King's, I. * 282; K. JAMES VI. offers a horse, worth L.100, for recovery of two strayed, II. 242; proclamations against their detainers, *ib.*
- House-breaking, during Plague in Perth, I. * 219; house of Bonyntoune broken, II. 340; young Laird hanged, 347; Alex. Daw hanged, *ib.*; Lord Chancellor's house broken, 352; Wm. Creichtoune hanged for do., 353; Moffat and Adieson hanged, 357; And. Reid, 411; And. Rutherford banished, III. 540.
- Household, Master of KING'S, I. * 244; Members of, * 312, * 313; PRINCE'S, * 314; Expenses of, * 317, * 323; his Jurisdiction, II. 91.
- Houstoune of that Ilk, (Laird of,) I. * 82; Jo., * 150, * 167; * 350; Pat., 382; Umbesetting the gait, * 450, 19; Rob., his brother, Slaughter, 69; Pat., 141; Sir Pat., Slaughter by, 182; Feud with Master of Eglington, 352; with young Laird of Glengarnock, 354, 378; Sir Jo., II. 572;—of Lany, Jo., II. 343.
- Howard, Lord Hen., II. 319, 409.
- Howiesoune, Mr Jo., Forging an Act of Parliament, &c., II. 14.
- Howp, (hope,) what, II. 519.
- Howpaslot, Tower of, Stouthrief from, I. * 23; burnt, * 172; Laird of, destroying Woods, &c., I. * 71; barbarous maiming and slaughter of threescore of sheep there, III. 381, &c. See Scott.
- Howlatis and Stymeis, III. 588.
- Huchesone, Sir David, Provost of Rosling, Herys, I. * 255.
- Hudskull, I. * 288.
- Hume. See Home.
- Hunter of Ballagane, Dunc., Intercommuning with, I. * 369; III. 248, 475, 500;—of Haggburne, Ja., Stouthrief, &c., II. 567;—of Halkburn, T., I. * 432;—of Hill-Tarvet, Pat. III. 452;—Hunter of Hunterstoun, Ro., I. 71;—

- HUNSDON, LORD, I. * 510.
- HUNTLEE, EARL OF, Alex., Justiciar, I. * 60, * 62, * 78, * 107; Battle of Corrichie, * 183; Geo., * 163, * 175; challenges the Master of Forbes, judicially, * 185; Jo., gift of the Master of Forbes's, &c., escheat, * 249, * 300, * 302, * 384, * 462, *note*; * 469, * 494, * 503, * 512; Intercommuning with, 33, 75; High Treason, &c., 171; pardoned, 181; Raid against him deserted, 267; denounced, 283; Offers presented by him, 301; to abide trial, 303, 306; Trial for Conspiring against the Religion, 310; Summons of Treason, 314; doom, 316; Tract as to 'the Spanish Blanks,' 317; Slays the Earl of Murray, 358; Trial ordered, 363; warrant from Privy Council to prosecute, *ib.*, &c.;—MARQUIS OF, Geo., III. 24, 79, 409, 419; Warrant from Privy Council to prosecute the 'Societe of the Boyes' with fire and sword, 581.
- Hunting, barbarous torture and savage Murder of a Gentleman, &c., III. 547;—King's Master of, I. * 240; corn destroyed, * 272;—in Megotland, I. * 272, * 285; in Glenarkney, * 278; in Athole, * 279; in Glenfinlas, * 295; the Hunts, * 311, * 323.
- Hurcheone, a hedgehog, I. 253.
- Hurting Crownar of Renfrew, I. * 106;—and wounding, I. * 200; breaking a boy's backbone, III. 477; Jo. Murray hanged, 479, 491, &c. See Wounding.
- Hussie, what, III. 525.
- Huttone, Ro., slain with an 'Otter-staff, with ane tua-granet fork of irne at the end thairof,' III. 499; Hen. Baird beheaded, 500.
- Hyde-the-bastard, III. 385.

I.

- IDIOT, curator to, I. * 254; Theft by one, * 415.
- Idoltry, I. 30. See Mass, &c.
- Ilay, Governor and Sheriff of, I. * 258;—Herald, * 272; III. 81; interesting form of Execution of Summons against E. of Orkney, 86;—Island of, burnt and harried, I. 229.
- Images of Our Lady and St John, I. * 320; hanging Image of St Francis, * 286; breaking Image of St Magdalene, * 335; casting down, in Kirk of Air, *ib.*
- Importation of Artillery, &c. I. * 307.
- Importing and uttering forged money, I. * 137;—Alex. Thomson hanged and forfeited, II. 404. See Forgery, Uttering, &c.
- Impotency, Decree of Divorce on the ground of, I. * 460.
- Imprecation, awful, of K. JA. VI. as to Sir Tho. Overbury's murder, II. 600, *note*.
- Imprisoning, I. * 159, * 165, * 171, * 381; II. 43; III. 212.
- Imp-Tree, or Fairie's Trysting-place, I. 52, 58.
- Incantation, I. 51, 70, 101, 161, 209, 230, &c. See Witchcraft, Sorcery, &c.
- Incarceration, I. * 165. See Imprisoning, &c.
- Incest, I. 459; and Adultery, Ja. Bonar burnt, 22; Marioune Reid, 41; Gibb. Young, 42; Eliz. Prestoun, 83; Marg. Scott, 84; Dame Grizell Scott, *ib.*; Da. Dundas with Countess of Eglinton, 100; Godthray McCulloch of Ardwell, 134; Sir Ja. Hamilton, 167; Ja. Stewart 'wirreit' and 'brunt,' III. 248; Jo. Ramsay of Pryour-Lethame, 257; Jaffray Irwing of Robgill beheaded, 576.
- Incheaffray, Commendator of, &c., I. * 387; Ja., 267; II. 159; present at Gowrie's Conspiracy in KING's suite, 172; his Deposition, 180.
- Inchegarvy, House of, keeping, I. * 281.
- Indictment. See Dittay.
- Infamous and Perjured, &c., Assise declared, I. * 73, * 203; forger, * 375, * 387; Notary, * 402; Margt. Hertsyde declared, for abstracting QUEEN's jewels, II. 556; recalled, 557.
- Inglis of Eistscheill, Tho., III. 268;—of Inglis-tarvet, Alex., I. 60;—of Kilmanny, Jo., * 160; Alex., yr., *ib.*;—of Langlandhill, Wm., False money, &c., * 76, * 81; Jo., * 226;—of Murdestoune, Tho., 35;—of Scheill, Wm., * 457;—Wm. hanged for Treason, * 142;—of Wintermure, Mungo, * 226.

- Ingyret, what, III. 209.
- Innerleithen, Stealing out of Kirk of, I. * 25.
- Innernessane, Burning of, I. * 124.
- INNERMEITH, Richard, LORD, * 136; John, * 346, * 417; Ja., 91, 114; Jo., III. 22.
- Innerwick, Laird of, I. * 413. See Hamilton.
- Innes, And., alias *Cow the jegat*, I. * 376; alias *the Scolar*, *ib.*; Mr Alex., 382; Ro., notary, hanged for falsifying a Charter, II. 104;—of Auchluncarye, Ja., I. * 411;—of Balvany, Ro., III. 436;—of Caibo, Alex., I. * 391;—of Crombye, Alex., * 465, 68;—of Coitis, Ro., 382;—of Dranye (Drymye,) Ja., * 376, * 391;—of that ilk, Alex., yr., * 169; Wm. oppressed, * 376; Sacrilege, &c., *ib.*, * 391;—of Innermarkie, Ro., * 391; Oppression, taking ransom, &c., * 411; invades Commendator of Ardochattan, * 465, 284; beheaded for Murder of E. of Murray, 362;—of Knokcorth, Jo., III. 225;—of Leweharis, Ja., I. * 376; Jo., 201;—of Monbenys, Ja., 376;—of Rothnakenzie, Ro., * 169;—of Touchis, Walt., * 186.
- Invenience, Lord of, I. * 409. See Abbot of Unreasion, Robin Hood, &c.
- Interlining Signet Letters, I. * 346.
- Intercommunicating with Duke of Albany, I. * 16, * 17, * 18; with Thieves of Leven, * 17; Sheriff of Ayr, * 137, &c.; Rebels of Carrick, Bute, and Arran, * 140, &c.; Englishmen, * 332; at Broughty-craig, * 344, * 345; with Laird of Caldwell, * 357; rebels, * 358; Laird of Ballagane, * 369; English, * 406; D. of Chattellarault, &c., against the QUEEN, * 466; with E. of Mar, 136, &c.; Countess of Errol for resetting with E. Bothwell, 366; with the Clan Gregor, II. 414; with Lord Maxwell, III. 91; two persons hanged for, 223, &c. See under parties' names.
- Interpreters allowed to Highlanders, earliest recorded instance, III. 246.
- Insight penishing, II. 70, 443.
- Insulis, Jo. de, III. 2, &c. See Isles.
- Insueoch, remarkable Witch-Confessions there, III. 616, *et seq.*
- Insurrection against the King, Dunkeld, I. * 106; in Burgh of Air, * 204.
- Instrument, using a forged, I. * 222; falsing and forging, 45.
- Intoxication, (using potions, drugs, poison, &c.) I. * 158, * 369, * 419.
- Invading, &c., for Slaughter, I. * 356.
- Invasion of a Sheriff in his fenced Court, I. * 136;—Judicial Arbitration for, * 167, * 172, * 181, * 201, * 238;—of Master of Sempill, * 343;—in a fenced Court, * 456;—of a Minister, &c., II. 416;—Walter Grahame scourged, and his right hand struck off, 417; and taken captive, III. 212;—by the English, I. * 269.
- Inveraray, K. JAMES V. at, I. * 278, * 279.
- Inveresk, battle of, I. 51.
- Ireland, Rebels in, I. * 348.
- Iron-house or 'Cage' for felons, III. 293, &c.
- Irons, punishment of hanging in, I. * 137, * 358; Armstrong, II. 364; Stanfield, III. 198.
- Irving of Ardtanfard, Jo., II. 532; his servant slain by 'the Societe of the Boyis,' *ib.*;—of Bonschaw, Edw., * 431; Geo., III. 576; Agnes Cairletoun, his wife, commits Incest, *ib.*;—of Drum, Alex., I. 206, 284;—of Kynnok, Jo., II. 99;—of Lenturk, Alex., yr., III. 230;—of Moncoffer, Ro., Hamesucken, &c., II. 494; acquitted, *ib.*;—of Robgill, Dav., I. * 431; Jaffray beheaded for Incest with his brother the Laird of Bonschaw's wife, III. 576;—of Saba, (Cava,) Wm., III. 82; his son Wm. slain, 278;—of Wysbie, Gilb., III. 241; Alex., his son, and Wm., his nephew, hanged for horse and sheep stealing, Perjury, &c. *ib.*
- Isla (Yla) Herald, taken prisoner in Orkney, his coat of arms torn, &c., III. 278, 283, 317, &c.
- Island-Lochbroom, Castle of, I. * 305.
- Island-Vernak, in Loch-Katrine, detained against King's Commissioner, III. 235.
- Isles, Angus of the, I. * 46;—Arch, alias *the Clerk*, * 256;—BISHOP OF, Geo., (John,) * 79, * 105; Alex., * 387; and RAPHO; And., III. 14, 109, 366;—Donald of the, I. * 45, * 231, * 234, * 254; besieges Mak-kane, * 262; sustentation of, in Castle of Edr., * 270;—Expedition to, by K. JAMES IV., * 120, * 266; Cannons which passed there, * 272, * 275; silver plate for the King's use, * 302; new Expedition, * 303;

fitting up Ships, &c., *ib.*; victnalling, &c., *ib.*;
Letters from Queen, * 304; hostages sent to
Dunbar, Tamtallon, and the Bass, * 305;
Sasine taken of MacKany's lands, * 307;
Ships to carry Islesmen to the Borders, for
defence of the kingdom, * 324; Proclama-
tion for an expedition against the Islesmen

and Highlanders, 355;—Halks brought from,
* 294;—Sir John of, * 116;—KINGS OF
THE, III. 1;—LORD OF, Jo., I. * 46; III.
2;—Raid of, 118, 202, 225.
Italian Minstrels, I. * 123, &c. See Minstrels.
Italy, Embassy to, I. * 273.

J.

JACK (piece of armour) covered with velvet, I.
* 312.

Jackis, Robert the, an Evil Spirit, III. 606, 614,
&c.

Jak, Rich., beheaded for Slaughter, I. * 27;
Tho., II. 384;—*alias* Scott, Jo., burnt for
Bestiality, 491.

Jakkis that plays vpon the Veolis, I. * 316.

JAMES III., KING, I. * * 6; masses for his soul
at Cambuskenneth, * 295; Chaplain 'fingand
for his fawle,' * 315.

JAMES IV., KING, I. * 1 to * 124, *passim*; his
Coronation, * 114; Selections from his private
and public Expenditure, from * 114 to
* 124; married, * 117; his sports, see App.,
passim; skilled in surgery, &c., * 124; his
Funeral Obsequies, * 259; Letter from KING
OF DENMARK, as to the Earl of Little Egypt,
III. 592. See Q. MARGARET.

JAMES V., KING, I. * 125 to 325, *passim*;
Stoutthreif of his Mangonels and Artillery coming
from Stirling Castle, * 132; Crown and
Jewels stolen, * 133; Raid against Border
Thieves, &c., * 152; attempt to take him and
Duke of Ross out of Stirling Castle, * 233,
* 239; Palace of Linlithgow held against
him, &c., * 255; Selections from his Treas-
urer's Accounts, * 259; Keepers during his
infancy, *ib.*, * 261; Rockers and nurses,
* 263; Invested with the Collar of 'Cok-
kilzeis,' * 265; sent to Craigmillar Castle,
* 266; supposed attempt to carry him to Eng-
land, * 267; silver plate stolen from, * 271;
spends Pasche at Stirling, * 274; Masses said
for his soul's health, * 278; his 'Almous,'
or charities, * 278; at Inveraray, *ib.*, * 279;

solemnly ratifies peace with England, * 283;
shoots with English Archers, &c.; invested
with Order of the Garter, *ib.*, * 289; Golden
Fleece, *ib.*; and St Michael, *ib.*; sends Hawks
to K. of ENGLAND, * 284, * 285; returns
from Argyle, * 284; his study, *ib.*; English-
man employed to make Viols to him, * 285,
* 286; Prayers offered up for his prosperous
return from France, * 286; Barons, &c.,
warned to attend King's reception, *ib.*; entry
with QUEEN MAGDALENE into Edr., * 287;
the Queen's Coronation, death, &c., *ib.*; at
Tamtallon, * 290; married to Q. MARY OF
GUISE, * 292; costly dresses on that occa-
sion, *ib.*; * 293, &c.; public entry, *ib.*; hunt-
ing of Glenfinlas, * 295; sends falcons to
France, *ib.*; his natural sons and daughters.
See Lord James, Lady Jane, &c.; his 'jurn-
nall' * 297; his great Matin-book, *ib.*; his
writing books, *ib.*; gifts to 'Gentill-wemene,'
ib.; his 'pettis' at Falkland, * 299; Plays
and festivities at Uphalyday, *ib.*; his QUEEN
Crowned, *ib.*; both get new Crowns, *ib.*;
his Robe-Royall, kirtle, and hood, * 300;
Golden Rosary, * 301; birth and Baptism of
PRINCE JAMES, * 302; dress for Sea expedi-
tions, *ib.*; New expedition to the Isles,
* 303, * 309; Letter from the Queen, * 304,
'baver' (beaver hat) to him, * 305; 'skin-
cost,' (huff jerkiu,) *ib.*; visits Orkney, *ib.*;
his Privy purse, * 305; at Glamis, * 306;
Embassy to THE EMPEROR, *ib.*; Expedition
to the Borders, with the Barons of Lothian,
&c., * 307; goldsmith work and jewels deliv-
ered to him, in Holyroodhouse, *ib.*; at
Crawfurdjohn, * 310; demands Abbacies of

Coldinghame and Melrose for his natural sons from THE POPE, * 311; Royal Household, * 312; death of QUEEN DOWAGER, * 318; his Dule dresses, *ib.*; goes to the Borders, * 319; sends to Norway for Hawks, * 322; sends horses to the K. OF FRANCE, *ib.*; REGALIA, Crowns for him and his Queen, *ib.*; in Peebles, * 323; drugs to him and Mrs Margaret, *ib.*; Gypsies dance before him, at Holyrood, III. 592; Letter by King, in favour of Johnne Faw, *ib.* See Prince Arthur and Prince James.

JAMES VI., KING, born in Edr. Castle, I. * 479; his Baptism, *ib.*; 'Hiflorie' of, * 490; Raid of Ruthven, &c., 111 to 139, &c. See Treason; his life conspired against by Witches, 209; the interest taken by him in examining Witches, 213, 216, 218; he and his Queen assailed by Witches, on their passage from Denmark, 211, 218, 222, 236; Earl Bothwell uses Witchcraft to take his life, 240, 245; also used by Ewfame Macal;ane of Cliftonhall, 247, &c.; invaded by Earl of Bothwell, &c. in Holyroodhouse, 272; Oration by him in St Giles's Kirk, 357; assailed at Falkland, 275, 276; Presides in person in the Court of Justiciary, 247, 270, 294; II. 161, &c.; Bothwell tried for Raids of Falkland and Holyrood, 294; forfeited, 297; Taxation of L.100,000, previous to the birth of PRINCE HENRY, 306; Baptism of the Prince, at Stirling, 338; preparations for reception of Ambassadors, &c., 339; an Englishman hanged, for slandering him, 385; examines a Witch at Linlithgow, 400; is Besieged in the Tolbooth of Edr., 29; Edw. Johnnestoun fined 3500 merks, 34; vacillation of the King in granting and recalling Precepts, &c., 88, &c.; Gowrie's Conspiracy, 146, &c. *q. v.*; Appendix of Documents illustrative of, 171 to 332, &c.; is present in Parl. at forfeiture of the E. of Gowrie's brother, &c., 161; offers a horse, worth L.100, for two strayed hounds, 242; Proclamations against the detainers, *ib.*; is made a Burgess of Perth, and signs Guild-Book, 247; Embassy from Q. ELIZ., congratulating him on his escape from Gowrie's Consp., 313, 315;

circulars written to the Clergy, 317; Letter from Jo., E. of Gowrie to him, 330; F. Tennent hanged for writing Pasquils, 332; fines Kincaid of Craighouse 2500 merks, & 'his broune horse' 339; King's relentless cruelty in the case of Cornwall, for trivial offences against the Kingly dignity and office, 349, &c. See also under Dicksoun, Tennent, Ross, Narne, &c., for similar instances; gibbet ordered to be taken down and burnt on which Cornwall had attempted to show King's portrait! 351; singular Letter from him, as to punishment of a Mass-Priest, 530; Proceedings against Lord Balmerinoch, for treasonable correspondence with THE POPE, 568; Q. ELIZ. expostulates with him, 571; Gunpowder Plot, 572; his Letter to the Lord Advocate, 577; listens behind the tapestry to hear his Courtiers praise him, (they being aware of his presence,) 590, 592, 593; his awful imprecation as to Sir Thomas Overbury's Murder, 600, *note*; Tuedie scourged and banished for 'vnreverent' speeches as to the King, III. 220; Jo. Ogilvy, Jesuite, declines King's authority, 330; is kept from sleep *ad delirium!* 332; hanged and quartered, *ib.*; Relation of the arbitrary proceedings against him, *ib.*, &c.; his conduct on the scaffold, 350; Jo. Flemyng hanged, for uttering speeches against the King, 359; proceedings against Mr Thomas Roise for writing a Pasquil against the Scots nation, 445; his right hand struck off, and then beheaded, &c., 454; illustrative Papers, 582; at an expense of L.600 he gets Stercovius, a Pole, put to death, in *Poland*, for writing 'a Legend of reproaches' against the Scots! 448. See also *Trials passim*.

JAMES, PRINCE and Steward of Scotland, (DUKE OF ROTHESAY, eldest son of KING JAS. V.,) his birth, I. * 302; baptism, *ib.*; his state Cradle, *ib.* and * 303; his Arms, *ib.*; silver work, * 303; reward to messenger who brought 'tithingis' of his birth to the King, *ib.*; messengers sent to K. OF FRANCE, * 305; his nurse, * 306; silver Plate, Chapel 'geir,' &c., * 306; bear-tooth for, * 307; horn for, *ib.*; his death, * 309; 'dule-weidis' (mourn-

- ing) for, * 310; his household establishment, * 314. See Prince Arthur and Albany.
- JAMES, LORD, Commendator of Kelso, (natural son of K. J. A. V.,) I. * 277, * 295, * 296, * 305;—Commendator of St Andrews, (natural son of K. J. A. V.,) * 295, * 297.
- JANE, LADY, (natural daughter of K. J. A. V.,) I. * 297, * 300, * 314; Dule dress to, * 320; Bessy M'caw, her nurse, * 325.
- Jane, the French Dwarf, I. * 296.
- Jamesoun, Wm., (*Wantoun Will*), beheaded, I. * 219.
- Jardine of Apilgirth, John, I. * 393, * 398, * 442; Alex. burns James of Littlegill, 108; warded in Edr. Castle, *ib.*; breaks ward, 135; Alexr., yr., Slaughter and Fire-raising, 184, 304; Sir Alex., III. 57;—of Birnok, Tho., II. 465; Burning Littlegill, Rape, Adultery, &c., 491; III. 51; beheaded, 58;—Da., Alex., &c., Slaughter, &c., II. 484;—of Dyke, Jo. I. * 142.
- Jasp-stane, 'for stemming of bluid,' III. 564.
- Javelins, I. * 289.
- Javellour, what, III. 483.
- Jedburgh, Abbot of, John, I. * 334; Commendator of, * 451; And., * 483, * 486;—Army of, Conspiring its destruction, * 183;—Justice-aire of, * 16; Expenses of, * 22, * 27; Proclamation, * 64, * 67, * 115, * 309, * 318;—Kirk of, Plundering, * 37;—Raid of, * 256, * 421, * 422;—Rioting in the town of, between the Kerrs and the Turnbills, II. 370.
- Jedwart-stavis, order to put down, and 'for vsing of speris, axis, halbertis, bowis, and culveringis,' I. * 262, * 289, * 295, * 320; ordered to be kept in 'buithis,' in Edinburgh, * 362, * 403. See other weapons under their names.
- Jerveswood, Laird of, I. * 82. See Livingstoun.
- Jester, King's. (See Fool;) I. * 124, &c.
- Jesuites, College, at Gratz, III. 336;—trafficking with, I. 172; proclamation against, 281, 336; Commission of fire and sword against, 337; Jo. Ogilvie tried, III. 330; hanged and quartered, 332; relations of the proceedings against him, *ib.*, &c.; his conduct on the scaffold, 350; his Deposition, &c., 352; Resetting, 371; three persons banished, 376; Sir Ja. Clelland, &c., *ib.*; Resetting two persons banished, 541.
- Jesus, embroidered with crown of thorns, &c., I. 308. See the Appendices to the early reigns for relics, Church ornaments, &c.
- Jewels, KING'S, diamonds, &c., retained for payment of 5900 merks due to a goldsmith, I. 344; QUEEN'S Pearls and jewels abstracted, II. 544; stolen from E. Marischall, III. 562; one of them 6000 merks value, 563; another, 5000 merks, *ib.*; a curious enumeration of other valuable jewels, 564.
- JOHN, LORD, natural son of KING JAMES V., I. * 308.
- Johnnestoun of Auchinsbork, Geo., I. * 86;—of Anchrynnies, Jo., Murder, shooting, &c., II. 493; acquitted, *ib.*;—of Beirholme, Tho., III. 489, 493;—of Brakinsyde, Ja., I. 48; III. 501;—of Brwme, Ro., II. 465;—of Briggis, Ja., III. 35;—of Caskieben, Geo., I. 284; III. 488; Jo., his servant, Murdered, *ib.*;—of Cleuch-heidis, Da., 439;—of Creychtmond, Geo. I. * 454;—of Cottis, Ro. * 397, * 398, * 442;—Craigaburne, Jo. * 442; Ro., II; Tho., 34, 48;—of Corry, Adam, * 229, * 230;—Christian, forcibly carried off, 362; Ed., acquitted of Mutilation, &c., II. 461; Ja., slain, III. 432;—of Curriellaw, Wm., 436;—of Duns-kellie, (*viz.* of that Ilk, *q. v.*) Sir Ja. denounced for breaking Ward from Castle of Edr., I. 297, 305; slays Lord Maxwell, *ib.*, 346, 362, 452; liability as to General Band, 521; is slain by Jo., L. Maxwell, III. 36;—of Erschag, Ja., 489;—of Elphingstoun, And., I. * 330, * 336, * 442; Pat., yr., 148; Ja., 255; Pat., II. 343;—of Eschescheillis, Wm., I. * 165; Wilkin, III. 35; slain, 49;—Edw., hanged, I. * 87; Edw., Treason, Besieging King, &c., in Edr. Tolbooth, fined 3500 merks, II. 29; Ja. 'wirreit,' (strangled,) for Forging coin, &c., 353; Jo., Wearing Pistols, &c., III. 76;—of Fingland, Tho., yr., 438; Slaughter at his funeral, *ib.*, 439; Tho., *ib.*;—of Foulraw, Jok, 439;—Geillis, Witch, Act of Privy Council, 600;—of Gratno, Tho., I. * 85;—of Hayhillis, Wm., 431;—of Haisliebray, Ja., 355; his sons slay the Parson of

- Lochmaben, *ib.*; III. 35;—of Howgill, slain, 50;—of that ilk, (Laird of,) Adam, I. * 41; Jo., his Officers, * 148; found caution of 10,000 merks, * 229, * 274; Hereschip of his cattle by the English, &c., * 348, * 387, * 469, 48; Sir Ja., Slaughter, &c., 184; King's declaration as to his pledges, 346; slays Lord Maxwell, 360; II. 461, 509, 596; III. 29; his picture hanged with the head downwards at the Cross of Edr., 31; shot dead by Lord Maxwell, at a conference, *ib.*, 36; with *two* POISONED bullets, 37;—Tutor of Johnnestoun, Jo., 75;—Jok the Galgeart, I. * 397; Jo., bailie of Water of Leith, III. 9; Gilbert, hanged for Cattle-stealing, &c., 270;—John, (Commandator of Saul-seat,) Fire-raising, &c., I. 12;—of Kynnelheid, Wm., slain, III. 489;—of Kirkhill, Wille, I. * 398;—of Kellobank, Ja., * 402; Wm., 48; Slaughter of Laird of Kynnelheid, III. 489; Wm., yr., and Ja., his sons, *ib.*;—of Kirktoun, Ja., slain, 432, 435; And., 439; his son Jo. slain at a Funeral, *ib.*;—of Lochhouse, Jo., Slaughter, Houghing Oxen, &c., beheaded, II. 425; Ja., III. 500;—of Lockerbie, (Turmour,) Wm., 37; his Deposition as to the Laird of Johnstone's Slaughter, 46, 271; Slaughter, &c., 432; Arch., his brother, *ib.*; Wm., Slaughter, 436; Fra., his brother, slain at the young Laird of England's funeral, 438, 439; Wm., 539;—of Mossoppe, Ro., 489;—of Myreheid, Fra., 439;—of Mostoune, Pat., slain by Lord Glammis, &c., II. 386;—of Newtoun, Ro., I. 13;—of Newbie, Ro., II. 465, 466; Tower of, besieged by widow of Jo., yr., &c., 465; Jo., sen., *ib.*;—of Powdene, Simon, remitted, I. * 244; Tho., 48; Ninian, III. 439;—of Perisbehill, Gav., I. * 431;—Parson of Tunnergarth, Jo., slain, II. 441;—Provost of Annan, Edw., III. 431; of the Quawis, Jo., bringing in Englishmen, Stouthreif, &c., I. * 393;—of Raecleuch, Jo., (Tutor of Johnstone,) III. 75; Ro., 433;—of Ryhill, Edw., 375;—of Tunnergarth, Jo., Slaughter of Laird of Lockerbie's brother at a Funeral, 438; Blench Bell, his wife, *ib.*; Jo., Wm., Fra., and Ja., his sons, *ib.*; And., his son, is slain at the same Funeral, 439;—of Thornik, Capt. Ja., Slaughter of Laird of Wamphray's brother, 501;—of Wamphray, Jo., I. * 86; Ro., III. 271; Sir Ja., 392; Wm., alias *the Galliard*, 441, *note*; Ro., 452; Wm., his brother, slain, 501;—of Westraw, Ja., I. * 436; vmq^o Halbert, *ib.*, 439; Ja., 10; slain, 38; Ja., 184; Ro., his brother, slain, *ib.*; II. 461, 506; Ja., III. 433, 438; Slaughter at a Funeral, 439;—Mr Wm., Minister of Lochmaben, slain, I. 355.
- Jollie, Alesoune, Slaughter by Witchcraft, &c., I. 397; acquitted, 399.
- Jousting, see Tournament, I. * 118, * 323. See Barras. For particulars as to tilting and weapons for the tournament, &c., see the Appendices.
- Jowp-alane, what, II. 156, *note*.
- Judicial Combat. See Combat and Duel.
- Judicium Dei*, appeal to heaven—Ordeals for proof of innocence or guilt of supposed Murderers, III. 184, &c. See Touching, &c.
- 'Junting' dead bodies by Witches, I. 218, 233, 238, 239; II. 477.
- Juratory caution, III. 445.
- Jurisdiction of Bailies, II. 43;—of Bailies and Sheriff of Edr., I. * 129;—Declinature of, 443; II. 4, 81, &c. See Declinature;—King's Chamberlain, 91;—of King and Privy Council, declined, 494; III. 87; Mr And. Creichton sentenced to be *hanged*, 89; banished for life, 90; of Lord High Constable, I. * 351, * 476, 98; II. 91;—of Magistrates of Edr., I. * 129, 98;—in Maritime causes, *ib.*;—Master of King's Household, II. 91;—Sheriff of Peebles, I. * 350.
- Jurnall, the King's, I. * 297.
- Jury. See Assize, Evidence, Wilful Error, Proof, &c.
- Justice, administration of, early Regulations for, I. * 11, * 64, * 389, 162, &c.
- Justice-Clerk, sworn, I. * 126, * 235, * 236, * 254, * 272, * 315, * 328; his jurisdiction declined, * 443; III. 558; and Master of Ceremonies, *ib.* 595; remarkable Letter as to the 'odour' of this appointment, *ib.* 596.
- Justice Courts, anent, I. * 162.

- Justices-General, Earl of Argyle, I. * 244; Sir Simon Preston, * 477; sits in person, II. 428, 491, &c.
- Justice-airs, Signet made for, I. * 256; Proclamations for regulating, * 64, * 389, &c.
- Justiciary of Atholl, I. 83;—Commission of, III. 558;—Serjeant of, I. * 2;—of the West Marches, * 239.
- Justify, to execute or put to death, legally; II. 550, *et passim*.

K.

- KEAS (rooks), Witches take form of, III. 605, &c.
- Keiller, John, a Dominican Friar, burnt for heresy, I. * 210, * 211, &c.; conveying and supplying him, * 221.
- Keir of Cowclarquay, Tho., I. * 454;—Mr Tho., Invading Lord Saltoun, * 476.
- Keith of Auchquhirsk, Alex., II. 539; Wm., his son, beheaded for slaying an Englishman, *ib.*;—of Benholme, Ja., Masterful Theft, &c., III. 563;—of Bodome, Alex., 540; Wm., his son, *ib.*;—of Coklaw, Nath., 540;—of Craig, Ja., 478;—of Drumtochtie, Sir Geo., 483; his brother Mr Alex. slain on the sands of Montrose, *ib.*;—of Harviestoun, Ja., 437, 483;—of Inchejernok, Pat., I. * 148;—of Innergy, Sir Wm., * 78;—of Littledean, Mark, * 229;—LORD, Wm., III. 243;—of Ludquhairn, Wm., I. 382, 384; his house besieged, 388; the Laird taken prisoner, &c., *ib.*; II. 128; Alex., III. 419; Sir Wm., Scourging, Slaughter, &c., 539;—of Northfield, Arch., I. * 148;—of Seatoun, Wm., III. 478;—of Troop, Jo., Fire-raising, II. 41.
- Kello, Mr Jo., Minister, hanged and burnt, I. 14.
- KELLY, EARL OF, Tho., II. 582, *note*. See Erskine of Gogar.
- Kelman, Alex., and Wm. Gardin, hanged for uttering base money, I. 385.
- Kelso and Melrose, James, Abbot of, (natural son of K. JAMES V.) I. * 277, * 295;—of Kelsoland, Tho., * 170;—Town of, resetting E. of Bothwell, 291; fined 1700 merks, 292; remarkable 'Band' subscribed there, III. 394.
- Kemp, (Champion,) the King's, I. * 271.
- Kene, Ja., Bailie of Stalkirk, III. 457.
- Kent, a great staff or bludgeon, II. 519; III. 481, 488, &c.
- Kent, Ro., Oppression, Hamesucken, &c. I. 60.
- Kennedys, Feud betwixt them and the Crawfords, I. * 150;—Historie of the, III. 125, &c.
- Kennedy of Ardmillane, Tho., II. 10, 106;—of Areis, Hew, III. 477;—of Attiquane, Geo., I. * 86; Geo., yr., slain, *ib.*;—of Brunstoun, Wm., * 427;—of Bogend, * 457;—of Blairquhan, Ja., * 138, * 150, * 182, * 219; Jo., II. 106, 108; III. 119, 140;—of Bardrochat, Jo., I. * 138;—of Barquheny, Hew, 84;—of Balliarak, Alex., Slaughter of Spens, a servant of the E. of Cassillis, II. 400;—of Barsalloch, Anth., yr., III. 172;—of Balscherocche, Da., 180;—of Bargany, Tho., I. * 42; Alex., * 138, * 167; oppressed in Air, * 204; his officers deforced, * 251, * 336, * 369; Besieges house of Penkill, * 403; Tho., 20, 141; II. 35; Gilb., 106; Laird of, slain, III. 129; Gilb., 170; slain, 172;—of Balmaclennochan, Gilb., I. * 138; Geo., * 369, * 427, * 457;—of Bennane, Jo., * 138, * 403; Hew, II. 106; III. 171;—Blairquhynnequay, Hew, I. * 427, * 454;—of Culvane, Pat., 20;—Tutor of Cassillis, Tho., 373;—of Corse, Da., Slaughter, II. 480;—of Coiff, (or Culzeane, Tutor of Cassillis,) Sir Tho., slain, III. 177;—of Craigneil, David, Oppression, I. * 55;—of Culzeane, (Tutor of Cassillis,) Jo., slain, * 334; David, 405; Tho., 373; Sir Tho., waylaid by Laird of Auchindrane, II. 35; Tho., yr., 36; Sir Tho., 49, 390; murdered, 565; III. 127, &c. See Muir of Auchindrain; Sir Ja., 120, 127;—of Cove, (Coiff,) Tho., I. * 138, * 405;—of Craigneil, Hew, II. 35;—of Crugiltoun, Ja., III. 477;—of Daljerrok, Pat., yr., I. * 457;—Sir Dav., Capt. of Lochdoun, * 73;—of Dunneyne, Tho., * 138;—of Drumquharne, Alex., 20;—of Drum-

- murquhie, Tho., III. 128, 129, 133; was the principal murderer of Sir Tho. Kennedy of Calzeane, 134; his forfeiture, 140, 166, 173; summons of Treason, 177; forfeited, 180;—Dean Gilbert and Schir James, attempting to restore Popery, I. * 427;—of Dalquharrane, Dunc., * 350, * 457;—of Drumnellane, Pat., * 138; Jo., yr., * 181; Jo., * 453, * 457;—of Dangar, Jo., III. 172;—of Glentig, Alex., I. * 138, * 181;—of Giletree, Jo., * 150;—of Garriehome, Hew, proposal and attempt to murder, III. 137, 165, 172, 177, 180;—Sir Gavin, oppressed, I. * 55;—of Girvanmains, Hew, respited, * 244, * 457; Sir Hew, * 488, 48; II. 106;—of Glennuk, Geo., abiding from Raid of Dumfries, 134;—of Garfar, Wm., III. 153;—of Hallaithes, Jo., 439; Wm., yr., *ib.*;—of Kirkmichaell, Gilb., I. * 138; Mr Lambert, II. 106;—of Knokdone, Ja., * 138, * 181; Walt., II. 106;—of Knokroche, Tho., I. * 182;—of Knokdaw, Tho., Mutilation, * 335; Fergus, II. 106;—of Leswalt, Sir David, oppressed, I. * 89, * 95, &c.;—of Lechland, Martin, slain, * 130;—of Monounsiun, Gilb., III. 180;—of Maxweltonne, Da., yr., Slaughter, &c. II. 461; III. 170;—Ninian, burnt for Heresy, I. * 215;—of Penquhirrey, (Banquherrie,) II. 10; Hew, III. 172, 173;—Provost of Ayr, Hew, 345;—of Smetoune, Jo., 172;—Tho., 'Revising,' I. * 182;—of Turneberry, Wm., III. 172;—of Yet, Alex., I. * 138.
- Keris, Laird of, I. * 457. See Schaw.
- Kerr of Ancrum, Wm., slaughter, I. 36; Wm., yr., 149; Ro., II. 380;—of Bowdene, Jo., 460;—of Bothtown, Ro., III. 390;—Bailie of Lauder, Raulf, 453, 539;—of Brounlandis, And., 569;—of Cesfurd, And., I. * 127; slain, * 133; Walt., * 147; Geo., Tutor of, *ib.*; Sir Walter, * 230; breaking the Band, * 208, * 351, * 378, * 468, * 512; Wm., Warden of the Middle Marches, 293; Sir Ro., yr., 308, 337, 342; II. 11; (see Lord Roxburgh;) Sir Walt., III. 390; remarkable penance enjoined to him for the Slaughter of Sir Walt. Scott of Branxholme, 391; Fend with the Laird of Ormistoun reconciled, 393, 396;—of Caveris, Tho., I. 337; II. 365; assaulted in Jedburgh, 370, 430;—Capt. Tho., I. 344;—of Craling, Tho., (brother to Fairnirst,) II. 370; slain, 445;—of Dolphington, Mark, I. * 29, * 68, * 88, * 127; And., * 208, * 229; Walt., * 468; III. 396;—of Fawdonsyde, And., I. * 432, * 451, * 463, 46; III. 390, 396;—of Fentoune, And., II. 466;—of Grenehill, Ja., 519;—of Graden, And., I. * 147; admitted to free ward, * 419; Tutor of, II. 429; Jo., his son, *ib.*; Ro., III. 391;—of Gateshaw, And., I. * 69; Lancelot, * 147; Rich. III. 390;—of Greenhead, And., I. * 166; Gilb., yr., * 201; Gilb., * 230; And., 149;—Mr Geo. to be wardled and tried, 280; trafficking with Papists as to 'the Spanish Blanks,' 311, &c.; Ro. hanged for Perjury, &c. III. 539;—of Hirsell, Sir Walt., I. * 379; Sir Jo., 282; Adultery, &c., 293; II. 381, 476, 515; Sir And., III. 391;—of the Hoill, Tho., II. 476;—of Kerrisland, Robert, I. * 388, 71;—of Kippeschaw, Mark, III. 390;—of Linton, Ja., I. * 32; Geo., * 139; Ja., * 166; Geo., * 201; III. 390; Wm., 538;—of Lyntellie, Ja., II. 378;—of Littledene, 380, 476;—of Lochtour, Gilb., III. 538;—of Mylnerig, And., II. 506; Mr Jo., his son, strikes a person in the Tolbooth during the sitting of the Lords of Session, III. 73;—Mark, Commendator of Newbottle, (*q. v.*) III. 390;—of Mersington, Ja., I. * 127, * 166, * 182, * 190, * 229; Tho., * 468; III. 390;—of Newtown, Ro., I. 337;—of Newhall, Geo., III. 569;—of Pharnihirst, (Fernihirst,) David, (And.,) I. * 18, * 28, &c., * 88, * 127, * 327; Sir John, * 379; Sir T., * 468; Invaded by Lord Hume, &c., * 487; And., 280, 337; II. 11; Sir And., Provost of Jedburgh, 370; Shooting with hagbuts, Slaughter, &c., 378; Tho., his brother, slain, 421; Sir Tho., III. 390, 396;—of Primsyde-Loche, Ralph, I. * 30, &c.; Gilb., III. 391, 396;—of Pryoraw, Tho., II. 475;—of Steilstokbrayis, Ja., 515;—of the Schaw, Ro., III. 69;—of Sunderlandhall, Tho., I. * 139;—of Spylaw, Sir Jo., II. 405;—Surname of,

- agreement of their Feud with the Scotts, remarkable Contract, &c., III. 390;—of Trearne, Ro., I. * 388;—of Torbet, Ja., III. 391;—of Whiterig, Ja., I. * 69;—of Woidheid, Ro., III. 396;—of Yair, (Zair,) Wm., I. * 87; Tho., * 177, * 230; And., III. 497; Mr Tho., his son, 538.
- Key, Slaughter committed with a large, I. * 396.
- Keyme, Spuilzie of, I. * 112.
- Kids, price of, at Justice-aires, I. * 390.
- Kilbaberton, Lady, healed by a Witch-prayer, I. 234.
- Kilbirny, Place of, broken into, II. 508.
- Kildrummy, besieging Castle of, I. * 246.
- Kildrymmie, Alex., Lord of, III. 541; his cloaks, &c., stolen, *ib.*
- Kilgour, Ro., beheaded, I. * 134.
- Kilnockie, Laird of. See Johnnie Armstrong.
- KILMAWERIS, LORD, Assise on, I. * 263; Wm., III. 122, 316.
- Kilpatrick, Laird of, Ro., slain while at the horn, I. * 77. See Crechtone.
- Kilsythe, Lord. See Levingstoun.
- Kilwinning, Commendator of, Gawin, freed from ward, I. * 436; Intercommuning with D. of Chattellerault, * 466, * 478.
- Kincaid of Cottis, Dav., (Constable of Edr. Castle,) I. * 158, * 230; Ja., 77; Clem., 255; II. 343;—of Craighouse, Jo., Forcible Abduction, II. 336; extraordinary and avaricious conduct of K. JA. VI., 337; he fines the Laird 2500 merks and to give him his 'broune horse,' 339;—of Crymcramp, Ja., I. * 239;—Da., Wounding, &c., * 158;—of Gogar, Jo., portioner, III. 565;—of that Ilk, Tho., respited for Resetting English Traitors, &c., I. * 239; Ja., yr., wounded, &c., * 458, 73; Ja., 98; Malc., his son, slain, *ib.*; II. 337;—Jo., Witch-finder, III. 599; mode of pricking for discovering the Devil's mark, &c., *ib.*, 602;—of Warrestoune, Jo., I. 72; Murdered by his wife, her nurse, and servant, 241, *note*; II. 445; his wife beheaded, 446, 502; her Nurse burnt, 446; Ro. Weir, broken on the wheel, &c., 450; Tho., his barns robbed, III. 564;—Wm. and John, Forcible Abduction, I. * 421.
- Kindly Tenants, III. 18; what, 366, *note*;—lands, 18, &c.; rowmes, 366.
- King's chamber, Wounding in, I. * 85. See Chalmer;—Palace, Slaughter and felony committed in, * 100.
- KING, THE, fomenting discord between him and his Barons, I. * 206;—shooting near his person, 98, 100, 187;—Conspiring his death by Witchcraft, 209, 230;—slandering, an Englishman hanged, 385. See Treason, K. JA. VI., &c.
- King of Barrocht, (Barrauch,) Wm., 208; Feud with Laird of Straloch, 353; Ja., Slaughter, III. 379;—of Bourty, Wm., I. * 148;—of Thieves, *th.*, I. * 155.
- KINGHORN, EARL OF, Pat., II. 572; III. 318;—attempt to restore Popery at town of, I. * 430; assisting E. of Bothwell, 310.
- Kinlochow, Hereship of, I. * 256.
- Kinloss, ABBOT OF, takes oath of K. HENRY VIII. to ratify the Peace, I. * 283, * 285; Edw., 267, 293; II. 139, 159, 319;—LORD, Edw. 319; III. 447. See Bruce.
- Kinmont, Will of, freed from Carlisle Castle by Laird of Buckcleugh, I. 363, 364, &c.
- Kinnaird of Cowbyn, Walt., II. 484;—of that Ilk, Jo., far of, Slaughter of the Laird of Ruthven's servant, 427; Wm., son of, acquitted of Murder under trust, 472; Jo., III. 259;—of Inchesture, Jo., I. * 88, * 424, 28; Ja., II. 427; Pantoun, 472; Ja., yr., acquitted of Murder under trust, *ib.*
- Kinnear of Henderstoune, Jo., I. * 404;—of that Ilk, Da., II. 397; Jo., yr., 430.
- Kinninmonth, (Kinnmoud,) of Callinche, (Kil-duncane,) Mr Walt., yr., III. 429;—of Hill, Wm., I. * 424, * 452;—of that Ilk, Da., III. 429; his son And. slain, *ib.*
- Kinross of Kippenross, Ja., I. 15, 299.
- KINTAILL, LORD, Colin, III. 19, 25.
- Kintyre, Governor, Sheriff, and Justiciary of, I. * 258; Earl of Glencairn's Raid, * 319; horrible barbarities committed there, 224, &c.
- Kirk, see Assembly, &c., grievances, II. 9;—Mr Ja., (servant to E. of Argyle,) III. 233, 250, 252.
- Kirk of Field. See Morton, Daruley, &c.

- Kirkaldy of Grange, Ja., I. * 208; remitted, * 250, * 253, * 337, * 338; Sir Wm., Intercommuning with, * 466, * 478, 33; Wm., II. 3;—Mr Ja., Treason, hanged, I. 45.
- Kirkaldy, Town of, assisting the Earl of Bothwell, I. 310.
- Kirkbride, Rector of, slain, I. * 329.
- Kirkcudbright, Justice-aire of, I. * 52, * 75; expenses, * 317.
- Kirkhill, house of, besieged, I. 174.
- Kirkmaquho, Burning of, I. * 249.
- Kirkmichaell, Laird of, Feud between him and the Laird of Amisfield, I. * 132; Town of, burnt, * 405.
- Kirkoswald, attempt to restore Popery, I. * 427.
- Kirkpatrick, Sir Alex., knt., his servant slain, I. * 86;—of Auchinleck, Mr Sam., III. 271;—of Brakoch, (Bracho,) Ro., I. * 456, 111; Jo., III. 475;—of Closeburn, Sir Tho., I. * 41, * 165; remitted, * 248; to present two Thieves, * 287; Roger, * 398, * 405, * 431, 78, 80, 178; Tbo., 259, 264, 289, 298, 304; Sir Tho., III. 123; Alex., *ib.*; his son tried for Slaughter of Laird of Spott's son, *ib.*, 212; of Ellisland, Jo., yr., l. 111;—of Friarscare, Tho., * 398;—Jo., Slaughter, III. 429;—of Kirkmichaell, Sir Alex., I. * 127; Roger, yr., slain, * 132, * 165; Deadly Feud with the Laird of Amisfield, &c., *ib.*; the Laird mutilated, *ib.*; Wm., * 190; remitted, * 248, * 398, * 405; taken prisoner by young Laird of Drumlanrig, &c., III. 212; Wm., yr., *ib.*;—of Knok, Roger, I. * 87, * 132.
- Kirktoon of Stewartfield, Adam, I. * 147;—of the Tower, 349.
- Kirkwall, Castle of, I. * 257; Convocation at, * 413; seized by E. of Orkney's base son, III. 272, &c. See Orkney.
- Kirkwood, Ja., beheaded, I. * 165.
- Kitchen, King's, Grooms of, I. * 313; 'Turnebroches' in, *ib.*;—door, groom of the, *ib.*;—Court, grooms in, *ib.*
- Kittycrocehill, near Glasgow, Battle of, I. * 237, * 238, * 247.
- Knapska-honnetts, II. 475.
- Knapscall, a steel bonnet, II. 158, 179.
- Kneland, (Clelland,) Mr And., Justice-depute, II. 426, &c.;—of Foskane, Jo., III. 134;—of that Ilk, Wm., I. 35, 63;—of Knowhobhill, Arthur, I. 35;—of Monkland, Sir Ja., resetting Jesuites, III. 376.
- Knives, drawing and stabbing with, in a fenced Court, &c., I. * 330.
- Knockschenoch, Burning the Peile of, I. * 242.
- Knok, (clock,) K. JAMES V.'s, I. * 300, * 305, * 311; the Prince's, * 311, * 316.
- Knollis, Sir Wm., Preceptor of Torphechin, Lord High Treasurer, I. * 2. See Torphechin.
- Knowis of that Ilk, Rob., I. * 361; mutilated, * 364; wounding, * 365.
- Knox, And., Parson of Paisley, III. 14. (See B. of the Isles); Mr Ja., III. 21; Wm., cruelly abused and Murdered, 496;—of that Ilk, (Laird of,) * 150;—of Ramfurly, III. 366; And., Bishop of the Isles, *ib.*
- Kyle, Alex., Stouthrier of Gold and Silver work, I. * 395;—Lollards of, I. * 287.
- Kyndly lands, III. 18, &c., rowmes, 366; tenants, III. 18; what, 366, and *note*.
- Kynloche, Hen., banished for theft, III. 542.

L.

- Labawtie. See Bastie.
- Ladies of rank consult Witches, I. 54.
- Lag, Burning Place of, I. * 160;—Laird of, see Grierson.
- Laing, Alex., Rebellion in Orkney, III. 273; hanged, 283; Tho. hanged for same crimes, *ib.*; his Deposition, 296;—Hendrie, an Evil Spirit, III. 606, 615, &c.
- Laidlaw of Rafflat, Jaquie, Slaughter, &c., II. 370.
- Laird, Wm., *alias* Jo. Guthrie, hanged for Bigamy and Adultery, III. 429.
- Lairdis Jok, II. 520. See also Armstrong.
- Lalow, Sebastian, &c., Egyptians, III. 593.
- Lamb, Witch-superstition as to, III. 608.
- Lambes, (Lammas,) III. 243, and *note*, 614.
- 'Lammas-Evyn,' Raid of Dumfries at, I. * 75.

- Lanark, Justice-aire of, I. * 115, * 116.
 Land-louper loun, III. 525.
 Land-ill, what, I. 51.
 Lanctoun of Erleshauch, Pat., II. 467.
 Lang-irnis, (50 stone weight,) an instrument of torture, I. 376.
 Langlandis of that Ilk, Ja., III. 391, 393; Geo., 396.
 Langside, Battle of, I. 1, 4, 5, &c.. 41.
 Language, Treasonable, spoken against the King, I. * 251. See K. JAMES VI.
 Laugholme, Castle of, I. * 284; house of, burnt, &c., by the Armstrangs, II. 450, 479;—Raid of, I. * 338, * 356.
 La Plume, French Page, I. * 307.
 Lardner, King's, Yeoman of great and petty, I. * 313; Grooms in, *ib.*
 La Touche departs to France, I. * 308.
 Latimer of that Ilk, Rich., hanged, High Treason, receiving English pay, Fire-raising, &c., I. * 348.
 Lathries, Tho., surgeon in Perth, beheaded, II. 85, 100.
 Lauderdale, Inhabitants get Remission, I. * 14.
 LAUDERDALE, VISCOUNT, III. 419.
 Lauder (Lawder) of Balbardie, Gilb., I. * 487, 133; Wm., yr., *ib.*;—of Bass, Sir Robert, * 78; yr., * 143; remitted, * 243; respited, * 250, * 413; Mr Ja. slain by his servant, 89; Geo., 304; Feud with Lord Borthwick, 352; II. 10;—of Blythe, Sir Alex., Just-dep., Provost of Edr., I. * 76, * 79;—of Fountainhall, Sir Jo., I. 257;—Gilb., slain by the Cranstouns, I. 362;—of Hallow, Wm., I. * 159, * 167, * 333, * 487, 11; Sir Wm., 169;—Henry, King's Advocate, I. * 400;—of that Ilk, (Laird of,) Sir Alex., I. * 62; Ro., * 147, * 468; Rich., yr., *ib.*; Ro., III. 569;—Justice-aire of, I. * 14, * 115; Tolbooth burnt, III. 116;—Raid of, I. * 335, * 384;—Supplying English at, I. * 344, * 360; swearing fealty to English General, * 378;—of Todrik, Cuthbert, banged and drawn for Theft, Resetting Thieves, &c., I. * 51;—Wm., beheaded, Treason, &c., I. * 344; Walter beheaded, 89; Wm., Forgery, banished and declared infamous, I. * 375; Wm., baillie of Lauder, slain, III. 116; Wm., baillie of Dunbar, 487;—of Winnoquhe, Alex., I. 74.
 Lauristoun of that Ilk, Tho., &c., (Assisors,) imprisoned for year and day, I. * 203.
 Laven, Castle of, I. * 381.
 Lavendar, (Laundry-woman,) French, I. * 291; King's, * 313.
 Lavers, two silver, I. * 323.
 Law, day of, I. 351.
 Lawburrows, breaking, I. * 94, * 269.
 Lawmond of Innersyne, (that Ilk,) I. * 198; Sir John, * 336; Sir Ja., III. 199; 36 of his followers massacred by Marquis of Argyll, *ib.*
 Lawson of Hieriggis, I. * 333;—of Humble, Ja., 265; II. 459, *note.*
 Lawvete, Chaplains of, to pray for King's (Ja. V.) return, I. * 286.
 Lead for Prince Arthur's burial, I. * 309.
 Learmonth of Dairsye, Sir Pat., I. 23, 114;—of the Hill, Wm., I. 270;—Mr Ro., Justice-depute, I. 366.
 Leasing-making, Wm. Scott hanged, I. * 206.
 Leasing, III. 142.
 Leask of Auchinad, Tho., I. 382;—of that Ilk, Wm., I. 382;—of Haddo, Pat., I. 382.
 Leaver-diarg, or Red-book of Miggerny, III. 481, *note.*
 Leckpreveck of that Ilk, Alex., jr., beheaded, I. * 62;—Robert, banished, I. * 161.
 Lefnorys, Laird of, Remission for Slaughter, I. * 82.
 Legatt, Alex., his Deposition as to Orkney Rebellion, III. 299.
 Leidereiff, Laird of, slain, I. * 367, * 371.
 Leith of Harthill, Pat., I. * 454; II. 540; III. 560;—Raid of, I. 27, &c.;—Ships arrested there for the use of the Army, I. * 270; Court of Justiciary held there, from Nov. 1571, to Aug. 1572, 25; again in 1596-7, II. 3; assisting Bothwell in taking, II. 21; *eight* English Pirates hanged within flood-mark, III. 99; *thirty* others hanged, 103; Papers as to Pirates, 108, &c.; *two* more hanged, 244.
 Leighton of Ullishavin, (Usan,) Tho., remitted, I. * 252, 264.
 Lekky of Croy, Walt., I. * 166;—of that Ilk, Rich., . * 166; Walt., 282; Alex., slain by

- Laird of Calderwood, &c., III. 493 ;—of Kypdarroch, Ro., yr., III. 583.
- Lennox, County or District of, Burning and Hereschip of, I. * 246 ; Murders and Stouthriefs by the Macgregors, II. 414, 415 ; severals hanged, *ib.* ;—Field of, 418, 424, 430 ; said to have been instigated by the Duchess of Lennox, 434. See MacGregor, 457 ; III. 223 ;—of Caly, Wm., oppressed, I. * 53 ; Wm., yr., Killing Salmon, &c., * 54 ; Striking a Messenger-at-arms, * 75 ;—DUKE OF, Esme, I. 98, 122 ; Lud., King's Lieutenant, 303, 307, 344, 348 ; assists King at Gowrie's Conspiracy, II. 153, 165 ; his Deposition, 171 ; married to Sophia Ruthven, 297, 590 ; III. 12 ; Great Admiral of Scotland, III. 106 ; heritable Bailie of Regality of Glasgow, 513 ; his Offices, &c., 589, *note* ; his death, *ib.* ;—DUCHESS OF, said to have instigated the Hereschip of the Lennox, II. 434 ;—EARL OF, Jo., Forfeiture recalled, I. * 12 ; slain at Field of Linlithgow, * 228 ; Jo., respited, * 231 ; arraying Battle against Duke of Albany, * 241, * 269 ;—MASTER OF, Math., Forfeiture recalled, I. * 12 ; Rape of his Daughter, * 60 ;—Math., I. * 78 ; Captain of Castle of Dumbarton, * 246 ; dresses for his sisters, * 296, * 297, * 305, * 321 ;—REGENT slain, 41, &c., 87 ;—of Woodhead, Jo., I. * 167.
- Lent, killing, selling, or eating flesh in time of, I. 369.
- Leprosy, charms for, II. 28.
- Leslie, Agnes, relict of the Provost of Elgin, slain, II. 41, 557 ; Alex. B. of Murray, her son, *ib.* ;—of Auchorties, *alias* Bannachy, Jo., I. 119 ;—of Auldcreig, Geo., III. 507 ; Bessie, his natural daughter, (11 years old,) forced and defloired, *ib.* ;—of Barres, Wm., I. * 454 ;—of Buchanistoun, Hen., I. * 148 ;—of Boquhane, (Balquhan,) Will., I. * 184 ; Jo., 119, 175, 207, 209, 300 ; Jo., fiar, III. 444 ;—Captain of Blair, Geo., II. 394 ;—of Cunlie, Wm., I. 209, 255 ; II. 14 ;—of Coklarochy, Wm., I. * 184 ;—of Creechie, Wm., and his wife, Witchcraft, I. 209 ;—of Camellis, Geo., I. 209 ;—of Conrak, Wm., II. 530 ;—of Cultis, Jo., slain by Witchcraft, I. 208 ; Jo., his brother, I. * 298 ; clothes for his marriage, * 318 ;—Geo., Yule-Dress to, I. * 320 ;—of that ilk, I. * 454 ;—of Kineraigy, Alex., I. * 148 ; Geo., III. 401 ;—of Kincragie, Geo., fiar, II. 528 ;—of Kynnyrnrie, Walt, I. * 391 ; of Largie, Jo., I. 119 ;—of New Leslie, Geo., I. * 184 ; Norman, MASTER OF ROTHEs, gift to, I. * 257, * 299, * 300, * 312 ; supplying him, * 358, &c. ;—of Pitcaple, Alex., I. * 184 ;—Rob., Treason, II. 278 ;—of Touche, Geo., I. * 454 ;—of Warthill, Wm., Burning Place of Pitmedden, I. 161, 209 ;—of Warderis, (Wardes,) Alex., yr., Oppression, &c., I. * 328, * 454 ; Jo., slain by Witchcraft, 206, 207, 209 ;—Wm., (son of Geo. E. of Rothies,) I. * 357.
- Lethingtoun of Salteoitis, Pat., I. 142.
- Lethmont of the Craig, Ja., I. * 469.
- Lettaempt beds, the King's, (*Lits-du-camp*), I. * 273, * 283 ; Standards for, * 290.
- Lettronis, (desks, *Fr. lectrin*), I. * 320.
- Levingstoun of Little Airds, Ro., I. 11 ;—of Belstane, Jo., I. 35, 159 ; Alex., III. 494, 495 ;—of Bandone, Tho., II. 76 ;—of Castlecrary, Arch., slain, * 149 ; John, * 404 ;—Christian, 'wirreit and brunt in assis' for Witchcraft, &c., II. 25 ;—of Donypace, Alex., I. * 167, * 383 ; Jo., yr., 119, 351 ; II. 394 ; Jo., 446 ; Jean, his daughter, murders her husband, and is beheaded, *ib.*, &c., 502 ; III. 508 ; Da., 563 ;—of Greenyards, Hen., I. * 453 ;—of Haining, T., I. * 421 ; Mr Tho., brother to the Laird, II. 405 ;—of Halhill, Alex., I. * 62 ; Tho., 36 ;—Jean (Lady Warriestoun), Murders her husband, II. 446 ; her subsequent conduct, confession, and appearance on the scaffold, *ib.*, &c. ; her nurse burnt, 447 ; Ro. Weir, her servant, broken on the wheel, 450 ;—of Jerviswood, (Giriswod,) Ja., I. * 82, * 87, * 167 ; Wm., * 451, 36 ; Ja., II. 541 ; III. 417, 452 ;—of Kilsyth, Wm., remitted, I. * 241 ; Sir Wm., 114, 293 ; II. 496 ; Lord Kilsyth, 597 ; III. 73, 312, 418, 621 ;—LORD, Alex., I. * 167, * 177, * 414 ; Wm., 116 ; Alex. 293, 304 ; Proclamation that none accompany him to his 'day of Law,' 351 ; Feud with Lairds of Airth and Luss, 352. See Linlithgow ;—MASTER OF, Alex., I. 91, 114 ;—of Pantoun,

- Tho., II. 502;—of Pantoskane, (Bantaskan,) Alex., I. 292;—of Prestonoe, Jo., I. * 421; II. 10;—of Salcoittis, Pat., II. 343;—of Westquarter, Ro., I. 59; II. 502;—of War-randhill, Alex., I. * 385.
- Leven, Thieves of, bringing them in, I. * 17, &c., * 238.
- Lever-Schot, what, II. 536.
- Levying War against the King's Lieutenants, I. * 134.
- Lewis, Island of. See Macleod; Lands of, set, I. * 102; Hereschip and Burning, &c., III. 244.
- Lewis, Jo., besieging Waughton, &c., beheaded, I. 8.
- Lilbhis, magical incantations, I. 77.
- Lichtis, lungs, III. 521.
- Liddell of Halkerstoune, Ninian, slain, I. 46.
- Liddisdail, Inhabitants free to frequent markets, &c., I. * 245; remitted, *ib.*;—good rule to be kept, * 111;—Raid against Border Thieves, * 134, * 152.
- Life, opinions of the ancients that it was resident in the blood, III. 182, &c.
- Lindesay, Alex., Captain of Fynnevin, I. * 347;—of Auchinskeach, Jo., II. 490; III. 271;—of Ballingscho, Sir Jo., I. 280; II. 135;—of Blairiefedden, Harie, 135; Da., his uncle, *ib.*; Harie, Slaughter, III. 248;—of Brodland, Alex., II. 363; Mr Ja., his son, Slaughter of Lord Spynie, 529;—of Barrese, Jo., 529; Mr Jo., his son, Slaughter of Lord Spynie, *ib.*;—of Balcarras, Sir Jo., Lord Men-mure, III. 62;—of Balgaveis, (Balgavy,) Mr Walt, I. 282; Sir Walt, Murdered, III. 62, 65; by the Master of Crawford, *ib.*, 248; Da., *ib.*, 307;—of Barnyardis, Dav., I. 28;—of Ballul, Mungo, * 166, * 451; II. 438, 439;—of Carrestoune, Sir Harie, Shooting Hagbuts and Pistolets, 409, 529;—of Canterland, Mr Alex., Slaughter of Lord Spynie, III. 63;—of Covingtoun, (Colbintoune,) Jo., Remission, I. * 257, * 369; Feud with Somervilles, *ib.*, * 383, * 437, * 469, 15; Fire-raising, 109, 166; II. 452; Geo., his brother, Slaughter of Lord Spynie, 529;—of Corbasket, Alex., yr., I. * 62;—Sir Da., yr., fights young Laird of Pittarrow and their 'complices' at the Salt-tron of Edr., III. 61, 65;—Mr Da., Minister, I. 304; his conduct as to Gowrie's Conspiracy, III. 621, &c., (*q. v.*);—of Dowhill, Adam, I. * 160; remitted, * 239, * 253; Ja., II. 416; Pat., III. 583;—of Durrod, I. * 62; Jo., * 132; Ro., * 382, 73, 88; Ro., 133; Alex., Slaughter of Laird of Lokky, III. 493; Jo. his natural brother, *ib.*;—of Edzell, Sir Dav., I. 74, 85; Da., *fiar*, &c., tried for Slaughter of Lord SPYNE, II. 529; trial, III. 61; notice of the facts, &c., *ib.*, 64; Letters to the King, *ib.*;—of Evelik, Jo., II. 515;—of Faisdew, Alex., 135;—of Fairgirthe, Jo., I. 15; Ja., III. 115;—of the Grange, Bernard, II. 452;—of Glenesk, III. 63;—Mr Jo., Parson of Men-muir, I. 101;—of Kynfawnes, Harie, I. 267, 279; III. 248, 316;—of Kynnettillis, Da., II. 529; Harie, his son, Slaughter of Lord Spynie, *ib.*;—LORD, of BYRIS, Jo., I. * 134, * 166, * 185; gift of his escheat given to Douglas of Kilsindy, * 239; Treason, * 271; Pat., * 472, * 473; Murder of David Riccio, * 479, * 500, * 503, 29, 85, 91; Ja., 293, 345, 346; Jo., III. 248;—of the Mount, Sir David, Lion King of Arms, I. * 261; Keeper of K. J. A. V. in his infancy, *ib.*; King's Usher, * 265, * 273; his wife Jonet Douglas, * 275, * 276, * 278, * 292; payment for their services, * 304;—MASTER OF, summoned for Treason, * 268;—of Pyotston, Wm., * 201;—of Quarrelhill, Da., II. 76;—of Raskarrell, And., slain, III. 115;—Rolland beheaded, I. * 159;—of Scheillis, Ja., III. 495;—of Wauchope, Jo., forfeited, I. * 48;—of Woodheid, Sir Jo., II. 135, 136;—of Woodwrae, Sir Jo., 529.
- Lingot, of gold, large, I. * 307.
- Linlithgow, besieging Palace of, I. * 238, * 242;—COUNTESS OF, Helenor, II. 546, *note*;—EARL OF, (see Levingstoun,) Alex., 496, 544; charged with education of the royal family, 546, *note*;—Field of, I. * 228, * 238, * 239, * 240;—Keepership of, * 316;—Raid of, 19;—withholding, * 255.
- Linkhop, Ro., tried for Slaughter, for drowning 60 persons in a ferry-boat, I. 185.
- Lion, a coin, (Hardits or hardheads,) striking, I.

- * 440, * 487;—King at Arms, * 63. See Lindsay, Stewart, &c.;—one of King's Ships, * 317.
- Lisk, what, II. 417; III. 496.
- Listoun, Harie, Murder, &c., III. 572.
- Litter, I. * 291, &c.
- Little, Wm., Provost of Edr., I. 143, 261, 268.
- Littlegill, Place of, burnt, I. 108; again, 184; II. 482;—Laird of, and his daughter, slain, 184; III. 54. See Bailie.
- Litt-hows, what, III. 605; litt-fatt, *ib.*
- Litster, Jo., burnt for Sodomy, II. 491.
- Liveries, Royal, for King's Household, &c., I. * 312, * 313, &c.
- Lochaber, burning of, I. * 101.
- Lochbroom, Castle of, Island, I. * 305.
- Lochdoun, Treasonably taking Castle of, I. * 73; Sir Dav. Kennedy Capt. of, *ib.*
- Lochfergus, burning of, I. * 100.
- Lochinvar. See Gordon.
- Lochirmachus, Laird of, I. * 414.
- Lochleven, Lady, Mistress of K. JAMES V., I. * 298.
- Lochmaben, Castle of, Besieging, I. * 332;—Parish Kirk of, burnt, 305.
- Lochmaben-stane, Raid of, I. * 397, * 398.
- Lochmalearies, (or Lochmabalies,) 40 d. pieces, so called, I. 134.
- Lochmalony of that Ilk, James, I. * 404.
- Lockerby-lick, what, III. 30.
- Lockfast places, breaking up, Wm. Burrell hanged, I. 59.
- Lofthouse, (Loftus,) Robert, banished for concealing 'Paise-Penneis,' *q. v.*
- Logan of Bonington, Geo., II. 10; III. 417, 487; Ro., fiar, 539;—of Brownhill, Geo., I. * 458;—of Cotfield, Ro., * 159; Jo., 10, 72; And., yr., 148, 265; And., III. 255;—of Cowstoune, Jo., II. 355;—of Drumchapill, Jo., fiar, III. 114;—of Grantoune, And., II. 368, 397;—of that Ilk, Geo., 130; III. 475;—Jo., portioner of Restalrig, fined 1000 *l.* for hearing Mass, 254;—Jonet. See Lady Craig;—of Parsonisknowis, Ja., I. 149;—of Rais, 63;—of Restalrig, Sir Ro., * 176; Ro., 148; denounced for Bothwell's Conspiracy, 283; again, 335; Gowrie's Conspiracy, II. 146; Forfeiture of his son, 276; Letters to E. of Gowrie, 257; his *five* Letters, with *fac-simile*, (from the Original MSS.,) 281; Depositions of seven witnesses, 287, (see *Sprott*;) his bones produced in Court, 277; and forfeited, 291;—of Sheriff brayis, Jo., I. 34.
- Logie, Ro., bailie of Queensferry, II. 555.
- Logy-Meigle, Laird of. See Currou.
- Lokkatt of Bar, Jo., I. * 137, * 204, * 352; effecting the escape of a Heretic, *ib.*; Spoliation of Churches, altars, &c., * 353, * 491; Geo., II. 106, 145; Moyses, his brother, Slaughter, &c., 461; III. 171;—of Braidschaw, Alex., 565;—of Cleghorn, Steph., I. * 3, * 4; Mungo, 36, 87; Allan, jr., *ib.*; II. 357;—Geo., strikes a person during the sitting of the Lords of Session, III. 73;—of Kirkwood, Gavin, I. 36;—of Lee, Ja., I. * 76; Allan, beheaded, * 159; Ja., * 232; Allan remitted, * 257; Ja., * 404; Hamesucken, &c., * 410; Mungo, 35; Ja., 36; II. 3, 21, 49; Wearing Pistolets, 61; Invaded by Lord Somerville, *ib.*, 540; III. 101; Murder under colour of law, 205;—of Wicketschaw, Steven, I. 36.
- Lokman, (Hangman,) I. * 274.
- Lollards of Kyle, I. * 287. See Heretics.
- Lorane of Harwood, Hector, II. 510; Wm., his brother, slain, *ib.*; Hector also slain, *ib.*
- Loranes, forging false, I. * 397.
- Lords and Ladies warned to come to the Coronation, I. * 300, &c.
- Lorimers, spurriers, &c. II. 399, &c.
- LOTHIAN, EARL OF, II. 273; Ro., 568, 575; theft from, III. 98, 316, 339; Duel with Lord Cranston's sons, 507.
- LOUDDON, LORD, Hew, III. 318.
- Loupe, Laird of, III. 5; Tutor of, *ib.*
- Louthiane, Mr Wm., Priest, degraded, I. * 275; beheaded for Slaughter, * 151.
- Louranston of that Ilk, Tho., I. * 85.
- LOVAT, LORD, I. * 359; Alex., to present Rebels, * 390; Hew, 33; Simon, 285; And., II. 600, *note*; Sim., III. 20, 284.
- Love, Capt. Peter, and 7 other English Pirates, hanged within flood-mark, III. 99.
- Lovell of Ballumbly, Sir Hen., oppressed, I. * 177; he and Jo., yr., 37; are denounced Rebels, 41.
- Low, Jo., slain, III. 536.

- Lewis, Jo., hanged within flood-mark for Piracy, III. 244.
- Lowise, Jo., King's Fool, I. * 317; Ja., messenger, slain, * 379;—of Menner, (Manor,) Tho., * 87.
- Lowrestoune, Laird of, I. 284.
- Lowrye of Cairnhill, Math., I. 70;—Pat., '*Pait the witch*,' Sorcery, Witchcraft, &c., '*wirreit and brunt*,' II. 477.
- Lowson (Lawson) of Humby, Ro., I. 77.
- Ludquhairn, House of, besieged, I. 388. See Keith.
- Lues Venerea, vid. Grantgore.
- Lugs, cutting off a man's, I. * 475. See Ears.
- Lumfaddis, what, III. 368.
- Lumbart-sleeves, I. 51.
- Lummisden of Airdry, Wm., I. * 157; Ro., II. 60;—of Blanerne, Pat., I. * 144; Jo., yr., * 230;—of Cuschnie, III. 230; Wm., his brother, *ib.*
- Lundores, Commendator of, Pat., II. 53; his servant slain, *ib.*, 73; one of the King's suite at Gowrie's Conspiracy, 172; his Deposition, 181.
- Lundy of Balgony, And., I. * 338; Rob., * 426;—of Conland, Ro., I. 17; And., II. 92;—of Gorthie, Geo., II. 112; his son David slain, *ib.*;—of that ilk, Jo. I. * 183, *note*; Wm., * 426;—of Strathairlie, Jo., I. * 157; And., * 404.
- Lung-Schot, what, II. 536.
- Lunze, the loins, II. 28.
- Lunt, what, III. 369, &c.
- Luss, Lady, waylaid for her slaughter, I. * 178. See Colquhoun.
- Lutrale, (Lutterell,) Sir John, English Captain at Broughty, I. * 345.
- Lute and case to K. JAMES V., I. * 278; strings, * 284; wires for, *ib.*, * 285, * 286.
- Lutherans, diet for their accusation, I. * 278.
- Lyddell of Halkerston, Jo., Slaughter, III. 482.
- Lyell of Murthill, Wm., I. * 404; Tho. III. 88;—of Stanypath, Geo., I. * 85; Jo., * 144, * 147, * 179; John, * 384, * 396; Geo., II. 343; Geo., *far*, 563.
- Lying in wait, II. 61. See Besieging, Umbesetting, &c.
- Lyke-walk, III. 549, 551.
- LYLE, ROBERT, LORD, Great Justiciar of Scotland, I. * 2; Forfeiture recalled, I. * 12, * 19; John, Lord, seizing a Messenger's letters, &c., I. * 157; denouncing Lord Sempill rebel, * 170; slays a Chaplain, * 178.
- Lymmeris, what, III. 398, 547, &c.
- Lyoun of Aulbar, Sir Tho., I. 352; II. 287, *note*; III. 323; of Baldukie, (Master of Glamis,) I. 117, 119, 174;—of Balgellie, Wm., I. 119;—of Colmelegy, Wm., I. * 150;—of Cossynis, Jo., yr., I. 119;—of Easter Ogill, James, slaughter, I. * 408, 119; II. 62;—George, (brother of Jo. L. Glamis,) I. * 328; Ja., 'base son' to the Master, III. 323;—Jo., beheaded for concealing Lady Glamis's Conspiracy, &c., I. * 202;—Wm., flies from justice, I. * 194; dies in Flanders, *ib.*, * 197. See the proceedings against LADY GLAMMIS for pretended Treason, &c., v. Glamis.
- Lysymachus jun., 'a counter-buffe to,' III. 448.

M.

- MACADAM of Craigullane, Wm., III. 118;—of Smeithistonne, Ro., III. 118;—of Watterheid, Gilb., III. 118.
- MacAlexander of Dalreoch, Jo., II. 106; III. 171;—of Drummochreynne, Tho., strangled ('*wirreit*') for Forging and uttering base coin, II. 353.
- MacAllane of Castlewirrie, (Castletirrim,) Ran., V^cEane, III. 542; his wife carried off, &c., *ib.*;—Don. Darg and two others hanged, III. 251. See also MacAlzeane.
- MacAllaster, Donald Mole, hanged for slaughter, &c., I. * 51; Allaster and Angus hanged for Treason, III. 364; Don. V^cEane V^cHenrie, murdered by drowning, &c., III. 489;—of Dounskye, Coll, *far*, III. 553;—of Largs, Donald, remitted, I. * 258;—of Loupe, Alex. remitted, I. * 255.

- MacAlzeane of Cliftounhall, Mr Tho., I. * 444 ;
—Euphame, (of Cliftounhall,) Witch, I. 216 ;
Plots against the life of her father-in-law,
237, 245 ; Conspires against the King's life,
for which she is tried, and for Witchcraft,
Sorcery, &c., 247 ; burnt alive, 257 ;—Mr
Hen., Justice-depute, I. 98, &c., 248 ;—Pat.,
alias Moscrop, Advocate, husband to Eufame,
I. 247, &c.
- MacAlzerach, Michael Dow, an aged man, ban-
ished for Common Theft and Robbery, I. * 53.
- MacAngus (MacDonald) of Glengarie, Don.,
and 13 others, slaughter, II. 413 ; III. 19,
20, 25 ; Fire-raising and Slaughter, 540.
- MacAphie of Colonsay, III. 27.
- MacArrel of Hillhouse, Wm., III. 345.
- MacArliche, Jo., hanged for Treason, III. 365.
- MacAulay of Ardincapill, Alex., I. * 361 ; Walt.,
* 453 ; Aulay, 167, 290, 307, 392 ; II. 105 ;
Intercommuning with the Clan Gregor, 414,
430 ; MacGregor refuses to take part against
him, 435 ; he pays *Calp* to MacGregor, 436,
540 ; III. 264.
- MACBRAIR of Almagill, Ro., 166 ; II. 506 ;—of
that ilk, Arch., beheaded for Slaughter, 158 ;
—Sir Jo., Slaughter of, I. * 39 ; a Canon of
Glenuce (heretic) escapes from Hamilton
Castle, * 352.
- MacBrek, Arch., bearing Mass, &c., II. 442.
- MACCAIG, Andro, Murdered with K. HENRY,
(Darnley), I. * 492.
- MacCall of Boighous, Wm., III. 57 ;—of Little
Fawside, Mungo, his Coal-pits set on fire, III.
361.
- MacCalzeane. See MacAlzeane.
- MacClellan of Auchleane, Sir Wm., III. 150 ;—
of Bomby, Wm., * 85 ; Oppressed, * 90 ;
Stouthrief, Forgery, Cattle-stealing, Oppres-
sion, I. * 55 ; Sir Ro., III. 120 ;—of Middle
Third, Pat., I. * 55 ;—Patrick of Gilestone,
Slaughter, I. * 61 ; beheaded for Cattle-steal-
ing, * 64 ; Pat., Slaughter, * 95 ; Thomas,
respited, * 245 ;—Wm. of Nuntoun, Tutor of,
* 190, * 219, * 229, * 384, * 453 ; Tho.,
* 453, 304 ; Wm., II. 355 ; III. 117.
- MacClennoghane, Dug. and Pat. hanged, I. * 88.
- MacClويد of Dunvegane, Besieged in his House
of Summerdail, I. * 225 ; Besieging Castles
of Carnebog and Duuskaith, * 231 ; Resetting
Donald of the Isles, &c., * 254 ;—of the
Lewis, Torquill, Treason, I. * 45, &c. ;—of
Mynzenes, Jo., I. * 225.
- MacCondachquhy of Ballemanoch, Allan MacGil-
lespik, respited, I. * 253 ;—Jo. Dow Camp-
bell, Tutor of Innerraw, II. 62 ; Jo. hanged
for Treason, III. 364.
- MacConeill of Dunnivaig and Glynnnes, Angus,
Treason, Murder, &c., I. 224, 348 ; his and
his wife's Depositions, III. 9 ; Offers to the
King, 363 ; Letter to the King, 366 ;—of
Knokrynsay, Sir Ja., Treasonable Fire-rais-
ing, &c., III. 1 ; his remarkable escape from
Edr. Castle, 3 ; barbarities towards his father
and mother, &c., 6 ; burns Askomell, *ib.* ; re-
moved from Blackness, 7 ; escapes from Edr.
Castle, *ib.* ; retaken, 8 ; sentenced to be be-
headed, 10 ; escapes and gets to Spain, 3, 10 ;
his deposition, *ib.* ; illustrative documents, 12,
&c. ; E. of Argyll's Report, 27 ; singular
ceremonies, on his meeting with Coll MacGil-
lespic, 20 ; his Offers made to the King, 370 ;
Angus Oig, his brother, III. 3, *note*, 4 ; tried
for Treason, &c., 363 ; hanged along with five
others, 365 ; illustrative documents, *ib.* ; Of-
fers to the King, *ib.* ;—Rannald Oig, his bas-
tard brother, III. 369 ;—Mary carried off, &c.,
III. 542 ;—of Slaitt, Sir Don., III. 542 ; his
sister carried off, *ib.* See *ORME*.
- MacCoule, Ro., starving a man to death, and then
gibbeting his dead body, &c., III. 491.
- MacCulloch of Ardwell, And., I. * 93 ; a rebel,
* 384 ; Gothray, *ib.* ; Incest, 135 ;—of Bar-
holm, Ja., slain, I. 81 ; II. 523 ; Tho., *ib.*,
539 ; III. 328 ; Alex. of Cardernes, I. * 218,
* 219, * 229, *note* ;—of Cardines, Ninian,
Oppression, I. * 52 ; Tearing King's Letters,
* 53 ; Alex., * 253 ;—Jo., merchant, slain,
III. 327 ; Jo. Maxwell, beheaded, *ib.* ;—of
Killaissor, (Killaser.) I. * 93, * 95 ;—of
Myreton, (Merton, Mortoune,) Sir Alex., I.
* 91, * 161 ; Wm., 134, 141 ; II. 539 ; III.
121 ;—of Netoun, Alex., yr., III. 477 ;—of
Torhouse, I. * 398.
- MACDONALD of Ardnamurchan, Chief of the Clan

- Ian, III. 20;—Coll MacGillespie, Slaughter, III. 553;—of Dunniveaig. See Makconneil;—of Glengarie. See MacAngus;—Jo. See Muidertach;—of Keppoch, Alex., III. 22, 25, 250, *note*;—of Largie, III. 26. See MacIan and MacKane.
- MacDonell, Alex., gets gold sword, &c., from L. Lieut. of Ireland, III. 2;—of Benbecula, Ran., III. 542; his wife forcibly carried off, &c., *ib.*; Don., Capt. of Clanranald, (in 1725,) *ib.*;—of Scothouse, Don., III. 19.
- MacDowell of Barjarg, Alex., Slaughter, II. 515;—of Creoches, Pat., Slaughter, II. 515; III. 478;—of Freuche, Fergus, I. * 139, * 181, * 218, * 219; Jo., Slaughter, II. 515; Slaughter of the Laird of Balseir, 477;—of Garthland, And., I. * 88; Uthred, yr., Slaughter, 84; Treason, 119, 127; II. 131; Euf. Dumbar, Lady G., Slaughter, 515;—of Knokincroschie, Jo., I. 85;—of Machermoir, Peter, II. 455; Ro. and Jo., his sons, Mutilation, &c., 492; III. 328;—Tho., of Maccaristoune, (Mackerstoune,) tried for Hamesuckin, &c., I. * 176, * 456, * 469, * 479; II. 10, 14; Sir Wm., III. 539;—of Mondork, Tho., I. * 139; Vchtre, II. 492, 506, 540; III. 88, 134, 552.
- MacDowgall of that Ilk, (Dunnollych,) III. 14; Allan, his son, *ib.*;—of Raray, Jo., III. 233;—of Steidrig, Alex., I. * 456.
- MacDuff, *alias* Barroune, hanged for Gowrie's Conspiracy, II. 155, 246;—of Fadouy, *alias* Barroun, *alias* Fergusson, Da., II. 394; singular instance of Designation in the names of Highlanders, *ib.*;—of Glenelwort, Tho., III. 363; his wife's right arm cut off, *ib.*
- MACEANDOWIE, *alias* Cameron of Lochzell, Allane, Murder, &c., III. 258.
- MacEwin, Jo., and four MacGregors hanged, III. 112.
- MACFARLAN of Ardeische, Walt., I. * 224, * 317;—of Arroquhar, And., * 451; denounced, 348; feud with Earl of Mar, &c., 352; Jo., III. 233, 565;—of Auchinvannell, Parlane MacWalter? III. 114;—of Blairwak, Dunc. III. 565; Wm. MacClane, his servant, slain, *ib.*;—Clan, Murder Sir Humphrey Colquhoun at Bennaehra, II. 431; barbarous torture and savage Murder of a Buchanan, III. 546, &c.;—Geo., taken, I. * 306;—of Gortane, And., III. 565; Jo. Roy, his son, and 8 others, Slaughter, Fire-raising, &c., *ib.*; hanged, 568;—of that Ilk, Sir John? I. * 72, * 224; Dunc. * 223, * 224, * 453, 69, 141; Jo., III. 250, 546, 550;—Isob., branded and banished, I. * 346;—Jo. MacRobert, hanged for burning Ardochbeg, Sorning, &c., * 225;—Ro., Christiana, and Dunc. find caution, * 227.
- MacFingane. See MacKinnon.
- MACGHIE, John, of Plomtoun, Oppression, I. * 54.
- Macgill of Cranstoun-Riddell, Mr Da., Lord Advocate, I. 206, &c., *passim*; Mr Ja., III. 540; his house broken, &c., *ib.*;—Dame Eliz. Lady Culzeane, II. 36; relict of Sir Tho. Kennedy, 391;—of Nisbett, Mr Da., I. 261, &c.;—of Rankeillor-nether, Clerk Register, * 479; Ja., Advocate, II. 112.
- MacGilleoun, (MacLean,) Hector, of Doward, I. * 169, * 241;—John Oig, Treason, * 50;—of Lochbui, Jo., his son slain, * 247, * 252.
- MacGillespie, Coill, III. 19, 20; strange ceremony at meeting with Makconneil, *ib.*, 27; takes Castle of Dunniveaig, 363; surrenders to Argyle, 364.
- MacGillibred, Jo. MacEwin, &c., I. 225.
- MacGhilliechallum (Stewart) of Tennandrie, Jo. Dow, II. 528; Allaster, his brother, hanged, 529.
- MacGillievoriche, Petrie, hanged for Murder under trust, III. 230.
- MacGregor of Glenstray, (Chief,) Allester, II. 102, 414, 419. See account of Field of Lennox, or Conflict of Glenfruite, 430; he and four others hanged and quartered, 433; Documents illustrative of the history of this affair, *ib.*, &c.; was infamously betrayed by Argyll, 434; his Declaration, 435; hanged his own height above the rest of his Clan, 434; III. 223; Dun., Tutor of, 250; Allaster, 537;—Intercommuning with. See Clan Gregor;—Laird of, I. * 317, * 319; II. 62; Jo. Dow, his son, and others, 63; Murder

- and Reiff on the Laird of Luss's lands, II. 414; Mac-Coule-kere, I. * 164;—of Moirinsche, Dnn., (Dowglas,) Tutor of Glenstray, III. 250;—Pat., I. * 170; Jo., &c., beheaded, II. 419; Duggal and Neill hanged, 424; Jo. Dow MacEwin and ten others hanged, 436; Neill hanged, 438; Malc. and three others hanged, 439; Dougall, &c., Slaughter, III. 223; Gregor Beg and nine others hanged, 232; Dunc. MacPatrik and five others hanged, 249;—Ro. Abroche slain, 223, 537.
- MacGrume, Eugenius, hanged, I. * 81.
- MACHECTOR, an Evil Spirit, III. 606, 614, &c.
- MACIAN of Ardoamurchan, Jo., I. * 233, * 229; III. 20;—of Castleirrim, Ran., 542; his wife forcibly carried off, *ib.*; Don. Mac-Allan, Capt. of Clan Ranald, 19. See Mac-Donald.
- MacIveane of Gremmat, Pat., III. 172; Jo., yr., *ib.*; made prisoner by Laird of Drummurquhie, 179.
- MacIntosh, (Malcolm Tosche,) of Abirairdour, Dunc., III. 266;—Captain of Clanquhattane, I. * 243;—of Dunnachtie, Lach., 33, 285; II. 97, 102, 507;—of Esseiche, (Essy,) Wm., Slaughter, II. 102; and taking captive, III. 266; Hector, 'allya' and kinsman of, I. * 256—Intercommuning with, * 175;—Laird of, * 116; respited, * 243, * 286; Will., his son, and five others, Slaughter, II. 507; Sir Lauch., III. 14.
- MACJAMES, Jo. Macallaster and And., Fire-raising, &c., III. 370.
- MACKANE, (See also MacIan,) besieged by Donald of the Isles, I. * 262; Sasine taken of his lands, * 307; Earl of Argyle resigns them in the hands of the Crown, * 312;—of Ardnamurchan, Jo., Slaughter, III. 483;—of Rava, Alex. MacGilbetoun, Besieging Summerdaill, &c., I. * 225.
- MacKe, Alex., banished for selling Poison, &c., I. * 203.
- MacKenzie of Culcovie, Mr Alex., III. 552;—of Cultellan, Rorie, II. 413;—of Fardane, Alex., yr., I. 200;—Mr Jo., Archdean of Ross, 27 of his houses burnt, III. 541;—of Kintail, Jo., respited, I. * 245; Colin, I. 285; Kenneth, 337;—of Roystoun, Sir Ja., (Lord Roystoun,) 257;—of Sturdrum, Alex., yr., 200.
- MacKie of Balseir, Alex., slain, III. 477;—Donald, respited, I. * 248; Pat. hanged for Forging money, 134; Harb., slain, III. 544;—of Far, Y, (Odo,) invades Sutherland, &c., I. 68; Don. wounded by the E. of Caithness, III. 231; Don., far of, Slaughter of the Lairds of Stirrco and Dyn, 235;—of Glassak, Jo., Murdered under trust, &c., 473; Jo. Maxwell of Garrarie and Geo., his son, beheaded, 477; Nianane, 474;—of Larg, Sir Pat., 460, 475;—of Myrtone, Jo., I. * 92; Rich., * 384; Arch. 134;—of Sanday, * 170.
- MacKillope, 'the fiddler,' slain, II. 437.
- MacKinnon (of that ilk) of Strathordill, Sir Lauch. III. 19; Forcible Abduction, 542.
- MacKippoune, Duncan Dow, hanged, I. * 225.
- MACLEAN and Clanranald, Feud between, I. * 169;—of Coll., Lauch. III. 19;—of Doward, I. * 231, * 234; respited, * 245, * 246, * 254, * 258; Lauchlan, Treason, Murder, &c., 224; murders threescore persons, 229; four-score men slain, besides women and children, 230; III. 6; Hector, (Eachin Oig.) 19, 25; delivers his Castle to the King's Lieut., 368;—of that ilk and Harris, Rorie-more, 19;—of Lochbuy, (see Macgilleoun,) I. * 234, * 247; Hectour Ow, III. 19;—Lord, (Laird,) I. * 281; English ship taken by, * 281; sends Hawks to the King, * 294;—Wm., slain, &c., III. 565.
- MacLeod of Assint, (see MacClويد,) I. 68; Neil Angussone burns Dornoch, &c., *ib.*; beheaded, 69;—of Dunvegane, remitted, * 234;—of Harris, Neill, III. 102;—Tormond, wastes and burns Lewis, 245; Piracy, *ib.* See MacClويد.—of the Lewis, Torquill, High Treason, I. * 45; his lands let to Earl of Huntlie, &c., * 102, 107; Neill takes English Pirates, III. 100; Neill, natural son to Rorie, Fire-raising, Piracy, &c., 244; hanged, &c., 247.
- MacLellane. See MacClellane.
- MACMATHE of Corsebank, Jo., III. 247, 493;—of Schaw, Ja., III. 271.

- MacMillan of Knockingarroch, Don., III. 118.
- MacMorran of Glasspen, Jo., III. 57; Ja., yr. *ib.* 124; Ja., III. 387;—Jo., bailie of Edinburgh, killed by a boy, at a riot in the High School, there, 195, *note*; 349, 362, III. 239.
- MacMoylane, Jo. Gair, hanged for Treason, III. 364.
- MACNACHT of Doungoncht, Jo., III. 118;—Ja., Forcing, (Rape,) III. 499;—of Kilquhannite, Jo., slaughter, I. * 327; slain, III. 229.
- MacNachtene of Dundarroch, Alex., I. 68.
- MacNeill, Chief of the Clau, Torquill, gift of Giga's lands, I. * 246;—of Gaeya (Gigha) Gillicallum, I. * 246.
- MACONEILL of Dunnyvaig and Glennis, Angus, I. 224, 348; Ja., III. 1. See MacConeill.
- MACPHATRICK, Allaster, &c., slaughter, III. 554.
- MacPhie of Collonsay, Malc., &c. slain, III. 553.
- MACQUHARVE of Auchtale, Ja., I. 35.
- MACRANALD-BANE, Donald, High Treason, I. * 45.
- MacRanald of Easter Leyis, Allan, II. 96; his son Allester slain, *ib.*; slaughter, 98;—of Gargowoche, Allaster, III. 250;—of Kepoche, *ib.*, *note*;—of Vlladill, Angus, 481; Allan, his brother, murdered by the Laird of Glenlyoun, *ib.*
- MacRerik, of the Kerne, Ja., III., 93.
- MacRinnyl of Barneill, Ja., I. * 138.
- MacRone, Janet, Forced, III. 499. *
- MACSORLE of the Route, Sir Ja., III. 19, 23, Sir Ronald, 370.
- MACTEYR, Gilbert, beheaded, Stouthreif, &c. * 361.
- MACWALTER of Auchinvannell, Parlane, III. 114.
- MacWilliam *alias* Herrach, Angus, wounded and made prisoner by E. of Caithness, III. 231.
- MACERS, I. * 316.
- Machetema, Cornelius de, Dutchman, slain by the E. of Cassillis, Lo. Sempill, &c., in time of Parliament, I. * 236, * 238.
- Madman, slaughter by an alleged, I. * 363. See also Idiot, Slaughter, &c.
- MAGDALENE, QUEEN, (of James V.,) I. * 190; convoy from France, * 251; entry into Edr., * 287; Coronation, interment, and obsequies, *ib.*; Public mourning, *ib.*, *note*; 'grathing and howelling,' (embalming,) * 292; 'saul-
- mess' and 'Dirige,' I. * 293; suffrage for, * 297, * 304, * 310, * 319, * 322.
- Magistrates of Edr. tried for freeing a Prisoner, I. 442 to 450; form of delivering up a criminal to be executed, III. 98.
- Magna Assisa, I. * 391.
- Magnus, Doctor, (Ambassador,) I. * 271, * 283.
- Maidens of Witch-covens, III. 605, 613, &c.
- Maiden, 'grathing' of the, at the QUEEN'S entry into Edinburgh, I. * 119.
- Maijic-coittis, II. 432.
- Mairtin, And., Secretary to the Earl of Orkney, Rebellion in Orkney, &c., III. 273; hanged, 283; his Confession, 301.
- Maistres, the auld, I. * 311;—the Lady, * 304.
- Maitland of Auchingassill, Ja., I. * 127; John, 159;—of Clonhie, Jo., III. 475;—of Lethingtoun, Rich., I. * 338; Sir Wm., Secretary, * 479; at Riccio's murder, *ib.*, * 507, * 512, * 513;—of Thirlestane, Sir Jo., (Lord Chancellor,) I. 172.
- Malcolmetsche, in ward, in Edr. Castle, I. * 286. See MacIntosh.
- Malcolm the Fule, (Fool,) I. * 273;—Mr Jo., Minister of Perth, (afterwards Principal of St Leon. Coll., St Andrews,) II. 330; Letter from Jo., E. of Gowrie, to him, *ib.*
- Malesoune, a father's, II. 479.
- Malloch, Da., mutilated. See Toscheanch and Oliphant.
- Maltmen, ordered to have ale and malt ready for the Army, I. * 270.
- Mangertoun, Laird of, (Armstrang,) I. * 153; Tho., * 171.
- Mangonels and Artillery, Stouthreif of, I. * 132.
- Manrent, Band of, form of one, I. * 373, &c. See Band.
- Manwell, Mr Ninian, Englishman, Intercommuning with, I. * 406.
- Manswearing, II. 453. See Perjury.
- Marches, West, Raid of, I. * 161;—Just. of, * 239.
- Mares, King's, (forbreeding,) I. * 316, See Royal Stud, &c., and under the names of the Kings and Queens, &c.
- MARGARET, QUEEN, (of JAMES IV.,) her marriage, I. * 117, * 188; her horses, &c., burnt at Dalkeith, * 118; her faction, * 259; at

- the Castle of Blackadder, I. * 261; at Harbottill, in England, * 262; returns to Edin., * 266; recovers her wardrobe, *ib.*; interview with the KING, her son, at Craigmiller, *ib.*; supposed attempt to carry him off to England, * 267; her death and funeral, * 318; Barons and Clergy summoned to attend her 'Tyre-ment,' * 319; Embassy to England, * 320.
- Mark, the Devil's, searching for, &c., III. 601, and Witchcraft *passim*.
- Marchmond Herald, I. * 268, * 273, * 274, * 281.
- March-stones, demolishing and overthrowing them, I. 66.
- Mariones, Georgie, hanged, III. 382.
- MARISCHALL, COUNTESS OF, Dame Marg. Ogilvie, Treasonable and Masterful Stouthreif, &c., III. 562;—EARL OF, Wm., I. * 78, * 259; Feud with Lord Gordon, * 263; with Lord Forbes, * 264, * 300, * 302; Akergill besieged, &c., * 394; Geo., III. 116, 178, 268, 283, 304; Feud with Laird of Meldrum, 353; II. 41, 572; III. 32, 496; his plate, jewels, &c., seized, a little before his death, by the Countess, &c., 562;—MASTER OF, I. 44; II. 494.
- Marjoribanks of Ratho, Tho., I. 155.
- MARR, COUNTESS OF, Agnes, I. 119; Annabill, *ib.*, 265;—EARL OF, Ja., REGENT, * 423; Jo., 117; Forfeited for Raid of Ruthven, 119, 178; Jo., 267, 304; that none accompany him to his 'day of Law,' 351; Feud with Lairds of Garden and Arrochar, 352; Kirk's grievances, II. 9; assists the KING at Gowrie's Conspiracy, 149, 165, 172; his Deposition, 174, 496; III. 22, 205; Lord High Treasurer, 438, 458, 597.
- Marrabas bonnet, I. * 297.
- Marriage of K. JAMES IV., I. * 117;—of K. JAMES V., * 293, &c. See also K. JA. IV., V., VI., and Q. MARY.
- Marriage-presents, I. * 297. See Tocher;—Dress to Lady Errol, * 322, &c.
- Married maidens, charmed cake, &c., II. 537.
- Married women, arguments as to their liability to be tried, &c., I. 41, &c.
- Marrying 'in the fashion of Papistry,' I. * 420;—after excommunication, 189.
- Marshall of Innerpethie, Geo., I. 76;—of Pitcairns, Ja., 132.
- Martain, Jean, 'Maiden' to a Witches' Coven, III. 606, &c.
- Martyrs, Scottish Notices relative to, I. * 209 to * 216. See Heresy, Reformation, &c.
- MARY OF GUISE, QUEEN, (of K. JAMES V.,) her Marriage, I. * 292; triumphal entry, * 293; her nurse, midwife, &c., * 295; embroidery work done by her, in gold and silver, * 296; her CROWN-matrimonial was made of Scottish gold, * 298; goldsmith work for, * 299; belt or girdle of gold of 'the mynde' (mine), with a sapphire, *ib.*; her Robe-Royal, &c., * 300; her Coronation, * 299, * 300, * 301; Sceptre, * 302; writes to the King, in the Isles, * 304; at Glamis, * 308; at Crawfordjohn, * 311; gets Specimen of Gold from the royal Mines, *ib.*; her dule-dresses for the QUEEN DOWAGER, * 319; gold chains, &c., from France, *ib.*; State bed of crimson velvet, &c., *ib.*; Collar of gold set with pearls, * 321; her Painter, *ib.*, 322; Dule-gowns for her and her Ladies, * 322, * 323; CROWN, * 322; golden belt weighing 19½ oz., *ib.*; goes to Peebles, * 323; her materials for Archery, * 324; silver dish stolen from, * 386; her chief Cook robbed, * 406.
- MARY QUEEN OF SCOTS, Conspiracy to seize her person, I. * 461; notices relative to Bothwell's first marriage, *ib.*; Married to Darnley, * 478, * 488; David Riccio murdered in her presence, * 479, &c.; she is warded in her Palace of Holyrood, * 482, &c.; E. Bothwell tried, * 488; French Paris, * 489; Queen's person seized at 'Foul-brigis,' and carried to Dunbar Castle, *ib.* See French Paris's Depositions, * 502, &c. as to her alleged part in DARNLEY'S Murder.
- Masking dresses, &c., I. * 284.
- Mason, Capt., English Pirate, III. 109.
- Mason, King's Master, I. * 315.
- Mass, Celebration of the, I. * 427, * 435. See Reformation, &c.;—Lady Seytoun, &c., 14, 30, 31, 35, 38; hearing it celebrated, II. 348, 442; Mass-priest chained in his Mess-claithes, &c., for 2 hours, and then all his 'Popischue

- baggage brunt, and he Banished for life, II. 531; Mr Ro. Phillope and Ja. Stewart banished, III. 252; Jo. Logan, portioner of Restalrig, fined 1000 *l.*, 254; Jo. Ogilvie hanged, 330; Moffet, 377.
- Mass, ornaments of the, destroyed, I. * 353. See Reformation.
- Massacre of 36 Lamonds, by command of the Marquis of Argyle, III. 199.
- Masses for the soul (see Saul-Mess) of K. J. A. IV., I. * 259;—trental for K. J. A. V. at Quithorne, * 278; before our Lady of Paisley, *ib.*;—trental of, 'for Britonaris sanlis, quhillkis perist at the Port of Aire,' * 279.
- Maser (mazer) stolen, III. 99.
- Massindew (*Maison-Dieu*) in Jedburgh, I. * 377.
- Master of Artillery, I. * 268;—of Ceremonies, III. 558.
- Masterful beggars to be punished, I. * 67;—Reiving by Messengers, * 155;—Stouthreif, Tho. Hardie hanged, II. 441, 473. See Stouthreif, &c.
- Mathow of Balhousie robbed of his Title-deeds, &c., III. 265; Pat. Eviot hanged, *ib.*;—Grissell, stealing a coffer with writings, II. 93; Drowned in the North Loch of Edr., 94; her accomplice scourged, *ib.*
- Mathesoune, Jo., II. 343;—Jo., jr., Oppression, &c., beheaded, I. * 202.
- Matin-book, I. * 296; King's great, * 297, &c.
- Maule (Mawll) of Panmure, Rob., I. * 141; remitted, * 256; Tho., taking captive, &c., * 345.
- Maver of Mawerstown, Mark, III. 230;—of Staynies, Mark, II. 484.
- Maxton of Cultquhay, Rob., I. * 88; Pat., 77.
- Maxwell of Aikenhead, Jo., I. * 43; Walt, * 130; Jo., Tutor of, 289;—of Arenyning, (Aremein,) Tho., Slaughter, III. 229;—of Auchinlarie, Wm., 327; Slaughter by his son Jo., *ib.*;—of Barvannok, Ro., 477;—of Boisfield, Jo., I. * 402;—of Bratoch, Ro., 110;—of Calderwood, Ja., 36; Ja., yr., *ib.*, 133; Sir Ja., 105; Slaughter of the Laird of Lekkie, III. 493; his death attested, 495;—of Castlemilk, Ro., I. 111;—of Conhathie, Rob., * 151; Harb., yr., slain, *ib.*; Edw., brother to, II. 465; Jo., III. 229, 544;—of Cowestanes, Ro., slain, I. 157. See M. of Kirkhill;—of Crostoun (Trostown?) Edw., slain by Wm. Douglas of Lyncluden, &c., III. 90, 95;—of Craigtoun, Edw., rebel, 91;—of Caveris, Mr Wm., 229;—of Caveose, Harbert, II. 259; taken prisoner after burning of Langholme, by the Arminstrangs, 450, 479, 490, 492;—of Cowhill, Arch., 485, 492; Wm., yr., *ib.*; acquitted of Slaughter of the Laird of Kirkhill, 490; III. 229, 560;—of the Coittis, Harb., slain, 167; II. 492;—of Cowglene, Wm., Resetting Jesuites, III. 376;—of Dalquhorne, Pat., slain, II. 71;—of Duncowtedir, Ro., I. 111;—of Dnuwiddie, Sir Ro., 133, 157; slain, 167; II. 492; Ro., III. 11, 35, 41;—of Dargavell, Pat., I. 378; his daughter Rebecca carried off, *ib.*;—of Drumcowtrane, Geo., III. 124;—of Foulbar, Jo., I. * 385;—of Garrarie, Jo., and Geo., his son, Murder under trust, III. 473; beheaded, 477;—of Gribtounne, Wm., Hamesucken, Besieging Tower of Newbie, &c., II. 464, 485;—of the Hillis, Edw., 485; III. 475;—Jo., callit '*Achilles Johnne*,' beheaded for Slaughter, 327;—of Keltoun, Ro., I. 289;—of Kirkconnell, Jo., *ib.*; Ja., III. 495;—of Kirkhill, (Kirkhous or Crovestanes,) Ro., slain, I. 157; II. 485; Wm., *ib.*; III. 11; Cha., 35; Wm., 41;—Lord, Feud between him and Lord Crichton of Sanquhar, I. * 53, * 75, * 85; Slaughter of the Laird of Kilpatrick while at the horn, * 77, * 124; Caution to present felons to trial, * 142;—Rob., * 149, * 151; Justice-depute, * 163, * 184, * 190, * 199; Keeper of Treif Castle, and Steward of Kirkcudbright, * 232; Keeper of Lochmaben Castle, * 233; Steward of Annandale, * 237; Justiciar of West Marches, * 239; Great Admiral, * 251; accompanies Q. MAGDALENE from France, *ib.*, * 259, * 264; keeping Castle of Hermitage, * 284, * 300; poinded for debts, * 307; John, * 387, 111, 114; created EARL OF MORTON, 275; made Warden of West March, *ib.*; Feud with Laird of Closeburn, 298, 305; slain by Sir Ja. Johnstone, *ib.*, 360, and notes; III. 30;—Jo., Treason, II. 557; escapes from Edr. Castle, III. 3, 11,

- III. 47; Murders the Laird of Johnstone, 31; summons of Treason, &c., 33; the Murder is committed with *two poisoned bullets*, 37; sentence, 40; illustrative Papers, 41, &c.; Offers by him, viz. to marry the deceased Laird's daughter, without tocher—that the young Laird should marry LORD HERRIES'S daughter with a dowry of 20,000 merks—and to be banished for 7 years, &c., 51; his execution, &c., 52; Ro., his brother, petitions Privy Council to intercede with the KING, 52;—Intercommuning with, 91, 223;—Theft from Lord M. 92;—of Logane, Alex., 93, 229; Jo., his son, *ib.*;—of Mersyde, Wm., II. 490;—MASTER OF, Ro., III. 229, 475;—of Newlandis, Wm., 493; Ja., his son, Slaughter of Laird of Lekkie, *ib.*;—of Nether Pollock, Jo., I. * 42; Jo., yr., 19, 133;—of Newark, Pat., * 150; Geo., 19, 69; Pat., 355; II. 131; Slaughter of the Laird of Skelmourlie and his son; III. 122; Da., 229; Pat., 264;—of Orchardtounne, Sir Ro., 31;—of Poterak, Ro., 225;—of Pollok, Sir Jo., 377;—of Stanelie, Jo., I. * 130, * 170; Gabriel, attempting to restore Popery, * 427; Pat., slain, 133;—of Southbar, Tho., 69;—of the Schottis, Sir Ro., II. 485;—of Spottis, Sir Ro., his Deposition as to the Laird of Johnstone's Slaughter, &c., III. 43, 229;—of Teling, Alex., Taking Theftboot, I. * 427, 41; Dav., yr., *ib.*; Hugh, II. 600, *note*;—of Tinwald, Edw., Fire-raising, I. 110, 289; II. 105; III. 44;—of the Tower, Ro., 45;—of Terriglis, Sir Wm., I. * 426; Sir Jo., * 428; III. 391;—Wm., 'wirreit' (strangled) for uttering base money, II. 355.
- Maxwell's thorns, III. 30.
- May, Mr Dunc., Fomenting jealousies between the KING and his Barons, &c., I. * 329.
- Maybole, attempt to restore Popery at, I. * 427.
- Mayne, Jo., Forging *harditts*, I. 82.
- Measures, false, II. 88.
- Megerny (Miggerny) Castle burnt, &c., III. 481; the *leavar-diariq*, or Red-book of, *ib.*
- Megotland, Hunting in, I. * 272; none to hunt there till the KING's arrival, * 282, * 285; killing deer and roes there, 48.
- Meldrum of Achquhartieis, And., II. 428; oppressed and taken captive, *ib.*;—of Drumbrek, And., 49; Geo., yr., Treason, Oppression, &c., 428; beheaded and forfeited, 430; Place of, kept against the King's guard, 428; And., 557; III. 230, 365; Geo., 409;—of Fivy, Geo., I. * 187, * 229; respited, * 254; Sir Geo., * 370;—of Haltounne, Geo., yr., II. 76;—Laird of, (Alex. Seytoun,) slain, I. * 149, * 175, &c. See Seytounne;—of Idene (Edane,) Pat., * 150; Tho., Hamesucken, &c., III. 431; Pat., *fiar*, 432; Tho., Usurpation, &c., 460; Pat., yr., 464;—of Moccoffer, Mr Wm., slain, II. 76;—of Ordley, Jo., oppressed, &c., III. 431, 460; Slaughter, &c., 464;—of Rothiebirsbane, And., hurt and robbed, &c., 478;—of Segie, Tho., I. * 157; Da., II. 99.
- Mell, what, III. 405, 510, &c.
- Melrose, ABBOT of, waylaid, I. * 182; his sheep driven to Lintlithgow, * 274; Abbcy of, solicited of THE POPE for a natural son of K. JAMES V., * 311, 205; Commendator of, Ja., II. 380;—Field of, I. * 133;—LORD, Tho., III. 538, &c. See Binning and Hadingtoun, &c.
- 'Melteithe,' a meal, price of, at Justice-aires, I. * 390.
- Melville, Mr And., Master of King's Household, I. 185; his wife lost at sea, *ib.*; II. 91;—of Bruntisland, Sir Ro., 568, *note*; III. 208;—of Carnbee, Jo., yr., I. * 157; Jo., * 160; Sir Ja., 306; Sir Jo., yr., II. 234;—of Halhill, Sir Ja., I. 242;—of Murdocairny, Sir Ro., 267, 293, 350; II. 3, 496, 568;—of Raithe, Sir Jo., I. * 172, * 184, * 190, * 199; remitted, * 250; judicially murdered, * 339;—Capt. Ro., 309;—of Wester Touche, Jo., remitted, * 250.
- MENTEITHE, EARL OF, Alex., I., * 164; Jo., 282;—of Egflischaw, Ro., 82, 83, 285;—MASTER OF, Wm., * 164;—of Pansteid, Harie, and his sons, &c., Stealing corn, &c., III. 564;—of West Kerse, Wm., I. * 167; Sir Jo., II. 600, *note*.
- Menjet, (meinzeit,) what, III. 384, &c.
- Menzie, train, &c., III. 586.

- Menzeis of Auchinsell, Ro., I. * 456;—of Castelhill, Wm., III. 442; Jo. and And., his sons, Murder, *ib.*—of Combreise, (Comerie,) Dunc., 233, 264; Ja., his brother, slain, 537; his house burnt by the MacGregors, *ib.*—of Culterawis, Mr Alex., I. 467;—of Curlie, Gilb., Prov. of Aberdeen, III. 204; Alex., his son, slain, *ib.*—of Enoche, Ja., 501;—of that ilk, Ro., I. * 76; Alex., III. 233, 583;—of Pitfoddellis, Gilb., 205, 206; his green corn cut, &c., 258, 259; Marg., his wife, *ib.*;—of Tilliepowreis, Dav., 205;—of Weem, Ja., I. 141; Alex., 392, 433; III. 264.
- Merche, marrow, III. 587.
- Merecluche, Hereschip of, I. * 36.
- Merleounis and Hawks sent to France, I. * 266.
- Mermadyne, a trinket of diamonds, I. * 293.
- Mertene, Jo., Bailie of Blaikschaw, II. 490.
- Mertonne of Cammo, Tho., I. 310.
- Mertrik-skins, what, I. * 321.
- Merse, Inhabitants of, get Remission, I. * 174; Raid, * 267; charged to defend the country, * 324.
- Merser of Awdy, Laurence, I. * 352, 59;—of Edindowie, Ro., III. 490;—of Mekillour, Laur., II. 63;—of Sawling, Gabriel, I. 134; Ro., III. 134.
- Messenger at Arms, deforcement of, I. * 71, &c. See Deforcement;—maltreated by Sheriff of Murray, II. 564;—deprived for neglect, I. * 63; for ignorance, * 217;—falsifying an execution, * 155; evidents, hanged, 85; his servant hanged, 87;—forging and signeting false Letters, &c., scourged and deprived of his office, II. 455;—hanged for taking black-maill, I. * 356;—imprisoning one and his witnesses, * 345; taking, &c., 205;—Oppression and frauds by, * 154;—sentence against fugitive, * 155;—Slaughter of, * 48, * 379, * 381; Wm. Wauchope beheaded, II. 402;—striking, I. * 75; causing one to eat the whole copies of the Letters to be executed by him, &c., 346;—wounding one, and tearing his Letters, &c. 354.
- Methven of Barnfield, Mr Jo, II. 562;—LORD, Henry, I. * 224, * 355; besieges Place of Dupplin, &c., 25; slain, 30; III. 449.
- Middilmast, (Middlemeist,) Geo., of Grerstone, (Greistoun,) slain, I. * 81, * 87; Tho., * 133, * 147;—of Lilslie-Chapell, Wm., II. 378; Jo., his brother, slain, *ib.*; Slaughter of the Laird of Craling, 445; Wm., Constable of Dumbarton, III. 475;—of Chapell, Wm., III. 569.
- Middletoun, Ja., Slaughter, (a youth of 14,) III. 237; sentenced to be beheaded, 241; banished for life, after six years imprisonment, *ib.*, note, 458;—of Killhill, Jo., I. 29.
- Middle-gerd, (earth,) I. 57, 164; man of the, III. 609. See also Witch Trials.
- MILAN, DUKE OF, I. * 272. See Grosalez.
- Milk, cow's, Witches mode of taking, III. 603; note, 605.
- Miller, Sir Constene, banished, and his right hand struck off, I. * 432.
- Mines, Gold, in Scotland, I. * 298; Dutch miners, *ib.*; Silver, * 302, * 306, &c.
- Ministers (Clergy) exemption claimed by them against passing on Assises, I. 24; praying for the banished, 136, &c.; striking a minister, &c., II. 360; do. while Privy Council was sitting, 416; scourged through Edr., and right hand struck off, 417; the Moderator and several Members of Assembly tried, 494; banished, 503. See Reformation, Assembly, &c.
- Minor, Slaughter by, I. * 16, * 396; acquitted, 453; mutilation by, I. 160.
- Minstrels of England, I. * 118, * 122; French, * 267, 292; Italian, * 314, &c., Violders, * *ib.*
- Mint irons, using them in coining, Alex. Reid hanged, II. 398.
- Minto, Hereschip of, I. * 18; Burning of, 19; Kirk of, 'Pas-pennys' found at, I. * 18.
- Mischancie, III. 5, &c.
- Mischantlie, III. 549, &c.
- Misrule, Lord of. See Robin Hood, &c.
- Missillit, (mussillit,) to go disguised, muffled, or masked, I. 246; Proclamation against riding 'missillit,' 266, 306; III. 383.
- Mitchell, Mr Ja., notice of his Trial for firing at Archb. Sharpe, III. 195, 196; Ja., Murder, by striking with 'kentis and faillis,' and then 'donking' in a 'mylne-leid or dam,' 488.
- Mitchelson of Mortoune, Alex., 155.

- Moder-nakit, stark naked, II. 70; III. 539.
- Moffat of Grantown, Ro., I. * 397, * 398;—of Helbeth, Ja., his son, hanged for Forging and vending base money, II. 353;—of Hewek, Edw., I. * 86;—of Knock, I. * 397, * 398;—Symone, hanged for horse-stealing, &c., I. 386; Nicol, hanged for do., house-breaking, &c., II. 357; Moffat, a Mass-priest, warded, III. 331; Adam, scourged and branded for Perjury, 358; Mr Ja., *alias* Haliburtonne, Jesuite, resetting him, 371; tried for hearing Mass, &c., 377; banished, 379; Wm., Forcible Abduction, &c., (a remarkable case,) 402.
- Moitt, Jo., beheaded for the murder of his wife, III. 481.
- Molle (Mow) of that Ilk, Jo., Hamesucken, &c., I. * 176, * 230;—Slaughter, 256; II. 476, 515; Tho., his brother, 559; Jo., III. 396.
- Moncrieff of that Ilk, Jo., I. * 88; Wm., * 343, * 379, * 466; Alex., his son, taking wages to serve against the QUEEN, * *ib.*; beheaded and quartered, * 467; William yr., 10, 37; Wm., II. 159; Hew, his brother, forfeited in Parl., *ib.*; Mr Jo., Advocate, 166; Wm., 234, 513; III. 583;—of Easter Moncrieff, Mr Jo., Sheriff-dep. of Perthshire, II. 244; III. 583, *note*;—of Pitcreif, (Pittencrieff,) Jo., with Gowrie previous to his Conspiracy, II. 176, 179, 183; his Deposition, 184.
- Moncur of Balluny, Jo., Oppression, &c., I. * 178, * 180;—of Chapelton, Jo., I. * 424; Pat., II. 384, 528;—of that Ilk, II. 528; Jo., his son, *ib.*
- Monocords, a musical instrument, I. * 116.
- MONTROSE, MASTER OF, Wm., abiding from Solway, I. * 241; Jo., 282, 347; married Eliz. Ruthven, II. 297, *note*;—EARL OF, Wm., * 78, * 165, * 167, 74; Jo., 114, 275, 282, 304; Feud with Laird of Calder, &c., 347; Feud with Laird of Thornydykes, 352; combat with Laird of Calder at the Salt Tron, Edr., 361; Chancellor, II. 159; his house broken into and goods stolen, 352, 430, 496, 568, 596; Ja., III. 318;—Reformation preached in town of, I. * 406.
- Montfoid, Jo., yr., of that Ilk, Oppression, &c., I. * 74; Ja., yr., * 133.
- Montrule, Madame, I. * 294, * 295.
- Monyvaird, Kirk of, burnt, slaughter of six score Murrays, with their wives and children, I. * 101;—Lady, III. 465, 480, 452.
- Mons-Meg, I. * 117, &c.
- Montgomery of Auchinhude, Hew, I. 61; III. 119;—of Broomland, Ja., I. * 388;—of Brunstane, Adam, I. 61;—of Giffen, Pa., I. * 420;—of Hazlehead, (Heislet, Heislop,) Hugh, I. * 204, * 369, * 388, * 420, 36; and his spouse oppressed, &c., 60, 61, 99; Mr Alex. and Marg., 'brother-bairnes' to Laird, III. 535;—of Lainshaw, Neill, remitted, * 253; Sir Neill, * 335, * 360, * 369, * 388, * 402, 63, 169; II. 376, 390;—LORD, Justice, I. * 272;—of Makbehill, Robert, I. * 339;—Dame Mariota, (Lady Sempill,) Imprisoning, &c., I. * 381;—MASTER OF, Assise on, I. * 264;—Capt. Ro., 60, 61;—of Scottistoun, Jo., Oppression, &c., I. 60, 66; III. 236; Jo., yr., slain, *ib.*;—of Skelmorlie, Geo., I. * 170; he and Wm., yr., his son, slain, 133; Trial of Maxwell of Newark, III. 122; Sir Ro., 129, 164;—of Stair, (or Stane,) Mr Wm., I. * 161; Hugh, * 388.
- Monorgane (Monorgund) of that Ilk, And., I. * 88, * 177; Gilb., * 424.
- Monro of Aldie, Ro., III. 498;—of Assint, Ro., I. 191; Hugh, 194;—of Dalcarthy, I. * 408;—of Fowlis, Mr Hector, I. 192; remarkable superstition, 202, &c., 285. See Fowlis;—of Kildrummodyis, Hector, I. 203;—of Killry, Hector, I. 198;—of Newmore, And., I. 194;—of Urquhart, Jo., I. 194.
- Monteith of Kerse, Sir Wm., II. 23; Wm., yr., *ib.* See Monteith.
- Monyest, most, III. 23.
- Monypenny of Kynkell, Alex., I. 60;—Mr Mungo, wounding, I. * 328;—of Pitmilley, yr., I. * 478;—of Pilrig, Pat., I. 10; Da., 155; Pat., 186.
- Moore of Powmadie, Geo., III. 541.
- MORAY, EARL OF, &c. See Murray.
- Morbus caducus*, III. 556.
- Morrowing-gilt, I. * 115.
- Morrice-dancers. See Dancer, I. * 124.

- Moryene, Peter the, III. 591.
- Morverne burnt, &c., I. * 247.
- Moranvelay, Monsr., I. * 296.
- More, the, I. * 278; III. 591;—the More lass, *ib.*; christened, 592.
- Mortons, what, II. 432.
- MORTON, EARL OF, (Douglas,) I. * 269; Ja., * 370, * 374, * 384, * 438, * 439, * 469; Riccio's Murder, * 479, * 496, * 503; his servant John Geddes slain, I, 4, &c.; REGENT, Conspiracy against, 32, 70, 72, 111; Process of Treason, and doom of Forfeiture, &c., 113; executed, 115; his head ordered to be taken down from Tolbooth, 116, (note,) 121, 146, 178; Wm., 276, 330, 333; Lord Lieutenant, 342; III. 205;—EARL OF (Maxwell,) Jo., created Warden of the West Marches, I. 275; deprived of Earldom on restoration of title and estates to heir of the Regent, III. 28;—MASTER OF, II. 494; Ro., III. 61;—of Randerstoune, Alex., I. * 404;—of Walkinschaw, Ja., I. * 344.
- Mortymer of Craigievar, Ja., yr. I. 94;—of Flemingtoun, Jo., yr., II. 385;—Geo., Jesuite-Priest, Resetting him, III. 541.
- Moscrop, Mr Jo., plotted against by Witches, I. 237; hanged, II. 35. See MacAlzeane.
- Mosman, Wm., beheaded, I. * 159.
- Mourning, Public, the first instance was for Q. MAGDALENE, I. * 287, *note*; for PRINCE JAMES, * 310; for Q. MARGARET, * 318, * 320, * 322, * 323, &c. See also under the names of Kings and Queens, &c.
- Mousewald, Slaughter of Laird of, I. * 41.
- MOUNTAEGLE, LORD, detects the Gunpowder Treason, II. 590.
- Mow, Wm, Parricide, II. 18; came in the King's will, and fined 1000 \pounds , 19.
- Mowat of Busby, Charles, I. * 166, * 167; re-mitted, * 254, 29, 63; slain, 79;—of Doquhally, Pat., * 454; Magnus, II. 49;—Tho., Theft, III. 233;—of Sewdane, Geo., III. 280;—of Gersestair, Ro., III. 299.
- Mowbray of Barnbougall, Rob., I. * 333, * 335 * 436, 154; Francis, his son, slays Mr Wm. Schaw, 363; Alex., his brother, II. 22; Ro., 320, *note*, 405;—Francis, High Treason, his dead body produced in Court; sentence pronounced, and his corpse gibbeted, drawn, and quartered, &c., II. 277, *note*; details and illustrations of this remarkable case, 405;—of Pitlouer, Ja., I. 60, 78;—(Mowtray?) of Seyfield, Geo., I. 255; II. 99.
- Mowtray of Markinche, Geo., I. 59, 64;—of Seyfield, Ro., III. 453. See Mowbray.
- Moydart, John, (Mudyartach, Moderat, &c.) I, * 323, * 392, &c. See next article.
- Muidertach, John, (MacDonald,) I. * 323, * 392.
- Muirhead of Bulles, Jo., I. * 55;—Kathr. burnt for Witchcraft, I. 395; Mr Jo., notary, hanged, III. 430;—of Lachope, Ja., yr. II. 541; Ja., III. 345.
- Muirfowl, price of, at Justice-aires, I. * 389.
- Muk, Island of, burnt, I. 228.
- Mule, the King's, foot-mantles, &c., for, I. * 288.
- Mull, Island of, burnt, &c., I. * 247.
- Mullikine, Agnes, *alias* Bessie Boswell, banished for Witchcraft, I. * 432.
- Mulray of Markinche, &c. See Mowtray.
- Mummyn, (munning,) Southrief, by way of, I. * 50, * 51, * 271.
- Munitions, see Artillery, I. * 295, * 298, * 306, * 317; expenses of, * 325.
- Munroe, Da., murdered, III. 196; corpse of one of the Murderers bleeds, on approaching the place of murder, *ib.*
- MURDER.—ADAMSOUNE, And., beheaded and quartered, I. * 84; Eliz., murdered by her husband, * 355;—Aitkyne, Ro., beheaded, I. * 475;—Armstrong, Jo., hanged, I. * 173; And., David Riccio's murder, * 485; Sim, *alias* *Waintoun Simie*, Murder of K. HENRY, (Darnley,) * 489; Tho., for murder of Warden of the West Marches, II. 363, has his right hand struck off, and hanged, and then gibbeted in irons, 364. See Armstrong;—BASTIE, Sir Anthony D'Arcy de la, murdered, I. * 235;—Bikertoun, Hen., beheaded, I. * 162;—Black, Hen., and 11 others, III. 53;—Blackadder, Capt. Wm., hanged and quartered for murder of K. HENRY, (Darnley,) I. * 489;—Bonar, Wm., acquitted, II. 531;—BOTHWELL, EARL of, Ja., murder of K. HENRY, (Darnley,) * 488;—Brown, Jonet, hanged,

III. 269; Jo. and 3 others hanged for piracy and murder, under trust, III. 569;—Burn, Jo., I. * 426;—Bynning, Jo., hanged and quartered for DARNLEY'S murder, 95;—CAITHNESS, EARL of, Geo., * 394, III. 498;—Calder, Tho., &c., II. 516;—Campbell of Arkinglase, Jo. I. 391; of Glenlyoun, Dunc. III. 481;—Camerone, Allan, *alias* MacEandowie of Lochzell, &c. III. 258;—Canochsoune, Alex. John, I. * 170;—Colquhoun, Mr Adam, Treasonable Slaughter and Poisoning, &c., I. * 419, hanged and burnt, *ib.*; Helen, Poisons her husband, 80;—Cowan, Agnes, hanged, II. 402;—Craiganis, Murder of Laird of, I. * 163, * 164, &c.;—Cranstoun of Skaittibus, Rich., Murder of David Riccio, I. * 486;—Cruikshank, Ja., hanged, and his head and right hand affixed at Dundee, &c., II. 384;—Cuninghame of Aiket, Wm., poisoned by his wife, I. 80; Pat., beheaded, II. 18;—DALGLIESH, Geo., hanged and quartered, for K. HENRY, (Darnley's,) Murder, I. * 490, his Deposition, * 495, his Confession, * 500;—Deanis, Pat., hanged, II. 517;—Dow, Meg, burnt, I. 186;—Dowglas, Mr Arch., Darnley's Murder, I. 142, acquitted, 154; Pat., burnt, I. 363;—Duncan, Bessie, hanged, III. 430;—ELLIOT of Copschaw, Jo., II. 520;—Elphinstoun, Mr John, Adultery, &c., I. * 356—Erskine, Ro., III. 260, beheaded, 264; Helen, Isabell, and Annas, tried, 266; sentenced to be beheaded, 269; Annas banished, *ib.*;—FERGUSSON, John of Craigdarroch, I. * 79; Wm., decapitated with a sword, I. * 425;—Fischeare, Jo., beheaded, I. * 174;—Fotheringham, James, hanged, I. * 344;—Frude, (Ford?) Laird of, murdered, I. * 426;—GAIRDNER, Grissell, Witch, 'wirreit' and 'brunt,' II. 195;—Galbraith, Ja., beheaded, III. 565;—Geikie, Wm., yr., acquitted, II. 388;—Glen, Wm., I. * 426;—Glorat, Laird of, Murdered, I. * 170;—Gordon of Auchindoun, Sir Pat., and 26 others, &c., I. 284; Ja., barbarous Murder of Laird of Pitmedden, III. 78; of Clubisgoule, Jo., III. 399, 402; of Haddo, Harie, III. 488;—Gracy, Wm., hanged, I. * 344;—HAITLIE, Alex., I. * 451;—

Haitlie, Wm., II. 472;—Hamilton, Tho., called '*unsanyt*,' I. * 126; of Benestoun, Jo., slain, 85; Ja., of Spittelscheill, II. 540, beheaded, 561;—Harrott, Wm., I. * 456;—Haubert, (Howbert,) Nicholas, *alias* French Paris, Murder of K. HENRY, (Darnley,) I. * 489; his Deposition, Aug. 9, * 502; his Deposition, Aug. 10, * 506;—Hay of Tallo, Jo., (apparent of,) hanged and quartered for K. HENRY, (Darnley's,) Murder, I. * 490; his Deposition, * 496; his Confession, * 500;—Henderson, Christopher, hanged, I. * 473; John, hanged, I. * 206; of Boltoune, Jo., hanged and quartered for Darnley's Murder; * 490, his Deposition, * 498; his Confession, * 500;—Hepburne of Whytecastell, Sir Pat., sent., Murder of K. HENRY, (Darnley,) I. * 489;—Hinchelwoid, Ja., hanged, II. 540;—Hodge, Ro., III. 488;—Horsburgh, Tho., hanged, and his head and right hand struck off, II. 423;—Hume of Spott, Geo., Darnley's Murder, &c., I. 101; acquitted, 107;—Hunter, Pat., and John, * 426;—HUNTIE, EARL of, Geo., I. 284;—INNES of Innermarkie, Ro., beheaded for Murder of E. of Murray, I. 362;—JOHNSTONE, Wm., David Riccio's Murder, I. * 485; Jo. of Auchrynnie, and 3 Forbeses, II. 493;—KELLO, Mr Jo., Minister, hanged and burnt, I. 14;—Kinnaird, Ja., and Wm., I. 472;—LAUDER of Bass, Mr Ja., slain, I. 89; Walter, beheaded, *ib.*;—Leighton of Ullishaven, John, Murders his mother and servant, I. * 344;—Listoune, Harie, III. 572; Lital-Johne, Thomas, beheaded, I. * 361;—Lockhart of Lee, Ja., III. 206;—Louthian, Sir Wm., beheaded, I. * 151;—MAXWELL of Garrarie, Jo., and Geo. his son, beheaded, III. 473;—LORD, Jo. for treasonable murder of the Laird of Johnstone, &c. III. 32, &c.;—Menzies, Jo. and And, &c., III. 442;—Mitchell, Ja., III. 488;—Moitt, Jo., beheaded for Murdering his wife, III. 481;—Muir, (See Muir of Auchindrane);—MURRAY, EARL of, Ja., murdered, and place of Dynnibirsell burnt, I. 284;—Wm., Murder of K. HENRY, (Darnley,) * 489;—MACCLARENE, Malc., I. * 441;—MacCulloch, Arch., of Ard-

well, murdered, I. * 99;—MacDonald, Gillespie, MacInnes, Dow, &c. hanged, II. 415; MacDormond, Ja, I. * 441;—MacGillievoriche, Petrie, hanged, III. 230;—MacGrasycht, Jo., I. * 441;—MacGregors, see MacGregor, and Slaughter;—MacKie, Allaster, tried for Reiff, &c., along with the Laird of MacGregor, II. 413; hanged, 414;—MacLean of Dowart, Lauchlan, I. 224;—MacOneill of Dunnivaig, Angus, I. 224;—NEILSON of Assint, Donald and Neil, his son, III. 489;—Nicolsonne, (Nukilsoune,) William, II. 363, acquitted, *ib.*;—ORMESTOUNE of that Ilk, Ja., Murder of K. HENRY, (Darnley,) I. * 489, his Confession, &c., * 511; Hob, uncle to the Laird, Darnley's Murder, I. * 489;—PARK, Ja., III. 495;—Paterson, Geo., I. * 426;—Peebles, *alias* Pardoun, Marioun, 194, murdered corpses bleed on her *touch*, *ib.*;—Pennycaik, Jo., hanged, and right hand struck off, 372;—Pollok, (Powok,) Hugh and Archibald, beheaded, I. * 81; Jonet, 186;—Powrie, Wm., hanged and quartered for K. HENRY, (Darnley's.) Murder, I. * 490; his Depositions, * 493, &c.; his Confession, * 500;—Pratt, Isab., hanged, 371;—QUHITE, Wm., David Riccio's Murder, I. * 483;—RAMSAY, Jo., hanged and decapitated, &c., II. 404; of Pryour Lethame, Jo., Incest and Murder, III. 257;—Reoche, Ja., beheaded, III. 484;—Robertsonne, Alex., the Murder of David Riccio, I. * 486;—Roise of Dunskeillie, William, beheaded, II. 481;—Ross, Jonet, heiress of Craigie and Kinfawns, burnt for the Murder of her husband, brother to the Laird of Balhousie, II. 409, and *note*;—SAWLIE, Jonet, and Lady Ullishaven, (in state of pregnancy,) murdered, I. * 344;—Schaw, Christian, Murder of Regent Murray, I. 23;—Scott of Cambusmichael, Tho., hanged, drawn, and quartered for David Riccio's Murder, I. * 478;—Sinclair, Ja., III. 498;—Spens, Alex., beheaded, II. 76;—Stanfield, Philip, III. 196; hanged in chains, &c., 197;—Steill, John, called *Kempey*, hanged, I. * 126;—Stewart, Pat., beheaded for atrocious Murder, &c., II. 393; Jo. son to Ja., L. Doun,

beheaded for Murder under trust, III. 74;—Stirling, Helen, Lady Ullishaven and her servant murdered by her son, I. * 344;—Swan, Jo., beheaded, II. 542;—SYMPILL (Sempill,) LORD Jo., I. * 163; Wm., Lord, * 164, * 166; Sir John, I. * 163;—Robert, MASTER of, I. * 163, * 166;—TOMSOUNE, Issob., Child Murderer, hanged, II. 540;—Tod, William, beheaded, I. * 355; Geo., Murder of David Riccio, * 486;—Trumble, Tho. and Walt., I. 77; And., 85;—Tulliallan, Laird of, beheaded, I. * 151;—ULLISHAVEN, Lady, &c., Murdered, I. * 344;—VILLOUR, Sebastian de, * Murder of K. HENRY, (Darnley,) escapes, I. * 490;—WALDY, Wm., hanged, I. * 344;—Wardlaw, Marion, II. 423;—Watson, Ja., Murder under trust, hanged, II. 540;—Weir, Beatrix, III. 68; Peter beheaded, 123; Bessie beheaded, 472;—Wenyis, And., beheaded and quartered, I. * 84;—Wilsoune, Pat., Murder of K. HENRY, (Darnley,) I. * 489; Cristian, (*alias the Lanthorne*,) III. 194; a murdered corpse bleeds on her touch, 195;—Wright, William, decapitated with a sword, I. * 424;—YAIR, Henry, murder of David Riccio, I. * 481; hanged, drawn, and quartered, * 482;—Young, Ja., David Riccio's Murder, I. * 484; Jo. hanged, 85.

Murder, remarkable Bond betwixt Earl and Master of Cassillis, for the Murder of the Laird of Auchindrayne, III. 622.

— Ordeals for discovery of, III. 183; superstitions as to touching the corpses of Murdered persons, 143, 165, 182, &c.; Bar-recht or law of the bier, 183; form of the ceremonial, 184; Trials where *touching* was founded upon, 191. —, treasonable, or under trust. See Murder *passim*.

— under colour of law, III. 399, 418, &c. See also under Murder.

Murderer, setting free a, I. * 208.

Murdoch of Camlodden, Pat., mutilated, II. 492; — of that Ilk, Tho., I. * 138; Pat., III. 328; — *alias* MacKie, Wm., Mass Priest, chained at the cross for two hours, and then all his '*Popische baggage* brunt,' and he banished for life, II. 530.

- Mure of Annestoun, John, I. * 382, 71;—of Ar-rochill, Jo., I. * 130;—(Mure) Adam, hanged for Stouthreif, by way of 'mummy,' I. * 51;—of Auchindrayne, Jo., I. * 130, * 138, * 369, * 457, II. 10; shooting at the Laird of Culzean, &c. 35; denounced rebel, 37, 106, 390, 460; Ja., yr., slaughter of Laird of Culzean, &c. 538, 560, 565; their Trial, III., 124; his family, 126; created Baillie of Carrick, *ib.*; forfeited and beheaded, 156; Documents illustrative of their trial and crimes, *ib.*, &c.; young Laird put to the torture, 170; Tho., his son, 175; And. Sinclair, his half-brother, 139, 175; Dalrymple's body bleeds, on being touched, by Mary Mure, John's grandchild, 196; Letter from E. of Cassillis to the KING, 581; young Auchindrayne tortured, 582; Bond betwixt the Earl and Master of Cassillis, to Murder the Laird of Auchindrayne, 622;—of Auchinsoull, Gib., III. 180;—of Balma-guchane, Peter, I. * 54;—of Bogend, Martin, * 130;—of Cloncaird, Pat. I. * 150; Walt., II. 106, 109, III. 128, 135, 171, 173, summons of Treason passed from, 177;—of Craig-Skene, John, II. 460, III. 171;—of Cald-well, Laird of, I. * 82; Sir Jo., &c., * 343; Robert, his son slain, * 350; intercommuning with him and William, his son, rebels, * 357, * 385, * 388; Laird slain, 17; Robert, 18, 71, 91; Robert, brother of John, slain, 183, II. 565;—of Fleit, Ja., III. 130, 135, 136, 164;—Geo., hanged for slaying two Ministers, I. 361; Wm., messenger, slain, 381; Ja., beheaded for slaughter, III. 492;—of Glenheid, Walt., III. 135, 164;—Ja. brother of Laird of Auchindrayne, I. * 369;—of Kettiemuir, Ad., I. 35;—of Knokmarloch, Ro., II. 130; Jo., III. 172;—of Moneyhagen, 126; And., *ib.*; Ja., *ib.*;—of Nesbet, John, I. * 404;—Patrick, oppression, I. * 89, 90, 91;—of Rowallan, * 420, * 428, Jo., feud with the Cuninghames, &c., I. * 56; Mungo, * 137; Wm., yr., 171, II. 390;—of Randerstoun, Wm., II. 565;—Mr Ro., Schoolmaster of Ayr, III. 128;—of Skaitmuir, Alex. I. * 404;—of Tarquyne, (Carquhene,) Jo., III., 180;—of Woidland, John, 135, 136, 172.
- Mures, deadly Feud between them and the Cuninghames, I. * 57.
- Murray of Abercorse, Huchoune, I. * 391;—Sir Adam, knt., * 49;—of Abercairny, And., * 88;—of Aiket, (Haykit,) Cha., his son Jo. slain, II. 53, 73;—of Arbeny, Jo., 166; called 'Mekill Johnne,' 174; was wounded at Gowrie's Conspiracy, *ib.*; his Deposition, 189;—of Balvaired, And., I. * 408, 308; II. 49, 54; slays Laird of Gorthie's son, 112; Sir And., Letter to the KING, defending himself against Henderson's accusations, 323, 581;—of Banheid, Wm., I. * 347;—Blak Johnne,' Treason, * 71;—of Blackbarony, And., remitted, * 258, * 415; Jo., 141, 185; Sir Arch., III. 539;—of Broughton, Ja., Wilful error, I. * 219; George, II. 430, 521; Slaughter, 539, 540;—BISHOP of, And., I. * 6, * 31, * 42, * 79; Alex., * 222; Pat., *ib.*, * 343, * 358; Alex., II. 557; Pat. III. 583, 620;—of Cowbairdie, I. 175;—of Cock-pule, Cuth., Treason, * 11, * 398, * 454; Cha., 136, 304; III. 394;—Cathedral of, Sacrilege committed there, I. * 376;—and ARGYLL, COUNTRESS of, the relic of Regent Murray, 102; her daughter, *ib.*;—Dean of, oppressed, * 176;—EARL OF, Ja., Lt.-Gen. of the North for 5 years, * 238; respited for taking the E. of Huntly, &c., * 259, * 282; discharged of his Lieutenantry of the North, * 290, * 298; goes to France, * 303; money sent to him, * 308, * 466, * 478, * 503; murdered, 284, 300, 357; Ja., III. 318; Alex., Witches' revels at Darnaway, 604;—of Elibank, Sir Gedion, II. 509; III. 312, 337; proceedings as to the duel between his son and a son of Lord Cranstoun, 505;—of Fawlohill, *alias* Philiphauch, Jo., slain, I. * 69; Ja., * 127; Pat. * 148, * 332; III. 394, 396;—of Galdwall, Da., I. 76; Pat., hanged for House-breaking, Theft, &c., II. 383;—of Gospertie, Sir Da. See Lord Scone;—of Gudisburne, Ja., III. 235;—Jo., Leiche, banished for uttering base coin, II. 99; Walt., his brother, and 2 others, 'wirreit at ane staik, and brunt in asses,' 100; Wm., Slaught-er, III. 235; Arch., Rebellion in Orkney,

- 273; hanged, 283; his Deposition, 296; Jo., hanged for Stouthreif, &c., 479;—of Laichlaw, Jo., I. * 441;—of Letter-Bennettis, Wm., 89;—**LORD, OF TULLIEBARDIN**, Jo., II. 496. *Vide* TULLIEBARDIN;—of Lochmaben, Jo., III. 389, 390;—of Newtown, Sir Wm., 601, *note*;—of Pardowis, Ja., I. 119;—of Polmais, Jo., 282; II. 54;—**Ro.**, Justice-depute, 76;—**REGENT**, Conspiring his Murder, I. * 510; field of Langside, 6; forging his signature, 19; Murdered, 23; David Hamilton hanged, 31; George Mowtray tried, 59; Arthur Hamilton in Bothwelhauch tried, 87; Laird of Spott tried, 101; acquitted, 107; III. 394;—of Romannos, Wm., I. * 147, * 166; Wm., yr., of, * 332, * 424;—of Spaingiedaill, Jo., 349;—of Tibbermure, Pat., * 407;—of Tulliebardine, Sir Wm., * 468; Sir Jo., 116, 304, 347; Wm., yr., II. 49, 54, 74; Sheriff of Perthshire, 243, 387; Sir Jo., 426;—Tutor of, I. 289;—of Touchadam, Jo., * 3;—of Udstone, Gavio, * 404; II. 474; III. 235;—Wm., Capt. of Barrow, slain, I. * 395.
- Murrays, six score of, with their wives and children, burnt and slain by the Drummonds, at the burning of the Kirk of Monyvaird, I. * 101.
- Murronis, what, II. 432.
- Muschett of that ilk, III. 377;—of Orchardheid, Da., II. 438;—of Tolgarth, Geo., I. 299.
- Musgrave, Sir John, (Englishman,) Intercommuning with, I. * 34; Burning of Selkirk, 35, * 119, * 121.
- Mussilburgh, milns of, burnt, I. * 363;—Raid of, * 339; Battle of, 51, *note*.
- Mustard, Agnes, Resetting a stolen purse, containing 500*l.* in gold, and jewels worth 3000*l.*, III. 552.
- Mustouris. See Wapenschawing.
- Mutilation, during Parliament, I. * 26, * 158; by a Minor, * 160; Judicial Arbitration, * 167, * 181, * 201; Assise imprisoned for year and day, * 203, * 246; of a Bailie of Aberdeen, * 250, * 254, * 356, * 405, * 437, * 453; by biting off a finger, 34; of a left eye, II. 456; Forrester, III. 112.
- Mutton, price of, at Justice-aires, I. * 389.
- Mwildis, earth from dead men's graves, &c., used as a charm, I. 251. See Grave, and Charm.

N.

- NAIG, a bachillane, III. 78; a naig, 98; a staig, *ib.*; a paissing-naig, 163.
- Nairne, Kirk of, Witches initiated there, &c., III. 616, *et seq.*
- Nairnshire Witches, list of, III. 616, *et seq.*
- Napier, Allan, 'wirreit at ane staik and brint in assie,' for uttering base money, &c., II. 403;—of Ballekinrane, Jo., I. * 384; Tho., II. 439;—Barbara, Witch, I. 216; tried, 242; pleads pregnancy, 243; is acquitted? 244, *note*; the Assise is tried for Wilful Error, 244;—of Blakzairdis, Ro., II. 438;—of Edinwillie, (Edinbellie,) Sir Arch., I. 154, 372; II. 339;—of Kilmahew, Jo., I. * 178; Ro., * 361; Peter, murdered by the MacGregors, II. 432; Jo., 438, 439; III. 538;—**LORD, Arch.**, his bones proposed to be raised, and sentence of forfeiture to be pronounced, II. 277, *note*; III. 394;—of Merchinstone, Jo., I. * 42; Arch., appointed Justice-depute, * 415, * 419, * 443, * 447, 46, 72; II. 10; Jo., yr., 339; Jo., fiar, 433; Sir Arch. appointed to the Offices of 'Clerkschip of Justiciary-Generall and Maister of the Ceremonies at the Creatioun of all Erles, Lordis, and Barrones,' &c., III. 558;—of Womwet, (Woolmot,) Arch., the 'gudeman' of, slain, II. 339;—of Wrychtishoussis, Mr Wm., I. 20, 46, 159.
- Narne of Alliefargie, Laur., II. 63;—Mr Peter, murdered, under form of law, 349, 351.
- Nasmyth of Inwar, Ja., II. 394;—of Posso, Mich., I. * 429, *note*, * 450; Ja., III. 417, 431, 569;—Wm., banished for forging Testanis, I. * 394.
- Nativi tenentes*, III. 366, *note*; and see Kindly Tenants.
- Neilsoun of Assint, Donald, Murder by drown-

- ing, III. 489; Neill, his son, *ib.*;—of Corsok, Jo., 118;—of Craigeaffy, Jo., I. * 140; Alex., fiar of, Slaughter, II. 515;—of Graniche, Jo. Stewart, III. 250;—Jo., alias *Suppit-out*, drawn and hanged, I. * 63; Alex., Forgery, II. 17;—of Madinpap, Rob., I. * 87.
- Neilstoun, Kirk of, attempt to restore Popery at, I. * 430.
- Nelson, Thomas, 'Cubicular' to KING HENRY, (Darnley,) his Deposition as to the Murder, I. * 501.
- Nesbit of Dalzell, Jo., Baroun of, I. * 62, * 82; Geo., * 139, * 230; respited, * 245; 'the Barroune of' Dalzell, * 414; Ro., III. 459; Gaw., his son, Slaughter, *ib.*;—Sir Dav., Assisting the English, I. * 332;—of Greneholme, Alex., II. 507;—Hen., Provost of Edr., 22; Sir Tho., III. 129;—of that Ilk, Adam, I. * 142; Philip, * 144; slain, * 244; Geo., * 393; Tho., his son, Slaughter, II. 517; Philip, 563;—of Raschill, Hew, I. 119.
- Netherbow-Port of Edr., the Earl of Arran 'held furtle' at, I. * 241.
- Nevene of Kirkwode, John, I. * 402.
- Newall, Arch., slain, I. 158.
- Neville, Sir Hen., his three Letters as to the Earl of Gowrie, II. 315.
- Newark, Laird of, I. * 177;—Siege of, * 139, * 270.
- Newbottle, Abbay of, I. * 272; gilt chalice stolen, *ib.*;—ABBOT of, (see Kerr,) I. 101, 184, 244; Mark, II. 159; III. 390;—LORD, Mark, his chambers broken, &c., II. 357, 380, 496;—Town of, burnt by the English, I. * 349; Slaughter of French soldiers there, * 377.
- Newby, Place and miln of, Burnt, I. * 60; besieged, &c., II. 464.
- Newcastle, in England, I. * 281.
- 'Newes from Scotland, declaring the damnable life of Dr Fian,' Warlock, &c., I. 213.
- Newtoun, house of, to be cast down, I. 343, 344;—of that Ilk, Wm., * 85, * 346; pursued for his Slaughter, * 349; Treason, Fire-raising, &c., *ib.*, * 386, * 469, * 486;—Lady (Jonet Creichtoune,) rape of, * 258;—of Mitchelhill, Dav., * 141, * 144.
- New-Year's day festivities, I. * 282;—gifts, * 115, * 271, * 295, * 299, * 307;—Mass, * 284, * 295.
- Nicknames, Border, I. * 90, &c., &c.; of Evil Spirits and Witches, III. 606, 614, &c.
- Nicoll, Issobell, Witch, III. 614, &c.
- Nicolson, Geo., Ambassador from Q. ELIZ., his Letter as to Gowrie's Conspiracy, II. 313.
- Niddry-Marischall, Laird of, Feud with Laird of Edmonstoun, I. * 143; with Laird of Dundas, * 144; waylaid, * 169. See Wauchope.
- Nik of the Fell, what, II. 519.
- Nishie, Elspet, Witch, III. 606, 614, &c.
- NITHSDALE, EARL OF, III. 28.
- 'Nobillis of paiss,' coins, I. * 18; Angell, III. 178; Roise, *ib.*
- Noble of Ferme, Ja., I. * 450, 71.
- Non-sunt*, striking coins so called, I. * 440.
- NORFOLK, DUKE OF, I. * 210, * 283, *note*, * 287.
- Norham, Siege of, I. * 117.
- Norkott, Johan, her corpse disinterred, and *touched* by persons suspected of her Murder, &c., a remarkable case, III. 192.
- NORTHAMPTON, EARL OF, Hen., his Speech as to L. Balmerinoch's Treason, II. 593; was involved in Sir Tho. Overbury's murder, *ib.*
- Northberwick, Kirk of, the great Convention of Witches with the Devil there, I. 212, 235; a more detailed account, 239, 243, 245. See Witchcraft;—Prioress of, Invasion, &c., * 347.
- Northland-men, not to return home from Army, under pain of death, I. * 270, &c.
- NORTHUMBERLAND, EARL OF, I. * 4, &c., * 272, * 273, * 276, * 279, * 280, * 281.
- Norwall, Wm., banished for life, for stealing Poor's-box, Adultery, &c., II. 387; hanged as a False Notary, 389.
- Norway, K. JAMES V. sends to, for Hawks, for Falconry, I. * 322.
- Nory of Buchquhopill, Rob., I. * 88.
- Notaries deprived for ignorance, neglect, &c., I. * 217; hanged for falsifying 'evidents,' 85; his servant hanged, 87; Tho. Marjoribanks hanged, II. 34; Jo. Moscrop hanged, 35; Ro. Innes hanged for falsifying a Charter,

104; Norwall hanged for acting without a Warrant, 389;—Perjured, right hand struck off, Banished and declared Infamous, I. * 402, * 432; Alex. Cuik hanged, III. 418; Mr Jo. Muirheid hanged, 430;—Protocol book, I. * 217. See also Messenger.

Nurse, French, I. * 295, * 310;—to K. JAMES V., * 263, * 271; to his eldest son PRINCE JAMES, * 306. See P. JAMES;—to Prince Arthur, * 309;—LADY JANE, * 325.

O.

OATHS taken, by swearing upon swords, III. 275.

OBIGNY, LORD, horses and hounds sent to France to him and to 'Madame D'Obinze,' I. * 277.

Obsequies, Funeral, of K. JAMES IV., I. * 259; Q. MAGDALENE, I. * 287, * 288, &c. See under the various names of Kings and Queens, &c.;—Offering at, I. * 304, &c.

OCHILTRIE, LORD, STEWART OF, AND., I. * 177, * 199, * 335; Feud with, * 352, * 428; intercommuning with D. of Chatellerauld, &c., * 466, * 478, 88, 91, 162, 306; denounced, 310; II. 3; Kirk's grievances, 9, 107; 1000*l.* gifted by the KING, 238, 380, 445; Warden of West Marches, 453; III. 9; Slaughter of Lord Torthorwald, 66; Raid of the Isles, 118, 225; Letter to the KING, 367, 419;—MASTER OF, I. 49.

Octavians, the, II. 568; III. 63.

Odoneill, Irish Rebel, I. 348.

Officers of Witch-covens, III. 605, &c.

Ogilvy of Balfour, Ja., I. 375; II. 134;—of Bahngrow, Jo., I. * 157;—of Boyne, Walt., I. * 217; Alex., * 462, *note*; III. 560;—of Boigside, Ja., shooting hagsbuts, &c., II. 134;—of Cragbone, Walt., I. * 150;—of Craig, Jo., his houses, &c., to be cast down, I. 348; Sir Jo., slaughter, &c., II. 130; Mr Da. and Fra., his brothers, *ib.*, 235;—of Cukistoane, Ja., I. * 138;—of Dunlugus, Sir Walt., I. * 179, * 182; Sir Geo., 284, 382;—of Drummis, (Drum,) Alex., I. 264; Walt., III. 330; Jo., his son, a Jesuite, cruelly persecuted and hanged, *ib.*, &c.;—of Findletter, Sir Walt., I. 284; II. 133;—of Gassall, Jo., yr., III. 478;—of Inchemartin, Pat., remitted, I. * 240, 28, 141;—of that Ilk, Alex., abiding from Solway, I. * 255; David, * 404; Gilb., 74, 91;—of Innerquharitty, Jo., I. * 138;

remitted, * 240; Sir Jo., 75; II. 134;—Jo., called *Reid Johnne*, II. 134; Alex., called *Blak Sandie*, *ib.*;—Jo., Jesuite, his Trial, III. 330; kept from sleep *ad delirium*, 331, 332; hanged and quartered, *ib.*; Relation of the proceedings, *ib.*, &c.; conduct at his execution, 350; his Deposition, &c., 352; Resetting him, 371;—of Keillour, Arch., II. 430, —LORD, OF AIRLIE, Ja., I. * 136, * 138, * 244, * 270, * 470, 75, 114, 116, 263; II. 297, *note*; Hereschip of his lands of Gleny-lay, &c. III. 233;—MASTER OF, Ja., I. 348; 375; Slaughter of the Laird of Kerse's son, and Wounding Lord Spynie, II. 130, 133, 135; fined L.5000, 146; Sir Jo., Pat., and Fra., his brothers, *ib.*, 235;—of Mygvie, And., I. 28;—of Quheich, Jo., I. 264;—of Quhytefield, Dav., I. 348.

Ogill, Mr D., assaulted, I. 337;—of Hartree-wood, Henry, I. * 386, 27.

Oker, taking usurious interest, &c., II. 101.

Olipphant of Condie, Laur., III. 479;—of Gask, Wm., slaughter, III. 443; Laur., his brother, *ib.*; Demembration, 479; Wm., slaughter, 542;—of Kelly, Alex., invaded for his slaughter, I. * 347; oppressed, *ib.*;—of Keltie, I. * 453;—LORD, Laur., Justiciar, I. * 14, &c.; Jo., oppressed, * 108; Laur. invaded for his slaughter, * 488, 25, 27; slaughter, 44, 89, 92; slaughter, II. 512; III. 419, 443;—MASTER OF, Laur., I. * 395, 119; Jo. slain, II. 514; III. 443;—of Newtoun, Sir Wm., King's Advocate, III. 232, &c.; Walt., 583;—of Pittoccer, Peter, I. 24;—Pursuivant, I. * 273;—of Rescobie, Peter, III. 479, 542;—of Turingis, Peter, I. 25, 27; III. 583;—Wm., Justice-depute, I. 101.

Olivers of Gagy, I. * 347;—in Stryndis, tried at

- Justice-aire of Jedburgh for numerous crimes, I. * 28, &c.; four of them hanged, * 30.
- Oneill presents K. JAMES V. with a horse, I. * 303. See Steid, &c.
- Oppression done to the Lairds of Ravinniscraig and Vehitrie, I. * 32;—to Lady Cardines, * 52; Laird of Caly, * 53; Abbot of Dundrennan's officer, * 54; Sir Gavin Kennedy, * 55; Laird of Niddry-Marischall, * 73; Laird of Bass, *ib.*; Laird of Leswalt, I. * 89; Ardwell, * 90; Lord Drummond, * 108; Mr D. Lindsay, * 141; John Petcarne, &c., * 159; Laird of Congiltoun, * 158, * 160, * 169; Dean of Murray, * 176; Moncur of Balluny, * 178, * 180, * 181; John Mathesoune, beheaded, * 201; Laird of Bargany, * 204; Hepburn, &c., 87; 'cietineris' of Brechin, * 431; Tho. Cuninghame hanged, II. 359; and Perjury, &c., three persons hanged, beheaded, and scourged, II. 453;—and Murder, 516; by E. of Orkney against Inhabitants of O. and Zetland, III. 81, 312, 489, 491. See Orkney.
- Or, James, beheaded for slaughter, III. 358.
- Orde of that ilk, And., I. * 150.
- Ordeals, popular, for the Discovery of Murder, III. 183, &c.
- Orders of K. JAMES V., invested with the Collar of Cokkilzeis, I. 265; the Garter, * 283, * 289; St Michael, * 283; the Golden Fleece, *ib.*; mending the King's, * 292, &c.
- Organs, I. * 122, * 279, * 290, * 321.
- ORKNEY, BISHOP OF, I. * 211; Adam, 101, 267, 270, 293; Trial of Mitchell for fring a pistol at, III. 195; Rebellion in Orkney, 293, &c.; Ja., 301, 304; Geo. 444; Ja., 508;—EARL OF, Ro., to seize and expel the Spaniards, I. 267; Pat. seizing 'the Ark of Noy,' 336; attempt to poison him and cut him off by Witchcraft, 373; Tho. Palpla executed, 374; II. 76, 77; Ro., 97; Pat., tyrannical oppression of Inhabitants of O. and Zetland, III. 81; curious form of the execution of dittay, 86; Trial of Ro., natural son of Pat. E. of O., 272; he, along with 5 accomplices, is hanged and forfeited, 283; illustrative Papers, *ib.*; Trial of Pat. E. of O., 308; notices of, *ib.*; beheaded and forfeited, 318; illustrative Papers, 319; conference between the Secretary, Lord Advocate, and the Earl, 320; his Examination, *ib.*, 322;—MASTER OF, Jo., Witchcraft, attempt to poison his brother, the Earl, &c., I. 373; tried for slaying the Parson of Urquhart, 392, 397.
- Orkney and Shetland, withholding the rents, I. * 182; Convocation of lieges in arrayed battle, and slaughter of EARL OF CAITHNESS, * 253; Lease of Lordship and Isles of, to Oliver Sinclair for 3000 merks yearly, * 257, * 258; K. JAMES V. visits, * 305; Convocation there, * 413; Rebellion by the Earl and his base son, III. 272 to 307, and 308 to 327; Bond of Association by the Rebels, 293; Depositions of Rebels, 294, &c.; Bond torn by Ro. Stewart, 304; Deposition of Ro. Stewart, 306; Letter from the KING, as to the oppressed people of Orkney, 319.
- Orme, Da., baillie of Newburgh, III. 97;—of Mugdrum, Da., I. 270, 309.
- Ormistoun of Brigend, Ro., I. 268;—Deer-park of, chasing and wounding Deer, I. * 140;—of that ilk, Geo., * 147; Ja., deforcing a Messenger, I. * 334; at DARNLEY's Murder, 145; Ja. III. 391; Deadly feud with Laird of Cessford, reconciled, 303;—*Rob*, alias *Hob*, I. 145;—of Smailholm, Jo., I. 270.
- Ormond, Pursuivant, I. * 273, * 281, * 306, * 317, 226.
- Oronsay, Island of, burnt, I. 229.
- Orphies, (*orfeverrie*.) gold embroidery, I. * 301.
- Orrok of that ilk, Ro., I. * 186, 60;—of Sillibawbe, his wife portioned by K. JA. V., I. * 324. See Tocher, &c.
- Otterburn of Redhall, Mr Adam, remitted, I. * 252; sent to London to treat a Peace, * 283; * summoned, * 310; Tho., 154, 375, II. 528.
- Otter-stalff, Ro., Huttone, slain with, III. 499; Hen. Baird beheaded, 500.
- Oulk, week, III. 601, *et passim*.
- Outing forged money, II. 74. See Uttering.
- Overbury, Sir Tho., murdered, II. 593; K. JAMES VI., awful imprecation, 600, *note*.
- Over the dyke with it, a Witch's nickname, III. 606. See Nicknames.

- Ovens for the King's Ships, I. * 303.
 Oxen employed to drag heavy Artillery, I. * 260,
 * 263, * 267;—Geo. Dempstar banished for
 hurting an ox in the plough, II. 127.
 OXFORD, EARL of, I. * 118;—St Mary's, Pas-
 quil against the Scottish Nation, affixed on
 door of, III. 447, &c. See Roise.
 Oye, (o, or oe,) a grandchild, I. 183, II. 520, III.
 78.
 Oylispek, what, III. 599.

P.

- Pace, (Pasche,) Easter, III. 603, *et passim*.
 Paddokis, 'plewghie' of, a singular Witch-charm,
 III. 603.
 Padseane of Newtounne, Rodger, III. 93, 387;
 Jo., yr., 495.
 Pages, I. * 289, * 294, * 307, * 321.
 Pailzeonis, (Pavilions,) I. * 273, * 283, * 310,
 * 323. See Hunting, &c.
 Painting, art of, I. * 117, * 119, * 259; pictures
 brought from Flanders, * 284, * 287, * 310;
 QUEEN'S Painter, * 321, *ib.*, * 323.
 Paische, Easter, II. 523, &c.
 Paisley, Commander of. See Claud Hamilton;
 Wm., I. 119;—Monastery of, Hamesucken
 at, * 382; attempt to restore Popery, * 427;
 detaining the Abbey, &c., 45.
 Paistounne, Jonet, Confession of Witchcraft, III.
 601; Devil's marks found on her, 602.
 Palace, shooting within, punished by Banishment
 for life, I. 187. See King, Holyrood, &c.
 PALATINE, COUNT, III. 322; THE COUNTESS,
 I. * 308.
 Pall, funeral, I. * 287, * 288, &c.
 Palinode, what, III. 621.
 Palpla, Tho., poisoning, executed, I. 374.
 PALSGRAVE, THE, I. * 301; III. 322.
 Pamfara! tantara! II. 601 and *note*.
 Paniter, Patrik, Abbot of Cambuskenneth, Secre-
 tary, I. * 79; Ambassador, * 273.
 Pannel permitted, before conviction, to assign a
 Reversion, I. * 374.
 Pantoun of Pitmedden, Jo., I. * 184;—of Tulle-
 maid, Ja., * 470.
 Pantoune, a kind of slipper, III. 512.
 Pantry, the KING'S, I. * 313.
 Pansis of mailze, I. * 317.
 Panmure, Place of, Imprisoning a messenger in,
 I. * 345.
 Papist Lords, proceedings against them. (See
 Angus, Huntlie, Erroll,) I. 306, &c.
 Papists, Resetting, I. 167; trafficking with, to
 alter the Religion, 172, 371.
 PARMA, DUKE OF, I. 327, 328, 329.
 Parliament, Mutilation during sitting of, I. * 26;
 —printing false Act of, II. 2, 14.
 Park, QUEEN'S, Wounding a Keeper of, I. * 381.
 Park of Bagray, Alex., warded, I. * 357, * 451;
 —of Gilbertfield, Ja., * 170; Rob. * 404;—
 Ja. and Wm., Murder, Oppression, &c., III.
 495;—of that Ilk, Walt., I. * 170.
 Pardoune, the, I. * 278.
 Paris, French, *alias* Nicholas Haubert, Murder
 of K. HENRY, (Darley,) I. * 489; his first
 Deposition, * 502; his second Deposition,
 * 506; Execution at St Andrews, * 489,
 * 510; Letter from Regent Murray to Q.
 ELIZABETH as to, * 511; his head and a leg
 sent to Edr., *ib.*, 152.
 Parkins, Capt. Jo., English Pirate, III. 104.
 Parricide, Jo. Diksoun, yr. of Belchester, broken
 on the 'row' or wheel, I. 241; Wm. Mow, II.
 18; Philip Stanfield, III. 196; his father's
 corpse bleeds on being touched by him, 197;
 notices of the trial, *ib.*, 198; hanged, his
 tongue cut out and burnt, his right hand struck
 off and affixed on the Port of Hadington, and
 his body gibbeted in Irons, *ib.*
 'Pas-pennys' found, I. * 18; what they were,
ib.;—concealing, * 32.
 Pasquills, writing against the KING, F. Tennent
 hanged, II. 332;—forging one against the
 Scottish Nation, III. 445; Mr Tho. Roise's
 right hand and head struck off, &c., 445; il-
 lustrative Papers, 582.
 Pasmentos of Gold, I. * 302, and Excerpts from
 Treasurer's Books, *passim*.

- 'Patesar,' King's, I. * 313.
- Paterson of Caverhill, Ninian, I. * 87; Bartie, 'wirreit and brunt' for Sorcery, &c., II. 535; Tho., * 421, * 469;—Helen, hanged for coining bawbeis, I. * 365;—Jo., Sh.-clerk of Fyfe, III. 453;—of Leuchrie, And., II. 343.
- 'Patroune' of the King's Ships, I. * 298; silver 'qubissill with ane lang chenze to him,' *ib.*
- PAUL V., POPE, II. 570, *note*.
- Pavier, a French rope-dancer and posture-Master, II. 238.
- Pawtoun, Mr Wm., Minister, Treason, &c., I. 20.
- Pax, cover for the, in PRINCE'S Chapel, I. * 306.
- Peace between England and Scotland solemnly ratified, I. * 283.
- Pearl beads, I. * 307; and Jewels abstracted from the QUEEN, II. 544; from E. Marischall, III. 563, 564.
- Pedder, Alex., scourged 'mother-naikit' with 'suord-beltis and horse-brydillis,' III. 539.
- Peebles, Justice-aire of, I. * 24, * 72.
- Peebles-shire, Barons fail in Bond, I. * 146;—Baron of Findowie, Alex., with Gowrie before his Conspiracy, II. 158, 176; his Deposition, 191;—Justice-aire of, I. * 24, * 172;—Privileges of the Sheriff, * 350;—Marionn, *alias* Pardoun, corpses of Murdered persons bled on being *touchèd* by her and her husband, III. 194;—of Chapelhill, Oliver, I. * 132;—Tho., hanged and quartered for Coining, &c., * 440.
- Peices, a term applied to massive plate, II. 520.
- Peirsie, Capt., English Pirate, III. 104.
- Peirsoun, Alisoun, burnt for Witchcraft, &c., I. 163;—of Cairny, Da., II. 103.
- Peistis, lead drops or slugs, III. 120.
- Pellok-bows, I. * 293.
- Pendykillis and frontellis, I. * 320.
- Penkill, House of, besieged, I. * 403.
- Penman, taken prisoner by Buccleuch, I. * 273.
- Penny, Sir Jo., Chaplain, slain, I. * 178.
- Pentland, Captain Jo., Slaughter, banished, I. 46.
- Pennycuke, of that ilk, John, I. * 127, * 143, * 159; acquitted of Mutilation, &c., * 203, * 333, * 424, 11; denounced, 276; his brother 'spuiljied,' 396; Gilb., II. 49, 129, 376, 379.
- Perjury, Arch. Croser hanged, I. 111; Wm. Barclay, II. 348; Alex. Cheyne beheaded, 453; Alex. Wastland hanged, *ib.*; Alex. Croy scourged, *ib.*; Mr Jo. Galbraith stands at the cross, and is Banished for life, 476; III. 76; Da. Donaldsoun hanged, 208; Ro. Grahame of Langboddome, &c., hanged, 358; Alex. Cuik, notary, 416, hanged, 418; And. Turnbull and two others hanged, 538; Da. Turnbull's tongue pierced with 'ane hett boitkyn,' and banished, 538.
- Perrot, Sir Jo., Deputy of Ireland, III. 2.
- Perth, Bailies and community remitted for burning Craigy, I. * 240; exempted from Assises, * 418;—Conflict between E. of Glencairn and Master of Wintoun, III. 579;—Convocation on the South Inche, I. * 451;—EARL OF, Jo., III. 233, 316, 548;—Feud with Laird of Craigy, I. * 432;—Hamesuckin to Keepers of the Gates of, * 219;—Justice-aire of, * 265, * 272;—K. JA. VI. made a burgess, and subscribes Guild-book, II. 247;—Plague in, Housebreaking during the, I. * 219;—Quarrel with Laird of Clackmannan, 276, &c.; conduct as to Gowrie's Conspiracy, 186, &c., 192, &c. See GOWRIE;—Reformation preached at, * 407;—Spey-Tower of, * 177.
- Pestilence, (see Plague,) 'that nane mak mercate with Inglis menne,' because of the, I. * 294; the pestilence 'but mercy,' 51, 302; diet deserted on account of, II. 426.
- 'Pets' kept by K. JAMES V., I. * 299.
- Pettigrew of Over Cottis, Walter, I. * 388.
- Phillope, Mr Ro., banished for saying Mass, &c., III. 252;—Ro. Sh. Clerk of Dumfries, III. 452.
- Philosopher's stone, I. * 120.
- Pickery, an aged man banished for, I. * 53, II. 43.
- Pigs, price of, at Justice-aires, I. * 390.
- Pikle neirest the wind, a Witch's nickname, III. 606.
- Pilgate, I. * 291.
- Pilgrimages beyond seas, Lady Glammis, &c., I. * 244; Earl of Cassillis, &c., * 245;—to Qubithirne, I. * 117;—to Rome, I. * 240;—in Scotland, I. * 371;—to St James in Gal-

- licia, I. * 101;—to St John of Amiens in France, I. * 107;—to St Ninians, I. * 106;—to St Thomas of Canterbury, I. * 107.
- 'Pilniewinkis,' an instrument of torture, I. 215.
- Pink, a small ship, III. 100.
- Pinkertoun, Alex., beheaded, I. * 164.
- Pinkie-cleuche, Battle of, I. * 360, * 378, 51, and *note*, &c.
- Pipers, English, I. * 115; of St Johnstoun, tocher given to him, * 279.
- Piracy, Capt. Ja. Cockburn and 5 others hanged, I. * 131; Alex. John Canochson, * 170; * 273; hanged in chains, * 358; Walt. Cowsland, 37, 93;—the English Pirates, III. 99; *eight* hanged within flood mark, 101; *thirty* Pirates tried by Vice-Admiral, 102; hanged at Leith, 107; Documents as to Piracies by the English, 108. &c.; Jo. Davidson, and Jo. Lewis, English Pirates, hanged within flood-mark, 244;—and Murder under trust, Jo. Brown and three others, 569; hanged, and their heads affixed at Leith and Buratisland, 572. See Pirates.
- Pirated goods, Stouthrief of, I. * 87.
- Pirates, Expedition against, I. * 298; English, * 379. See Piracy.
- Pissane of mailse, I. * 288, * 317.
- Pistoletts, Act anent bearing, I. 299; shooting with, 371, II. 22; curious legal arguments on this point, 53, &c.; Lockhart of Lee, II, 61, 128, 129; Turnbull of Mynto, II. 370; Maxwell of Cowhill, 485; Wm. Douglas, yr. of Drumlanrig, III. 212, &c. See Wounding, Slaughter, &c.
- Pistuletts, (coins,) forged, II. 99; gilding, 100.
- Pit and gallows, I. * 396, II. 43;—of Tulliallane, III. 479, of Blair Castle, 491, persons starved to death there, *ib.*
- Pitblado of that Ilk, Alex., I. * 404.
- Pitcairn, Rob., Commendator of Dunfermling, I. * 436, 88, 101;—of that Ilk, Hen., II. 53;—of Ramsay's Forthar, Hen., II. 10.
- Pitcur, Tutor of, I. * 406; Sir David Forbes, kat., slain in ward, under his custody, *ib.*
- Pitmedden, place of, Burnt, I. 160.
- Pitscottie of Loncardie, Finlay and David, his great grandson, I. * 258; Jo. Mutilation, III. 363; Colin, yr., *ib.*
- Pittarrow, Laird of. See Wischart.
- Pittencrief, Laird of, I. * 504.
- Pittendreich, Lady, &c. See Douglas.
- PITTENWEEM, LORD, Wm. III. 245; his lands in the Island of Lewis burnt and wasted, &c. *ib.*;—PRIOR of, Violence committed by, I. * 156, 117; Wm., 279;—Magistrates of, assist Earl of Bothwell, 319.
- Plague, in Perth, Housebreaking during the, I. * 219; in Stirling, 'gude rule anent,' * 262; in Selkirk, * *ib.*; on the English Borders, * 294; that 'na Inglis men be sey cumand be ressaut,' * *ib.*; in Edr., diet deserted, II. 426, &c.
- Planis, Monsr. de, French Ambassador, I. * 261, * 263.
- Plate. See gold, silver, basio, &c.
- Play-coats, &c., I. * 282, * 299.
- Players, I. * 114, * 115, * 118, * 299.
- Plenishing, insight, what, II. 70, &c.
- Plewge of paddokis, a curious Witch-charm, III. 603.
- Plumber, King's, I. * 314.
- Plume, de la, French Pursuivant, I. * 296.
- Pluscardin, PRIOR of, Alex., supplying Master of Rothes, I. * 358; invaded, in presence of the Holy Sacrament, * 376.
- Poison, Conspiring the KING's destruction by, I. * 187;—selling, * 203; purchasing, II. 337; poisoning fowls, *ib.*; banishment for life, *ib.*;—Slaughter by, I. * 368; Helen Colquhoun, 80; Andro Glencorse burnt, 84; Lady Fowles, 185, 191, &c.; Master of Orkney, 373; Jo. Boyd acquitted, 399; Ro. Erskine, III. 260; beheaded, 264; Helen, Issobel, and Annas, 266; sentenced to be beheaded, 269; Helen banished, *ib.*
- Poisoned bullets, I. 90; Laird of Johnstone slain with two, III. 37.
- Poisoning and treasonable Murder, &c., I. * 419; Mr Adam Colquhoun hanged and burnt, * 420; and Incantation, &c., B. Patersoun 'wirreit' and burnt, II. 535.
- Poison-Ordeal, III. 184.
- Polmude, Laird of, slain, I. * 106.

- Pollok of that Ilk, David, Theftboot, I. * 143 ; Charles, Tutor of, * 384, * 402. See Maxwell.
- Polwort of Rottonraw, Wm., denounced for Forcible Abduction, &c., 345.
- POMER, DUKE OF, I. * 322.
- Poor's-box stolen, II. 387.
- POPE, THE, treasonable correspondence with, II. 568, &c. ; Lord Balmerinoch's Confession, 575 ; King's Letter to Lord Advocate, 577 ; Documents illustrative of, 580, &c. ; his alleged Supremacy, III. 330, &c.
- Popery, attempting to restore, I. * 410, * 427 ; See Reformation, &c.
- Poplicie, (sciatica, or palsy ?) I. * 422.
- Porquier, John, Frenchman, murdered, I. * 361.
- Portincraig, Raid of, I. * 336.
- Portar of Lag, Ja., Hereschip done to, I. * 90, &c. ; Thomas, beheaded, I. * 92.
- Porterfield of that Ilk, Mr Jo., I. * 450, 19 ; Wm., slaughter, 69.
- Porters, King's, I. * 313.
- Portingall-doucattis, III. 178, 563.
- Portuys, (Porteous-roll,) I. * 321.
- Portwise (Porteous) of Gernkirk, (Glenkirk,) Jo., I. * 81 ; Tho., 190 ; II. 467 ; III. 453 ; —of Halkschaw, Pat., I. * 147 ; Wm., * 422, * 424.
- Pott, Richard, hanged, I. * 87.
- Poultryman, King's, I. * 313.
- Poultry, price of, at Justice-aires, I. * 390.
- Power of Silverwood, Jo., I. * 458.
- Pow-aixes, II. 432.
- Pow-penny, at Funeral obsequies, I. * 293, * 297.
- Pow, what, III. 605, &c.
- Powrie, Wm., hanged and quartered for Murder of K. HENRY, I. * 490 ; his Depositions, * 493, &c.
- Poynd-faldis, destroying, I. * 163.
- Prayer, Witches', virtue of, I. 232 ; form of, 234, 237 ; III. 95.
- Praying publicly for the banished Ministers, I. 136.
- Pregnancy, pleaded by a condemned Witch, I. 243 ; II. 29, 52.
- Pregnant women, Murder of two, I. * 344 ; striking and producing abortion, * 412, * 421, 453 ; Murder of, II. 517 ; Pat. Deans hanged, *ib.*
- Prestado, Laird of, I. 166. See Borthwick.
- Prestoun of Craigmillar, I. * 159 ; Geo., * 333 ; Sir Simon, Justice-General, * 477 ; Da., 255 ; Fend with Lord Borthwick, &c., 352 ; Sir Geo., II. 455 ; —Simon, of that Ilk, Battery *pendente lite*, Oppression, &c., I. * 73 ; Geo., * 159, * 347, * 381, * 477 ; —Ja., Provost of Edr., Justice-depute, I. * 126, * 129 ; —Jo., Justice-depute, I. * 143 ; —of Valleyfield, Ja., yr., I. 15 ; Sir Jo., II. 456, 555 ; III. 264 ; —Eliz. acquitted of Incest, &c., I. 83 ; —of Hiltrie, Geo., murdered, II. 18 ; —of Fentounbarns, Mr Jo., Collector Gen., II. 274 ; President, III. 78 ; —of Pennycooke, Mr Jo., President, II. 328 ; Collector, 496, 568, 598 ; III. 312.
- 'Preyne, pin, III. 527 ; used for pricking Witches, to discover Devil's mark, 602, &c.
- Pricking for Witchcraft, to find Devil's mark, III. 599, 602.
- Priests, Jesuite, Resetting, III. 541, &c. See Jesuite ; —Seminary, Resetting them, 167, 172 ; proclamation against, 281.
- PRINCE OF SCOTLAND, Alex., (brother of KING JA. IV.), I. * 232. See also JAMES.
- Printing a vitiated Act of Parl., II. 2, 14 ; or striking coins with Mint-irons, II. 398 ; Alex. Reid hanged, 399.
- Prisoner freeing from ward, I. * 81 ; English, * 351 ; Magistrates of Edin. freeing Pater-son, * 442, &c. ; —taking, I. * 171, * 437 ; III. 212, 489, 495, 497, 539.
- Privy Council, declining their Jurisdiction, II. 494 ; III. 87 ; Mr And. Creichtoun sentenced to be hanged, 89 ; banished for life, 90 ; they write the KING as to the English Pirates, 108 ; they present Captain of a Dutch Waughter with a silver cup, for escorting two English Pirate vessels to Leith, 111.
- Privy Purse, King's, I. * 305.
- Procession, I. * 116 ; public, for prosperity of the KING, and return of the REGENT, * 270.
- Proclamation to regulate Justice-Aires, I. * 64, * 388.
- Protection, Special, to Tenants of Archbishopric of Glasgow, I. * 41 ; —breaking the King's, I. * 106.

- Prothogoll-buik, (Protocol,) Notary's, I. * 217 ; III. 416, 417, &c.
- Prothonotary, English, at Ratification of Peace with England, I. * 283 ; at his departing to France, * 307, * 321.
- Protestation against the Verdict of an Assise, I. * 449.
- Proof in exculpation on a Trial for Slaughter, by Witnesses, refused, III. 467 ; Assise ordained to take proof of a fact, 574 ; Probation led after the Jury was enclosed in the Assise-house, 575.
- Provisions, prices of, at Justice-aires, I. * 389, &c.
- Prynrois, Mr Da., Justice-depute, II. 562.
- Pudrache, of the country of Balquhidder, II. 424, 432, &c.
- Purdie, Jo., Herald, slain, I. 362.
- Purgatio Vulgaris*, what, III. 184.
- Purse, Stealing, III. 441, 445 ; Resetting a stolen, &c., 553.
- Pursuivant, mocked, &c., I. * 367.
- Pyker, or petty thief, II. 552, &c.
- Pyle of the Raw, Jok, slaughter, I. 37.
- Pynfalde, what, I. * 58.
- Pyne-doublet, definition of, II. 158, 183. See 'Secretit.'
- Pynouris, employed to transport Artillery, &c., I. * 260.
- Pyote of Fovertie, Alex., I. * 404.

Q.

- Quails, live, I. * 310.
- Quarrel-holes, Convocation at, I. 174.
- Quartering the bodles of Traitors, Forgers, &c., the limbs being placed on Tolbooths, Ports, &c., I. * 440, &c., * 467, * 481, * 484, * 491. See Treason, &c.
- QUEENSBURY, EARL OF, Wm., III. 381.
- QUEEN'S Chariot, I. * 291, * 293, * 320 ; Coronation, I. * 287, * 299, * 300, * 301 ; Crown and Jewels, I. * 298 ; made of Scottish gold, *ib.*, * 322 ; Household, I. * 314 ; Master of, goes to France, * 317 ; Master Usher, &c., I. * 314 ; Painter, I. * 321, * 322, * 323.
- Querrell, young Laird of, slain, I. * 368.
- Question. See Torture, Rack, &c.
- Quinzear, (*pugio*, a whinyard.) a sort of short sword or cutlass, I. * 401, &c. ; III. 90, 467, *et passim*.
- Qulhippo of Leyhoussis, Tho., slain, II. 455 ;—Ro., Theft, II. 81 ; hanged, 85.
- Qulhissill for 'Patroune' of the King's ships, I. * 298 ;—golden, for the King, I. * 304 ; another with 'ane Dragoun ananulit,' * *ib.*
- Qulhissillit, exchanged, III. 92.
- Qulhitefurde of that Ilk, John, I. * 384, 91, 133 ; Adam, yr., *ib.* ;—of Mylnetoun, Jo., I. * 404 ; * Adam, II. 376.
- Qulhitelaw of that Ilk, Pat., I. * 169, * 364, * 480 ;—of Newgrange, Pat., I. 119.
- Qulhitbirne, Pilgrimage to, I. * 117 ; trental of Masses for K. J. A. V., * 278 ;—Malcolm, Prior of, attempting to restore Popery, * 427.
- Qulhitslaide, Burning Place of, I. * 30.
- Quinta essentia*, I. * 120.
- Qulhuslaris, (fifers ?) I. * 292.
- Qwickens, sowmes of, what, III. 603.

R.

- RACHLIE, (Racblin,) Island of, III. 26.
- Rack, punishment of the torture or question, I. * 401. See Torture.
- Rae, English Pursuivant, I. * 286, * 287 ;—Habbie, and 21 others, Slaughter, III. 472.
- Raeburn of that Ilk, Jo., I. 17. See Ryburn.
- Ragment and rhyme, in name of 'Johnne the Commoune-wele,' I. * 15.
- Raid, abiding from the, of Aytoun, I. * 103, &c. ; of Eskdale, * 104 ; of Aytoun, * 110, * 112, * 117 ; against the Border Thieves, * 134 ; of Tamptallon, * 138 ; of West Marches,

- * 161; of Werk, * 240; of Solway, * 241; of Jedburgh, * 256; of East and South Borders, * 259; Border-Raids, * 267; of the Merse, *ib.*; against the Border Thieves, * 271, * 282; of Glasgow, * 331; of Coldinghame, *ib.*; of West Marches, *ib.*; of Ancrum, * 332; of Dumfries, *ib.*; of Dumbarton, * 334; of St Andrews, *ib.*; of Lauder, * 335; of Portincraig, * 337; of Langholme, * 338; of Gladismure, * 331, * 339; of Musselburgh, * 339; of Edgebucklingbrae, * 345; of the Muir of Roslin, *ib.*; of Langholm, Haddington, and Edinburgh, * 356; of Abertarf, * 392; a Warden-Raid or 'Day of Trew,' * 397, &c.; of Lochmabane-stane, *ib.*, * 398; of Dunse and Langtoun, * 404; of Lauder, *ib.*; of Jedburgh, * 421, &c.; of Stirling, * 467, * 470, &c.; of Crawford-Douglas, * 483; of Brechin, 6; of Hawick, 10; of Linlithgow, 19, &c.; of Leith, 27, &c.; of Ruthven, 111, 113, 116, 119, 130, 132, 139, &c.; of Stirling, 133; of Dumfries, 155; of Aberdeen, 183; against the E. of Huntley, 267; of Falkland, 276; of Woolmot, II. 21; of Stirling, 85; E. of Angus's, at Dumfries, 105, 130, 134; of the Isles, III. 118, 202, 225; of Glenfrwne, (*q. v.*) 223.
- Rait of Halgrene, Wm., I. 15; II. 362; Da, fiar, *ib.*; —of Tibberta, Ro., I. 17.
- Rallie, Capt, hanged for counterfeiting the Great Seal, I. 361.
- Ralstone of that Ilk, Jo., I. * 43; Tho., * 130; Hugh, * 170.
- Ramsay of Ardbikie, Ja., II. 63; —of Balmain, Jo., elder, 363; —of Balmonthe, yr., fined for invading . . . Ballenden, on High Street of Edr., 234, 240; —of Banff, Neische, I. * 88, * 232; —of Clatty, Geo., 28; —of Cockpen, James, remitted, * 241, 10; —of Dalhousie, Nicholas, * 140, * 159; treasonable language against the KING, * 251; in ward, * 336; George, deforcing Messenger, * 356, * 422, * 471, 10, 27; Geo., yr., 244; Sir Geo., III. 264; the Lady of, her Funeral, 601; —of the Forther, Jo., II. 128; Mich., III. 257, 487; —of Halhouse, Jo., imprisoned, I. * 203; —of Hawis, (Lawis,) Hen, * 207; Jo., * 336; —Jean, Lady Wørreistoun, 'revised,' (carried off,) 244; —Jo., hanged, and his head fixed on the Nether-bow of Edr., for Murder, &c., II. 404; —Sir Jo., of West Barns, (afterwards Visc. Haddington, &c.) Assault committed within Falkland Palace, 91; saves KING's life at Perth, 150, &c. See Gowrie Conspiracy; gets grant of a sword and bloody dagger added to his Arms, 298, &c.; —of Jordanstoun, Dav., I. 22; —of Kynmont, escheated, * 253; —LADY, (Margt. Carnegie,) her Funeral, III. 601; —of Laweris, Hen., I. * 158; —LORD, of Dalhousie, Jo., II. 91; William, III. 601, *note*; —of Murye, Wm., I. 5, 6; —of Panbryde, Hen., * 345; —of Poltoun, Wm., * 423; Oliver, 27; —of Pryour-Lethame, John, Incest and Murder, III. 257; —of Quhytehill, Jo., II. 124, 454; —of the Rinde, Ja., 128.
- Randell, Capt. Wm., and 29 other English Pirates, hanged within flood-mark, III. 99.
- Ranefray, Chase of, III. 112. See Fight of Bendoich, Clan-Gregor, &c.
- Randolph, English Ambassador, I. 144.
- Ransom, exacting, I. * 18, 31, * 411, &c.
- Rape (Rapt) of Earl of Lennox's daughter, I. * 60. See instances of former misapplication of this term, III. 402, &c.; John Steill (*Kempy*) hanged, I. * 126; of Jonet Creichtoun, Lady Newtoun, * 258; Lady Lefnorese, * 349; of Jonet Auldjoye, * 421; of Lady Warreistoun, 244; Laird of Vrinoch's daughter, II. 394; Ja. Chene of Pennan banished, 400; Hen. Sinclair of Quhytkirk, 405; Jo. Broun acquitted, 463; Wm. Bell hanged, 475; Jo. Errole hanged, 566; Wm. Wischert of Mwretoun, III. 507. See also Ravishing, Forcible Abduction, Forcing, &c.
- Raphaell, a Spaniard. See Cassançeis.
- RAPHOE, BISHOP OF, III. 14.
- Rate, Jo., hanged for breaking Gardens, &c., III. 555.
- Rattray of Balnocard, I. * 232; —of Craighall, II. 85; Geo., his servant, &c., beheaded, *ib.*; —of Kinvaid, I. 25.
- Ratlibation, II. 70, &c.; of Slaughter, I. * 381. 'Raveisching.' See Forcible Abduction, Rape,

- &c.; remarkable instance of the former misapplication of the terms 'Raveisching' and 'Rape,' III. 402.
- Ray, And., bailie of Perth; Deposition in Gowrie's Conspiracy, II. 186.
- Reavaris, what, III. 100, &c.
- Rebellion in Orkney, III. 272 to 327; Band of Association by the Rebels, 293; Depositions of the Rebels, 294, &c.
- Rebels, assisting, I. * 144, * 165;—slain at the horn, * 80.
- Red-book of Miggerny, III. 481, *note*.
- Red-cross, bearing the English, I. * 360.
- Red-hand, what, II. 376; III. 420.
- Redding-straik, what, III. 73, 567.
- Redik, Geo., Sh.-dep. of Kirkcudbright, III. 452.
- Redpath of that ilk, (Laird of,) I. * 147; Wm., * 414, * 477; Wm., yr., 10, 41;—of Grinlaw, Wm., 205.
- Reformation of Religion, commencement of, I. * 209, * 339; Case of Sir James Melville of Raith, *ib.*; Spoliation of Churches, altars, &c., * 353;—preached at Dundee and Montrose, * 406; at Perth and Ayr, * 407; at Kirkoswald, Maybole, Paisley, &c., * 427; a great many individuals warded, *ib.*, &c.; at Holyroodhouse, * 434; tumults, * 435.
- REGENTS of Scotland, ARRAN, I. * 267; returns to Scotland, * 270; Ancrum-Muir, * 360; MURRAY, * 421; MARR, * 423; Murray conspiring his death, * 510, 6; Forgery of his signature, 19; Murder of THE KING (Darnley) and the two Regents, 35; LENNOX, 41; Conspiracy against Regent MORTON, 32, 70, 72; Murder of Regents MURRAY and LENNOX, 87. See under their names, &c.
- Register House, in Castle of Edr., I. * 312, * 317, * 323, * 325;—Clerk of, * 315, &c.
- Regrating, I. * 227, &c. See Forestalling.
- Rehabilitation, form of Letters of, I. * 110.
- Reid of Aikenheid, Jo., I. 21;—Alex., hanged for using Mint irons, II. 399;—of Collieston, And., I. 382;—of Drumfork, Mungo, III. 57;—of Freyndlasheid, Jo., I. 41, 42;—Ja., 'wirreit and brunt' for Sorcery, &c., II. 421;—Marioune, Incest, I. 41, 42;—of Thirdpart, Da., II. 514;—Thom. See Bessie Dunlop's Trial, I. 49, &c.;—of Turnberry, John, slain, * 220; James, beheaded for this Slaughter, *ib.*
- Reidliche of Airdrie, Geo., II. 490;—of Barnewhowrie, Ro., 490.
- Reif of an anchor and cable, I. * 106;—(here-schip) of Summerdaill, * 225.
- Reiver, Sanderis the Read, an Evil Spirit, III. 606, 614, &c.
- Reiving, masterful, I. * 155.
- Religion, Protestant. See Reformation, Jesuites, &c.;—trafficking for alteration of, I. 172; the Spanish Blanks, 310.
- Reliques, I. * 278; of St Dathos, * 283; of St Mabago, * 306; of St Andrian of May, *ib.*, &c.
- Remission, General, to Inhabitants of Berwickshire, the Merse, and Lauderdale, I. * 14.
- Renfrew, attempting to restore Popery at, I. * 429.
- Rentoune of Bylle, David, I. * 140;—of the Scheillis, Jo., acquitted of Masterful South-reif, &c., II. 442.
- Reoche, Jo., Murder, beheaded, III. 484.
- Replegiation to a Regality, I. * 382, 16, &c.
- Reres, Lady, I. * 509, &c.
- Rescuing a felon, I. * 142.
- Resetting, the Traitors of Levyn, I. 18, 19, &c.; 'Hob the King' and 'Dand the man,' 32; Armstrangs, 33, 34; Rebels, 36; Border Thieves, * 208; Englishmen, * 346; Seminary Priests, 167; a declared Traitor, II. 124; a stolen purse, III. 552; Rebels, Act anent, I. * 80; Jesuites, III. 371. See Jesuites.
- Restis for culverins, &c., what, III. 205, and *note*.
- Revels, Witch, III. 603, 604, &c. See Witchcraft *passim*.
- 'Revising,' (Forcible Abduction,) I. * 104, * 180, * 182, * 241.
- Rhenish Wine, presented to K. JA. V., I. * 308.
- Rhymes, Witches', III. 607, *et seq.* See also Witch-Trials.
- Riccio, David, (vulgarly Rizzio,) Murdered, I. * 478; Scott of Cambusmichaell hanged, drawn, and quartered, * 480; Henry Yair hanged, &c., * 481; remarkable Supplications of persons accused, * 483, * 484, * 485.
- Rice-Ordeal, of the East, III. 184.

- Richardson of Smetoun, Ja., 155; II. 10, 343; Sir Ja., III. 601, *note*.
- RICHMOND, DUKE OF, I. * 271, * 272.
- Riddale, Burning the Place of, I. * 34.
- Riddell of that Ilk, (Laird of,) 'Hereschip' of, I. * 34, * 166; Walt., 71; Jo., yr., II. 476; III. 569.
- Riding furd of burgh, in 'Routing,' I. * 95;—with the English, * 359.
- Rig of Carberrie, Ja., I. 72, 84.
- Riglen's horn, what, III. 603.
- Rimbursin, ruptured, I. * 404.
- RINGRAIF, THE COUNTIE, I. * 401.
- Rings, &c. See New-year's gifts.
- Rioting within burgh, choosing a Lord of Inobedience, &c., * 409; to restore Poperie, * 416; at High School of Edr., (*q. v.*) 195, *note*, &c.; at the apprehension of Lord Borthwick, 354, &c.
- Rix-dollar, III. 601.
- ROBERT, LORD, (natural son of K. JAMES V.) I. * 305, * 308.
- Robertoun of Ernok, Ja., I. 36, 88, III. 345.
- Robertson of Dulcabene, Pat., Slaughter, I. * 431;—Dunc. scourged for taking wages against MARY Q. of SCOTS, * 467;—of Fascalie, Alex., II. 63, 394; Ro. 433;—of Glengennet, Dunc., II. 394;—of Killischawie, Ja., II. 394;—of Middle Downie, Alex., carrying timber out of Braemar, &c., III. 458;—of Pitcastell, Dunc., II. 394;—Ro., beheaded for Slaughter, III. 415;—of Smythstoune, Jo., II. 105;—of Straloch, Jo., *alias* 'Barrone Reid,' III. 203;—of Strowane, Alex., I. * 107; Ro., II. 394, 433; his *cradoche* harried, 437, III. 22. See Duncanson.
- Robin Hood. See Hood.
- Robson of Barvanes, Jo., II. 515;—of Leipielesche, Math., III. 568.
- Rochell wines, I. * 349, * 377.
- Roes, killing deer and, I. 48.
- Rogersaune, Jo., Hamesucken and Slaughter, III. 485.
- Roise, (Ross,) of Ballivot, Jo., burning of Clunie, Murder, houghing cattle, &c., II. 138; put to the torture, *ib. note*, and 144; objections against the Assise, 143;—of Dunskieth, Nich. I. 68; Will. Murder, under trust, &c., II. 481; beheaded and forfeited, 484;—of Glenbeg, Jo., III. 371;—Jo., Provost of Nairn, III. 485;—Kath., Lady Fowlis, Witchcraft, Poisoning, &c., I. 185;—of Kiltravock, Hugh, I. 191; Wm., houghing and slaying horses and cattle, &c., II. 67, 130;—of Pitcalany, Nicolas, II. 481;—of Swanstoune, Jo., I. 72;—Mr Tho., writing a Pasquil against the Scots Nation, III. 445; his right hand struck off and then beheaded, 454; Papers illustrating this remarkable case, 582 to 590; his Depositions, 588;—of Thorne-toun, Ro., I. 23. See Ross.
- Roise-nobilis, III. 178.
- Rokkeris and Nurses to K. JAMES V., I. * 263; to the Prince, * 314, &c.
- Rollok of Duncrub, And., Oppressed by Laird of Kelty, &c., I. * 240, * 373; Sir Walt., Tutor of, II. 63;—Mr Ro., Principal, superintended the education of E. of Gowrie, and his brother, II. 215, 329;—portioner of Craigie, Geo., II. 540.
- Rolls, Writers of the, I. * 315; Keeper of, * 316.
- Rome, messenger sent to, I. * 281; directions sent to, as to giving benefices to natural sons of K. JAMES V., * 311;—Embassy to, I. * 274.
- Rona, Island of, III. 109.
- Ronald, Barbara, Witch, III. 614, &c.
- Rood of Greenside, Heretics burnt at, I. * 210.
- Rooks, Witches take form of, III. 611, 613, &c.
- Rope-dancer, French, II. 238.
- Rorie, an Evil Spirit, III. 606.
- Roring Lyon, the, an Evil Spirit, III. 606.
- Rosary, golden, I. * 301.
- Rosedow, attempting to restore Poperie at, I. * 429.
- Roseneath, Burning and Hereschip of, I. * 246. See Burning, Hereschip, &c.
- Roslin, Provost of, Heresy, I. * 255;—Muir, Raid of, I. * 345.
- Ross, (Roiss,) of Auchlossin, Nic., I. * 184;—of Balnagowan, Alex., I. * 352, 191, 192; Sir Da., 195; Geo., 285, II. 483;—of Balmakkie, Donald, I. 201; Hu., II. 484, III. 452;—BISHOP of, Ja., I. * 185, * 211; Ro., I. * 254; Ambassador to England, * 277; to France, 6

- * 278; assault on treasurer (Mr Gawin Dunbar), in Cathedral of Ross, I. * 328, * 399; Dav., II. 273, 274;—Christian, burnt for Witchcraft, I. 194;—of Craigie, Jo., * 88, * 187; remitted, I. * 249, * 406, * 432, * 451, 25; Treason, 130; Mr Ro., II. 394; Jonet burnt for the Murder of her husband, the Laird of Balhoussie, 409, and *note*; plaids stolen, III. 266, 446, 472, 449; Jonet, *ib.*, notices of the Family, 583;—of Drumgrange, Jo., II. 130;—DUKE of, I. * 5; Ja., death and burial, I. * 120, * 233, * 239;—Gilb., Prov. of Maybole, II. 560;—of Halkhead, Sir John, I. * 4, &c.;—of Hanyng, Geo., I. * 137; Jo., 6, 89; Mr Math., II. 106, 108;—of Holme, Dav., I. 201;—Herald sent to the EMPEROR, I. * 304, * 307, to the K. of ENGLAND, * 312; waits on French Ambassador, * 322;—Helen, Tocher to her daughter, I. * 312;—Ja., beheaded and quartered, for taking wages against MARY QUEEN of SCOTS, &c., I. * 467;—LORD, Ninian, I. 150, * 344;—LORD, OF HALKHEAD, I. 71;—of Maitlandis, Tho., I. 27, III. 583;—of Mountgrenane, Jo., Treason, I. * 8;—of Petthevles, James, Treason, I. 130;—of Prestoune, Tho., I. * 399.
- Rossie of that Ilk, Dav., I. 74.
- ROTHES, Geo., EARL of, Intercommuning with, I. * 110, * 185; remission to him and his accomplices, I. * 249, * 283; dresses to John, his son, * 299; And., * 466, * 478, 91, 114, 304; III. 444;—MASTER of, (Norman Leslie,) I. * 337, supplying him, * 358.
- ROTHESAY, DUKE of, James, Prince and Steward of Scotland. See Prince James.
- Rothsay, Remission to Inhabitants of, I. * 113; Castle besieged, I. * 240;—Provost of, murdered, III. 199; inhuman barbarities of Argyll's followers, *ib.*;—Herald, I. * 282, * 286, * 287; banquets, Englishmen, * 300, * 304; sent to London, * 304.
- Routing, riding furth of burgh, in, I. * 95.
- Round, to whisper, II. 185, 214, 588.
- Row, breaking on (the wheel,) I. 241, II. 450.
- Rowan of Sandiedub, Nicoll, II. 391, Alex., his son hanged for barbarous cruelty—burning a woman on a red-hot 'girdill,' *ib.*, 393.
- Rowallan, Feud between Laird of, and the Cunninghams, I. * 56; * 428, &c. See Mure.
- Rowmais, King of, III. 590.
- Rowll, John, Prior of Pittenweem, Deforclog, &c., I. * 157.
- Rowne-tree, II. 536. See Charms.
- Roxburgh, Barons of, fail in their Bond, I. * 146;—Castle of, supplying the English in, * 360, * 379;—Justice-aires, expense of, * 317;—LORD, Ro. II. 351.
- ROXBURGHE, LORD, Ro., II. 548.
- Roy, red-haired, III. 251.
- Royston's, Lord, MS. Abridgment, I. 257.
- Ruid-day, II. 376.
- Ruid-well, III. 618.
- Rule, Bessie, a Witch's nickname, III. 606;—Robert the, an Evil Spirit, *ib.*, 615, &c.
- Rum, Island, of, III. 20.
- Rungis and batounis, striking a Minister with, II. 416; naked people struck with, and scourged, 454.
- Russell, Hieronymus, burnt for Heresy, I. * 215; Mr Jo., Justice-depute, 169.
- Rutherford, of Auchingorthe and his son respited for 'Revising,' I. * 241;—of Edgearstoun, Jo., I. * 20; Rich., III. 396;—of Hundolee, (Hondelye,) Jo., I. * 35; Geo., * 127, * 147, * 208, * 440; Sir Nich., III. 393, 396;—of Hunthill, Jo., I. * 208, 280; Wm., yr., *ib.*; Jo., and Tho., yr., tried for Raids of Falkland, &c., 293; Jo., III. 396;—of that Ilk, Helen, Herschip of her tenants, I. * 204;—Jo., hanged, I. * 142; Mr Nicoll, * 440;—Rich., Provost of Edr., 46; of Jedburgh, III. 396, 431; Jo. and Wm. tried for cruel Slaughter, II. 519; Wm. beheaded, 520; And., House-breaking, &c., III. 540;—of Synwallis, Wm., Mutilation, 225.
- Rutherglen, attempt to restore Popery at, I. * 430.
- Ruthven, Mr Alex. See MASTER of;—Alex., Resetting him, III. 72, 202;—of Ballindene, (see also Bandene,) Wm., I. * 342, * 347; funeral of Laird of, II. 473; Wm., III. 437;—of Foreland, (Frieland,) Alex., and Harie, his brother, forfeited in Parl., II. 159; Wm., 241; Alex., III. 203; Intercommuning with his son Alex., 72, 202;—Hary, *alias* Free-

- land, uses treasonable expressions against the King, II. 325; Depositions relative to, *ib.* to 329;—Holy Well of, 538;—of that Ilk, (Laird of,) I. 13; Wm., yr., *alias* Bandene, II. 397;—LORD, Wm., I. * 141, * 177; gift of Laird of Gorthy's escheat, * 248, * 342; Pat., murder of David Riccio, * 479, * 503, &c.; Wm., besieging Place of Dupplin, &c., 25; invaded, 89; tried for Slaughter, 90; and DIRLETON, II. 283;—MASTER OF, Wm., remitted for Besieging Castle of Rothesay and Burning Bute, I. * 240, * 479; Alex., killed at Gowrie's Conspiracy, II. 148, &c. See GOWRIE;—pensioner of Ross, Alex., II. 98;—Raid of, I. 111, 113, 116, and 119 to 130, &c.; Lairds of Mains, Drumquhassill, and Duntreath, executed, 139, &c.;—Surname of, not to come within 10 miles of King's person, &c., II. 239, 240;—Wm., brother of Jo., Earl of Gowrie, &c., forfeited in Parliament, 159.
- Ryburn (Raeburn) of that Ilk, Jo., Adultery and Child-Murder, II. 415.
- Rye-bowt, what, III. 605, 618.
- Ryellis of aucht, what, III. 100.
- Rynd of Kerse, Jo., yr., Slaughter, II. 101; Wm., 130; Pat., his son, slain by the Master of Ogilvie, &c., *ib.*; Harie and Gilb., his sons tried, 135;—Nicol, wounds Provost of Edr., I. * 399; makes public confession at Cross, with bare feet, in linen clothes, &c., *ib.*; II. 235;—Mr Wm., preceptor to Jo., Earl of Gowrie, 158, 176; his Deposition as to Conspiracy, 219; is 'extremely booted,' (put to torture in the boots,) 220, 238, *note*, 319. See GOWRIE'S Conspiracy.

S.

- Sabbati, Dies*, Saturday, I. * 115.
- Sacrament, Holy, abusing the, after the manner of Papistry, I. * 428; receiving, while under Excommunication, I. 365, * 375.
- Sacrilege, hanging an image of St Francis, I. * 286; breaking an image of St Magdalene, * 335; casting down one in Kirk of Air, *ib.*; spoliation of Churches, Altars, &c., * 353; striking a Rector in Cathedral of Aberdeen, &c., * 356; invading Prior of Pluscardin, &c., 376; stealing chalices, &c., * 393; this crime punished by drowning and hanging, *ib.*
- Sadler, King's Master, I. * 315;—Sir Ralph, I. * 286, * 301.
- Saidler, Christian, burnt for Witchcraft, &c., II. 25.
- Saiffer, what, III. 441, *note*.
- Salamander, the, one of the King's ships, I. * 298, * 316.
- SALISBURY, EARL OF, (Cecil,) Sir Ro., II. 581; his death, *ib.*, *note*; his speech as to L. Balmerinoch's Treason, 592.
- Salmon Fishing, in close-time, I. * 40, * 54; destroying, I. * 163.
- SALTOUN, LADY, III. 66; LORD ABERNETHY OF, I. * 177; Wm., besieging Frendraucht, &c., * 329; invaded, * 476; Alex., 116; Jo., II. 273, 572.
- Salutation, singular ceremony at the meeting of Makconell and Coll MacGillespie, III. 20.
- Sampsoun, Agnes, (Annie, the wise wife of Keith,) Witch, I. 216; her Trial, 230; her Witch-prayer or conjuration, 234; another, 237; 'wirreit' and 'brunt in assis,' 241.
- Samuelstoun, Laird of, taken by Lord Hamilton, I. 358.
- 'Sanct,' the, John Scott, the celebrated faster, so called, I. * 311.
- Sanctuary. See Holyrood, Torphechin.
- Sanday, Piracy and Murder in the Roadstead of, I. * 171.
- Sandelandis of Calder, Sir Ja., I. * 159, * 237; goes in Pilgrimage to Rome, * 240; remitted, * 256; Jo., yr. of, found caution for L. 10,000, licence to go to France, * 333; escapes from ward, *ib.*; Ja., 70; feud with E. of Montrose, 347; feud with Sheriff of Ayr, 352, 359; fights a combat with E. of Montrose, 361;—of Cruvy, Ja., I. * 156;—of Gilliswallis, Ja., III. 72;—of that Ilk, (Laird of,) Jo., * 147; takes two thieves, I. * 273, * 424;—of Sla-

- manno, Sir Ja., I. 248, 282; feud with E. of Montrose, 347, 348; feud with Sheriff of Ayr, &c., 352; II. 365, 555.
- Sangweleris, (wild boars,) I. * 311, * 312.
- Sanguhar, slaughter of inhabitants, I. 305;—Kirk of, attempt to restore Popery at, I. * 430;—LORD CRICHTOUN OF, Ro., I. 49, * 53; Wm., * 229, * 232; Feud with Lord Maxwell, I. * 53, * 78, * 85, * 109, * 124; with the Laird of Drumlanrig, * 269; Wm., slain, I. * 353, * 354; Ro., 372, 375; II. 394; III. 115; Wm., 339; hanged for killing a fencing-master, 447;—Tutor of, I. * 397, * 398; Wm. II. 71.
- Saphire, for MARY OF GUISE's golden girdle, I. * 299; King's ring, * 323.
- Satin, for dresses, I. * 292, &c., &c.
- Saturday, termed '*dies Sabbati*' in ancient writings, I. * 15;—Black, what, I. 56, *note*.
- Saul-Mess and Derige, &c., I. * 293, * 297; II. 530.
- Saulseat, (*Sedes animarum*.) Commendator of, John, Fire-raising, &c., I. 12.
- SAVOY, DUKE OF, Letters to, II. 571.
- Saw, Witch's salve, I. 53; II. 28, &c. See Witchcraft, *passim*.
- Sayneig and croceing, a Witch-charm, II. 479, &c.
- Sceptre, KING'S, I. * 117;—QUEEN'S, I. * 302, &c. See under their names.
- Schafferonis, I. * 299.
- Schalmeris, (musicians,) I. * 292.
- Schlaikill-bane, III. 509, &c.
- Schankis, (hose,) I. 51. See also App. to the earlier reigns, III. 265, 478, &c.
- Scharge, scharg, what, III. 538.
- Scharp, Jo., slain, II. 427;—Mr Jo., Minister, tried, II. 494; banished, 503.
- Schaw of Barragane, John, I. * 382;—of Broiche, Jo., I. * 450;—of Cambusmoir, Alex., III. 233, 250;—of Cammysmort, Judicial Arbitration, I. * 167;—Elizabeth, (mistress of K. JAMES V.,) I. * 277;—of Glenmure, Geo., II. 128; Adam, his brother, tried for shooting bagbouts, &c., *ib.*;—of Greenock, Jo., I. 19, 63, 67, 171;—of Grymnet, Jo., I. * 457; Alex., Tutor of, III. 172;—of Haly, Jo., oppression, &c., I. * 57, * 453, * 457;—of Kerise, Jo., slaughter, I. * 58; Quintin, (Tutor of,) * 137, * 150, * 457;—of Knokhill, Geo., I. * 167; Mr Ja., III. 233;—of Sauchy, Alex., I. * 167, * 327; Ja., II. 62, 63, 502;—of Sornbeg, I. * 343; Jo., II. 106, 109;—Mr Wm., slain, I. 363;—of Welwood, Adam, I. 19.
- Schaveill, Sir Harie, III. 589.
- Scheilling, (scheill,) what, II. 519.
- Scherand wine, price of, I. * 389.
- Schellopes, small vessels, III. 84.
- Scoir, (scoroch,) buck-toothed, III. 223.
- Scola, Edw., sometime Sheriff of Orkney, III. 280.
- Scoll, (scoil,) drinking a, what, II. 172.
- SCONE, LORD, II. 273; Andro Henderson complains of him, 321; his exculpation, 322, 457, 496, 572; III. 208, 316;—Regality of, I. * 424.
- Scott, of Abbotsford, Sir Walter, Bart., Letter from, as to the name and Clan of Scott, III. 381;—of Abbotsball, Wm., I. 261, 304; Tho., Justice-Clerk to K. JAMES V., singular anecdote of his death, &c., III. 596;—of Allanhauche, Ro., I. * 127, * 147, * 400;—of Balbertoune, Ro., I. 28;—of Balwery, Sir Wm., I. * 62, * 78, * 134; Wm., * 425; Sir Ja., 261, 304; subscribes the forfeited Lords' Band, 346; II. 49;—of Bonynoune, Ro., I. * 400, * 414; Adam, * 450; Jo., II. 339;—of Braxholme, Sir Walter, found caution of 500 merks, I. * 152; caution of 20,000 merks, * 229; Treason, * 272, * 332; to depart this realm, 261, 308, 346; Band or Association between him and 50 of his Clan, III. 381, 390; remarkable penance enjoined on Laird of Cessford, for his murder, 391;—of Bowhill, Ro., II. 339; his three brothers slay Napier of Wowmet, *ib.*;—of Buklenuche, Sir Walt., I. * 127; Treason, * 272; takes Penman prisoner, * 273, * 456; Keeper of Liddisdale, 342; takes Will of Kinmont out of the Castle of Carlisle, with sound of trumpet, &c., 363; QUEEN ELIZ. demands redress, 364; relations of that remarkable event, II. 504; III. 390, 396;—of Burnfoot, Adam, I. * 400;—of Burthauche, Jo., I. * 147;—Capt. of the Airmetage, Roger, III. 220;—of Castlesyde, Geo., III. 458;—Dav., 'callit *Lady*,

- I. 27, 33, &c.;—of Deloraine, Jo., Resetting Traitors, &c., I. * 23;—of Deringstoun, Geo., III. 396;—of Dryhope, Adam, his brother, II. 405;—of Edrene, Tho., I. * 456;—of Edilstane, Ro., III. 396;—of Edschaw, Walt., I. * 17, 27, 38; Phil., * 69, * 147, * 456;—of Fenwick, Simon, I. * 147;—of Goldielands, Walt., I. 276;—of Harden, Wm., I. * 400; Walt., his houses to be demolished, 276; denounced, *ib.*;—Geo., Walter, and Ingram Scott, hanged for barbarous cruelty, maiming and killing sheep, &c., 380; illustrative Papers, 389; Jok, *alias the Sukler*, hanged, 396; Walt., Mutilation, 455;—of Hanyng, Tho., I. * 400, * 456, * 457; Ro., II. 509; Tho., III. 391; Sir Ro., 539;—of Hartwoldmyres, Ro., III. 458;—of Hassindene, Wm., I. * 147; oppressed, I. * 252; Dav. slain, * 456;—Hob, called *the Colufurd*; Mr John *the Clerk* hanged, I. * 450; Mich. scourged for cattle-stealing, * 157; Hercules denounced, 305; Adie, called *the Peck*, hanged, II. 365;—of Howpaslot, Walt., I. * 18, * 71, * 88; Tutor of, (Rob.), * 147; Rob., * 173, * 230, * 400; Lady, III. 381;—of Horsehill, Ro., I. * 434;—Jo., baillie of Mussilburgh, II. 555;—John, '*the Sanct*,' a celebrated faster, I. * 311;—of Langschaw, Patrick, III. 601, *note*;—of Linflar, Walt., I. * 88;—Margaret, nurse to PRINCE ARTHUR, I. * 309;—Marg., Incest and Adultery with Lord Borthwick, 84;—of Munjie, Pat., I. * 88;—of Newburgh and Gemmilsleuch, Mr Arth., II. 451; Sir Jo., III. 539; his purse stolen, 552;—of Pitgorno, Tho., Justice-depute, I. * 163, * 168;—of Qhitchester, Robert, I. * 19, * 21, * 23, &c.;—Rob., '*callit Bellit Robin*,' I. * 27;—of Raeburn, Wm., III. 381;—Ro. and Adam, bailies of Hawick, &c., acquitted of slaughter, III. 218, 396; Pa., baillie of Selkirk, 396;—of Robertoun, Jo., I. * 147;—of Sintoune, Ro., slain, I. * 61; Walt., * 127; Walt., yr., * 400;—of Satchells, Lady, III. 381; Capt. Walt., (Author of Metrical Hist. of Name of Scot.) 382; Wm., 383;—of Sundelishope, Jo., III. 442;—Surname of, remarkable Contract betwixt, and the Kerrs, III. 390;—of Thirlestane, Ro., I. * 400, * 456, 3rd 9; Sir Ro., II. 562; III. 301, 393, 539;—Tho., Ambassador to England, &c., I. * 276; Justice-Clerk, * 328;—of Tuschelaw, Walt., I. * 22, &c.; Dav., * 36; Adam, called *the King of Thieves*, * 142, * 144; beheaded, * 145, * 270; Wm., * 433, * 434, * 450, * 456; Walt., 84; III. 396;—Sir Wm. jun., Felony done to him, I. * 60;—Wm., hanged, I. * 206; Dame Grizell, *ib.*
- Scougall of that ilk. See Skowgall.
- Scourging with a bridle, &c., I. * 454; naked people, cutting the backs of Cattle, &c. * 455; naked people with 'roungis and batounis,' and 'leisching' them with belts, three persons beheaded, hanged, and scourged, II. 454; Messenger scourged and deprived, *ib.*; with a belt and murdering, 531; with sword-belts and horse-bridles, &c., III. 539;—punishment of, I. * 157, * 206, * 458, * 467; II. 94, 417, 455; for following Gypsies, III. 99; for 'vnreverent speiches' against the KING, &c., 220; for Theft, 443, 445.
- Scrabster, House of, detaining, I. 337.
- SCROPE, LORD, Warden of England, I. 365.
- Serymgeour, Constable of Dundee, (of Dudhope,) Ja., I. * 177, * 268, * 269, * 324, * 347, 41, 178; to bear a Cornet Blanche and the King's Banner and Standard, 342; Sir Ja., 392, 413; III. 134; Ja., yr., *ib.*;—of Balbegys, Alex., his houses, Jonet his daughter, &c., burnt, I. * 334;—of Balbouchtie, Ja., I. * 404;—of Ballinscho, Jo., III. 471;—of Glaswell, Ja., I. 27, 75.
- SEAFORTH, EARL OF, III. 19.
- Seal, great, Counterfeiting, Captain Rallie hanged, I. 361.
- Seanis, (Sciennes,) near Edinburgh, III. 572.
- Seatoun-thorne, a Witch trysting-place, II. 543.
- Seereitt, a pyne doublet, or chain mail worn under the dress, II. 84, 149, 158, 183, 185; III. 204, *et passim*.
- Secret members, cutting off, putting hot ashes and live embers in the *scrotum*, &c., II. 393; Pat. Stewart beheaded for these crimes, 394;—stroke upon, with the foot, III. 542.
- Secret Council, declining the Jurisdiction of the,

- &c., II. 494; Case of Ministers holding an unlawful General Assembly, &c., *ib.*
- Sedition, in burgh of Ayr, I. * 204; in Edinburgh, bearing a banner called the Haly Gaist, &c., * 330.
- Selbie of Bittilsdane, Ro., II. 515.
- Selkirk, Barons of the shire fail in Bond, I. * 147; Justice-aire of, * 22, * 38, * 71;—Pot-Loch of, * 19;—Town of, burnt, * 35; 'herreit be Thevis and Pestilence,' * 262.
- Seminary Priests, III. 372. See Papists, Jesuites, &c.
- Sempill of Beltrees, Jo., 70; convicted of Treason, in Conspiring the REGENT'S Slaughter, I. 72; Sir Ja., II. 309;—of Blenescheillis, Jo., I. * 476;—of Cathcart, Wm., * 388; Gabriel, yr., 66;—Colonel, Wm., 173, 327;—of Craighait, Gabriel, excommunicated, &c., * 365; Ro., 66;—of Ernok, 67;—of Fulwood, John, * 163, * 170, * 382, * 385, 141, 183; II. 439; Wm., III. 237;—LADY, (Dame Mariota Montgomery,) Imprisoning, &c., I. * 381;—of Ladymere, Gabriel, * 163;—LORD, John, * 163; Wm., * 164, * 166; unjustly denounced a rebel, * 170, * 190; remitted, * 256; Treason, * 271, * 381; Ro., * 385, * 421, * 426, * 476, 141, 265; Hew, III. 316; Feud with Earls of Eglington and Glencairn, &c., 580;—MASTER of, Ro., I. * 163, * 166; found caution not to resort to France or Scotland, * 226, * 256, * 343; invaded, * 343; slays Lord Creichtoun of Sanquhar, * 353; pardoned, * 354; found caution for 20,000 merks; And., 66, 67, 133;—Mathew beheaded, * 165;—of Noblistoun, Ro., * 361;—of Thirdpart, Wm., * 388, * 429.
- Sempills, Feud with the Cunynghames, I. * 164, * 166, &c., * 282; Pareis, Horse-stealing, * 476.
- Serat, Q. Mary of Guise's Fool, (a female,) I. * 293, * 294, * 301, * 307, * 322.
- Serjeand of Justiciary, I. * 2.
- Servitour, domestic, original signification of, II. 67.
- Session, Signet made for the Court of, I. * 256.
- Setlington of Auchinskeiche, Jo., I. * 456;—of Stanehouse, Jo., * 140.
- Sewers, who served up the King's meats, I. * 312.
- Sewing gold, I. * 296; silver *ib.*, 319.
- Sey-Revaris, Pirates, (*q. v.* and Piracy,) I. * 273.
- Seytoun of Auchinhuif, Jo., I. * 454;—of Caraldeston, Jo., * 465;—of Gargunnoch, Mr Alexander, III. 552;—of Kylesmure, Sir Wm., II. 509;—LADY, Dame Mary le Pyeris, I. 14;—of Lathreise, John, yr., * 404, * 465;—LORD Geo., * 78; Justice depute, * 85, * 199; Licence to, * 111; abiding from Solway, * 243, * 338, * 381, *note*, * 387; mutilation of Laird of Borg, * 465, 114; Ro., 154, 178;—of Lumford, Jo., * 48;—MASTER OF, 94;—of Meldrum, Alexander, slain, * 149, * 175, * 183; feud with Earl Marischall, 353; Geo., Tutor of, his coffer with writings stolen, II. 93; Alex., *fiar*, slain, III. 379; Jo., *ib.*;—of Mony, James, 478;—of Northrig, Tho., I. 169; Geo., III. 134;—of Parbroath, Da., I. 270; Comptroller, 347;—of Pitmedie, (Pitmedden,) Jo., 59;—of Pittady, Jo., 64;—of Rungavy, Wm., * 387; Dav., 28;—of Touche, * 421; Ja., 64;—of Tulliebody, Sir Ninian, * 147, * 167; Ro., * 453; Walt., * 465, * 466; Ja., II. 62.
- Sharpe, Archbishop, notice of the Trial of Mitchell, for firing a pistol at him and Bishop of Orkney, III. 195, *note*, &c.
- Sheep, barbarous cruelty in maiming and killing, III. 380; George, Ingram and Walter Scott hanged, 389; illustrative Papers, *ib.*; Jok Scot, alias the *Sukler*, hanged, 396;—selling sheep to the English, I. * 179, * 181;—stealing, (see also Stouthreif, &c.,) * 22, * 87; from Queen's Park, * 388; Hob Scott and four others hanged, * 450; Achilles Henderson scourged and banished, &c., 7; Adie Usher hanged, III. 568; Will Usher banished, 569;—stealing wool from live sheep, I. * 206.
- Sheriff, bribe taken to discharge a Murderer, I. * 63; Invasion of, in a fenced Court, * 136, * 456. See Jurisdiction, &c.
- Ship of gold, &c., I. * 295.
- Ships of War, KING JAMES V.'s, Salamander, I. * 298, * 316; Little Bark, *ib.*; Unicorn, *ib.*, 317; Expedition against the Pirates, * 298;

- wood for, * 300; victualling for the Isles, * 303, (see *Isles*); ensigns, standards, &c., for ships, *ib.*; Ovens for, *ib.*; silver plate, &c., * 304; keeping the Ships, * 316; the Lion, * 317.
- Shirts, King's, embroidered with gold and silver work, * 301, &c.
- Shooting near the KING's person, 98, 100; within KING's Palace, punished by Banishment for life, 187, &c. See *Holyrood*;—with Pistolets, 371. See *Pistolets*, &c.
- Sib, of kin, &c., III. 96.
- Sibbett, (Sibbald,) of Cair, Dav., I. 16, 17;—of Lethome, Dav. * 426;—of Rankelour-over, Alex. 60; Tho., Tutor of, III. 9.
- Siege of Newark, I. * 139; of Makkanes House by Donald of the Isles, * 262; of Blackadder by the English, * 269; of Palace of Glasgow by Earl of Lennox, * 269, &c. See *Battle*, *Field*, &c.
- Signet, three new ones made, I. * 256.
- Signet-Letters, interlining, I. * 346;—Forging, a Notary and his servant hanged, 85, 87; Messenger scourged and deprived, II. 455.
- Silver Mines, I. * 302;—'pece,' (plate,) stolen, * 179; boy of K. JA. V., 302; 6 great and 4 small, * 323; two lavers, *ib.*; dish stolen, * 386;—Vessels, Master of the King's, * 313;—work, King's, three cases of, taken with him to the Isles, * 302, * 303; cases for, * 323.
- Simon of Craighous, Laur., III. 72;—Sir Duncan, burnt for Heresy, I. * 210, * 211, &c.
- Sinclare, (Sinclair, St Clare,) of Auchinfranko, William, I. * 85; Slaughter, * 151; slain, * 327;—of Blause, William, III. 134;—of Burgh, Hew, I. 375;—Captain Geo., III. 32;—Da., imprisoned by his brother, E. of Caithness, I. * 395;—of Drydane, Edward, * 166, * 336;—of Dyn, Ja., slain, III. 235; Geo., (his brother,) *ib.*;—of Etha, Wm., 82;—of Galdwalmore, with William, Edward and George, his sons, slain, I. 299;—of Hiefield, George, * 169;—of Hirdmanstoun, William, Slaughter, * 468; Witch consulted to allay his lady's birth-pains, 237;—of Ley, James, his son Adam drowned for Sacrilege, * 393; Wm., III. 303;—of Little Blair, Robert, I. * 347;—of Longformacus, Math., * 477;—of Loquhoy, Hen., 387;—LORD, Henry, * 78, 60, 310;—Margaret, Lady, * 182; remitted, * 249;—MASTER OF, servant slain at Dysart, * 408, 3;—of Mey, (May,) Sir Wm., 195; Wm., yr., III. 9, 291;—of Myreside, Wm., I. * 347;—of Murchill, Ja., III. 285;—of Pitcairns, Oliver, I. * 252; Captain of Tappallan, * 254; Protection to, *ib.*; gift, * 256; Lease of Orkney and Shetland, &c., for Rent of 3000 merks, * 257, * 258; gift, *ib.*; Keepership of Castle of Kirkwall, *ib.*; found caution to answer for all crimes, &c., * 329;—of Ratter, John, (brother to Earl of Caithness,) III. 286; Justice and Sheriff depute of Orkney, *ib.*, 304;—of Ravinsnuk, Oliver, II. 476;—of Rosling, Sir Wm., I. * 159; Respited for Abiding from the Raid of Solway, * 241; remitted, * 242, 33; Witch consulted for recovery of his Lady's health, 232; II. 10; Wm., 467;—of Strone, Henry, &c., pursued for Slaughter, I. * 413;—of Stircko, Jo., slain, III. 235;—of Tenquhie, Hen., 82;—of Tullope, Wm., 280;—of Whitekirk, Hen., I. 155; Hamesucken, Rapt and Forcing, II. 405;—William, Resetting Jesuites, &c., III. 371; banished, 376.
- Singers, I. * 115. See also *Minstrels*, &c.
- Singular Combat, (see *Duel*), trial for Slaughter in France, II. 382; in Flanders, III. 502; illustrative Papers, 504.
- Sinton, (Robert Scott,) Laird of, slain, I. * 61.
- Skaith, III. 612, &c.
- Skatt, (a sort of black mail,) levying, II. 528.
- Skellington, (Skerringtoun,) Laird of, Remitted for Slaughter, I. * 82.
- Skene of Curriehill, Sir Jo., Justice Clerk, II. 3; Lord Clerk Register, 273, 568; Sir James, III. 418.
- Skin-coats, to K. JAMES V., I. * 305.
- Skirling, Elspet, and two others 'wirreit and brunt in assis,' for forging and uttering base money, II. 74. See *Uttering*, &c.
- Skirving of that ilk, Harie, II. 534;—of Plewlandhill, Wm., I. 55.
- Skoll, (skoill,) meaning of drinking scoills, II. 172 and *note*, 312.

- Skowgall of that Ilk, yr., I. * 143; Jo., * 361, 155.
 Skrukned, what, III. 612.
 Skye, Isle of, I. * 225.
 Skyit-Thurisdag, (Furisdag), I. * 40.
 Skynner of Balgordye, George, I. 27.
 Slack, what, II. 519.
 Slaines, Letters of, II. 486, 604, *note*; pannel made to satisfy private party, notwithstanding of Remission, &c., III. 234.
 Slandering and calumniating the King, Jo. Dickson, Englishman, hanged, I. 385. See K. JAMES VI.
 Slanes, house of, to be cast down, I. 342.
 SLAUGHTER.—ACHESOUN of Gosford, Alex, I. 2;—Adam, Geo., beheaded, 95;—Agnew, Sheriff of Wigton, And., remitted, * 252;—Allan, Jok, beheaded, 10;—Angus, Geo., notary, II. 480;—ANGUSONE, (M^rLeod.) Neill, beheaded, I. 69;—ARMSTRANG. See under that name;—ARGYLE, EARL OF, Arch., * 247;—Arnauld, Mr Gilb., III. 379;—Arnot of Woodmylne, Jo., yr., II. 53; arguments as to shooting with Pistolets, &c., *ib.*, &c.;—Attiquane, Laird of, slain, I. * 86;—Auchincraw, William and Hary, II. 98;—Auchinfranko, Laird of, slain, I. * 327;—Auchinhervy, Laird of, slain, * 132, * 237;—BAILLIE of Howgait, Arch., slain, * 257; Tho., 38;—Bailjic, Mr Ja., III. 498;—Baird, Hen., beheaded, 499;—Bairdis, Jo., 119;—Ballindroicht, Laird of, slain, I. * 204, * 257;—Balluny, Lady, (Marg. Douglas,) slain, * 343;—Bannatyne of Corehouse, John, * 179; of Stenhouse, Sir Pat., 393; of Gairsey, Wm., *ib.*; acquitted, 397; of Kames, Hector, II. 131; in Chapell Donald, Ja., 461, &c. See Muir of Auchindrain;—Bardowy, (Perdowy,) Laird of, slain, I. * 204;—Barclay, Rob., sentenced to be beheaded, * 396; banished, *ib.*; of Towie, slays a Messenger, 381; acquitted, 385; Ja., slays Laird of Earlsmyln's son, II. 72, 80;—Bastie, Sir Anthony d'Arcy de la, slain, I. * 235;—Battiesoune, *Jok of the Scoir, Prikrit up Archie*, and Adie, hanged, II. 442;—Bek, Jo., 523;—Bell of Curre, Slaughter of Laird of Mousewald, I. * 41;—Bellenden, Jo., III. 497;—Bickerton, John, of Casche, I. * 69;—Bissate, Tho., yr. of Querrell, slain, * 368;—Blacater, Andro, of that Ilk, * 100; Jo., * 379; of Tullyallan, beheaded, * 151, * 271, * 275;—Black, Hen., and 11 others, III. 53;—Blair of Balthayok, Tho., I. * 343, * 424; Patrick, beheaded, * 374; Peter, III. 443; Tutor of Balmyll, Alex., I. * 424;—Blak-hall, Wm., of that Ilk, * 100;—Bog, Ja., * 476;—Bonkle, Tho., beheaded, 158; Jos., beheaded, II. 417;—Borthwick of Cruikstonne, Wm., respited, I. * 235, * 241, * 266;—Bowman, Christian, Lady of Brux, slain, * 208;—Boyd of Banhath, Ro., 171; Jo., 399; of the Kyppis, Ja., 171; LORD, Robert, *ib.*; MASTER OF, Thomas, *ib.*;—Brothersyde, Wm., beheaded, * 160;—Brand, John, student, beheaded, III. 360;—Broune, Tho., beheaded, I. * 15; of Carsleuch, Jo., 81; Jo., beheaded, III. 493;—Bruce of Cultmalundie, Laur., yr., &c., 443; of Fyngask, Pat., II. 427; Capt. Harie, III. 502;—Brunftlex, Geo., alias *Cutulg*, beheaded, I. 77; Alex., of Hardaikeris, II. 480; Adam, 506;—Bryntschele, Jo., beheaded, I. * 164; Pat., 63;—Buchanan, Geo., and 8 others, III. 546;—Butter of Gormock, John, I. * 367, * 371;—CAIRNS, Wm., of Orchardtoun, * 131; Wm., yr., remitted, * 252;—CAITHNESS, EARL OF, John, slain, * 253; George, * 394;—Campbell of Ardkinlas, acquitted, 363;—of Auchinhowie, Colin, * 204; hanged, * 251; his escheat granted to the Laird of Keir, *ib.*; of Bargour, Charles, his estate escheated, * 250; Hew, II. 507; Robert, III. 466; of Kethick, Pat., II. 80; of Lowdown, slaughter of Earl of Cassillis, I. * 136; of Pofortour, John, slain, * 251; of Skerringtonn, Cha., respited, * 257;—Canochson, Alex. John, * 246;—Carkettill of Marcle, Jo., 10;—Carrutheris, Jo., of Warrambie, II. 475; Jo., in Netholme, III. 115;—CASSILLIS, Gilbert, EARL OF, I. * 130; slain, * 136; Gilb., respited, * 236;—Castlearcy, Laird of, slain, * 149;—Cesford, Laird of, slain, * 133;—Chalmer of Seggydene, David, * 334; of Drumlochy, Wm., * 374;—Chamrone, Jo. and Dunc,

beheaded, III. 537;—Chancellor, Wm., of Quodquene, I. * 175;—Chartetis of Cuthilgurdy, John, slain, * 343; of Kinclavin, John, * 334; of Kinfawnis, Tho., and his brothers, * 334, * 343; of Lochtoun, Robert, remitted, * 254;—Clan Cameron, slaughter by the, * 355;—Clark, Jonet, burnt, 206; Cochrane of Pitfour, John, yr., * 334; of that Ilk, Wm., 133;—Cokburne, Sir Wm., of Scraling, * 26;—Colquhoun, Pat., and Mr Adam, * 170; Jo., beheaded, 359;—Colville, Sir Wm., of Vchiltree, slain, * 65, * 68, &c., * 112; Sir David, Priest, * 405;—Congiltoun, Hen., Tutor of, 5; Jo., II. 401; Hen., I. * 368; Patrick, *ib.*; Oliver, young Laird of, poisoned, * 369;—Corsintoune, Laird of, slain, * 82;—Cranstoun of Dodd, Sir Wm., 20;—Craig of Craigstoun, Wm., II. 105;—Craiganis, Laird of, slain, I. * 163, * 164, &c.;—Craigtoun, Laird of, slain, * 343;—Crawford, Tho., of Auchnames, * 205;—EARL OF, David, slays the Lord Chancellor Glamis, 79, 85; Laird of Balgawis, III. 248;—Creichtoun, Robert, of Kirkpatrick, slain at the horn, * 77, * 78, &c.; of Ruthvennis, Adam, banished for life, 165; of Scottistoun, Wm., slain, * 254, * 257; of Craufurdton, John, &c., II. 71; of Cluny, Sir Ro., 76; LORD, Wm., slain, I. * 340; of Quarter, Jo., 190; And., *ib.*;—Culros, Abbot of, slain, * 151;—Cumyng of Altyre, Alex., * 374; James, II. 427;—Cuninghame, John, of Capringtoun, I. * 148; Ja., of Glengarnock, II. 389; of Auchinharvy, Edward, slain, I. * 237; of Aiket, William, 17;—DAVIDSON, Alex., beheaded, III. 362;—‘Deill among us,’ (Robert Henry,) beheaded, I. * 368;—Dekesoune, Jo., beheaded, * 81; Wm., beheaded, * 87;—Dempster, Sir Henry, Chaplain, slain, * 343;—Dingvale of Kildun, slain, * 247;—Dischington of Ardross, &c., * 156;—Dougal, Ro., beheaded, * 15;—Douglas of Annatroche, Wm., III. 443; of Drumlanrig, Wm., Slaughter, I. * 78; Ja., slays Rector of Kirkbride, * 329; Jo., his brother, * 387; of Garschogill, Arch., * 256; Geo., II. 1; of Mouswall, Ja., and 5 others,

III. 472; of Pinzerie, Wm., beheaded, III. 95; Mr Ro., Burning, &c., I. * 201, 167; Mr Tho., Minister, III. 473; Wm., &c., 500;—Dounne, Ja. Stewart, Captain of, slain, I. * 332;—Drummond of Coquhalzie, Jo., II. 80;—Duffus, Laird of, slain, I. * 149;—Dunbar of Cumnock, Pat., yr., * 370; Alex., *ib.*; of Kilboyak, Alex., and his brother, III. 200, 399; of Mochrum, Jo., Slaughter of, I. * 112; Pat., II. 95; Ro., Ja., &c., III. 200;—Duncan, Jo., beheaded, III. 484;—Dunlop of that Ilk, Alexander, I. * 402;—Dunwedy, Pat., Slaughter of Laird of Glendinning, &c., hanged, * 60;—EDINBURGH, Treasurer of, slain, * 126;—Edzare of Inglistoune, Jo., II. 71;—EGLINTOUN, EARL OF, Hugh, I. * 132;—Eldmere, Laird of, slain, * 17;—Elisoune, Sir Alex., Chaplain, respited, * 257;—Elliot of Horslehill, Wm., sentenced to be beheaded, * 456; sentence of Banishment for life recalled, * 466; Ninian and Wm., their right hands struck off, and then hanged, II. 559;—Elphingstoun, Geo., respited, I. * 249;—Erskine of Auchterforfare, Arth., II. 101;—Ewmond, Sir Martin, Chaplain, slain, I. * 332;—FALCONER of Innerlochtie, Hew, III. 435; Hew, his son, *ib.*;—Farquharson of Inverchald, Jo., &c., 203;—Fentoun of that Ilk, slain, I. * 61, * 106, * 121; of Ogill, Ja., * 408;—Fergusson of Bracansyde, Ro., slain, * 232;—FLEMING, LORD, John, slain, * 61, *note*, * 131, * 141, * 144, * 236; of Moness, Alex., III. 443, 542;—FORBES, MASTER OF, Jo., I. * 149, * 175, * 183; Arth., 40; of Monymusk, Wm., III. 204; Ro., 227; of Reres, Arth., 89; Jo., beheaded, II. 532;—Forsythe of Newtoun, John, remission to Alex., his son, I. * 250;—Forsythe of Nyde, Ja., respited, * 251;—Fotheringhame of Powry, Wm., remitted, * 248;—Frenche, Alex., Tutor of Thornydykis, beheaded, III. 222;—Fullarton of Crago, Wm., jun., I. 79;—GALBRAITH, Mr Ro., * 172;—Gardin, David, slain, * 270; John, beheaded, * 404; Tho., of Bandoch, 372; of Legatstoun, Tho., II. 103; Da., his brother, *ib.*;—Gladstones of Coklaw, Jo., I. * 414; of that Ilk, Ja.,

472; Jo., Herald, beheaded, 362;—GLAMMIS, LORD, Pat., II. 386;—Glendoning of Drumrasche, Jo., 604;—Gordon of Crauchlaw, Wm., remitted, I. * 252; of Golspitour, Jo., yr., III. 235; of Kenmure, Sir Alex., I. * 231; of Lochinvar, James, remitted, * 252;—Gorthy of that Ilk, Geo., I. * 248, 255;—Gourlay of Kincairig, Wm., respited, * 253;—Gothrasoune, James, publicly flogged for Slaughter, committed in his eighth year, * 16;—Gowdie, Geo., III. 544;—Grahame, Alex., 483; of Craig, Da., II. 400, 480; of Gillesbe, Ro., I. * 85; Ja., II. 97; of Knockdoliane, Ro., I. * 386; of Thornok, Ro., remitted, * 248; of Westhall, John, slain, * 179;—Grant of Ballindalloch, John, * 175; of Culcabok, John, *ib.*; of Freuchy, James, *ib.*; of Glenmoristoun, Jo., III. 552; Jonet, burnt, I. 206; Tho. and Jo., III. 435;—Gray of Bandirrane, Gilb., &c. II. 514;—Grerstoun (Greiftoun), Laird of, slain, I. * 81, * 87;—Guthrie, Mr Hugh, slain, * 343; Laird of, slain, 372; of Kincaldrum, Alex., &c., II. 101; Wm. of Ravenshie, 528; III. 77, 80;—HAITLIE, Alex., I. * 451;—Halkhede of Petfurane, Jo., remitted, * 237;—Hall of Foulbar, Ja., III. 236;—Hamilton of Barodwy, Allan, slain, I. * 204, * 250, * 257; of Crawfordjohn, Sir Ja., * 414; of Hairshaw, Jo., his sons, &c., III. 119; of Stanehouse, Ja., I. * 179;—Harkness, Malye, Agnes, and Jo., * 442;—Hay, Jo., III. 241; acquitted, 243;—Henry, Jo. and Ja., I. * 453; Ro., ('*Deill amang us*'), beheaded, * 368;—Hepburn of Elstanefurd, Geo., and 77 others, * 1; of Kingstoun, Adam, I, 3; of Wachtoune, Sir Pat., III. 271;—Hereis, Andro, respited, * 242;—Hering of Little Blair, And., 262;—Heroun of Keerochtrie, Pat., III. 460;—Hervie, Alex., 444;—Holyrood, Slaughter committed within the *Girth*, (sanctuary,) I. * 258;—Horne, Gawin, and his mother, III. 224;—Houstoun, Pet., &c., I. * 350; Arch., beheaded, *ib.*; Rob., 69; Sir Pat., 182, 183;—Howdene, Sir Jo., * 365;—Hume of Ballicass, Wm., II. 336; of Coldingknows, I. * 377; of Manderstoun, Alex., 30; of Wed-

derburne, Da., I. * 102; Mark, &c. 2;—Hunter, And., hanged, * 366; of Ballagane, * 369; of Polmude, Edw., slain, * 106;—Hyviesoune, John, beheaded, * 388;—INNES, Sir Alex., Chaplain, slain, * 332; Mr Alex., Minister of Birnay, II. 557; Jo., 41;—JAK, Rich., beheaded, I. * 27; Tho., beheaded, * 384; Issobel, III. 224;—Jamesoun, Wm., (*Wanton Will*), beheaded, I. * 219;—Jardine of Apilgirth, Alex., yr., 184; Tho., of Birnok, II. 491; beheaded with Vmpra, his son, III. 58;—Jarding, Jo., Slaughter of Laird of Dunvedy, I. * 40; Cha., * 442; Da., &c., II. 485; Wm., and 6 others, 492;—Johnnestoune of Gratio, Tho., * 85; of that Ilk, Ja., 184; of Kellobank, Wm., Wm., yr., and Jo., his sons, 489; of Loch-house, Jo., beheaded, II. 425; of Lockerbie, Wm., &c., III. 432; of Thornik, Capt. Ja., 501; of Tunnergarthe, &c., Slaughter at a Funeral, 438, 439;—Jollie, Alisoun, I. 397; acquitted, 399;—KEITH, Alex., beheaded, II. 539; of Ludquhairn, Sir Wm., III. 539;—Kennedy of Baliarrak, Alex., II. 400; of Barguay, Tho., I. * 86; Alex. and 74 others, * 138; of Blairquhan, Jo., III. 119; of Corse, Da., II. 480; of Culzeane, John, slain, I. * 334. See Kennedy; of Girvanmains, and 250 others, respited for Slaughter of a Dutchman, * 236, * 238;—Kere, John, beheaded, * 149;—Kerr of Ancrum, Wm., 36; of Gateschaw, * 68; Mr Mark, 377;—Kincaid, Tho., 355;—King of Barro, Ja., III. 379; Da., in Hoy, *ib.*;—Kinnaird of that Ilk, John, far, II. 427;—Kirkpatrick, Alex., III. 123; Jo., 429;—Kirkwood, Ja., beheaded, I. * 165;—Knowis, Ro., * 399;—LATHREIS, Tho., beheaded, II. 85;—Lauder, Gilb., * 467; of that Ilk, Rich., yr., *ib.*; Jasper, (alleged madman), beheaded, * 363; William, * 487;—Leidereif, Laird of, slain, * 367, * 371;—Leighton of Ullishavin, Tho., remitted, * 252, 264;—Leslie of Kynmury, Walt., yr., remitted, * 255;—Lettir, Laird of, slain, * 204;—Levingstoun, Ro., * 399; of Warranehill, Ja., Remission to Jo., his son, * 257;—Lindesay of Barnyards, Dav., * 28; of Blarfadden, Harie,

- III. 248; of Dunrod, Alex., and Jo., his brother-natural, 493; of Colbyntonn, John, respited, I. * 238; of Edsell, Da., fiar, &c., slay LORD SPYNE, II. 529; tried, III. 61; notice relative to, *ib.*; documents, 64; Mr Alex., his son, 63, &c.; Mr George, slain, I. * 250; Marg., Lady Kersbank, 83; Rolland, beheaded, * 159;—Linkhop, Robert, 185;—Lochland, Laird of, slain, * 130;—Lockhart of Lee, Alan, beheaded, * 159; remitted, * 257; of Wikkitschaw, Alexander, remitted, * 253;—Logan, Sir Ro., of Restalrig, * 176;—Lokie, Ja., writer, 393; acquitted, 397;—Loudoune, Lady, (Dame Isobell Wallace,) * 136;—Lonthian, Sir Wm., beheaded, * 151, * 275;—Lufe, (Love,) And., * 334;—LYLE, LORD John, * 178; MASTER OF, William, * 178;—Lyddell of Halkerstoun, John, III. 482;—Lynne, Walter, beheaded, I. * 203;—Lynn of Eister Ogill, James, * 408; II. 62; Alexander, I. * 470;—MACALESTAR, Donald Mole, hanged, * 51; Allaster MacPhatrick, &c., III. 554;—MacAllane, Donald Darg, and two others, hanged, 251;—MacAngus of Glengarrie, Donald, and thirteen others, II. 413; III. 540;—MacArthur, Gilb., beheaded, I. * 63;—MacBrair of Almagill, Ro., 166; of that Ilk, Arch., beheaded, 158;—MacCaig, David, beheaded, * 396; MacClellan of Bomby, Tho., slain, * 237, * 244, * 252; of Gilestoun, Pat., * 61, * 95; Tho., * 215;—MacCondachie of Ballemannach, Allan MacGillespie, respited, * 252;—MacCulloch of Kilasere, Henry, * 244; of Torhose, Geo., remitted, * 252;—MacDonald, Eugenius, Captain of Clan Cameron, * 355; Coill MacGillespie, and five others, III. 553;—MakDowell of Freuche, Fergus, I. * 218, * 219; Jo., &c., II. 515; III. 477; of Garthland, Vthred, 84;—MacEwin, John, and four MacGregors hanged, 112;—MacFarlane, Jo. Roy, and eight others hanged, 565;—MacGillebreid, Jo. MacEwin, &c., I. * 225;—MacGregor, Jo., &c., beheaded, II. 419; Allaster of Glenstra, 432; beheaded and quartered, with severals of his Clan, 433; Papers relative to him and the Field of the Lennox, &c., *ib.*; Jo. Dow MacEwin, and ten others, hanged, 436; Neill, and four others, hanged, 438; Malc., and four others, hanged, 439; Dougall, &c., III. 223;—MacFischok, Gilb., and 3 others, hanged, II. 418;—MacIntosch, Angus Williamsoune, and five others, II. 96; of Esseich, Wm., &c., 102, 507; Wm., son to Laird of, &c., 507;—MacKane, John, III. 483;—MacKie of Far, Don., I. * 352; Don., fiar of, III. 235;—MacLean of Doward, Hector, I. * 246; Allan, his son, * 247;—MacMurquhe, Donald MacAlex., respited, * 246;—MacNacht, Matho, of Dungeuche, * 231; of Kilquhannite, John, * 327;—MacRannald of Easter Leyis, Allan, II. 98;—Machetema, Cornelius de, Dutchman, slain in time of Parl., I. * 236, * 238;—Marschell, David, II. 493;—Maxwell, yr. of Conhathie, slain, * 151; of Cowstanes, slain, 157; of Calderwood, Sir Ja., 493; of Newark, Geo., 133; Pat. III. 122; Arch., I. 157; John, ‘callit *Achilles Johnnie*,’ beheaded, III. 327; Ja., 493; of Dunwiddie, Sir Rob., slain, I. 167; II. 492; of Dalquharne, Pat., slain, 71; of Cowhill, Arch. and Wm., yr., 485, 492;—Meldrum, Laird of, slain, I. * 149, * 175; of Moncoffer, slain, II. 76; of Ordley, Jo., III. 464;—Melville of Hervistoun, Ro., remitted, I. * 250;—Merser, Ja., and three others, 39;—Middletoun, Ja., III. 237; sentenced to be beheaded, 241; banished for life, *ib.*, note, 458;—MONTGOMERY, MASTER OF, Jo., Slaughterer of Laird of Craiganis, I. * 44; of Skelmourlie, Ro., and Wm., yr., his son, slain, I. 133; III. 122; MONTROSE, E. OF, Wm., remitted, I. * 239;—Mosman, Wm., beheaded, * 159;—Mowe of that Ilk, John, * 256;—Muir, Jo. and Ja., yr. (See Muir of Auchindrain;) Ja. beheaded, III. 492;—Multrare of Markinche, Tho., slain, I. * 105;—Muncur of Balluny, Jo., * 343; Marg. Douglas, Lady Balluny, slain, *ib.*; of Stanis, And., remitted, * 250; Jo., 41;—Murray of Balvaird, And., slays Laird of Gorthie’s son, II. 112; of Broughton, Geo., 539; of Drumdewan, Ro., slain, I. * 255; of Newhall, Wm., * 26; of Newraw, Ro., slain, * 248; of Romannos, Wm.,

- yr., I. * 332;—MYLLAR, Jo., 167;—NESBET of that Ilk, Adam, slain, * 244;—Nesbit, Ed. and Tho., II. 517; Wm., 562; Gawin, III. 458;—Newlands, Walter, of that Ilk, slain, I. * 236;—OCHILTREE, LORD, And., III. 66;—OGILVIE of AIRLIE, LORD, James, remitted, I. * 243, * 270; MASTER OF, and his accomplices, II. 130, 146;—Oistillare, Sir Ro., I. * 343;—Oliphant of Gask, Wm., III. 443; Laur., his brother, *ib.*; William, 542; LORD, Laur., 44, 88, 92; II. 512;—Or, Ja., beheaded, III. 358;—ORKNEY, MASTER OF, Jo., conspiring death of his brother the Earl, I. 373; slaughter of the Parson of Urquhart, 392;—PACOCK, Gilbert, beheaded, 386;—Park, Ja. and Geo., III. 495;—Paterson, Ro., I. * 452;—Peirsoun, John, cook, a minor, * 396;—Pentland, Captain, Jo., 46;—Perdow, (Bardowy,) Laird of, slain, * 204;—Pollock, Ro., II. 21;—Portar, Tho., beheaded, I. * 92;—Porteous of Glenkirk, Thomas, 190;—Porterfield of that Ilk, William, 69;—Purves, Sir Rich., Chaplain, * 257;—Pyncartoune, Alex., beheaded, * 164;—QUHITEFURD of that Ilk, Jo., 133; Adam, yr., *ib.*;—RAE, Habbie, and 21 others, III. 472;—Raeburn of that Ilk, Jo., I. 17;—Ramsay of Dalhousy, remitted for slaying his brother, * 239;—of Kynmont, Alex., escheated, * 253; Nicholas, beheaded, * 374; Wm., beheaded;—Ratray, George, beheaded, II. 85; of Kinballoch, Pat., slain, I. * 255;—Reid, Ja., beheaded, * 220; of Turnberry, John, slain, * 220;—Reidpeth of Deringtoun, Andrew, slain, * 248;—Rewll, And., beheaded for slaying his son, II. 21;—Robertson of Dulcabene, Pat., I. * 431; Robert, beheaded, III. 415; of Straloch, Jo., 203;—Rogersoun, Jo., 485;—Ross of Craightoune, James, slain, I. * 343;—Rothuene, Friar William, * 229;—Rutherford, William, beheaded, II. 519;—RUTHVEN, LORD, William, I. 90;—Ryland, Laird of, slain, * 126;—Rynd of Kerse, Jo., II. 101;—SALTOUN, LORD ABERNETHY of, I. * 329;—Sandelandis of Calder, Sir Ja., respited, * 237; slays Sir Alex. Stewart, &c., 359;—SANQUHAR, L. CREICHTOUN of, Ro., slain, I. * 353;—Schaw, David, * 327; of Keirise, Jo., * 158;—Schoriswod and 12 others, * 350;—Scott, Adie, called the *Peck*, hanged, II. 365; of Braxholm, Sir Walt., I. * 144; of Cambnsmichaell, Tho., hanged, drawn, and quartered for Murder of David Riccio, * 478; Ro., and 7 others, acquitted, III. 218; Walter, &c., II. 339;—Scottistoune, Laird of, slain, I. * 172;—Scrymgeour, Ja., * 405;—SEMPILL, LORD, Ro., * 353;—Setoun, Alex., of Meldrum, slain, * 149, * 173, &c.;—Sibbett, (Sibbald,) Jo., * 425;—Sinclair, And., * 441; of Auchinfranko, Wm., * 151; slain, 327; George, remitted, * 254; Mr Hector, Parson of Kilbride, slain, * 256, * 329; of Hirdmanstoun, * 468; Alex. and Olipher, his brothers, *ib.*; James, * 257; of Strome, Edw., and 30 others, respited for Slaughter of EARL OF CAITHNESS, &c., * 253; Wm., a school-boy, shoots a Bailie of Edr., 195, *note*, &c., 349, 362;—Skirving, Geo., &c., 4;—Slose of that Ilk, Ja., 171;—Sloune, Friar Alexander, slain, * 229;—Smyth, Ro., alias Henry, beheaded, * 374;—Somerville of Drum, Hew, III. 259;—Spottiswode, James, jr., remitted, I. * 15; Jo., of that Ilk, II. 455;—SPYNE, L., Alex., 135, 146;—Stevenson, Sir William, Chaplain, slain, I. * 256;—Stewart, Capt. of Doune, James, slain, * 332; Christian, burnt, 399; of Dowellie, Mr Jo., and Tho., his brother, III. 536; Dutho, beheaded, I. * 350; Eufame, * 382; Harie, III. 248; Ja., II. 413; Ja., beheaded, III. 441; Ja. and Dunc., &c., 554; Jo., beheaded, I. 165; of Porterstoun, Wm., * 163, * 175; Robert, brother of Earl of Orkney, II. 76; hanged, &c., III. 283; Mr Thomas, I. * 149; Wm. and Harie, 79; William, brother of Lord Ochiltree, &c., II. 109, 445;—Stirling of Baldorane, Luke, I. 97; of Ballagan, Walt., 97; of Ballindroicht, Andrew, slain, * 204, * 257; of Bankeir, Andrew, slain, * 250, * 257; of Craighernat, Jo., yr., 97; of Glorat, Walter, his brother, slain, * 332; Jo., 97; Helen, Lady Ullishaven, slain, * 344, * 350, * 411; of Keir, Sir Jo., knt., slain, * 258, * 327; of Letter, Ro., slain, * 204;—Stoby, Sir William, Chaplain,

- I. * 248;—Stonebyres, Laird of, slain, * 126, *note*, * 132, * 238;—Strathlauchin of Lethinturk, Jo., yr., * 175, * 200; remitted, * 246; Tho., 79;—Sutherland of Duffus, Wm., slain, * 149;—Swyne, Jo., beheaded, III. 471;—Symmer, Robert, beheaded, 437;—Sympill, of Foulwod, John, I. * 163, * 166, * 333; Math, beheaded, * 165; of Nobilistoun, Ro., * 333;—Tait, James, II. 475;—Tennant, Arch., of Leuenax, (Linhouse,) slain, I. * 180;—Thief, Slaughter of a common, * 72;—Thomson, George, Minister, 133;—Thrisle, Wm., and four others, 77;—Tulliallan, Laird of, beheaded, I. * 151, * 271, * 275; (see Blackadder);—Tulloch of Tannoqueis, Robert, and Alexander, yr., II. 110; Alexander, and Ja. his brother, 563; and William Cuik, 565;—Tullynet, Baron of, slain, I. * 334;—Turnberry, Laird of, slain, * 219;—Turnbull, Tho. and Walter, 77; Thomas, apparent of Mynto, and 11 others, II. 370; And., beheaded, 377; Hector of Stanyledge, and 3 others, 442; Hector of Lylslie, 445; Hector of Wauchope, 511; acquitted, *ib.*;—Tweddy of Dravay, Adam, I. 190; of Drummelseare, Jo., * 141; Ja., his son, remitted, * 249; James, 190; Gilb., Slaughter of Laird of Polmude, * 39; Ja., and four others, 34; of the Wrae, Wm., 190;—Twenty men, women, and children, slain, * 175;—VAUSE of Many, John, respited, * 250;—Veitch, Andrew, 204; of North Syntoun, Ja., yr., 204;—Vic Kewyn, John Dow MacKewyne, and above 30 others, 33;—WALLACE, Dame Isab., Lady Loudoun, * 136;—Wallanche of Pittedy, John, slain, * 244;—Wast, Andrew, III. 467;—Wauchope, Geo., II. 52;—of Nudrie, Arch., I. 168; Ro. ? Wm., his son, 403; Banished, 410;—Weir of Blakwod, Tho., * 180; Jo., bailie of Lanark, 184; of Quhytecleuch, Jo., and Mungo, his brother, beheaded, III. 247; Ralph, slain, I. 159; of Stonebyres, William, slain, * 126, *note*, * 132, * 159, * 238;—Williamsoun of Termet, Ang., II. 507;—Winrame, Mr Ro., I. 23;—Wood of Banblane, II. 72; of Bonyngtoun, James, I. * 343, * 433;—YOUNG, Alexander, II. 20.
- Sled, what, II. 531.
- Sleep, Witches 'waked' and prevented from, I. 50; a Jesuite 'waked' *ad delirium* ! III. 332.
- Sleich, Pat., hanged for Assisting the Earl of Bothwell, &c., II. 21.
- Sleuth-hound, III. 548.
- Slogan, slughorn, II. 504.
- Slose of that Ilk, Ja., Slaughter, I. 171.
- Slowane, (Aslowane,) of Garroche, Jo., I. * 55; II. 490.
- Small, Sir Tho., Chaplain, slain, I. * 405.
- Small, Niniane, an Egyptian, Respite for his Slaughter, III. 594.
- Smeatoun, hanged for breaking Ward, I. 360.
- Smith, Donald, hanged, III. 265;—King's smyth and 'knok' (clock) maker, I. * 305, * 313;—Sir Tho., Clerk of the English Council, II. 590;—William, *alias* Chesman, Fomenting jealousies between the KING and his Barons, I. * 329.
- Smollett, Tobias, murdered by the MacGregors, II. 432.
- Smore, to smother, or suffocate, III. 131, 430.
- Snowdoun, Herald, Justice-depute, I. * 366.
- Snow-storm, I. 362.
- Society and company of the Boyes, II. 532; Jo. Forbes, beheaded, 535; III. 581.
- Sodomy, John Swan and John Litser burnt, II. 491, *note*.
- Softlaw, Tho., slain, III. 90.
- Soir-hewit horse, what, I. 8.
- Soir-bassoned meir, what, III. 265.
- Soirdy-staig, what, III. 98.
- Solway, Battle of, I. * 329;—Raid of, * 241, * 242, * 244, * 254, * 256.
- Somer of Balzordie, Geo., I. 74, 90.
- Somer-scheill, what, II. 519.
- SOMERSET, DUKE OF, I. * 117;—EARL OF, (Sir Ro. Carr,) II. 600, and *note*.
- Somerville of Cambusethan, Sir Jo., I. * 62, * 78; * 167, * 388, * 404, * 451, 35, 63; II. 105;—of Drum, Hew, Slaughter, III. 259;—of Garidwoid, Ja., II. 555;—of Humby, Ja., I. 4, 23, 255;—Ja., slain, II. 567;—LORD, Hugh, * 167; Oppression, &c., * 169, * 175, * 185, * 199; John, * 369; James, invaded, * 382; Feud with the Lindsays, * 383, * 438;

- Hugh, I. 94, 114, 116, 178; Gilb., Feud with Laird of Lee, II. 61;—of Plane, Da., *ib.*;—of Pole, Wm., III. 268;—of Smailholmes, Ro., 436;—of Spital, Ja., 268.
- Soothsaying, III. 508. See Sorcery, Witchcraft, &c.; curious pleadings, 517, &c.
- Sorcery, to be inquired into at Justice-Aires, I. * 66; Sir Wm. Stewart, Lion King of Arms, executed, * 510; Bessie Dunlop, 49, &c., (see Witchcraft,) 101, 161; Lady Fowlis, 185, 191, &c.; Monro of Fowlis, 201; Bessie Roy, 207; John Feane, 209, &c.; Agnes Sampsoun, 230; Commission for examining Witches, &c., 261; Captain Pat. Hering, II. 23; Jonet Stewart and three others, 'wirreit and brunt in assis,' 25; Ja. Reid, *do.*, 421; Pat. Lowrie 'wirreit and brunt,' 477; Bartie Paterson, *do.*, 535; Beigis Tod, *do.*, 542; Margaret Wallace, a remarkable case, 508; burnt, 536; Tho. Greave, burnt, 555. See Witchcraft, Incantation, Charming, &c.
- Sorley-Buy, III. 2.
- Sorners, what, I. 264; II. 70, 432. See Egyptians.
- Sorning, I. * 225; Messengers hanged, * 356; II. 415; III. 201, 250, &c.
- Souter, Geordie the, hanged, III. 389.
- SOUTHAMPTON, E. OF, II. 584. (See Howard.)
- Souls of persons shot by Witches, III. 604.
- Sound, a fainting-fit or swoon, III. 468, &c.
- Soutter of Mylnetoun of Fornocho, Ja., III. 536.
- SOUTHESK, EARL OF, Dav., III. 601, *note*
- Sowmes of quickens, what, III. 603.
- Sowtare, Jo., hanged for 'falsing of evidents,' I. 85; Kath. burnt for Witchcraft, III. 618.
- SPAIN, KING OF, protects Argyle, Sir J. MacDonald, &c., on their flight thither, III. 3.
- Spald, what, II. 525; III. 384, 485.
- Spalding of Essintullie, Da., III. 72; Resetting Alex. Ruthven after Gowrie's Consp., *ib.*, 202; cutting timber, &c., 458;—of Innerry-dray, Jo., III. 203.
- Spaniard, Cassanzeis, the, I. * 315.
- Spaniards, Proclamation anent their arrival, &c., I. 267; 30,000 to be enlisted for altering the Religion, 311, &c.; anent their 'arryvaill,' 349; lies to be in readiness, 355, &c.
- Spanish Armada, I. 228, &c.;—Blanka, Conspiracy, &c., I. 310;—merchants, three murdered under trust, III. 569.
- Speeches, 'vnaverent,' against the King and Council, III. 220; Wm. Tweedie, scourged and banished, 222; 'blasphemous,' &c., Jo. Flemyng hanged, 359. See K. JAMES VI. &c.
- 'Spelair,' English, (rope-dancer, &c.,) I. * 118.
- Spens of Bodom, Wm., I. * 148;—of Condie, Jo., Queen's Advocate, * 373; III. 391;—of Wester Kames, Jo., slain by Laird of Kames, II. 131; Ninian, *ib.*;—of Kilsplindie, Tho., I. * 88;—of Lathalland, Ja., I. * 404;—of Maristoun, Jo., I. * 201;—Rich., servant to the E. of Cassillis, slain, II. 400, 461, &c. (See Mure of Anchindrain,) 480, 493;—of Wolmerstoun, David, I. * 201.
- Spey-Tower of Perth, I. * 177.
- Spice-house, King's, Yeoman of, I. * 313; Groom of, * *ib.*
- Spirits, Evil, nick-names of, III. 606.
- Spittale, Hereschip of the Place of, I. * 17.
- Spittell of Lewchat, Wm., I. * 404.
- Spott, Laird of, I. * 413, &c. See Hume and Douglas.
- Spottiswode of that Ilk, (Laird of,) jr., slaughter, Forethought Felony, I. * 15; George, * 15; Felony, &c., * 16; David, * 413; Ninian, 107; feud with Sheriff of Ayr, &c., 352; his brother George slain, II. 401; Wm., 402; Jo., slaughter of the Laird of Leyhoussis, 455; Da., III. 393.
- Sprache, (sprache,) hue and cry, II. 463, 519; III. 3, &c.
- Sprewe of Cowdoun, Tho., I. * 402; Jo., 169; Ja., *far*, II. 438; Ja., III. 365;—of Lady-mure, Jo., I. 60.
- Sprott, Geo., Trial for concealment of Gowrie's Conspiracy, II. 256; hanged and quartered, 259; his Deposition upon the scaffold, 260; Account of Trial and Execution by Archbishop of Canterbury, (Abbot,) 262; Sprott's Examinations, 272; Narrative of his Execution, 275; is tortured in 'the boots,' *ib.*
- Spuilzie, (See Hereschip,) I. * 57, * 59; of Keyme, * 112; E. of Caithness, &c., * 394; of Laird of Pennycaik's brother, 391;—of Teind sheaves, * 104, * 208.

- SPYNE, LORD, Alex., warded for Raid of Falkland, I. 278; reopened, 280; denounced, 305, 307, 375; deadly feud with the Master of Ogilvie; is wounded, II. 130; tried for slaughter, shooting pistols, &c., 135; fined L.5000, &c., 146, 235; slain, 529; Sir Da. Lindsay of Edzell, &c., tried, III. 61; notice relative to, *ib.*; Documents illustrating do., 64;—MASTER OF, Alex., II. 529;—LADY, Jean, II. 529.
- ST ANDREW'S, ARCHBISHOP OF, (James Duke of Ross,) I. * 120; Ja., (Beaton,) doors of his lodging forced, * 257; Chancellor, * 269, * 353; Jo., attempting to restore Popery, * 427; Geo., III. 96, 621; Letter to King as to Gowrie's Conspiracy, *ib.*;—Castle of, to be delivered up, I. * 283; assisting rebels, * 337, * 338;—Court of Justiciary held there, II. 568;—Magistrates assist E. of Bothwell, I. 310;—Prior of, Jo., * 79;—Raid of, I. * 334.
- St Adrian of May, relique of, I. * 306.
- St Barnaby's Day, Battle of, I. * 100.
- St Colmis-Inch, Commandeur of, (Tutor of Murray,) I. 289, 291; Hary, 393; III. 72.
- ST COLME, LORD, Harie, III. 72; Jo., his brother, beheaded for Murder under trust, 74.
- St Colmes-Mess, III. 251.
- St Duthos, relict (*relique*) of, I. * 283.
- St Francis' Altar, I. * 252.
- St Gele, (Giles of Edinr.,) I. * 252; tumult, &c., in the city of Edinburgh, * 417.
- St James in Galicia, Pilgrimages to, I. * 101.
- St John of Ameas, in France, Pilgrimages to, I. * 107.
- ST JOHN, LORD, Geo., I. * 151; Walt., * 185; Sir Wm., English Admiral, III. 367.
- St Leonard's, Chaplain of, I. * 314; Chapel, III. 178.
- St Magdalene, breaking image of, I. * 334.
- St Mahago, relique of, I. * 306.
- St Mary de Foresta, I. * 400.
- St Mary of the Lewis, Kirk of, sacrilege, I. 400.
- St Michael, order of, I. * 283.
- St Niniane, Pilgrimages to, I. * 106.
- St Thomas of Canterbury, Pilgrimages to, I. * 107.
- St Thomas-evin, III. 569.
- Stable, King's, Squire of, I. * 313; Yeoman of, *ib.*
- Stag-hounds, I. * 312.
- Stag and naig, what, III. 98; a soirdy stag, *ib.*
- Stake, Witches 'wirreit' (strangled) before being burnt, I. 186, &c. See Witchcraft, Sorcery and Burning, &c.
- Stalfurde, Captain Hilbert, and 28 other Englishmen, Piracy, I. * 379. See Piracy.
- Stalls, choral, demolished, I. * 353, &c. See Reformation.
- Stamp, Forging the King's, I. 157.
- Standard, Royal, I. * 114.
- Standard-bearer, heritable, I. * 268.
- Stanfield, Philip, Parricide, III. 196; his father's corpse bleeds on his touch, 197; curious notices of this case, *ib.*, 198.
- Stanhope of Stanhope-miln, Jo., II. 124, 355.
- Starving to death, III. 479, 491.
- Steel of Houstoun, Jo., II. 506;—*Kempy*, hanged, I. * 126.
- Steel-bonnet, the King's, I. * 273, * 283; typset to, * 283, * 320; II. 70.
- Steelbow goods, what, I. * 162.
- Steelbow tenant, what, I. * 162, * 471.
- Steel-saddles, I. * 290, * 295, * 300, * 312, * 321.
- Steeple, prisoners confined there, where no tol-booths or prisons, III. 219, and *note*.
- Steming of bluid, Jasp-stane for, III. 564.
- Stercovius, a Pole, put to death in Poland, at the instance of K. JA. VI., for writing a 'Legend of reproaches' against the Scots, III. 448.
- Steward of the King's Household, I. * 313.
- Stevenson of Hirdmanscheillis, Ja., I. * 393, * 424, * 469, 155, Jo., 156, II. 128;—of Hirdmestoun, Malc., Tutor of, III. 487;—of that Ilk, Jo., I. 35.
- Stewart, Arch., Captain of Dunnyvaig, I. * 258;—of Appyn, Jo., III. 252;—Allane, Capt. of Dalkeith, III. 248; Ja., his son, Adultery and Incest, 'wirreit' and 'brunt,' 249;—of Ardgoware, Ja., I. * 170;—of Ardinculye (Arntullie), Geo., I. 25; Jo., yr., II. 80;—Sir Alex., slain, I. 359;—of Auchmadies, Sir Ja., II. 63;—of Brig, Ja., I. * 454;—of Balquhadder, Allan, I. * 319; Commission of fire and sword against, 282;—of Barscube, John, I. * 163;—Mathew, * 382;—of Bogtoun, Jo., I. * 402;—of Blairgarrie, And., III. 554;

- Ro., his son, Slaughter, *ib.*;—of Bonskeid, Jo., slain, II. 528; Jo., his son slain, *ib.*;—of Baithie (Beith,) Pat., III. 134;—of Bonningtoun, Josias, II. 461;—of Bothwell-Muir, (Earl of Arran, &c.,) Capt. Ja., I. 91, 94; slain, III. 66;—of Ballieachan, Sir Ja., II. 63; Pat., III. 250;—of Bodinschawes, Ja., II. 63;—of Barclaw, Math., I. 136, 137, 159;—of Barskimming, Hary, II. 106;—of Carstairs, Sir Wm., II. 109, 445; Wm. his son, *ib.*;—of Craigyhall, Ja., I. * 143; respited, * 247; Harie, 348, II. 37, 502;—Christian, burnt for Witchcraft, &c., 399;—of Cragyhall, Jo., and Geillis Seitounne his spouse, Forcible Abduction, I. * 421;—Commissary of Dunkeld, Mr Ja., III. 478; Ja., Stewart-depute of Menteith, &c.; Slaughter, 554;—of Castelmylk, I. * 40, (A Tutor of,) I. * 480;—of Cardonald, Allan, I. * 42; Ja., 98;—of Cullelony, Alex., II. 63;—of Daldowy, Adam, I. * 130;—of Dowellie, Mr Jo. and Tho. his brother, Slaughter, III. 536;—Downe-Machreif, George, III. 256;—of Dunduff, Wm., I. * 405, II. 10; Math., 35; shooting at the Laird of Culzeane, 37; banished Scotland, England, and Ireland, and all their Isles, and fined 1000 merks, 40, 106, 461; Geo. his brother slain, 604; Wm., *ib.*, III. 121;—of Facastell, Robert, II. 63;—of Fintillache, Arch., III. 328;—of Flaswood, Tho., I. 58;—of Flatt, Alexander, III. 299;—of Foulage, John, I. 268;—of Foulbar, Jo., I. * 382;—of Force (Forss, Foss,) Ja., II. 63;—Alex. of Gairlies, Wilful Error, I. * 219; Alex. yr., * 366, * 398, * 414, * 455, 304, 467. See Lord Gairlies;—of Gaus-tounne, Tho., I. * 230, * 405, 63, 166;—of Garne-tullie (Grantully,) Sir Tho., I. 141, II. 433, 528; Sir William, III. 318;—of Gramsly (Gramesay,) Ja., (brother to the Earl of Orkney,) I. 387, III. 84, 88; two of his sons kill several English Pirates, and take two ships, 111;—of Hawrig, (Hallrig,) John, I. * 130, * 402;—of Heildounne, Walt., III. 465;—of Hulreid, Jo., III. 492;—Hercules, hanged, I. 362;—of Houstoun, Sir Wm., I. 375, II. 110;—John beheaded, I. * 165;—Jo. son of Ja. L. Doun, beheaded for Murder under trust, III. 74;—Ja., 'of Jerusalem,' banished for hearing Mass, &c., III. 252, 352;—of Innermeith, Wm., I. 306;—Josias, denounced, I. 306, III. 144; Jonet and three others 'wir-reit and brunt in assis,' for Witchcraft, &c., II. 25;—of Killeith, Sir Ja., Chamberlain of Orkney and Zetland, III. 273, 284, (See Lord Ochiltreie;) Sheriff of, 285;—of Kilpatrick, Jo., III. 440; Ja., his son, beheaded for Slaughter, *ib.*;—of Kynnaid, Wm., II. 528;—of Kirkhill, Sir Lud., his MS. Collections, I. * 478;—of Kilchattan, Nin., *fiar*, II. 131;—of Latheris (Lathrisk,) Rob., I. * 126;—of Lekprevick, Ja., II. 445;—of Ladywall, Mr Ja., III. 485;—Lady Marg., Rape of, I. * 60;—LORD JAMES (afterwards REGENT,) I. * 421;—LORD of Newtown, Ja., III. 248; Harie his son, Slaughter, *ib.*;—of Minto, Ro., respited, I. * 239; Math., 98; Sir Walt., baillie of Regality of Glasgow, III. 508, 513;—of Newtown, Ja., slain, II. 1, 107;—of Pitfowrie, Jo., III. 250;—of Porterstoun, I. * 163, * 175;—Pat. beheaded for atrocious cruelty and murder, 393;—Quhytlaw, Hercules, I. 270;—Robert, natural son of Pat. Earl of Orkney, Treason, Rebellion in Orkney, &c., III. 272; hanged along with five others, and forfeited, 283; illustrative Papers, *ib.* to 307. See Trial of his father, 308, &c.; tears the 'Band' by the Rebels, 304; his Deposition, 306;—Ro., baillie of Linlithgow, II. 559;—of Rossythe, Hen., I. 135;—of Roisland, Jo., I. 276;—Ro., (brother of the E. of Orkney,) Slaughter of Laird of Moncoffer, I. 76;—of Schawtoun, Adam, I. * 148;—Sheriff of Bute, Ninian, I. * 170;—of Schuittingleis, Alex., slain, I. 89;—of Seytoun, Wm., II. 110;—of Todlaw, Wm., remitted, I. * 256;—of Tulliemett, Wm., I. 306;—of Traquair, Wm., I. * 147, * 166, * 177, * 230; John, * 406, * 426; Sir Jo., 89; Wm., 276, II. 379, III. 394;—of Torbelstoun, Jo., I. * 83;—of Tenandrie, Jo., Dow MacGillichallum, II. 528; Allaster, his brother, hanged, 529;—of Tuedy, Ja., I. * 130;—of Tynneis, Ja., I. 270; his house demolished, 276;—of Tullich, Wm., II. 393;—of Vchiltreie, LORD,

- Andrew, I. * 428, &c. See Ochiltree;—Walter (brother of Lord Ochiltree,) I. * 335; Ja., his son, 19; Wm., (do.,) II. 109, 445;—Sir Wm., (Lion King at Arms,) executed for Sorcery, and Conspiring death of Regent Murray, I. * 510;—Wm., brother to Lord Ochiltree, Slaughter, II. 109, 445;—Wm., Capt., of Dumbarton, II. 433.
- Stik, to stab, II. 30, &c.
- Stikle, stubble, III. 612.
- Stilberry, Tho., English skipper, Piracy, hanged, I. * 381.
- Stinkand-style, in Edr., what, II. 416, 462.
- Stirling of Auchlyle, Ja., I. 15; Wm., III. 233;—of Baldorane, Luke, I. * 451; Walt., 22; Here-schip of Horses and cattle, by MacGregors, III. 249;—of Bankeir, And., I. * 150;—of Breaky, Dav., I. * 158;—Besieging Castle of, I. * 238, * 242;—of Craighernard, Jo., Feud with the Kincaids, I. * 458;—Field of, I. * 100, &c.;—of Glorat, Wm., I. * 150; Geo., * 227;—of Keir, Sir John, I. * 130, * 155, * 167, * 177, * 199; I. * 251; slain, * 258; one of the Guardians of K. JAMES V., in his infancy, * 259; sent to relief of Makkane against Donald of the Isles, * 262, * 477, 71; Sir Ja., 114; Sir Arch., 299, II. 502, III. 377, 554;—Raid of, I. * 467, * 470; abiding from, Forfeiture, &c., II. 85;—Town and Castle of, withholding against the King, I. 112, 116, 133.
- Stodart of Sheilgreen, Jo., II. 35.
- Stolps, King's silver, I. * 282; to bring in his col-lation, * 298, &c. See Gold and Silver-plate.
- Stomacher, I. * 307.
- Stouthrief, William Cockburne, I. * 15;—Symon Furde, *ib.*;—remarkable enumeration, I. * 20;—of Earl of Angus's Horses, I. * 23; his lance, 25;—Robert Dunwedy, I. * 41;—by way of 'Mummyn,' I. * 50, 51;—of Pirated goods, I. * 88;—from Bishop of Galloway, I. * 94;—of King's Artillery, I. * 132;—Capt. Ja. Guthry, I. * 143;—Bikkerton, beheaded, I. * 162;—Hugh, Lord Somerville, I. * 169;—Alex. Jo. Canochsoun, &c., I. * 170, * 176, * 203; John Henderson, hanged, * 206; during Plague, * I. 219; from Tower of Ern-side, * 223; Sir Ja., Thrift, &c., * 334; Gilb. MacTeyr, beheaded, * 351;—of the pay of the French Troops at Brouchy, * 361; of Horses, &c., 393, II. 385;—and Murders by the MacGregors, 414, 415; severals hanged, *ib.*;—Johnstoune of Lochhouse, beheaded, 425; Tho. Hardie, hanged, 441; Roise of Dungkellie, beheaded, 481; Allaster Stewart, hanged, 528; Ja. Hunter of Hagburne, II. 567; Wm. Douglas of Pinzerie, beheaded, III. 95, 205, 252; Jo. Murray, hanged, 478; Jo. Grant of Davachmoir, 490; Countess of Marischall, and Sir Alex. Strathachane, her husband, &c., 562; Ja. Keith of Benholme, 563.
- Story, And., hanged, I. * 87.
- Strabogie, Mass celebrated, II. 530.
- Straitone of Lowriestoun, Sir Alex., II. 495.
- Strakned, what, III. 605.
- Strang, Capt. Geo., I. 309;—of Balcasky, John, yr., I. * 141, 60;—of Kildrymmie, Ro., I. 60.
- Strangling at the stake and burning, a capital punishment, for Witchcraft, &c., *q. v.* (See also Burning;—at the stake, I. * 393. See Witchcraft;—a child, 371; taking captive and, III. 553.
- Strathachin of Balwisse, I. * 345;—of Brig-toun, Alex., I. * 207;—of Claypottis, John, I. 27;—of Lethinturk, Jo., yr., Slaughter, I. * 175; Concealing the Master of, Forbes's Con-spiracy, warded, * 200; Da., * 206; remitted, * 246;—of Monboddo, Jo., I. 28;—of Thorn-toun, John, I. 17; Sir Alex., and his wife Dame Marg. Ogilvie, (Countess of Marischall,) Masterful Stouthrief, &c., III. 562.
- Strathbogie, house of, to be cast down, I. 343, 344.
- Strathnaverne, Inhabitants respited, I. * 248.
- Stratoun, David, burnt for Heresy, I. * 210, &c.;—of Craigy, Dav. I. 29.
- Strauchane, Wm., Messenger, scourged and de- prived, for signeting false Letters, &c., II. 455; Mr Alex., Minister, tried, 494; banished, 503; Mr Ro., Masterful Stouthrief, &c., 562.
- Straws, Witches ride on, superstition, III. 604, &c.
- Streamers for the King's ship, I. * 303.
- Strechin, House of, besieged, I. 65.
- Striking a person, whilst the King was sitting in

- judgment, II. 358; fined 1750 merks, 359;—a Minister, 416; Walt. Graham scourged, and his right hand struck off, 417;—During sitting of the Lords of Session, III. 73.
- Strudgeoun of Myllerland, Adam, II. 490;—of Towroce, Harb., II. 490.
- Stud, Royal, I. * 301, &c., * 306; the King's Brood-mares, * 316.
- Study, K. JAMES V.'s, I. 284.
- Stug-tailit, what, III. 265.
- Stymeis, bats, III. 588.
- Suborning of Witnesses, III. 354; several persons beheaded, hanged, scourged, and branded, 358; And. Turnbull and 2 others hanged, 539; Da. Turnbull's tongue pierced with 'ane hett boithyn,' and he banished, *ib.*
- Substancious man, 'quhat is,' I. * 161.
- Suckler, Jok the, III. 382, 389; hanged, 396.
- SUFFOLK, EARL OF, Tho., II. 589.
- Subrages for Q. MAGDALENE, I. * 297, &c. See Obsequies, Funeral ceremonies, &c.
- Summerdaill, House of, besieged, I. * 225.
- Sunpterman, King's, I. * 313.
- Superstitions. See Witchcraft, Charms, &c.;—touching the Corpse of a Murdered person, as a test of guilt or innocence, III. 143, 165, 182, &c.
- Supplications, remarkable, of persons charged as Conspirators at David Riccio's Murder, I. * 483, * 484, * 485.
- Supremacy of the Pope, maintaining the, III. 330, &c. See Balmerinoch.
- Surgeons provided for the Army of the Borders, I. * 325; Report of, in case of Mutilation, &c., 7;—two sit on an Assise, III. 574.
- SURREY, COUNTSSE OF, I. * 18;—EARL OF, * 187, * 270.
- SUSSEX, EARL OF, L. Lieut. of Ireland, III. 2.
- Sutherland of Clyne, And., yr., Resetting him, I. * 395;—COUNTSSE OF, Dame Jean Gordon, 348, 530;—of Duffus, Wm., slain, * 149; Oppression, &c., * 222; Alex., * 391; Wm., II. 143. See Duffus;—EARL OF, I. * 149, *note*; John, * 336, * 370, * 391, * 411; Alex., * 462, *note*, 94; Hugh, 114; Jo., Submission between, and E. of Caithness, III. 231;—of Evelik, Wm., I. 68;—of Greifschip, And., * 391;—of Kinsterrie, Wm., III. 616.
- Swan, Jo., burnt for Sodomy, II. 491, *note*.
- Swarff, swooning, I. 251, &c.
- Swasche, an alarm drum, &c., II. 30.
- Swascheris (Swescheouris), what, II. 245.
- Swearing fealty to English Protector, I. * 378.
- Swearing upon swords, III. 275.
- Sweetmeats brought to K. JAMES V., I. * 308.
- Swein, an Evil Spirit, III. 606.
- Suborning of Witnesses, III. 354; several persons beheaded, hanged, scourged, and branded, 358; And. Turnbull and 2 others hanged, 539; Da. Turnbull's tongue pierced with 'ane hett boithyn,' and he banished, *ib.*
- Swimming, singular dexterity displayed by the Laird of MacGregor, II. 434.
- Swintonn of that ilk, Jo., I. * 147, * 159; gift of his escheat for wilful error to his 8 daughters, * 253; Warden-depute of the East Marches, * 323, * 414; Ro., 282.
- Sword-belt, scourging with, II. 454.
- Sword, decapitation with a, I. * 425; great, * 289; of Honour, * 260; a case to it, * 296; two-handed, * 289; II. 70. See Gowrie's Conspiracy, III. 245.
- Sword-slipper, King's, I. * 315.
- Swyne, Jo., beheaded for Slaughter at a bridal, III. 471.
- Swyngill-trie, Murder of a pregnant woman and her child with, II. 517; Pat. Deanis hanged, *ib.*
- Sydeserf of that ilk, Pat., I. * 143, * 386; Pat., yr., Slaughter, 4; Jo., 10, 155;—of Ruchlaw, II. 467; Wm., 534; III. 560.
- Sydney, Sir Ro., II. 318.
- Symbolical mode by which Witches took the fruits of the ground, &c., III. 603, and *note*. See also Witchcraft, *passim*, for similar instances.
- Symmer of Baljordie, III. 437; Ro., his son, Slaughter, *ib.*; beheaded, *ib.*;—David, Bailie of Edinburgh, freeing a Prisoner, I. * 442 to * 450; Protestation against the Verdict, * 449.
- Symontoune of Hardingtoun, I. * 455;—of that ilk, Jo., forging and making False money, * 76; Wm., * 382; Jo., yr., III. 539.
- Symsoune of Bannans, Jo., I. 200;—Edw., hanged for Stouthreif by way of 'Mumyn,' * 51.

T.

- TABLETS, I. * 295, * 299, &c. See New-year's gifts.
- Taikin, what, II. 470.
- Tailor, King's, in the Wardrobe, I. * 313; Master, * 315; Queen's Master, *ib.*
- Tailzeour, Wm., murdered at Kirk of Field with K. HENRY, (Darnley,) I. * 479, * 492.
- Tailziefeir of Herklaw, Wm., III. 493.
- Tait of Adamehill, Cha., yr., II. 95;—of Bairese, Geo., 475; James, his brother, acquitted of Slaughter, 476;—of Barnbarrache, Tho., I. * 85;—of Cheritreis, Wm., II. 475; Ja., his son, slain, *ib.*;—of Pirne, Alex., I. * 147, * 332; Geo., * 424, * 469.
- Talbonaris, I. * 267, * 273, * 292; Swische, * 314.
- Tale-teller, the King's, I. * 116, * 123.
- Tamptalloun, Raid of, I. * 138, * 140, * 243, * 244, * 263, * 274; the warks at, * 298; withheld against the King, 96.
- Tantara ! pamfara ! II. 601, and *note*.
- Tapestry. See Arras work;—new Tapescherye brocht furth of Flanders, I. * 298, * 300.
- Tarbert, Ja., writer, hanged for falsifying a Charter, II. 104.
- Target or targe, an ornament generally worn in the bonnet, I. * 292, * 293, * 321. See also New-year's gifts.
- Tarlasonne of Moinszeis, Jo., yr., II. 394.
- Tasker, III. 526, &c.
- Tax remitted to Town of Selkirk, it being 'hereit be Thevis and Pestilence,' I. * 262.
- Taylor, Jo., Warlock, III. 614, &c.
- Taymouth, Buik of, III. 232.
- Tearing the King's Letters, I. * 53, * 271, * 334.
- Tears, superstition that Witches could shed none, I. 211.
- Tedder, a halter, III. 474, &c.
- Teind sheaves. See Spuilzie.
- Tennent, Francis, writing Pasquils against the King, hanged, II. 332; his tongue ordered to be cut out, before his execution, *ib.*; afterwards dispensed with, *ib.*;—of Kairnes, Ja., II. 430; Jo., 467;—of Leuenax, (Linhouse,) Arch., slain, * 180; Ja., 155; II. 21, 259, 455; III. 9, 565;—Mungo and Francis, Sedition, &c., * 330;—of Williamstoune, Arch., I. 27.
- Tennis, game of. See Cache-puill.
- Ten-shilling pieces forged, II. 99.
- Testament, New, persons burnt for using it. See Heresy.
- Testanis, striking false, I. * 394, * 440; three women 'wirreit and brunt in assis,' II. 74.
- Testicles, Demembration of, I. * 253; putting hot ashes and live embers in the *scrotum*, &c., II. 393; Pat. Stewart beheaded, 394; cruelty in trampling, &c., III. 496.
- Tests of guilt or innocence of suspected Murderers, popular, III. 184, &c.
- Tithes paid to the Devil, superstition of Witches, being annually decimated, 'paying kane (or 'teynd') to hell,' I. 164, &c.
- Theft, from the Abbot of Dundrennan, I. * 73;—Common, Johnston, Story, and Gillespie, hanged, I. * 87; Douglas, &c., hanged, I. * 151, * 159; Turnbull, (*Blak-Sow*,) hanged, * 169; Armstrong, &c., * 173; John Elwald, (*Joh Unhappy*,) hanged, * 176; Young Laird of Tulydyry, hanged, * 358; John Robsoune, alias *Paulis Jok*, hanged, * 384; of a silver dish of QUEEN REGENT'S, * 386; from the QUEEN Dowager's chief Cook, * 406; by an alleged Idiot, * 415; Armstrangs and Elliots, 93; barbarous torture of a girl, to detect alleged Theft, II. 44;—masterful, &c., 74; treasonable and masterful, Countess of Marischall, &c., III. 562; Keith of Benholme, 563, &c. See Stouthrief, Hereschip, Reiving, Stealing, &c.
- Theftboot, taking, I. * 143, * 427.
- Theses publicly defended, III. 447, and *note*; Thesis and *annexa* by Mr Thomas Ross, 451, 586. See Ross.
- 'Thief of Hell wait upon hir selfe!' an Evil Spirit, III. 606, 614.
- 'Thief!' a Witch call, 607.
- Thieves, assisting, I. * 144;—letting escape from justice, I. * 149, * 223;—taking Theftboot,

- * 427;—Raid against the Border Thieves, I.
 * 134, * 152, * 271.
- THIRLESTONE, LORD, Jo., (Lord Chancellor), I. 172, 267, 304; dies, III. 66.
- Thistles, embroidered on the King's Coronation Robes, &c., I. * 301.
- Thomesone, Agnes, Witch, I. 216; Alex., hanged and forfeited for importing and uttering base coin, II. 404; Alex., banished for Adultery, III. 429; Gibb., hanged for stealing during the Burning of the Town of Dumfries, I. * 39; Issob., Child-Murder, hanged, II. 510.
- Thornetonne, Laird of, I. 284.
- Thorns, ancient Witch's and lover's trysting-places, I. 52, 58. See also Imp-Tree, II. 543;—Maxwell's, where Lord M. was slain, III. 30.
- Thornsdyde of East Nesbit, Ninian, I. * 147.
- Thraive of corn, &c., what, I. * 58.
- Threads, Witch-charm with, III. 605, &c.
- Thrift, Sir James, Chaplain, &c., Fire-raising, Stouthreif, &c., I. * 334.
- Throche, a sheet of writing paper, III. 148.
- 'Throw the Corne-yaird,' a Witch's nickname, III. 606.
- Threstoune, Place of, burnt, I. * 99.
- Thurso, Fishings of, violently occupied, I. * 395.
- Tibberis, burnt, I. * 348.
- Tildar, Sir William, Englishman, I. * 4.
- Tindall, *alias* Tinwall, Margt., tried for Oker (Usury,) II. 101.
- Tirring, what, III. 432, 548, &c.
- Title-deeds, Theft of, II. 340; Ja. Wod, far of Bonington, tried, *ib.*; hanged, 347; III. 265; Pat. Eviot hanged, *ib.*
- Toads used in Witch-charms, I. 218, 245.
- Tobacco, pipe of, said to be *drunk* or quaffed, III. 11.
- Tochers given by the King, I. * 272, * 279, * 312, * 317; to Barbara Falconer, * 324.
- Tod of Sereschaw, Sir Tho., I. * 5.
- Tok, Wm., scourged and banished for Perjury, III. 359.
- Tomb-stones, stealing, I. 48.
- Tongs, red-hot, used for torturing a girl, for the purpose of detecting alleged Theft, II. 45.
- Tongue, cut out by the root before execution, II. 335, and burnt, III. 198;—pierced with 'ane hett boitkyn,' 539;—a gentleman's throat cut, his tongue taken out, the tongue of one of his dogs put in his mouth, &c., a case of extreme barbarity, 548.
- Tooth-powder, silver clam-shell for holding K. Ja. V.'s, I. * 320, * 322; his 'pyke-teithe,' * 321.
- Torches. See Funeral-ceremonies, &c.;—at the Baptism of PRINCE JAMES, * 302.
- Torphiechin, LORD, I. 27; Ja., III. 316;—Preceptor of, I. * 2;—Sanctuary of, * 151.
- Torsenzie, the Lady, goes mad, after a Witch consultation, I. 236.
- TORTHORWALD, LORD, Ja., slain, III. 65; notice of facts, *ib.*; Lord Stewart of Ochiltrie tried, 66. See Stewart, &c.
- Torture, the rack, or question, I. * 401; wrenching the head with cords, 215; mode of torturing Witches, 217, &c. See Witches;—barbarous, inflicted on Feane, 219, &c.; Alison Balfour and Tho. Palpla, 375, 376; the young Laird of Auchindrane tortured, III. 170, 196; Mr Ja. Mitchell, *ib.*; Peter Aroy, a Highland robber, *ib.*;—instruments of, the 'Pilmiewinkis,' 215, 376, 377; 'boots' or 'bootikins,' 219, 222, 376, 377; Mr Wm. Rynd 'extremely hooded,' 220, 238, *note*; Sprout *booted*, 275; 'turkas,' (*torquois*,) pincers to tear off the nails, 222; needles thrust under the nails, *ib.*; 'caschielawis,' or 'caspicawis,' 375, 376, 377; the 'lang irnis,' of 50 stone weight, 376; scourging with 'towis,' (ropes,) *ib.*; a 'harrow-bore' used, II. 46;—most barbarous torture and savage Murder, III. 545;—inhuman, inflicted on a girl, to detect alleged Theft, II. 44;—'waking,' *i. e.* systematically preventing sleep, to extort confession, in the case of Witches, I. 50; a Jesuite 'waked' *ad delirium!* III. 332.
- Tortus, Math., II. 570.
- Torwoodlee, Place of, harried, and the Laird Murdered, &c., II. 520.
- Toscheauch, And., Lion King at Arms, violence committed on him by Lord Drummond, I. * 268;—of Monyvaird, And., 28; II. 383; Edw., III. 443; Da., yr., slain, *ib.*, 465; Annas Grahame, Lady M., *ib.*; Offers for

- of Hoppisburne, Tho., II. 509, 510;—of Howay, Walter, I. * 144;—of Howdene, Jo., III. 457;—of Hnatril-burne, Ro. III. 457;—Jo., one of King's Guard, sits as Assisor, II. 559;—of Lylsle, (Lilliesleaf,) Hector, Slaughter of Laird of Craling, II. 445;—of Minto, Wm., I. * 147; Tho. apparent of, &c., Slaughter, wearing dags and pistols, II. 370; Tho. 445; Hect. Tutor of, III. 396;—Peter, 'callit the Monk,' hanged, I. * 413;—of Philiphauche, Adam, I. * 43; Rob., Tutor of, * 148; Wm., III. 569;—of Qubitehope, I. * 22, &c.;—of Ravflat, Tho., Oppression, &c., I. * 252; Walt., II. 419, 424; Wm., his son, slain, 419; Adam, his servant, hung in irons, by the feet and shoulders over a beam for 12 days; Walt., remitted, III. 116;—of Stanyledge, Hector, Slaughter of Laird of Little Newton's six sons, II. 441;—of Tofts, John I. * 34;—of Wauchope, Hect., II. 473; Tho., yr., *ib.*, 509, 510; acquitted of Slaughter, 512.
- Turner, Jo., Sh. clerk of Wigtoun, III. 328.
 Turnour of Ardwell, Jo., II. 490.
 Turnepyke, a circular stair-case, III. 129, &c.
 Turnit ale, what, II. 525.
 Turquoise stone in the Coronation Ring, I. * 300.
 Twa-handit-swoirdis, I. * 289; II. 70, 432; III. 245. (See Gowrie's Conspiracy.)
 Twa-mark pieces forged, II. 99.
 Tweddale of Bankhead, Ro., I. 35.
- Tweedy, of Draway, Adam, Cutting off a man's ears, I. * 475; Slaughter, 190;—of Drummelzeare, John, I. * 43, * 88, * 141, * 147; Ja., * 229; Oppression, I. * 24, * 76; James * 384; Wm., * 475; Ja., 135; Slaughter, 190;—John, Tutor of, slain, 204; Ja., feud, 353; Geo., slain, 541, 562;—of Frude, Ja., murdered, I. * 426; Ja., * *ib.*;—Jo., in Linton, I. * 205;—of Southwood, Jo., slain, III. 54; the Laird of Birnok and his son beheaded, 58;—Wm., scourged and banished for 'vnreverent speeches' against the King and Council, III. 220;—of the Wrae, Wm., Slaughter, 190, II. 467.
- Tympanes, (timbrels,) I. * 119.
 Tynnakillis of Tanny velvet, what, I. * 301.
 Tynneis, house of, to be destroyed, I. 276.
 Tynto of Crympercamp, Rob. I. 5.
 Typpet to Steel bonnet, I. * 283; riding, *ib.*
 Tyree, Island of, burnt, &c., I. * 247.
 Tyrannical Oppression of the Inhabitants of Orkney and Zetland, III. 81, 312. See also Orkney, Ro. Stewart, &c.
 Tyrement. See Funeral Ceremonies, Obsequies, Suffrages, &c.
 Tyrie of Drumkilbo slain, I. 165, 325; Thomas, Tutor of, *ib.*, 332; Remission to, III. 116.
 TYRREWNE, (TYRONE,) EARL OF, Irish rebel, I. 348; III. 2.
 Tyrwit, Sir Wm., and 16 Englishmen, go on a Pilgrimage to the Shrine of St Niniane, I. * 106.

U.

- UCHILTRIE, LORD STEWART of. See Ochiltrie.
 Udny of Kethik, Jo., III. 437.
 Ugstone of Foddercarne, (Fettercairn?) Alex., I. 28.
 Ullishavin, Murder of Lady, I. * 344, * 350, * 411. See Murder, &c.
 Umbesetting the bie-gaitt, I. * 169, * 182, * 200, * 204, * 356, * 412, * 432, * 450, * 469; to Lord Oliphant, * 488, 58; Ewing, 380; Mure of Auchindrane, II. 35, 37; and Theft, &c, 74, 103; III. 224, and *note*, &c. See also Stouthreif, Harting, Wounding, &c.
 Uncouth, strange, III. 524, &c.
 Underfute, what, II. 27.
 Undergore, what, II. 27.
 Unfriend, enemy, III. 588, &c.
 Unhappy Jok, hanged, I. * 176.
 Unicorn, the Great, King's Ship of War, I. * 298; sent to France with the Cardinal, * 323;—Pursuivant (Robert Fraser) slain, II. 72.
 Unicorns, two, the supporters of the Arms of Scotland, (*temp.* JAC. V.,) I. * 308.
 Unlaw, what, III. 140.
 Unreason, Abbot of, I. * 116, * 121, * 123; In-

- surrection in Edr., I. * 409; in the Mearns, &c., 15, 81. See Lord of Inobedience, Misrule, Robin Hood, &c.
- Uphaly-day, what, I. * 115, * 299.
- Urie, Ro., Resetting Jesuites, III. 376.
- Urquhart of Alderne, Ja., I. * 224;—of Burrisgardis, Alex., I. * 336, * 357, * 391;—of Craig-Fintrie, Jo., III. 379;—Tutor of Cromartie, Jo., I. 285;—Ja., Warrant for him to deliver up or slay his two brothers, * 391;—LORD, Adam, 293;—Parson of, slain, 386; Gilb. Pacok beheaded, 388, (see Colville;)—Tho., Sheriff of Cromarty, * 169; Walt., 193.
- Urquhill, Laird of, present at Gowrie's Conspiracy, in the King's suite, II. 172. See Grahame.
- Usher, Adie, hanged for Sheep and Cattle-stealing, III. 568; Will banished, 569.
- Usher of the Chekkar-hous door, I. 316;—of the King's Inner Chamber-door, * 313;—of Outer do., *ib.*;—Prince's Master, * 314;—Queen's Master, *ib.*
- Usurping King's authority, I. * 159, * 208; and Murder under colour of law, III. 399, 418; and Hamesucken, 431, 497, 552.
- Usury, (Oker,) II. 101.
- Uttering forged money, I. * 137; Kelman and Gardin hanged, 385; Arneill, II. 17; three women 'wirreit and brunt in assis,' 74; Rauff Wallace burnt, 79; Walt. Murray and two others burnt, 100; Macalexander and three others 'wirreit,' and two more hanged, II. 353; Geo. Drummond, 365, and Pat. D., 383, 'wirreit and brunt'; Allan Napier, do., 403; Alex. Thomson hanged and forfeited, 404; Dow and MacClaren, do., 418. See also under Coining, Forgery, &c.

V.

- VAGABOND, and follower of Gypsies, scourged and banished, III. 99; four Faws hanged, 201. See Egyptianis, Fa, &c.
- VAISON, BISHOP OF, (Wm. Chisholme,) II. 569; account of his Family, &c., *ib.*, note; attempts to make him a Cardinal, 570.
- Vallem of Woodwrae, Dav. II. 385; James and Geo., his sons, hanged, 386. See Wallein.
- Vandyke, Sir Anth., II. 297, note, and 319, note.
- Vane-organ, what, I. 4, 7; II. 21, 449, 542.
- Vause (Vans) of Barbarroch, I. 373; Jo., II. 539;—of Blause, Da., III. 539;—of Campfurd, Ro., 328;—of Irsalk, Pat., Stonthrief, &c., I. * 94;—of Lochslin, (Lochslum,) Jasper, * 376; Jo., 204, 284;—of Lybrek, Pat. III. 328;—(Waus) of Many, respited, I. * 250; remitted, * 251, * 470;—of Ruthvennis, Alex., 94.
- Veadge, III. 572.
- Veils, mourning, I. * 287.
- Veitch, (Vaiche or Weche,) of Dawik, Wm., I. * 147, * 166, * 469; his son Pat. slain, 190; Jo., II. 430;—of that Ilk, James, I. 155;—of Kingside, Jo., I. * 141, * 144; Wm., * 424;—of North Syntoune, Ja., yr., 204; II. 368; of Syntoun, Walt., III. 391;—of Tourhope, Ja., I. 204.
- Velvet, I. * 301, &c. See App. to Reigns of K. JA. IV. and K. JA. V.
- Verdict, Protestation against one, for Wilful Error, I. * 449. See Assise, Error, &c.
- Vere of Stonebyres, I. * 126; murdered, * 132, * 159, * 238. See Weir.
- Vernour of Auchindinny, Tho., I. * 143; Robert, II. 21.
- Vessels, grooms of the King's, I. * 313; Silver, *ib.*, &c. See Silver, Gold, Plate, &c.
- Vitacium, what, III. 588.
- Victual, girnalling, I. * 181;—selling to the English, * 379, * 476; to Rebels in Edr., 30, 34.
- Violers, the King's, (Minstrels,) I. * 314, * 316.
- Viols for the King, (musical instruments,) I. * 285.
- Vulgaris purgatio, popular Ordeals for the detection of Murderers, III. 184, &c. See Touching, &c.

W.

- WADDELL, Jo.**, Parson of Flisk, I. * 472.
Waff, (vaff,) a signal, II. 287.
Waith-naig, what, III. 98, 610.
Waking (Walking) of Witches, what, I. 50; a Jesuite waked *ad delirium* ! III. 332.
Walcar, Sir Jo., Umbesetting, &c., I. * 204.
Waldegrave, Ro., Printing a vitiated Act of Parliament, II. 2. 7, 14.
WALES, PRINCE OF, Cha., III. 502.
Walk, to wake or watch, III. 527.
Walker, Hen., Spuilzie, I. 390.
Wallace of Boigheid, Hew, II. 130 ;—James, III. 57 ;—of Carmyre, Hugh, I. 36 ;—of Carno, (Carnell,) James, * 137 ; John, Treason, * 273 ; Hew, * 428, * 457, * 486, * 491, 36 ; John, II. 106 ; Sir John, III. 68 ;—of Cragy, John, I. * 251 ; Pension to his widow, *ib.*, 244 ;—Tutor of Craigy, Wm., * 137 ; Hew respited, * 237 ;—of Ellerslie, Wm., * 344, * 382, 141 ;—of Holmestoune, Ro., II. 130 ;—Ja., hanged, III. 265 ;—of Johnstoun, Wm., I. * 344, 35, 159, 169 ; Ja., III. 237 ;—Marg., Witchcraft, Sorcery, &c., III. 508, 'wirreit and brunt,' 536 ; proof allowed in this case, 525, &c. ;—of Maryford, Hew, I. * 420 ;—of Newtowne, Adam, * 157 ;—Rauff, Coining and uttering base money, II. 75, 77 ; 'wirreit and brunt in assis,' 79 ;—of Seweltoune, Edw., 106 ;—of Wallace-toun, Wm., III. 57.
Wallein of Wodwra, Alex., I. * 347. See Vallem.
Walpynnis, anent (lang) in buitlis, I. * 862.
Wambe, what, II. 417.
Wamebrasis, (belly-bands or girths,) I. * 290.
Wame-ill, what, I. 51.
Wand of Peace, ceremony of breaking, on occasion of a Messenger's Deforcement, &c., I. * 75, * 157, * 437, * 484 ; III. 469.
Wantonness and 'her marrows,' I. * 124.
Wantoun-Pyntill, I. * 181 ; slain, * 201.
Wantoun Will, beheaded, I. * 219.
Waponschawing, I. * 309, * 311, 349 ; general, 354.
Warbeck, Perkin, I. * 5, 116.
Ward, breaking, I. * 331, 108, 135, 297, 305, &c. ;—Free, granted to William, Master of Forbes, * 187.
Warden Raid, or 'Day of Trew,' I. * 397.
Wardens of Marches, hindering them from taking Rebels, I. * 165 ; their fees, * 315 ; Lord Maxwell slain, 360 ; Sir Jo. Carnichael slain, II. 363, 504.
Warding MARY Q. OF SCOTS, in her Palace of Holyrood, &c., I. * 482.
Wardlaw of Curryhill, Alex., I. 1, 34, 107 ;—Hen., Queen's Chamberlain of Dauffermline, II. 555 ;—Mr Ja., Justice depute, I. 159, &c. ;—of Kilbabertoun, Hen., * 158 ; imprisoned for Wilful Error, * 203 ; Alex., * 424 ; Ro., yr., 64 ;—of Torry, Jo., * 136.
Wardrobe, Yeomen of King's, I. * 313 ; Grooms in, *ib.* ; Tailor in, *ib.*
Wark, Raid of, I. * 240, * 242, * 257.
Warristoun, Laird of, I. * 62 ; House of, besieged, 81, 83 ; Lady 'raveisched,' (carried off by violence,) 244 ;—Laird of, Murdered by his wife, &c. See Kincaid and Levingstoun.
War trumpets, I. * 314.
WARWICK, EARL OF, I. * 379.
Wasche, strang or stark, (urine,) used in Witches' charms, I. 245.
Wast, And., Slaughter, III. 466.
Wastland, Alex., hanged for Perjury, Oppression, &c., II. 453.
Wat, Geo., hanged for Suborning Witnesses, III. 356.
Water-Ordeal, III. 184, 187.
Watsoun, Ja., Murder under trust, hanged, II. 540 ; James, drowned for lamb-stealing, III. 208 ;—Jonet, her Confession of Witchcraft, 601 ;—Patrick, Warlock, pricked for Devil's mark, 599 ;—of Saughtonhall, Mr Ja., portioner, II. 105.
Wauch of Hoip, Ro., III. 396 ;—of Keip, Ro., II. 474 ;—of Schawis, Tho., III. 387, 485 ; Tho., his son, *ib.*
Wauchope of Caikmure, Adam, I. * 468, 27, 6 156 ;—of Clogborne, Geo., II. 113 ; his son

- Ja. slain in a 'singular combat' or duel, *ib.*; his antagonist beheaded, *ib.*, note, 124;—Feud, I. * 143, * 144;—Geo., swearing fealty to Protector of England, &c., * 378; Slaughter, II. 52;—Gilb., slain, 562;—of Nudry-Marscheall, Gilb., I. * 143, * 144; waylaid, * 169, * 176; Geo., * 388; Wm., yr., killing game, * 395; Gilbert, *ib.*; Wm., 72, 107; Arch., yr., 168, 270, 305, 358; II. 52; Arch., (Ro.?) 29, 403; Wm., his son, slays Laird of Wowmet, *ib.*; Banished, 410;—of Stottin-cleuch, Wm., II. 562; his brother Gilb. slain, *ib.*;—Wm., beheaded for Slaughter, 402.
- Wanchoune, Castle of, besieged, Herechip, &c. I. 8.
- Waugter, Capt. of a Dutch, brings two English Pirate vessels to Leith, and is 'propyned with a (silver) coup of lx vnce weight,' III. 111.
- Waylaying, (see Umbesetting, &c.) I. * 169; Lady Luss, &c. * 178.
- Weath-horse, what, III. 98, 610, 613, *et seq.*
- Weche. See Veitch.
- Wedderat, Geo., slain, I. * 467, * 487.
- Wedderburn, Castle of, recovering, I. * 237; victuals furnished to, * 272;—Mr Dav., Forcing (Rape) and shamefully abusing, III. 439;—Lady, Assise on her and Lady Traquair, I. * 280.
- Wedonypha, ('wyten-on-fa,') what, II. 27.
- Weights, false, II. 88.
- Weir, (Vere, Were,) of Auchtyefardell, Wm., I. 35; II. 376; Jo., his brother, 506; Da., III. 134;—Beatrix, III. 68;—Bessie, beheaded for Child-Murder, 472;—of Blackwood, Tho., Slaughter and Rape, I. * 180; Ja., 36, 71; Geo. III. 227;—of Clowburne, Jo., II. 453; of Halcraig, Alex., I. 36;—of Howburne, Henry, I. 72;—of Kirktoone, Tho., 36;—of Newtown, William, * 87;—of Quhytecleuch, Jo., and Mungo, his brother, beheaded, III. 247;—Ro., broken on the wheel, &c., for Murder of Laird of Warristoun, II. 445;—Tho., Forcing, (Rape,) III. 499;—Wm., beheaded, 123.
- Wells, holy, Superstitions practised at, II. 538, &c.
- Welsche of Colliestoune, Da. III. 475;—Mr Jo., Minister, tried, II. 494; banished, 503.
- Wemyss of Bogie, Ja., Deposition as to Gowrie's Conspiracy, II. 218; Sir Ja., Vice Admiral, III. 102;—of Craigtoun, Mr Jo., 508;—of that Ilk, Dav., I. 233, 310;—of Logie, 280;—of Pittencrief, Sir John, married Dorothea Ruthven, II. 297, note;—of Vnthank, Tho., I. * 157.
- Westhall, Laird of, slain, I. * 179.
- West Marches, Raid of, I. * 331; Commission to rule, &c., 304.
- WESTMORELAND, EARL OF, I. * 271.
- Westraw, Laird of, slain, I. 36.
- Weyme, Burning Place of, I. * 103, * 107, * 110.
- Wharton, Sir Henry, I. * 348; burns Durisdeer, Amisfield, &c., *ib.*; LORD, * 401; treasonable Letter, addressed to him, *ib.*;—Tho., * 273;—Sir Tho., * 401.
- Wheat, exporting to Flanders, I. * 365.
- Wheel, breaking on the, I. 241; II. 450, and note.
- Whirlwind, superstition relative to, I. 164; that Devil carried off a Witch in a, III. 602; that Witches shoot people who do not 'sain' or 'sanctifie' themselves, 604.
- Whistle, silver, in common use before room-bells, I. * 396. See Quhissill.
- Whitefarde of that Ilk, John, I. * 384, 91;—of Myltoun, Jo. 70; Adam, yr., conspiring Murder of REGENT MORTON, *ib.*
- WHITEHORN, BISHOP OF, (*i. e.* Galloway,) I. * 163.
- Whitelaw of that Ilk, I. * 169; Patrick, * 364, * 480;—of Newgrange, Pat., 119.
- Whyte, Rowland, II. 318.
- Widderschynnes, what, III. 557, 605.
- Wigtoun, burgh of, oppressed, I. * 93;—EARL OF, Jo., II. 572, 596; III. 542;—Justice-Aire of, I. * 56, * 74, * 88; expenses, * 317;—Provost of, II. 540; slain, III. 119;—Sheriff of, takes bribe to discharge a Murderer, I. * 63; Oppression and Hereschip, * 89; Prevents a Court from being held, * 91.
- Wild-boars brought from France, ('sangweleris;' Fr. *sangliers*.) I. * 311, * 312.
- Wild-fowl, killing, I. * 395.
- Wild horses and mares, stealing, I. * 247.
- Wilful Error on Assise. See Error and Assise.
- Wilfurd, (Wolford,) Sir Ja., (English General of

- Hadington,) I. * 349; burns the towns of Dalkeith and Newbottle, *ib.*, 353.
- Wilkie, Ro., banished for Resetting Jesuities, III. 371;—of Saughton, Tho., portioner, II. 128.
- Wilkin, nickname for Wm., I. * 190, &c.
- Will, declared by the KING, in person, I. 247.
- Williamson of Termet, Angus, Slaughter, II. 507; Lach., *yr.*, *ib.*; Angus, 528;—Wm., Oker, (Usury,) II. 101.
- Willock, Jo., the Reformer, Heresy, &c., I. * 407, * 417, *note*. See Reformation.
- Willoughby, Sir Hugh, I. * 345;—LORD, II. 320.
- Wilman, Capt., English Pirate, III. 110.
- Wilson of Cruglin, (Croglene,) Jo., I. * 140; III. 501.
- Wilson, Christian, *alias* 'the Lanthorne,' a murdered corpse bleeds at her touch, III. 195; her Confession of Witchcraft, 601; carried off by the Devil in a whirlwind, 602;—Bessie, a Witch, 606, &c.;—Margaret, a Witch, *ib.*
- Wind, blast of evil, I. 233;—Witch-charm for raising, III. 607.
- Windows, glazed Church, destroyed, I. * 353. See Reformation.
- Wine, Rhenish, presented to K. JA. V., I. * 208;—prices of, at Justice-aires, * 64, * 389;—purchasing high-priced, * 349, * 377, * 458.
- Wine-cellar, King's, Yeomen of, I. * 313; grooms of, *ib.* See Yeomen, &c.
- Winrahame, Ro., Isla Herald, taken prisoner in Orkney, his coat of arms torn, &c., III. 278, 283, 317.
- Winterleuche, Hereschip of, I. * 398.
- WINTOUNE, EARL of, Geo., III. 316;—MASTER of, Conflict at St Johnstoun with E. of Glencairn, III. 579;—of Strichtmartyne, Tho., I. * 177.
- 'Wirreit at ane stake,' Witches strangled before being burnt, 186, &c.
- Wischart of that ilk, James, I. * 404;—of Mwretoun, And., 'Forcing and Defloiring' a girl of 11 years old, III. 507;—of Pittarrow, Mr Ja., Gift to his widow and children, I. * 235, * 496, 178; Jo., 284; Sir Jo., II. 363; young Laird and his friends fight young Edzell at the Salt tron of Edr., III. 61.
- Wissillit, exchanged, III. 92.
- Witchcraft, to be enquired into at Justice-aires, I. * 66; Agnes Mullikine, *alias* Bessie Boswell, banished, * 432; Jonet Bnyman, burnt, 38; remarkable case of Bessie Dunlop, 49; burnt, 58; using and seeking Enchantments, &c., 70; Violet Mar, 76; Wm., Gilmour, 101; Alesoun Peirsoun, 161; Jo. Myllar, 167; Lady Fowlis, 185, 191, &c.; Mr Hector Munro of Fowles, 201; Meg Dow, burnt, 186; Jonet Grant and Jonet Clark, burnt, 206; Bessie Roy, acquitted, 207; William Leslie of Crechie, and his wife, 209; John Feane, *alias* Cuninghame, 'Secretar to the Devil,' &c., burnt, 209; Agnes Sampsonne, 230; Barbara Napier, 242; Ewfame Mac-Alzeane, 247; Fra. E. OF BOTHWELL, 258; forfeited, 259; Nin. Chimeside, his servant, 259; Commission for examining Witches, &c., 261; Kath. Muirhead, burnt, 359; Jo., MASTER OF ORKNEY, 373; Alison Balfour, her husband, son and daughter suffer unheard of tortures, 375, 376; Alison Jollie, 397, acquitted, 399; Christian Stewart, burnt, 399; Capt. Pat. Hering, II. 23; Jonet Stewart and three others 'wirreit' and 'brunt in assis,' 25; Bessie Aikie, banished for life, 52; Pat. Lowrie, 'wirreit' and 'brunt,' 477; Issobel Greirsonne, 523; 'wirreit' and 'brunt in assis,' 526; Bartie Paterson, do., 535; Issobell Haldane's Depositions, 537; Beigis Tod, 'wirreit' and 'brunt,' 542; Ja. Mure, III. 68; Grissell Gairdner, 'wirreit' and 'brunt,' 95; Marioun Peebles, *alias* Pardoun, burnt, 194; corpses of Murdered persons bleed on her touch, *ib.*; Christian Wilson, *alias* the Lanthorne, *ib.*; a corpse bleeds on her touch, 195; and Poisoning, &c.; Ro. Erskine, beheaded, 260; his sisters Issobell and Annas, beheaded, 267; Helen, banished, *ib.*; Margt. Wallace, (a remarkable case, with pleadings,) 508; proof allowed, 505; 'wirreit,' and 'brunt,' 536; Christian Grahame, 509, &c.; Tho. Greave, burnt, 555; Remarkable Examinations of persons accused, 596; barbarous treatment of Witches at their execution at Broughton, 598; pricking and finding Devil's mark, 599; Confession of Manie Haliburtoun, *ib.*; Geillis

- Johnstone, III. 600; Confessions of Jonet Watson, &c., 601; remarkable Confessions of Issobel Gowdie, 602, and of Janet Breadheid, 616;—pleading (*quibus medijs, modis, et malis artibus*) as to how it was accomplished, III. 512, &c.
- Witches consulted by ladies of rank, I. 54, 55; by the Archb. of St Andrews, 164; pay *teynd* to the Devil, *ib.*; 'wirreit' (strangled at a stake,) and burnt to death, 186, &c. See Witchcraft; Great Sabbath, or Convocation at Northberwick Kirk, 212, 217, 239, 245; they 'junt' dead bodies, for making Witch-charms, 218, 233, 237, 239; initiation of Witches, 234, &c.; carous with the Devil in a ship and then destroy it, 235; baptize a cat, 218; a singularly curious charm, 237; restoring bewitched horses and cattle, 238; form of homage done to the Devil, 210, 217, 239; III. 609, &c.;—Witch in a state of pregnancy respited, 243;—Convention at Aitchison's haven, 245;—Commission for examining, 261;—Master of Orkney consults Witches for the death of the Earl, 373;—burnt *quick*, (alive,) who in their despair blasphemed and renounced their baptism, &c., III. 598;—pricking to find Devil's mark, 599, 602. See Witchcraft, &c.;—their Covens consisted of 13 each, 603;—symbolical mode of taking the fruits of the ground, dairy, &c., *ib.* and *note*, 614, &c.;—their dances, 603;—their revels and feasting, 604, &c.;—they set 'beesomes,' (brooms,) in bed with their husbands in their place, *ib.*, 608; or 'thrie leggit stooles,' *ib.*;—clay figures to take away life, 605;—took forms of 'keas,' hares, cats, &c., *ib.*;—grand Meetings, 606, 613;—remarkable nicknames of Witches, *ib.*;—how they shot with elf-arrows, 609;—form of homage to the Devil, *ib.*, *et seq.*
- Witches-bridle, a collar for extorting confession, I. 50; modes of torturing, 217.
- Witch-dances, III. 603;—Gillatrypes, (a dance,) 606, &c. See also Witch trials, *passim*.
- Witch-grace to the Devil, before meat, III. 612;—after meat, *ib.*
- Witch-prayer, charm, or conjuration, for healing diseases, &c., I. 234, 237, III. 95.
- Witness, famous, what, III. 73.
- Witnesses, Suborning, III. 352; several persons beheaded, hanged, scourged, and branded, 354; proof in exculpation of slaughter, by, refused, III. 467; And. Turnbull, and two others, hanged, 539; Da. Turnbull's tongue pierced with 'ane hett boitkyn,' *ib.*
- Woodspryne of Brighous, Ja., found Caution, I. * 487, 27; Umbesetting, &c., 58.
- Wode, (Woid, Wood,) Mr Alex. Vicar of Northberwick, Invasion, &c., I. * 347;—of Balbegnocht, Walt., I. 28, II. 73, 128, 454;—of Bonyngton, Ja., I. * 343, * 347, * 433; Ja., yr., 'fear' of, tried for breaking into Bonyngton, and stealing title-deeds, II. 340; is hanged, 347; Pat., 340;—of Colpna, Jo., slain, I. * 469; Alex., 382;—of Craig, Dav., I. * 347, 371; Sir Dav., striking Ministers, and Obstructing the designation of a Manse and glebe, &c., II. 360; acquitted, 363; III. 134;—of Galestoun, Jo., I. * 451;—of Lammeletlan, Alex., II. 397;—of Latounne, (or Banblane,) Wm., II. 63, Slays Unicorn Pursuivant, 72; tried for breaking into Bonyngton, stealing title-deeds, &c., 340; condemned to be hanged, 347; is remitted, *ib.*, *note*;—of Largo, Sir Andro, I. * 121; remission to, * 250; he redeems lands for the KING, * 322, * 424;—of Stonyside, Jo., I. * 437;—of Wodstonne, Arch., I. 29.
- Wolves, mention made of, I. * 116.
- Woodbine, used in Witches' charms, II. 26, 27, 28; Woman, burnt on a red-hot 'girdill,' II. 391.
- Woman-house, III. 540.
- Women, capital punishment, by drowning and burning, I. * 162, * 190, &c. (See Burning, Drowning, Females, &c;)—pregnant, Murder of, I. * 344; striking, * 412, &c. See Pregnant, hurting, * 421;—married, liability to punishment for crimes, argued, I. 42, &c.
- Woods, destroying, I. * 71.
- Wool, stealing, from live sheep, I. * 206.
- Woolmot, Raid of, II. 21; Laird of, slain, 52; 'Gudeman' of, slain, 339. See Edmonstonne.
- Worle, King's, Master of, I. * 315.
- Wormestoun, Laird of, III. 245; his lands, &c. in Lewis, burnt and wasted, *ib.*

- Worsome, bluid and, what, II. 478; III. 95.
 Worsted, clews of, used in Witchcraft, I. 253.
 Woulf of Wadelie, Jo., I. 155.
 Wounding in the King's Chamber, I. * 85.
 Wounding, I. * 159; Judicial Arbitration, * 167;
 —Countess of Craufurd, * 180, * 181, * 201;
 Mr Gawin Dunbar, * 328, * 401; a Baillie of
 Leith, * 403, * 410, * 412; an Officer,
 * 437; in Perth, * 451; females, * 454;
 Auchincraw, 381; Frenche, III. 69, 72.
 Woux, a watch, I. 386.
- Wraw, Witch's cries, while in the shape of cats,
 III. 611. See also Witchcraft.
 Wright, (carpenter,) King's master, I. * 314.
 Writer, of the Casualties, King's, I. * 315; hang-
 ed for falsifying a Charter, II. 104.
 Writing Pasquils against the King, F. Tennent,
 hanged, II. * 332.
 Wylie of Bonytone, Jo., I. * 81, Tho., * 87, * 470.
 Wynd, Henry, beheaded, 'ex gratia,' I. * 393.
 Wyndis, Alex., of that Ilk, I. * 37.
 Wyot, Henry, Englishman, I. * 3, 6.

Y.

- Yarn, hesp of, Witch-charm with, &c., III. 556,
 605.
 Ycolmkill, Jo., Commendator of, I. * 105.
 Year, first day of, regulated, II. 102.
 Yeomen of the King's Ale-cellar, Avery, Bread-
 house, Great Lardner, Petty Lardner, Spice-
 house, Stable, Wardrobe, and Wine-cellar, I.
 * 313, &c.
 YESTER, JO., LORD HAY of, I. * 149, * 265;
 his Assise, * 274, * 324.
 YORK, DUKE OF. See Perkin Warbeck;—
 Council of, I. * 295, * 323, * 324.
 Young, Gilb., Incest, 42; Ja., hanged for Per-
 jury, &c., III. 539; Jo., Warlock, Officer to
 a Witch-coven, 614, &c.;—Nicoll, slain, I.
 * 442; Magistrates of Edr. tried for setting the
 Murderer to liberty, *ib.* to * 450; Protestation
 against the Verdict, * 449, * 452;—Oliver,
 baillie of Perth, II. 187; his Dep. as to Gow-
 rie's Consp., 188;—Sir Peter, King's Almo-
 ner, II. 544.
 Youth, slaughter committed by a boy of eight
 years old, I. * 16; by a lad 14 years old, III.
 237; sentenced to be beheaded, 241; banish-
 ed for life, *ib.*, note.
 Yule of Garmiltoune, Jo., I. 27;—Ja., banished
 for Intercommuning with the English, I. * 406.
 See Treason, Intercommuning, &c.

Z.

- Zetland, Inhabitants of, barbarously oppressed by
 the Earl of Orkney, III. 81.
 Zow, an ewe, III. 396, &c.
 Zule, And., scourged and banished for Theft, III.
 270;—Christmas, III. 389, &c., *passim*.
 See under Letter Y, for all similar words.



