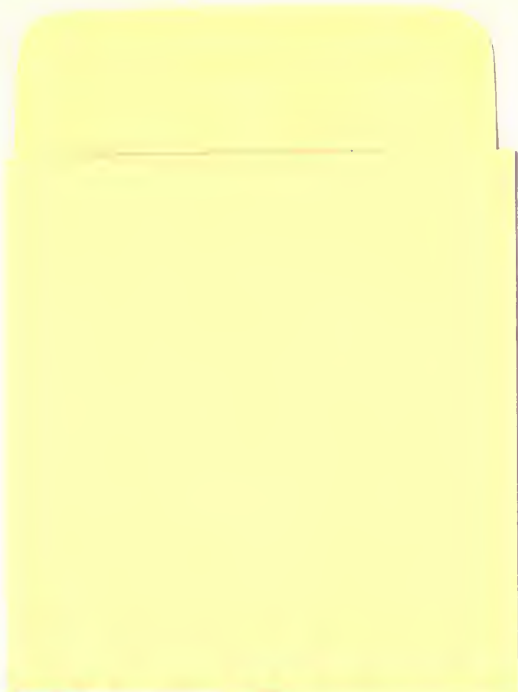


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ANCIENT
CRIMINAL TRIALS
IN SCOTLAND.

VOL. II. — PART II.

1600—1609.

Wm. L. Garrison
Book

I.

It is honorable for a duty to be performed. please to be made
of July, 1800
I have the honor to be
your obedient servant
Wm. L. Garrison

III.

It is honorable for a duty to be performed. please to be made
of July
I have the honor to be
your obedient servant
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III.

It is honorable for a duty to be performed. please to be made
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I have the honor to be
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ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;

COMPILED

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

BY

ROBERT PITCAIRN, ESQ.

VOL. II.
PART SECOND.

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

2612

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

(Sic subscritur) JAMES R.

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

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

¹ The Answers are general and evasive; and as the substance is contained in the following most remarkable CONFERENCE with the King, at Brechin, it seems only necessary to refer the curious to *Calderswood's Church History*, MS. Vol. V. p. 598, &c. ² The Chamber. A common mode of expression at this time. ³ Occasion, necessity. ⁴ Lat. *admirare*, marvelled; or wondered at.

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

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

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

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

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

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

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

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

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

Nov. 1602. (11.) MR ROBERT BRUCE drew neer to Edinburgh, in tyme of the Aſſembly. *George Heriot* and *John Robertſone*, Commiſſioners for the Town of Edinburgh, made mention of his reſepition;⁴ wherunto the Aſſembly applauded. But the King and the Moderator⁵ alledged they had fundrie things to proponne, before that were granted. The King deſyred to have the Interlocutor of the Aſſembly, 'whither Mr Robert ſould be enjoyned to utter in pulpit, that which he had offered in his bill before his baniſhment, and the reſolution which he had ſubſcribed at Perth, after his returne, or not?' Mr John Hall⁶ being firſt aſked, answered, 'Ther could be nothing done in that mater, whill⁷ the parties were firſt heard.' Soe it was thought meet that Mr Robert ſould be ſent for: But the mater was de-layed till the end of the Aſſembly; and howbeit he was nather called nor heard, they voted that he ſould publiſh in pulpit his bill and reſolution.⁸

¹ Grounds of quarrel or grudge. ² That is, in the heat of the ſtruggle and the deadly encounter in which he was engaged, he had no leiſure for reflection, but looked only for the means of ridding himſelf of his antagonist. ³ On cool reflection, and at that diſtance of time, the King is inclined to think it might have been in his power to have ſaved Mr Alexander's life. But this he admits, after being in the knowledge of all the facts and incidents, which he could not at the time have contemplated. Had he attempted to have taken him alive, in all human probability, it would have coſt his own life and that of his party: for Gowrie, as Provost of Perth, and adored by the citizens, could have in an inſtant overpowered the handful of followers attending upon the King, in this haſty and unprepared viſit. ⁴ The fact of his being repoued or reinstated. ⁵ Mr Patrick Galloway. ⁶ The Moderator of the former Aſſembly. ⁷ Until. ⁸ It is neceſſary to purſue this matter farther. The Editor hopes that *Wodrow's* Life of this remarkable perſon, together with the Lives of other eminent public characters, written by *Wodrow*, ſhall ſoon be publiſhed. The publication of theſe Lives would prove a valuable acceſſion to the *Hiſtory of Scotland*, and could hardly fail amply to repay the perſon who undertook ſuch a taſk.

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

SIR,

I INQUIRED of his Ma. yesternight, if he had any new intention anent yow? He answered, none, but that yee fould enter and doe your duetie, as was told yow of before. His Ma. alledges, yee never bide long at one resolution; for, after my excusing yow of your not abilitie for preaching the laft Sabbath, as yee willed me to doe, yett he fent Mr Henry Blyth to the Moderator, to enquire if yee fould teach? This I was ignorant of; but yett I answered, that it was upon a fear that poffessed yow, of a new offence, in not teaching; and foe that was done for the full affurance of his Ma^s minde in it. To the purpofe, Sir, yee fall enter, if yee please, on Sunday next, and advertife his Ma. two or three dayes before; inquiring, if he please to fpeak with yow? At your entry, yee muft doe (as his Ma. fpeeche is) the duety of a good fubiet and of a good pafior; not to fay, fimply, yee are refolved, which yee have done already; but yee muft indeavour to remove all fcruple from the auditor; as weill in cleiring his Ma^s innocencie, as of your guiltineffe. There are his Mas own words: And my poor advice is, to fatisfie his Ma.; feing, (with maie) I think it may and would be done, being a thing able to do good to the King and whole Common-weall, to knitte the hearts of his people to him, by removing fcruples, if any be, or by confirming them in the conceived truth; which, be your silence in this mater, will be called againe in queftion be them. The Lord give yow that refolution which may beft ferve for his glory. HALYRUDHOUS, this Tuifday the laft of Nov^r 1602. Keep this ticket for both our warrants.

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

SIR,

I WAS upon my journey homeward, when I received your laft Letter; and hearing that yee were Dec. 1602. gone in the country, I delayed any anfwer till your returneing. Therefore, now, Sir, for anfwer; firft, I fay, that if Mr Henry Blyth had any fuch commiffion of me, or if the honeft man will fay foe in my name, I will be content to take that imputation upon me: but otherwise, as it is true indeed, I received wrong, I am noe wayes ambitious of it. For I have been twice thrutt into it, and as oft out of it; and I have noe will that his Ma. be compelled to ufe his Royall office upon the remanent of my frail life. For thefe four or five yeares bygane, I have been continually under a lingering and dwyning death, which I am affured has been more troublefome and tedious to me, both in body and minde, then that hour of death fall be, when euer it fall please the Lord to call me therto. I have not forgott thefe voices, that oftentimes I wondered to hear, 'that his Ma. dreadeth us bodily harme.' Thefe things maketh me to look or I leap, and to advife weill or I enter; yett I fpeak nott this, as if I were minded to fhake off my duety that I ought to my flock: But if it would please his Ma. to fuffer us to ftand in that liberty wherein the Lord hes placed us, and to fpeak in the chair of truth, as the word and fpirit of truth fould direct us, I would promife, be God's grace, when ever the word fould give us occafion, as oft tymes it will, that then, from the authority of the word, I fall repreffe all finifter constructions of his Ma. actions, and by the authority thereof, beat down all feditious and in-folent humors of fubiects, that would preffe to ufurp upon your fuperiours; and foe, from the word, as moved therto to fpeak upon thefe matters; which muft have a far greater grace nor² to fpeak be way of injunctions, or fpeak as it were a cunn'd leffoun,³ or ane A B C putt in man's hand. The one deuty smellth of Divine Theologie, the other of Court Theologie, and does noe good to the caufe, but hurts greatly: And as God liketh of a cheerfull giver, foe when the people feeth thefe things to come freely, of my felf, without constraint, nor yett putt unto my head, they will reverence them the

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

² Conned lesson, got by rote.

³ Than.

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

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

SIR,

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

Your brother in Christ,

MR JOHN HALL.

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

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

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

¹ (1602. Jan. 19.)—Mr Robert Bruce addressed a Letter to the Town-Council of Edinburch, which is an echo of that to the Laird of Beltries. This was followed by *George Heriot* and *Cornelius Inglis* waiting on the King, on Bruce's part; who inhibited any preaching; whereupon he left the town. On 27th January, he intimated his design to preach next Sabbath, to James Aikenhead, one of the Bailies of Edinburch. ² Much correspondence, &c. took place, till at last the Commissioners of the General Assembly, Feb. 25, 1603, 'declared that his re-entrance to the Ministry of Edinburch came through his own desire.' ³ To the English Crown. The King departed for England immediately after this Conference took place. ⁴ Nevertheless. ⁵ Undertook; promised largely.

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

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

¹ A mode of expression for chamber.

² Than.

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

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

⁵ Shoot, aim at.

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

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

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

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

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

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

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

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

RIGHT HONOURABLE COUSINE,

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

¹ Quarrels, causes of offence.

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

Your moſt loving confine to his power, in God,

INUERNES, the 10 of February 1613.

ROBERT BRUCE.

No. XIX.

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

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

It may pleaſe your honor,

THIS daye morninge, at 9 howers at that tyde, the K.[ing] wrote to the Chancellor, Secretary, Aug. 1600. and others, and to ſome of the Kirk; and word came hither in this maner, and the L.[ord] Secretary told me, That yesterdai th' Erle of Gowry ſent the M^r his brother, M^r Alex^r Riven, to the K.[ing] hunting in Fawkland Parke; ſhewing the K.[ing] that where, for his adoies, he had muche troubles to git treaſor, &c. his brother th' Erle had founde in an old towre, in his houſe at S^t Johnſton's [Perth] a great treaſor, to helpe the K.[ing's] turne; wth w^{ch}, he ſaide, his brother wolde faine have the K.[ing] to go to ſee quietly, that day. Whereon, after the K.[ing] had hunted a while, and taken a drink, he tooke freſhe horſe and diſcharged his company (to wit), the D.[uke] and Erle of Marr then in company wth him, taking onely a few wth him; yet the D.[uke] rode, and the Erle of Marr followed, and the K.[ing] met by the way the L.[ord] of Inchclaffray, who alſo rode wth him to S^t Johnſton's; where the K.[ing] cominge, th' Erle meting him, caryed him into his houſe, and gave him a good dynner; and after went to dynner wth the D.[uke] and his company. The M^r, in the meane tyme of their diniug, perſwaded the K.[ing] to go wth him quietly to ſee it; as the K.[ing], diſcharging his company to follow, went wth the M^r from ſtaithe to ſtaithe, and chamber to chamber, locking ſtill the doors behinde him, untill he came to a chamber where a man was, wth the K.[ing] thought had ben the man had kept the treaſor. There the M^r cleked hold on the K.[ing] and drew his dagger, ſayinge he had killed his father, and he wolde kill him! The K.[ing], wth good wordes

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

Aug. 1600. and meanes, fought to difwaid him; fayeing, he was younge when his father was executed, and dyvers others honeft men; that he was innocent thereof; had reftored his brother, and for amends, made him greater then he was; that if he killed him, he could not efchape, nor be his heir: That he perfumed Mr Alexander had learned more divinity than to kill his Prince; affuring him, and faithfully promifing him, that if he wold leave of his enterprice, he wold forgive him, and kepe it fecret, as a matter attempted upon heate and rathenefes onely. That to thefe the Mr replied, what was he preaching? that thould not helpe him; he thould dye: And that therewith, he ftroke at the K.[ing,] the K.[ing] and he bothe going to the ground, that the Mr called to the man there prefent to kill the K.[ing,] That the man aufwered, he had nether harte nor hand; and yet is a very curragioufe man. That the K.[ing] having no dagger, but in his hunting cloths wth his horne, yet defended himfelf from the Mr; and in ftugling, got to the windowe, where he cryed Treafon! w^{ch} S^r Tho^s Erkin, John Ramfay, and Doctor Harris, hearing, ran up after the K.[ing,] but found the doors flut, as they could not paffe; yet John Ramfay, knowing another way, got up and in to the K.[ing,] who cryed to John he was flaine; whereon John out wth his rapier and killed the Mr. In this tyme, that th^r Erle thould tell the Duke, Marr, and the reft, that the K.[ing] was gone away, out at a back gate; that they ran out and Gowry wth him, and miffing him, that th^r Erle faide, he wold go back and fee where the K.[ing] was. That he, wth 8 wth him, wth a Steele bonnett and two rapiers, ran up the ftaires; that John Ramfay, meting them wth drawn fwordes, S^r Tho^s Erkin and Doctor Harris being then comed to John, after fondry ftrokes, in the end killed the Erle alfo; S^r Thomas being hurt, and Doctor Harris mutilate and wanting 2 fingers. That this ftir being, the townes men and Gowrie's friends, in evil appearance, faid, they wold have accompt where th^r Erle was, or they wold pay the grene cotes! To pacifie w^{ch} the D.[uke] and Mar were fent to the Magiftrates; and fo quieted the matter, as the K.[ing] and his company gott away; the K.[ing] thanking God for his deliverance. And yefternight, knighted, as I heare, John Ramfay and Doctor Harris; but the Secretary told it not me.¹

Upon thefe, Lettres comed from the Courte, The whole Council here convened; and in end, at one of the clock rofe, and came all to the market croffe, and there by found of trumpett intimated, but in bref, the happie efchape of the K.[ing] and their Act, that they made in Council, for the people to thank God for it; and in joy thereof, to ring bells and build bone fires. Mr David Lindfay, ftanding with the Council on the Croffe, made a pithy and fhort Exhortation to the people, to prayfe God for it; and therewth praied and praifed God for the fame; the whole Council on their knees on the Croffe, and whole people in the ftretes, in like forte. The peeces of the Caffe alfo fhote in joy; the few bells yet ringing; the youthes of the towne gone out to f[kirmith] for joye, and bone fires to be bilded at night: And the Council to go, this tyde, over to the K.[ing,] for further deliberation in this matter. The K.[ing] at his retourne to Fawkland, prefentlie caufe thruft out of the houfe, from the Q.[ueen,] Gowrie's two fifters in cheif credyt wth the Queene; and fwears to roote out that whole houfe and name. Upon the conveninge of the Council, the portes of the towne were flutt, for apprehendinge Gowrie's other brethren; and the lands are to be given to thefe new knights and others. This is the information and reporte comed yet hither, by the K.[ing's] command; w^{ch} fome yet doubted to be fully fo. What will follow, I remit to the fequell; being glad the K.[ing] is fafe, without hurte. Gowrie's Secretary is taken, and matters hope to be difcovered by him. Some falfe lyenge villains gave it out, I thould have ben this day morne at Leith, by 3 of the clock, and thould fay, being afked by one, that I was there attendinge ftrange newes from beyond the water. I tolde the Secretarie of it, that it was falfe, as God be thanked it is; and that if I were charged by any fuch devillifh devices, I wold refufe no debollifed fwinger or bloody villaine that thould be fo fuborned to put doubt towards me; praying the Secretarie to remember it, and fay it for me, if he hard it. That your honor fees how the malicious here fpite me; in what danger I live, and how fubject I am to all

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

accufation here; and fome practifing knaves wold whifper it, that this plot fhould be drawne and divided in other parts, [England.] But thus much, for this tyme, in hafte, wth myne humble duty and fervice. I pray God preferve yo^r hon^r. Edenburgh, the 6th of Auguft, 1600.

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

GEO. NICOLSON.²

I have no copie of this.

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

Right Honorable,

THE EARLE GOWRY, a nobleman of Scotland, who hath fpent fome time in thefe parts, is Feb. 1600. purpofed to returne home through England; and defires to have the honor to kiffe her Majefties hands, as he paffeth. And becaufe I know him well, and have had good communication with him, and therein found him to be of very good judgement, and exceedingly well affected both to the common caufe of Religion, and particularly to her Majeftie, and that which may concerne her honor and fervice, I have thought good to recommend him efppecially, unto your honor; and to befecch you to be a meanes, that he may receive that honour and favour that he is worthy of; that fo he may depart, confirmed in that good devotion and respect which he beares already towards her Majeftie. If your honor pleafe to conferre with him about thefe alterations feared in Scotland, I beleieve he will give you good fatisfaction; and that you will finde him to be a man of whom there may be exceeding good ufe made. I have given him my paffport, to ferve him till he come to her Majefties Court, in as ample and favourable fort as I could. The reft I referre to your honor's good favour towards him; whereunto I humbly recommend him. And fo, &c.

Your honor's very, &c.

HENRY NEVILLE.

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

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

Now to the occurrences of thefe parts, you fhall underftand, that the Erle Gowry, and a brother of his, have been lately flayne, in Scotland, in the Erle's own houfe, and in the King's prefence. They are charged to have confpired the King's death at that time, but God would not fuffer them. They had prepared for it, to execute their defaign, although they attempted it; and fo they fell into the pitt themfelves had digged.

This is the relation fent hither of it; which, notwithstanding, is diversely cenfured, according to men's divers affections. But howfoever, her Majeftie hath fent Sir Henry Bronkard thither, to congratulate the King's efcape, and to doe fome other offices to him. There is alfo one Hambleddoun come from thence, to refide here at leaft for fome tyme.

¹ This word is interlined. ² This must be allowed to be a very interesting letter; as it exhibits a striking picture of that singular transaction, at the moment, and of the manners of the times. In it we see, that the King had on a hunting-horn; that the King and his attendants wore *green cotes*; and that the Earl of Gowrie's two sisters lived in the palace, at the moment of the conspiracy, and were in *chief credyt with the Queene*. The foregoing *dispatch* of Nicolson proves very clearly, that Queen Elizabeth had no *finger in that pye*, particularly when Nicolson's declarations are coupled with the subjoined Letter, from Lord Willoughby. (No. 8.)—*Chalmers*. ³ In these and the following Extracts, it has been deemed unnecessary to give any thing farther than what relates to the Conspiracy. The above Letters to Cecil and Winwood, have been taken from that valuable and authentic Collection, *Winwood's Memorials and Affairs of State*, Vol. 1. pp. 156, 249, and 274.

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

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

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

(i.)

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

(ii.)

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

(iii.)

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

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

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

(iv.)

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

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

TRUSTY friend, We greet you hartlie well. We have taken occasion heirby, richt ernestlie Aug. 1600. to will and desire you, that ye fail not, all excuissis set a part, to be at Falkland, upoun Wedynsday at evin nixt, the twenty day of this instant, for your best advys and opinion to be had, anent the planting of Kirks of Edinburgh; the forme and maner of the univerfall thankis and prayis that shall be gevin to God, in every Congregation and Kirk within this realme, for our miraculous delyverie of that treasonabill Conspiracy, intendit laillie aganis us, at Sanct Johnstoun, be unquile Johne Erl of Gowrie, the Mr his brother, and thair affociattis; and for your advys to be gevin in sic uther, our great and wechtie affairis, as falbe particularly impartit to you at your coming: for the quilk, luiking precelsly that nicht, that on the morne thairefter, they materis may be handellit and put to ane point; We commit you in Godis protection. From Halyrudhous, this xij day of August, 1600.

JAMES R.

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

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

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

(i.)

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

(ii.)

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

(iii.)

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

(iv.)

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

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

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

³ The Master of Gowry, Mr Alexander Ruthven.

(8.) LETTER, *Lord Gray*¹ to

Sept. 1600.

SIR,

I LANDIT that fame nicht I left you laft, at eight houris, and ves in danger amongft the craiges, and never in my lyf fo feik. Heir I met v^t Thomas Hendryfone of Edinb: He hes no newes, faue of Th' Earle of Gouryes death. He tellis it in the fame forte as ye haue hard it. Ther is execute M^r Th: Cranftoun and George Craingelt, v^t fevin honeft men of S' Jhonftoun. They ar executed, for that they ver fund to be in armes befor the refl. His man, who ves v^t him, is bootit, M^r William Rynd; and hes deponit no thing, faue that ny Lord ftudit Magik in Italie and France, and had fprittis. His chamberlane, vho should haue flaine the King,² is yet keptit. M^r Patrik Gallouay hes preatchit all this in the pulpit of Edinb., bothe of the Magic and Treafoon; bot all vho ar dead, confeffit no thing. The King, efter the preatching, feuir folemnely, that all ves treu he hed preatchit, by his faluation and condemnation. The refl of the Minifters ves preaffit to fubfcryue that it ves treu; bot they refuffit: Yet they grantit to thank God for his Ma^{tie}s delynerance: And fo they ar banifit.

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

DOVER, 28 Sept. 1600.

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

(9.) EXTRACT from LETTER, *Mr Winwood to Secretary Cecil*,³
Paris, May 17, 1601.

THE Ambaffador of Scotland hath been advertifed of a dangerous practice againft THE SCOTS King: That lately, one called Glarnet hath been fent out of Scotland, with Letters to BOTHWELL, to haften home with diligence, where he fhall find fufficient affiftance. The principal perfon who employed this perfon is THE QUEEN of SCOTLAND; and Letters have been intercepted out of Scotland, from Mr Gray, that the death of GOWRIE should fhortly be revenged.⁴ May, 1601.

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

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

OUT of the Archduke's Camp, one of her Majefty's greateft commanders heth been advertifed, that Aug. 1602? a fire will break out in Scotland, before it be long; which makes Cecil to fear, knowing in what ftate King James ftands with England at this day, that other trains, made under ground by fecret pioneers, within the body of that ftate itfelf, may break out when it is leaft looked for. Add hereunto, the gallant maintenance of Gowrie's fon,⁶ fo near Scotland, and with fo great fhews; though no man knows from whence, befide Sir John Cary,⁷ who is holden to be very inward in that courfe, as certain gen-

¹ From the original in the Advocate's Library. The envelope is lost, and no trace remains in any other Letters in the same valuable Collection. It does not appear whether this Letter is from Patrick, sixth Lord Gray, or his son, the well-known intriguing Patrick, Master of Gray, who acted so base and treacherous a part in England, during the latter part of the reign of Queen Elizabeth, and the earlier portion of King James VI. The families of Ruthven and Gray were nearly related by intermarriage.

² Andrew Henderson. ³ *Winwood's Memorials*, I. 326. See also *Pinkerton's Dissertation*, (appended to *Laing's Scotland*, (First Edit.) 1800, Vol. I. p. 534, &c.) who strongly asserts the Queen's participation in schemes against her husband. The inferences he draws from the alleged intrigues of Queen Anne are quite fanciful; and the hypothesis he then maintained, in regard to the Conspiracy, quite untenable. *Laing* discarded Pinkerton's Dissertation from the subsequent editions of his History.

⁴ See Notice prefixed to the case of Francis Mowbray, Jan. 31, 1603, &c. ⁵ From *Cecil's Secret Correspondence with King James VI*, edited by Lord Hailes; who has purposely modernized the style. Cecil employed Howard, and the King Bruce, as the medium of correspondence.

⁶ Patrick Ruthven, the son of William Earl of Gowrie, whose daughter, as has been remarked before, was married to Sir Anth. Vandyke. It was he who wrote the admirable Letter to the Earl of Northumberland, published in the *Cabala*, (*Scrinia Sacra*, 4to. Lond. 1654, p. 106.) which shews talents of no ordinary description.

⁷ See Extracts of his Letters to Cecil, (5.) p. 316.

Aug. 1602? tlemen in the North, making several collections of tokens visible, and words let fall, have advertised their own conceits, in consequence, with those other fears which have been formerly advertised.

The Master of Gray hath had long conference with Queen Anne; since which time his style is heaved up *colturno altiore*, as Cicero said of Anthony. Divers of Gowrie's nearest and dearest friends have secret access to persons of great quality.¹ They keep old issues open, and feed spleen against all those that are employed and trusted in the courses of the present state; which the King's wisdom tempereth.

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

SIR,

Oct. 1600. I RECEIVED your packet to Mr Hudson, the 18th of this month; and another to Mr Ralph Gray, this morning; both which I have dispatched accordingly, but such is the negligence of the posts, that the packets are 7 or 8 days in coming. For occurens yt is uncertain, whether the convention hold; but the King is resolved to have bishops: The Marquis of Huntley have reconciled the King and Queen. The Erle of Mar is retired to Stirling; who hath very dishonorably suggested [to] the King, that I was privy to the practice of the Earl of Goury: his reason to induce him to believe yt was, because I gave the said Earle kind entertainment, at his being at London. Other newes hear is none, but that the country is in very good quiet; which course I will endeavour to continue in the town, to my utmost. But such are the contentions of the Council heer, that unless Sr Will. Bowes had carried himself very discreetly, and I myself presently prevented yt, they had quarrelled in my bed-chamber, being at Council. Thus, not willing to trouble you any further, I rest

Yours faithfully assured to doe you service,

Berwick, this 21 October 1600.

P. WYLLOUGHBY.

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

COUSING,

Jan. 1603. AFTER my hartly commendation, I culd not omit this feu lynis, that ze may knaw of my prosperus ariuel to this town; desyryng zou to haue my maist humble seruice recommendit to his lines. It greifis me mekil, in my passing throuche England, the los he hes, for the laik of sum (resident⁴) honest man, in quhom hartlie his M. might confyrd; and sik as interly low him, nicht assir them selfis. For, to be plain, I dout vtheris, for causis I vil not vret. I pray the Lord grant him that grace, that he may fauour them quha lousis him aboue al. I dout not bot, or now, ze haue resaut my Letter from London, desyryng earnestly to knaw the fucces of that maiter aganis his M. I hoip, vith the grace of God, to discouer mair in that, nor his M. hes zit bard; as also, in sandrie vther practifes aganis him, at my first cumming. . . . I man zit earnestly request zou to remember my couisng Capitane Coluill to his M., quha hes lostit al his esperance, for his M. seruice; and hopis he shal shortly gif better profout nor he has zit doon. I wret to zou afor, tuichin Mester David Foulis. Let him mak

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

³ From the Original, preserved in the Advocates' Library, Edin. (Denmyne Collections, A. 1. 34.) Colvill was then serving with reputation in the armies of Henry IV. of France. He was created Lord Colvill of Culross, Apr. 25, 1604. It is proper to mention, that his first wife was *Isobel Ruthven*, second daughter of Patrick Lord Ruthven, and sister of William, first Earl of Gowrie. His second wife, Helen Shaw, was widow of Robert Mowbray younger of Barnbougle. This connexion with the family of Gowrie, may account for the reliance placed in his information; but no farther trace is to be found of the matter, in any collection to which the Editor has had access. In an interleaved copy of Lord Cromarty's account of the Conspiracy, *Lord Hailes* remarks, 'there was another Colvill at Paris, then a spie of E. Essex (perhaps his 'cousing Capitan Colulle.)' Earl Bothwell was also then in France.' ⁴ Interlined.

300 priuē to the maiter, for the man is content, and defyris only the furtie of convoy. Al vther Jan. 1603. things, to neu occation; and my hartly commendationis to 3our brother: Praying 3ou, that this may ferue 3ou and Sir Thomas Erkyne, I remain 3our maift loving couling,

FROM CALYS, our first of Januar (1603¹).

JAMES COLVILLE of Eft Weimes.

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

To my Lord, MY LORD OF KINLOS.

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

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

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

Thus taking my leif, on my kneis, craifand at þe Almichtie, to 3owr Maieftie, þe Quene and Prince graces, with all the rest of 3owr Maiefties royall posteritie, mony guid and ioyfull dayes, with a hap-
pie and ioyfull refurrectione. 3owr Maiefties most humbill and daylie oratour,

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

ANDRO HENDERSOUN of Latoune.

To þe most nobill, gratiows, and hie renownit Pryns, KING JAMES of Britaine, ffraunce and Yreland.

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

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

PLEIS 3OUR SACRED MATIE,

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

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

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

D. SCONE.

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

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

MAY IT PLEIS 3OUR SACRED MAIESTIE,

I HAVE bein, be vertew of 3our heichnes commandement, accusit be the Erle of Dumbar, as gif I had bein ane moft ondwertifull subiect vnto 3our Maieftie, kything the malice of my hart by the vtering of onreverent speiches. 3our Maiefties informer is Androw Henderfoun, of quhom I will forbear to speak any thing, leaft I fould feim to haue no better defence nor² the accusing of my accuser. The first point of my accusatioun is, that I haue callit 3our Maiefties promiss bot diffimulatiounis; and quhatfoener may, by consequence, be inferrit vpon this point; for verificatioun quherof, he hes product vnto the Erl of Dumbar, ane Letter, wrettin by me, from Roistoun, the last of March, 1604, directit vnto my vncl, my Lord of Scone. The woordes are these. 'My Lord, Efer I had wrettin at lenth vnto 3our lo. with Maister David Moray, I haue tryit sum thinges, quherof toy dewtie bindes me to aduertise 3our lo. notwithstanding of that quhilk I wret to 3ow in my last Letter, that his Maieftie had said vnto my self, concerning 3ow; I fear it be al bot diffimulatioun.' Quhilk woordes, how far thay man be wresit befor they can prouue the thing alledgit, I am persuadit that 3our Maiefties self, without any apologie of myne, will moft gratioullie consider. Neuertheles, to the end 3our Maieftie may the moir cleirly understand how far this malicious imputatioun diffagreis from my trew meaning, I will bot schortly say this meikill. That former Letter, quherof I maik mentioun, sent be Mr David Moray, had in it tua parts; the first, was ane declaratioun, how 3our Maieftie had not only moft gratioullie admitit me to 3our preface, bot also graic me with moft fauorabil countenance; and maicoer moft bountifullie had givin commandement to gif me tua hundreth pund. The vther part was, that I had remeberit my vncl vnto findrie of 3our Maiefties Counfell, and sum of 3our favorites, from quhom I had resauit great protestatiounes of affectioun vnto him, and as great promiss of friendship, in his adoes.³ Bot befor the wretting of this last Letter (quherof I am now accusit), I was certanly informit, be sum of my vncl'es special freindes, that they from quhom I had resauit fairest woordes, wer his greatest enemies: Quhilk, mouit to call their promiss diffimulat. Sa that the fence of my woordes ar very cleir, after this maner; 'notwithstanding of that quhilk I wret in my last Letter, that 3our Maieftie had said and done vnto my self, 3et that quhilk I wret concerning my vncl I tuik it al to be bot diffimulatioun.' Gif my former Letter wer as weil to the foir, to be product vnto 3our Maieftie, as this last is, it wald maik this mater moft cleir. Bot as God schal be my iust judge, I

¹ From the Denmyne MS. Advocates' Library, Edinburgh.² Than.³ Concerns.

Jul. 1608. haue set donn vnto your Maieftie, moft trewlie, beath the contents of the one, and my meaning in the vther. Then fallowis, in my Letter, ' I knew his Maieftie to be, as they ar that be about him ; and I affiur you, ze haue na fauour of them that ar in greateft credit heir.' To this I anfuwer, that I was neuer sic a fott to think that your Maieftie was fo simpill to be guidit be them that ar about you. I protest, befor God, that I had na sic meaning. I haue baith hard and fein to muche of your Maiefties wifdom and refolution to think fa vyld a thought. Bot my meaning was, ' feing my vncl had no fauour of them that wer in greateft credit about your Maieftie, (the quhilk I was moft certantie mend to belieue,) therfor I greatele fearit that their hard informatioun might muif your Maieftie agentf him, heis not being present to anfwer for him felf, and having about your Maieftie fo many enemies.' Their refis zet more in my Letter, ' I heir fay that their is ane turn past heir, in fauoures of Androw Henderfoun, into the quhilk your lo. hes great neid to tak head to your proceding ; for albeit his Maieftie hes past it vnto him, I fear it be rather to try how ze behaue your felf, nor for any good mynd they had to pleafour Androw Henderfoun.' Theis woordes I hoop neid no apologie. Befoir God I had mynd of no thing concerning your Maieftie. I knaw, and that be experience, that al your Maiefties grantes ar and haue bein ener moft frie and abfolut. My only meaning was, of the advantage they that wer about your Maieftie might maik of my vncl's behauiour in this matter ; ffor it was directlie said, be fum of them, that he wald content Androw Henderfoun with a smal pairt, and tak the reit to him felf. From this point, it will pleis your Maieftie to confider, that the grund of my accusatione procedeis, and not from that zeal and affectioun my accuser professis to bear vnto your Maieftie : or els he had communicat this vnto your heichnes, at the first, and not keptit the sam befyds him thir four zeires and moir ; and now at lenth reveilit it, be the instigation of vther men, as him felf pairtly confeffis. Their is no man could moir iustlie accuse me vpon this mater nor the Erl of Dumbar, gif his lo. had knawen my trew meaning ; for it was his lo. of quhom I cheiflie meant in my Letter : And I haue cranit his lo. moft humble pardoun, for that I was fa folifche, vpon any informatioun, to belieue, that his lo. thought vtherways nor he had said vnto my felf. Gif I durft haue presumit, without your Maiefties leiuie, I wald, with prostrating my felf at your Maiefties feet, be woord, and not be Letter, mead this my moft trew Declaratioun ; and vnto the tym your Maieftie grant me that libertie (quhilk be thir presents I moft humble beg at your gratus handes) my hart schal neuer be pertaker of any contentment ; albeit my confcience bears me witnes, that I neuer fa mekill as thought onreuerentlie of your Maieftie, zet am I grevid aboue meafur to think that any thing fould haue efcapit my hand, quhilk, in the hardest construction, can be accountit for ondwitfulnes againf your heichnes. Their is na thing in this world can difcontent me mair than to want your Maiefties fauour ; bot to want it throch my awen iust deferving wer to me inupportabill. I wer to be accountit the moft ingrate wrech that ener had lyf, gif euer I had sufferit any fuch thoct to haue had place within my mynd ; considering the manifold fauoures your Maieftie hes schawen, baith to my felf and al my kynred. Their remains zet the last point of my Letter, into the quhilk I maik fum mentioun of my Lord Secretar. My simpill meaning was, that his lo. at that tyme had not fa great fauour as he defyrit to haue had, of theis that wer in credit about your Maieftie. I will ceafe to trubill your Maieftie any moir, w^t my idill woordes ; not dowing bot your Maieftie will, according to your accustomit goodnes, confider that the affectioun I careit vnto my vncl's weill, mead me the moir ernest in my Letter ; and gif their be any woordes in it onadvyfit, or not weill clofin (as I do confes their is many) your Maieftie will imput them to want of witt and laik of discretioun (quhilk euer accompaneis youth,) and not to mallice, quhilk I protest, in the presence of God, is as far reinouit from my hart, as it fliks neir to their hart that does accuse me. Praying vnto the Eternall to grant vnto your Maieftie ane moift happie and prosperous regne, ane bliffit and ane long lyf, I reit

your Maiefties moft humbill and moft obedient subiect,

S. ANDROW MORAY
of Baluaird.

EDINBRUCHE, the 13 of July, 1608.

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

THIS is to latt your ll. wnderstand the wordis that Hary Ruthven spak. He vas cumand downe betuix your ll. park dykis, aboue Scone; qubair he and William Wallace, feruitour to my ll. of Blantyr fell in conference aboute an SPROTT, quha was execut in Edinburg at that tym. William Wallace sayis to Hary Ruthven, 'this mater is mead cleier nor it was.' Hary Ruthven anfuertis him agane, and sayis plainly, 'Ha! ha! THE ERLE OF GOWRY was faiklely put downe! And the King, and all that was thair that day, vas Trateuris to the Erle of Goury!' And William Wallace anfuerting, forbode him to speik sik langage, for it wold do him evill. This I thought good to advertice your ll. that his Ma^{tie} our gratius foueran might be acquent therwith. I have subferyvit this with my hand, and am redy, for my dewty to his Hiienes, to feale it with my bluid.

ALEX^r BLAIR.²

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

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

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

ALEXANDER BLAIR in Colone, maryed, of the age of xxxviij yeiris, sworne vpon his great aithe, being humblit vpon his kneis, and demandit, 'What war the wordis he hard Hary Ruthven speik, for the whilk he hes bene wardit thir diuers oukis bigane?'⁵ Deponis, that vpon the aucht day of September, the yeir of God I^m.vjth and aucht yeiris, Hary Ruthuene, William Wallace fervand to the Lord of Blantyre, and the depouner, having mett togidder in Colone, and being comend thairfra towardis the burgh of Perth; as thay war betuix my Lord of Scones Park dykis, aboue Scone, William Wallace sayis, that 'This mater of GOWRYS TREASOUN is maid cleiar nor it wes, be the Executionn and Confeffioun of one named Sprott.' Vnto whome Hary Ruthven anfuertit, that 'The Erl of Gourye was ane honnest man, and that he wes faiklelie putt down!' And that 'Thay wer all traytouris that wes at his Slauchter, King and all!' Quhairupoun William Wallace replyit, 'Speik not sik langage!' And this deponer said to him, 'That is sclanderous langage: You do not weele to speeke sik langage.' And the depouner sayis, that Hary Ruthven and the depouner wer in goode terms of freindschip, at that time; and that Haryis wyffe and the depouner ar thridis of kin: And deponis, that Hary Ruthven and William Wallace ar vnder very grite freindschip and kyndnes; and that Hary Ruthven is doar and factour to William Wallace, in this rowme of Colone; and Hary aggreit William Wallace and Agnes Seytoun, ament hir lyverent of the rowme; and that Hary Ruthven fend to William Wallace, an hundreth merkis, in Januar last. Demandit, 'for quhat caus he concealed this mater, fra the moneth of September, quhill the moneth of August thairefter, that he reveilled it to the Lord of Scone?' Deponis, that thortlie thairefter, he tauld to Henry Rattray, goode-brother to the said Hary Ruthven, that the said Henry Ruthven had spokin sclanderous wordis of the King; and that the deponer wald haif reveillit the fame to the King, yf he wes in the cuntrey: And feing his Ma^{estie} wes absent, that he wald tell it to my Lord of Scone: To whome Hary Rattray anfuertit, 'He will deseie you and my Lord of Scone bothe; for he hes already biddan the pruffe of

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

² There is written

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

³ Mr George Graham, Bishop of Dumblane. He

was translated to the see of Orkney anno 1614.

⁴ Originals in General Register House, among the Warrants

of Parliament, &c.

⁵ Weeks past.

Apr. 1610. the cannon! And deponis, that findrie tymes, he focht the occasioun to haif tauld it to my Lord of Scone, but could not haif it; and that shortlie thairefter, he come to my Lord of Scone, being walking vpon the Greene of Scone, and tauld him that he had some mater to communicat vnto him; and my Lord anfwerit, 'Come to me ane vther tyme and I will heir 3ow.' Deponis alsa, that afor that tyme, he reveilled this fame mater to Andro Henderfoun, who advist the depouner to 'tell it to my Lord of Scone; and that nane hard this conference bot Andro Henderfoun and the depouner: And the depouner sayis, that he tauld this to Andro Henderfoun, witbin fourtene dayis after that Hary Ruthuane spak it; and he tauld it to Hary Rattray, within ane moneth after the speiking of it. Deponis alsa, that lang afor Hary Ruthuane spak thir speeches of his Maiestie, the depouner hard him say, 'Andro Henderfoun is going to big (*build*): Lat him big what he will, I hoip to see the day that I fall putt him out of his house and duell in it!' And that Atlame Hepburne in Scone, and David Blair thair, wer present, and hard thir speeches, quhiliks wer spokin in Sanct Johnnestoun, in Andro Boydis house thair, as thay wer come from the buryall of ane woman callit Coke, as he rememberis; and that Hary Ruthuane directit his speeches, on this mater, to the depouner, bidding him 'Go tell the fame to that fals knave Andro Henderfoun!' Deponis forder, that after Hary Ruthuane had spokin thir wordis, concerning Andro Henderfoun, that Andro Henderfoun and the depouner, being walking together on the brig of Perth, Andro Henderfoun perflavis Confene¹ Hynd vpon the brig, and left the depouner, and past to Confene Hynd; and as thay war speiking togidder, Hary Ruthuane come by, gaif Andro Henderfoun ane grite touke² and almost putt him over the brig, saying vnto him, 'You may hold out of my gait!' And this wer fourtene dayis afor the falling of the tree-brig of Sanct Johnnestoun.

(Sic subscriptur)

ALEX³ BLAIR.

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

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

abolished by Act of Parliament.

⁴ These and the following words, within brackets, are interlined.⁵ Alteredto 'they.' ⁶ 'Perth' deleted. Being the original paper, the corrections, on reading over the Depositions to the witnesses, are of course, made by the clerk.

sayd, that he sould duell in Andro Henderfonis houffis, latt him big as he wald? Deponis vpon his Apr. 1610. grite oathe, that he neur fpak ony fuch mater. Demandit, ' Yf afor the falling of the brig of Sanct Johnneftoun, the depouner toukit Andro Henderfoun vpon the brig? ' Deponis, that at the tyme fpecificit in Alexander Blairis Depofition, this deponer, coming alongis the brig, with his horfe in his hand,¹ he forgadderit vpon the brig with Andro Henderfoun, the Perfone of Bonhard, Alexander Blair, and Confene Hynd, quho wer all standing togidder; and thay fufferit the depouner to go by thame vpon the midis of the brig, becaus he had ane horfe; and at his by-paffing, his fhoulder tuicheit Andro Henderfoun, who tooke no offens thairat; and when the depouner was by² thame, Alexander Blair looked over his fhoulder and fayd to the depouner, ' Yow mycht haif gevin ws the gait! ' ³ And that Andro Henderfoun wes angerit at Alexander Blair for thair fpeecheis. And deponis, vpon his grit aithe, that he fpak na thing to Andro Henderfoun at that tyme. Demandit, vpon his grite oathe, to declair, ' Quhat is his opinioun anent GOURYIS TREASOUN, feing he wes prefent with the Erll in the chalmir quhair his Maieftie wes perfewit? ' Deponis, vpon his grite oathe, that he is and ever wes of opinioun, that the Erllis pairt wes worft; feing he faw the King's Maieftie haif na thing but ane hunting horne about his neck. Demandit, ' When he mett laft with his bruther Alexander? ' Deponis, vpon his grite oathe, that he faw him nocht for aucht yeiris; and that the laft tyme he faw him wes in Hull, in England, afor the deceis of the Quene of England.

(Sic fubfcribitur)

H. R. of Freland.

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

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

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

HARY RUTHUEN denyis this altogidder.

(Sic fubfcribitur)

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

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

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

⁴ Breadth.⁵ Without varying, with constancy.

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

(Sic subscrybitur) WILLIAM WALLACE.

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

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

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

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

ALEX. BLAIR. H. R. of Frelandis.

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

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

(iii.) AT EDINBURGHE, the lest day of Junij 1610. In presence of the Erl of Dumfermylne Chancellour, David Lord of Scone, Mr Johne Prestoun of Pennycooke President, Sir Alexander Hoy Kingis Secretair, Sir Thomas Hanmiltoun of Bynnie Aduocat and Mr George Young.

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

¹ This word deleted, and five words interlined. ² 3000 merks. ³ Fr. *quité*, required. ⁴ Fr. *fleche*, a shaft or arrow.

ALEXANDER BLAIR, being confrontit with Henry Rattray, and being re-examinat, vpoun that pairt Jun. 1610. of his formair Deposition, concerning Henry Rattray, the said Alexander, with mony aithis, abydis be his Deposition, in that point: And the said Henry Rattray, with mony aithis, denyis the fame, and that thair wes nevir ony fuche purpois or conference betuix thame, as is contenit in that Deposition.

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

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

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

NO. XX.

LETTERS OF JOHN, EARL OF GOWRYE.

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

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

¹ 'Toun' is deleted.

Nov. 1595.

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

PLEASE YOUR MAJESTIE,

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

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

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

GOWRYE.

ATT PADUA, the 24th of November 1595.

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

Ἐυλογητων εγω το ονομα τι θεο εις αιωνα.

BELOVED BROTHER,

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

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

caligine et nebulis obfuscati sunt,) *ô miserum spectaculum!* are drowned, in his Nov. 1595.
 iustice; I meane nocht all, *abfit*; for I am acquainted with diuers heir, *qui*,
etiam inter has paludes sigias, hes neuer boued ther kne to Baal: Quhat ane
 meruell is this? and quha can beleue it? and *zit* it is certanly true; *glorificetur*
igitur Deus in operibus suis, ac eo magis quo sunt mirabilia et παρα την φύσιν.
 There wes ane notable exemple of constancie not long ago, in ane Silesian Minif-
 ter, of some threcore yeares and mair, quha, efter he had beine deteined in pri-
 sone about nyne yeares, and the Jesuites had trauailed with him to recant; bot
 perfaiffing that thei could preuaile nothing at his handis, caused bring him to the
 fyre, lyke bludie dogges; quhere, efter he had maid ane excellent discours and
 harang to the people, shauing them the gret honour he wes callit to in suffering
 for Christes sake, and exhorting them to conuersione, abode most patiently, without
 ony shinking, all tormentis; magnifeing Godis holy name, and praying that
 ther sinnes mycht be forgiuen them. Efter he wes brunt, not being *zit* fatisfied
 of the crueltie that they had vsit against him, quhen he wes liuing, did cast ane
 gret heap of stones vpon his ashes, *multo scæuiores quam erant Iudei aduersus*
Stephanum. There were vtheris, quha for feare of death, at that same tyme,
 maid filthie apostacie fra the true Religione to that damnable idolatrie; and at
 that instant that ane of them begane to deny Christ, in making defectione, there
 islhued blude out of his nose in sliche gret abundance, that all did see him thocht
 he fould have dyed presentlie. This wes ane visibill signe of the hand of God,
 that chopped on him quha had done such ane villanie against his conscience, for
 purchase his auin lyffe, quhilk he wes not worthie to bruik, be the losf of his
 foule. Bot thir renegates not the les escaped not their auin punishment, for
 they all were send *ad triremes, vbi non viuis hore spatio vitam finituri, sed mor-*
ientes semper, nec tamen morientur. Laitlie, efter these thingis, ane certane
 Inglishe man, being moued on zele to cast ther *sacra hostia* (as thai most falslie
 callis it) out of the priestis handis, that wes caring it in processione, to the
 grund, and to stramp on it with his fete, wes apprehendit and denudit of his
 clothes, therefter ane hude putt on his heade, quheron wes painted the deuils
 image, and some with bleasis, quha brunt him continually in the backe and brest
 as he walked forduart; bot he, in the meane tyme, wes occupiet in schauing the
 people how thai were schamfullie abused by these miscent idolaters, quha were
 leading them to their auin damnatione. In end, he spake with such ane vehe-
 mencie, that the enymies caused knett his toung, fearing some vprere to enseu,
 if he had gottin ony forder libertie to speke: So he wes brought to the place of
 executione, quhere, lifting vp his eyes to heauen, and on his knees kissing the
 chain he wes bund with, they caused first cut of his hand for the fact he had
 committed, and nixt burne him quicke. All thir thingis were done in Rome,

Nov. 1595. that mother of all vyce, and hoorishe synagoge of deuils. I am fory that my abfence will not permit me to kyth my mynd and gudwill, in helping to fett furth Godis glorie there, *cui totus ex animo incumberem*; bot quhen, at his gude pleaſure, I returne, fall with his grace, indeuore my ſelf to amend quhatſomeuer is omitted for laike of my prefens. I thank you moſt hartfully, of your remembrance of me in your prayeris; defyring you earneſtly to continue, according to the loue you cary to the ſaluatioune of my foule. Thus, remembering my loving commendationis to your ſelf, with the haill nyctbouris of the toune, Committis you with them all to the protectione of the Omnipotent.

Youris aluayis affectionat,

GOWRYE.


AT PADOUA, the 28 of Nouember, 1595.

I DOUT nocht bot you haue hard, long ſince, of the Papes benedictione given to the King of France; quhilk hes turned to ane maledictione. No vther neuis occuris heir for the preſent; bot nou agane, latlie, there is ſome Engliſhmen put in the houſ of Inquifitione, in Rome.

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

No. XXI.

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

Youris aluayis affectionat.


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

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

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

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

¹ On the margin, 'Convictus et Suspendus.'

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

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

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

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

DITTAY against Frances Tennent.

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

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

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

The Aduocat produceit his Maiefteis Warrant, for perfute of Frances Tennent.

The faid Frances Tennent produceit certane

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

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

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

The Justice findis proces: Quhairvponne the Kingis Aduocat askit instruments.

The famin day, twa Letteris being produceit be the Aduocat, maid and writtin be Frances Tennent, togedder with his Depositionis; the faid Frances acknowledgeit and confessit in judgement the famyn to be his handwrit: Quhairvponne the Aduocat askis instruments; and in respect thair of, and of the ij^e and fyft Act of the Kingis xij Parliament, and vther Actis thairin mentionat, protestis, gif the Assyis clenge the faid Frances, for Wilfull Error.

The Aduocat produceit

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

¹ Giving or granting, that your lordship, &c. ² 'Coursing' had been originally written, and is deleted in the record, to make way for the *improved* orthography 'courfing.'
³ Codicis, lib. 9, tit. 7, l. unic. 'Quoniam si id ex levitate processerit, contemendum est: Si ex insania, miseratione dignissimum: Si ab injuria, remittendum.'

REX,

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

(Sic subfcribitur)

JAMES REX.

The said Frances produceit ane vther Warrant, subferyuit be his Maieftie, dispensing with the former Warrant, quhairof the tennour followis:

REX,

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

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

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

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

¹ Pasquils. ² This seems to be a dreadfully severe and barbarous sentence, when compared with the trivial nature of the offence; and marks a shockingly vindictive spirit on the part of the King. The case of Archibald Cornuall, Apr. 25, 1601, is another of many melancholy instances of the sanguinary temper of James VI. in all instances of infringement on his kingly dignity. Although the application of the torture, and cutting out of this unlucky libeller's tongue, were ultimately dispensed with, certainly the punishment was vastly disproportioned to the measure of the offence. The recent Conspiracies may perhaps have induced the King to make some severe examples; and poor Francis Tennent was offered up as the first suitable victim. Independently of his wounded kingly dignity, the wealthy burges's *escheat* had proved too great a bait to James's cupidity, to admit of his passing scot-free. ³ *Outther*, either. ⁴ Consisting of merchants of Edinburgh, but persons of no note.

Purchasing Poision—Poisoning Fowls.

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

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

The Justice continewis the faid dyet to the morne.

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

Nov. 7.—Comperit Mr Johne Marfchell, Minifter of Brechin, and produccit his Maieftis will; quhair of the tennour followis.

REX,

WE, vnderftanding that Thomas Bellie, induellar in Brechin, is become in our will for haifing and keping of poyfoune, and poyfoning thairwith of certane hennis: Thairfor we declair our will as followis, to wit; That the faid Thomas fall, within the fpace of fourtie dayes, remove and depart furth of our realme, and remane as a exylit and baneift perfoune furth pair of, during all the dayis of his lyffe; vnder the pane of deid: Commanding heirbye our Justice, Justice Clark and thair deputtis, to pronounce and delyuer jis our Will, iudiciallie; and caufe regiftrate the fame in our baikis of Adior-nall. Subferiuit with our hand, At Halyrudehous, the faxt day of November, 1600.

(Sic fubferibitur) JAMES REX.

SENTENCE. According to the quhilk, the Justice, be the mouth of James Lowrie, dempfter, Ordanit the faid Thomas, within the fpace of fourtie dayis, to remove and depart furth of this realme, as ane exylit and baneift perfoune, furth thair of, during all the dayis of his lyfyme; vnder the pane of deid.

Slaughter.

Nov. 12.—WILLIAME HOME of Ballicafs.

Dilait of airt and part of the Slauchter of vmq^{le} M^r Alexander Dikfoune, fone to vmq^{le} Robert Dikfoune elder of Haffingtoune-maynis; committit the xxj day of Aprile, 1597 yeiris.

PERSEWAR, Johne Dikfoune.

THE Justice continewis this mater, to the faxt day of Marche nixtocum. ‘Plegio, Wilelmo Home de Ballandyne.’

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

Wamesucken — Forcible Abduction — ‘Rapt and Rabisching.’

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

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

¹ Dough.

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

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

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

PRELOQUOUTOUR for the pannell, Mr Johnne Drowling.

PERSEWAR, Mr Robert Lyntoun, subfstitute, for the aduocat.

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

(Signed) JOHNE KINCAID.

DITTAY against Johnne Kyncaid of Craighous.

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

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

Continewit to the morne, the xiiij day of Januare.

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

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

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

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

(Sic subscritur)

JAMES REX.

Slaughter.

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

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

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

¹ Woolmot, near Edinburgh.

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

Merchintoune, cawtioner for productioun of the saidis lettres : quhairvpoune he askit actis and instrumentis.

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

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

Mar. 31.—JAMES WOD, ffear of Boningtoune, and Williame Wod of Latoune.

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

PERSEWAR.

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

The Aduocat produceit his Maiesteis Warrant, subfcryuit with his hienes (hand,) ordaining him to infist in perfuit, &c. ; quhairof the tennour followis.

REX,

MR THOMAS HAMMILTOUNE of Drumcarne, our Aduocat, We greit 3ow weill. It is our will, and We command 3ow, that eftir pe sycht heirof, 3e compeir before our Justice or his deputis, in our Tollbuith of Edinburgh, the last day of March instant, in pe hour of caus ; and infist in perfuit of James Wod, fear of Boningtoune, and Williame Wod of Latoune, tane and dilatit of breking of pe Place of Boningtoun, and of pe tressonabill and thifteous steilling and away-taking furth pair of, of certane ewidentis, writtis and pleneiffing, pertening to Patrik Wod, eldar of Boningtoune, and to pe Lady Viane.¹ As also, for contravening of pe Actis of Parliament in heiring of Mefs ; and refsetting of Lucis,² ane Seminarie Preist : ffor pe quhilk thir presentis falbe 3our Warrant. Subfcryuit with our hand, Att Halyrudhous, the last day of March, 1601. (Sic subfcribitur) JAMES R.

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

DITTAY *against* JAMES WOD and WILLIAME WOD.

JAMES WOD, fear of Boningtoun, and WILLIAME WOD of Latoun ; Ye ar indytit and accufit : fforflamekill, as it is statute and ordenit be our souerane lordis Actis of Parliament, and specialle, be ane Act maid in his hienes Parliament, hauldin and begun at Edinburgh, the xxix day of Julij 1^m.V. lxxxvij yeiris, that incaice it fal happin ony landit men to be lauchfullie and ordourlie convict of the crymes of Thift, Refsett thairof or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Tressoune ; that is to say, tinnall of lyffe, landis and guidis ; as the said Act at mair lenth beris : And trew it is, that ye and ather⁴ of yow, being landit gentilmen, accompaneit with Thomas Daw, smyth in Brechin, Alexander Daw, in Carrestoun, his brother, and vtheris your complices, laitle, vpoun the xvj day of March instant, came, vnder fylence and cloud of nycht, fra the citie of Brechin, to the Place of Boningtoun, pertening to Patrik Wod, eldar of Boningtoun, fader to yow the said James ; quhair Alexander Daw schott the hail 3ettis⁵ of the said place, and preiffit⁶ to pryife⁷ the

¹ A strange corruption, for Ulysses-haven, in the shire of Forfar. ² There is no notice of this branch of the Dittay having been insisted on, and no farther notice is taken. *Birrel* says, in his 'Diarey,' p. 54, 'The last day of Marche, James Wood of Bonnytoun and his guid-brother Williame Wood tholit ane Affyze for being at the Mefs in Andro Napier's hous ; but continewit the execution.'
³ Name left blank. ⁴ Either, each. ⁵ Shot or unbolted the bars and bolts, or other fastenings, of the gates. ⁶ Made a strenuous endeavour. ⁷ To prize or wrench open by means of any lever, such as a 'pinch' or crow-bar, &c.

irne 3ett thairof, and to enter thairin perforce : And becaus ye could nocht pryife the said irne 3ett, ye pryift vp ane stanchell¹ of ane laich volt windok,² and enterit thairby to the said place : And efter your entrie, ye opnit the hail duris, and schot the lokis of all the kistis³ within the said place, and specialle of the Chartour kift, standing in the chalmere of dace⁴ of the said place, pertening to your said fader ; furth of the quhill ye trefsonable (and) thifteoullie stall, conceleis, reffett, stouthfullie rest, and away-tuik, the hail evidentis being thairin ; and findrie vther writtis furth of ane vther kift, within the Galrie of the said place, and opnit the hail remanent kistis and coffers being thairin ; furth of the quhillis lykewyfe, ye trefsonable and thifteoullie stall, stouthfullie rest, reffett and away-tuik nyne pair of scheitis, foure buird-clathis,⁵ twa dosone and twa of feruettis,⁶ ane pair of blankettis of fustiane, and ane peace of vnbleicht linning claith : And efter that the hail kistis wer opnit, and that ye wer paking vp the writtis and plenneiffing foirsaid, within the saidis buird-clathis, Matho Wod in Croftis, James Wod his sone, and David, ane ryonner boy to the Maister of Ogilvie, came to the Place of Boningtoun to yow, and helpit to pak vp the graith : Lykeas, ye the said Williame Wod of Latoune, with Matho Wod, James Wod and David, and ilkane of yow, thane thifteoullie conuoyit away and bure vpoun thair bakis, the hail plenneiffing aboue writtin, writtis and evidentis, togidder with ane lytill coffer with writtis, pertening to the Lady Vfone, furth of the said Place of Boningtoun, towards the Place of Boschene ; quhair ye wes reffett be Johne Ogilvie, seruand to the Maister of Ogilvie, and be yow the said James Wod, fear of Boningtoune, haifing borrowit the said Place of Boschene to that purpois : And vpoun the Thurisday thaireftir, being the xix day of this infant, ye thifteoullie transportit and conuoyit the saidis evidentis, writtis and plenneiffing, fra the said Place of Boschene to the Place of Inchtur ; quhair ye the said James Wod, be your self, and vtheris of your causing, reffett the famin : And swa, ye and ather of yow ar art and pairt of the thifteous breking of the said Place of Boningtoune, and of the trefsonabill and thifteous steiling, conceleing, away-taking and stouth-reiff, furth thairof, of the plenneiffing, writtis and evidentis aboue writtin, pertening to the said Patrik Wod of Boningtoune, fader to yow the said James, and to the said Lady Vfone ; and of the reffett thairof : Of the quhillis crymes, ye, being laudit gentilmene, and being ordourlie and lanchfullie convict, ye and ather of yow hes incurrit the cryme and pane of Trefsaune, viz. tinfall⁷ of lyffe, landis and guidis : To the takin⁸ that ye and ather of yow ar art and pairt of the saidis crymes, ye haif confest the famin be your Depositionis ; as the famin, subseruuit be your handis, beris.

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

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

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

¹ Stancheon.

² The window of a low vault or cellar.

³ Chests.

⁴ The presence

chamber, or room of state. Properly speaking, it is that part of a hall which was raised higher than the rest ; the place of honour. ⁵ *Chawmer o' dais* is still used to signify a parlour, in remote parts of the country.

⁶ Table-cloths.

Servets, towels, or table napkins.

⁷ Loss ; from the

verb to *tyne*, or lose.

⁸ In token, evidence, or proof.

to the horne.—To the quhilk it is anfuerit, that it is nocht neccessar to warn him vpon fourtie dayes, becaus he is accusat of Treffoune, and brocht fra the Kingis waird to the bar.

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

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

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

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

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

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

(5.) ITEM, it is forder allegeit, that this Dittay can nocht be putt to the knowledge of ane Assyise, becaus it man ressaue ane Ciuile precognitioun, quhilk is nocht¹—The Aduocat ansueris, that thair is na Ciuilitie in Trefoun, and the allegiance mereitis na ansuer.—The defender sayis, he will fay na mare at this tyme.

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

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

Vpoun the quhilk Interloquoutour, the Aduocat askit instrumentis.

ASSISA.

Sir Patrik Creychtoun of Strathuird,	Mr Patrik Balfoure of Pitculloch,	Johne Mathesoun of Brochtoun,
Patrik Hepburne of Riccartoun,	Andro Paterfounne of Leuchrie,	Clement Kyncaid of the Coittis,
Patrik Levingtoun of Saltcoittis,	Johne Houstounne of Lany,	Alexander Fairlie of Braid,
George Lyle of Stanypeth,	Johne Fairlie of Comeistounne,	Patrik Johnestounne of Elphing-roune.
Mr Patrik Hepburne of Smetounne,	Williame Congiltounne of that ilk,	

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

¹ Left blank.

the Assyse; and of the productioun of the Act of Parliament; and of the productioun of the foure Depositiounis, maid and subferyuit be the pannel; beirand the hail contentis of the Dittay.

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

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

¹ Unless, excepting.

² Precedent, example.

³ *Cleanse*, or acquit.

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

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

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

VERDICT of the Assise.

QUHILKIS perfounis of Assyis, being chofin, and the said JAMES WOD, fear of Boningtoun, and WILLIAM WOD of Latoune, being accufit oppinlie in judgment, be reding of pe said Dittay, &c., thay removit algodder furth of Court, to the Counfal hous of the said Tolbuith; quhair thay, being convenit, electit and chufe the said James Rychardfoune of Smetoune Chancillar, and reafonit and votit vpoun the poyntis of the said Dittay; and efter lang deliberatioun, being throwchlie auisit thairwith, thay reenterit agane in Court, and thair, be the mouth of the said James Rychardfoune Chancillar, all in ane voce, fand, pronunceit and declarit the said *Willame Wod of Latoune* to be ffylit, culpabill and convict of the Dittay aboue writtin, and hail crymes thairin contenit; in respect of his Depofitiounis, and that he become in his Maiefteis Will thairfore: AND als, the said perfounes of Assyse, for the maist part, be the mouth of the said James Rychardfoun of Smetoun Chancillar, fand, pronunceit and declarit the said James Wod, fear of Boningtoun (as fear of Boningtoun, quhilk he confest to, be his awin fubfcriptionne at his Depofitiounis) to be ffylit, culpabill and convict of airt and pairt of the thifteous breking of the Place of Boningtoune, entering thairin perforce, accumpaneit with the perfounes contenit in the said Dittay, and of opning of the hail duris and lokis of all the kiftis within the said Place; and fpeciallie, of the Chartour-kift, ftanding in the chalmer of daice of the said Place, pertening to Patrik Wod of Boningtoun his fader; and of the thifteous fteilling, conceling, ftoothfullie reifing, refetting and away-taking furth of the said kift of the hail eidentis being thairin, and findrie vther writtis furth of ane vther kift, ftanding within the galrie of the said place; and opning of the hail remanent cofferis and kiftis being within the said place; and of the thifteous fteilling, ftoothfullie reifing, refetting and away-taking furth thairof, of nyne pair of fcheitis, foure burdclathis, twa dofone and twa feruettis, ane pair of blanketis of fustean, and ane piece of vnbleacht linning clait, pertening to the auld Laird of Boningtoune; and of ane coffer with eidentis, pertening to the Lady Vfane; committit vpoun the xvj day of March instant, vnder fylene and cloud of nycht.

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

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

Galbraith, dempftar of Court, hes Ordanit and Ordanis thame and ather of thame to be tane to ane gibbet, standand be-eift the mercat-croce of Ed^r, and thairpoune to be hangit, quhill thay be deid :¹ And all thair landis, heritageis, takis, steddingis, rowmes, poffeffionis, coirnis, cattell, guidis and geir to be forfaltit and inbrocht to our fouerane lordis vfe, as convict of the saidis crymes.²

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

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

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

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

The Aduocat takis instrumentis of the Confessioune of the pannell, of thair being at breking of the Place of Boningtoune ; and that Thomas Daw gat thre crownis, and Alexander Daw gat ane croune, for thair panis : And protesteing, gif the Assyis clenge, for Wilfull errorr : Repeittis lykewyis the Depofitionis of Latoune and Boningtoune ; quihikis ar produceit to the Assyis.

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

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

¹ It is probable that great interest was made for the young Laird of Bonningtoun. The sentence was not carried into execution till Apr. 27 ; under which date, Robert Birrell records as follows :— ‘ James Wood of Bonnytoun behedit at the croffe, at 6 houres in the morneing, for breking the Place of Bonnytoun, quhilk appartanit to hes father, and fould haif beine hes awen.’

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

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

Perjury — Hearing of Mass, &c.

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

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

Comperit Daud Hairt, feruitour to my lord Thesaurer, and produceit the lettres deulie executie and indorfat, purchest be Mr Thomas Hammiltoune, his hienes aduocat, aganis Mr Williame Barclay, for the crymes within contenit. ‘Continewit *in cras*.’

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

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

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

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

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

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

der pe pane of deid : And that he remoue or depairt furth of our realme, within fourtie dayis nixt efter his libertie furth of his presert waird. Commanding, heirfoir, 3ow, our said Justice, Justice Clark and 5our deputtis, to pronunce and deliuer þis our will, iudiciallie, aganis þe said Mr Williame : And þair-efir, caufe commit him to waird agane, within our Castell of Ed^r, þair to remane quhill the forder knawledge of our will and plefour towards him. As 3e will anfuer to ws þairvpoune : Quhairanent þir presentis falbe 3our Warrant. Subscriuit with our hand, At Dalkeith, the last day of Apryle, and of our regne þe xxxiiij 3eir, 1601.

(Sic subscriptur) JAMES REX.

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

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

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

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

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

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

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

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

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

Dilatit of the ignominious Dishonouring and Defaming of his Maiestie, in taking of his Portratour, and laying of the famyn and setting thair of to the stowpiss and vppereris of the gibbet, preiffing to hing vp the famyn thairvpoune.

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

ASSISA.

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

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

The Aduocat protestis for Wilful Error, in cafe they acquitt; in respect of the notorie of the deid, knawin to thamefelffis.

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

VERDICT. The Affyis, be the mouth of the said Johne Rankene, chancellor, ffind, pronouceit and declarit, for the maist part, the said Archebald Corneual to be fylit, culpabill and conviet of the trefsonabill setting of his Maiesteis portract to the tramme of the gibbet; and presenting of the famyn, to be hung heich vpoun ane naill infixt in the said gibbet.

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

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

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

IN the faid moneth of Aprile (1601), one of the officeris of Edr, having rowping at the Croce of Edr certane poidit geir, among the quhill the Kingis picture wes; and to the effect that the bred² and picture micht be the better fene (the officeris stand being hard befede the gibbet) vndifcretlie and rafchellie the officer wes calling³ in ane naill in the gibbett, to haue hung vp the bred, as wes reportit, and yit hang not vp the famin, bot ceiffit, being admonifchet be fum of the pepill ftanding by, that it wes not weill done to put vp ony naill to the effect foirfaid: Allwyfe, vpoun the faid prefumptioun, the officer wes challengit and put in wairde, within the tolbuith: And the Kingis Maieftie, being informit thairof, caufit examine certane witneffes thairvpoun; and thairefter the faid Officer wes put to ane Affyfe, and convict vpoun the faid prefumptioun; and dome gevin vpoun him, to be langit xxiiij houris, with ane paper on his foirheid, declairing the faid caus. Lyke as, he wes fua done with, vpoun the faid xxvij of Aprile, about fax houris at erin; and fufferit to hing on the gibbet quhill the next day, at erin, at the fame time: And thaireftir, the gibbet wes takin down and brunt with fyre.

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

Apr. 27, 1601.—UPON the fame Mounday, at fax houres at even, ane Officer of Edinburgh, named Archibald Cornwall, was hanged upon a gibbet, at pe Croffe of Edr. At pe rowping of fome poynded gear, at pe Croffe of Edinburgh, finding a broad wherein was the King's picture, and ftanding hard befid the gibbett, undifcretly and rafhly was driveing in a naill in the gibbett to hing up the board, as was reported: bnt being admonifhed by fome of pe people ftanding by, he ceafed and hanged it not up: Alwayes, upon the fame prefumption, he was putt in waird, in the jayle. The King, being informed, caufed examine certaine witneffes; and thereafter, he was putt to ane Affife, convicted and condemned to be hanged, and to hing twentie four houres, with a paper on his forehead: which was done; and thairefter the gibbett was taken down and burnt with fire.

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

Apr. 17, 1601.—FOR the honour and reverence thair aught to our foneran lord, his darrest fpos and children; Statutes and ordanis, that nane of thair Maieftis and graceis pictures and portraits be poyndit, rowppet or compryfet, for ony maner of caus, publictie or privatlie, heirefter: Difchargeing thair officeris and feriantis of the fam and of thair offices in that part, vnder the payne of tynfall of thair faid offices, and wairding of thair perfounis for the fpace of twenty dayes.

(Apr. 22.)—The Bailleis, deyne of gild, thefaurer, and maift pairt of the Connfall being convenit, appoyntis George Todrig baillie, David Williamfoun and Patrik Sandelandis, to pas to his Maieftie, prefentlie at Dalkeith, and to inform his Maieftie of the trewth, anent the offence confauet be his Maieftie aganis Archibald Cornuell, officer, for the alleget hinging of his Maieftie and fpos picture at the gibbet, in ane rowping.

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

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

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

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

ever it effeiris, to quahais knawlege thir our letters fall come, greeting. FORSAMEKLE AS MR PETER NARNE, having maift traiteroullie devilt and coufpyrit the Murther and deftruction of Englifhmen; and for executione of this vyld and abhominable fact, having trained thame within oure realme, promiffing unto thame to get thame advancen in credite and fervice with us; and having brocht thame to the town of Kelfo, he thair refolvit to have accomplifhen his faid vyld Murther; and being in the actual executione, he was, be the providence of God, stayed, the pair innocent ftrangearis relevit, and himfelf apprehendit, and is prefentlie in handis. Quhilk vyld and deteftable coyfnage and Confpiracie of an intendit and coufpyrit Murther, being of fo rare ane example and preparative, and carrying with it fa foull ane fclander and reproche to our natioun, giff the fame be not accordingly tane order with and punifheit: And albeit, thair be na law maide againe practizars and Confpirators of ane Murther, unexecute; and that this fact, nakedlie confiderit, will not appeir puneifhable to the death; yet We, having regard to the circumftanceis thairof, with the intereft quhilk it carryis to our fervice, and the fclander and reproche to our natioun, We have thairfoir, of our awin absolute auctorite and power, Ordanit the faid vyld and deteftable Confpiracie to be puneifheit to the death; to the terror of all uthiris to interprife the lyke hereftir. For quhilk purpois, We have maid and conftitute, and be the tenor heiroy Makis and Conftitutis, our richt trust coufing and counfalloir ROBERT LORD OF ROXBURGH, our Justice in that parte, to the effect undirwritin; Gevand, Grantand and Committand to him, our full power and Commiffioun, expres bidding and charge, to try and examine the faid Mr Petir, upoune the forme, maner and circumftanceis of the faid Confpiracie, and upoun the vyld Murther, quhairof he is fufpectilty; And, giff neid beis, for the better difcoverie of the treuth, to put him to Tortour: As alwa, to put him to the knawlege of ane Affize for the fame, and giff he cry guilty of the faid Confpiracie and intendit Murther committit be him, that he caus execute him to the deid for the fame; and in fpecial, for the foull and treterous Confpiracie forefaid: And for this effect, Justice Courtis, at quhatomevir placeis convenient, to fett, begyn, affix, have and continew; fuitis to make to be callit; abfentis to amerciat, unlaws and efcheitis of the faidis Courtis to ask, lift and raife, and for the fame, giff neid beis, to poind and diftrenzie; Affifers neidfull to this effect, *refpective*, under the pane of forty pundis, to fummond, warne, cheis, and cauis to be fworne; clerkis, ferjands, dempftair, and all uthir officiaris of Courte neidfull to make, creat and ordane, for quhome he fal be baldin to anfwer; and generallie, all and findrie uther thingis to do and ufe, quhilk for executione of this our Commiffioun ar requifite and neccellar; ferme and ftable halding, and for to hald, all and whatfumevir thingis in our name fall be done herein. Given undir our fignet, and fubferivit with our hand, AT BRECHIN, the tent day of October, and of our reign the xxxv, and yeir 1601.

(Locus figilli.)

JAMES R.

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

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

Dilatit and accufit, fforfamekill as he, accompaneit with John M'Culloch and Robert Ahannay, laitie, in the moneth of September laftbypast, cam to Johne Erle of Montrois chancellaris houfe, beyde the Abay of Halyruidhous, and thair, vnder fylence of nycht, brak the famyn, and thifteoullie ftall, concelit, reffett and away-tuik furth thairof, fourtie-fve pound pecis, ane cloik, twa dowblettis, ane bow and foure arrowis, with ane pair of filk fchankis, pertening to James Grahame, fone to the Chancellor, and vther feruandis to the Chancellor: Att the leift, for airt and pairt of the fleilling, conceling and away-taking thairof.

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

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

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

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

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

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

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

DITTAY against M^cAlexander and Johnestoun,

For airt, pairt, red, counsale and conceiling of the tresonabill Outing¹ amangis our fouerane lordis liegis, in the Tounis of Gawyefyde, Dalrars, Hammiltoun, Clochtane, Air, Irvin, and vtheris partis, of certane fals and counterfit ten schilling peices, to the similitude of his hienes trew coin²; committit ane yeir senfyne in harvest. *Item*, for airt, pairt, red, counfall and conceiling of the tresonabill forgeing, counterfitting, casting and prenting of xxx fals ten schilling peices, within the cite of Glasgw, in David Hallis bak chalmir thair; quhair thay, togidder with vmq^{le} Marioune Hepburne and ane serwand woman of hirs was lngeit; off the quhilkis, thay tresonablie outit ane to the said David Hallis wyffe; and the said Thomas M^cAlexander delyuerit twa of the saidis peieces to the said James Johnestoun, at the Bridgend of Glasgw; and als delyuerit to him fyve pundis w^{ts} thairof, in ane lytill zaird at the said Bridgend, quhilk he tuk bak fra him agane. *Item*, for airt, pairt, &c. of the tresonabill sforgeing, prenting and casting in calmis³ of trie, fillit with calk,⁴ within the place of Tourlandis, of twa fals foure merk pecis, to the similitude of his Maiesteis trew coin²; of foure merk pecis of silver; quhairof the said Thomas outit ane to ane honest man in Air: Lyke as, the said James, be directioun of the said Thomas, convoyit the calme out of Irving to the place of Tourlandis, quhair he and Sandie of Tourlandis wes present at the tresonabill sforgeing of the saidis pecis, quhilk wer maid of ane pew-

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

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

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

DILATIT for the treſſonabill bying of fourtie pecis of fals gold, in fyve pound pecis, foure pound pecis and crounis, and the maift pairt of them wer crounis, fra vnc⁴ David Johnſtoun, quhilk he reſſauit in the moneth of Junij, or thairby, in Kingorne, to be treſſonablie outit; for the quhilk he payit fourtie merk in guid ſiluer, quair of Johnſtounburne, his partiner, payit tuintie merkis. Lykas, he, togidder with the ſaid William Boirthuik, William Maxwell, Moirle and James Hoppingill his ſeruandis, paſt, at Mydfomer was ane yeir, to ane fair in Air, for outing of the ſamin, quhair he, in the ſaid fair, coſt⁵ ane broune meir,⁶ for the quhilk, he treſſonablie outit and payit xxiiij poundis of the ſaid fals gold: And als, bocht ane naig fra James Hammiltoun, ſeruand to the Maifter of Cathcart; for the quhilk he treſſonablie outit and payit xxvj or xxvij lib. of the ſaid fals gold; The quhilk gold the ſaid James Hammiltoun, being outand in Aire, for certane Lundonne wairis, the ſamin wes cryit fals; the ſaid James immediatlie thaireſtir followit the ſaid George, fra the burch of Air, be the ſpace of foure myles, raift the countrey and overtuik him and his cumpny, and compellit him to reſſaene the fals gold, and reſtoir the ſaid naig to the ſaid James Hammiltoun: Eſtir the quhilk, he, accompaneit with Thomas M^cAlexander apperand of Drummochryne, William Boirthuik of Johnſtounburne and his ſeruandis, ſatt down be ane brae-fyde, and pairtit⁶ the fals gold quhilk he left vnoutit,⁷ and delyuerit fourtie poundis worth thair of to the ſaid Laird of Drummochryne, in fals fyve pound pecis, foure pound pecis and crounis; and outit and delyuerit to the ſaid William Boirthuik, his partiner, tuintie poundis worth thair of; and retenit thrie crounis thair of to him ſelf; quhilk he thaireſtir outit and delyuerit to the ſaid Williame Maxwell; and ſua, hes committit Treafoun.

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

INDYTT, accuſt and perſewit, for airt, pairt, red, counſall and conceilling of the pairting of the ſaid fals fyve pound pecis, foure pound pecis and crounis, quilkis George Dowglas, callit of Bengowre, pairtit and delyuerit att ane brae-fyde, cumand out of Air, att Mydfomer was ane yeir, to Thomas M^cAlexander, apperand of Drummochryne, and Williame Boirthuik of Johnſtounburne; quhair of he delyuerit fourtie poundis worth to Drummochryne, and xx lib. thair of to the ſaid Williame Boirthuik, quha delyuerit the ſamyn to the ſaid Williame Maxwell, quha conveyit it to Edinburgh; and att his cuming, reſtorit agane to the ſaid Williame Boirthuik, quha thaireſtir outit ane of the ſaidis fals crounis in , and ane vther in Lauder; and thairby, the ſaid Williame Maxwell committit Treafoun.

¹ Yule or Christmas.

² Anno 1598.

³ Horse, nag.

⁴ Purchased, bought.

⁵ Mare.

⁶ Parted, divided.

⁷ Uncirculated.

Item, indyit ffor the trefounable reffauing fra George Dowglas of thrie fals crounis, to be outit as guid gold amangis our fouerane lordis leigis; quhairof he delynerit ane to Jeane Reid, fipous to James Lewingfoune, in wad¹ of ane faiddill, and the vther twa he delynerit to the Guidman of Johnfouneburne. *Item*, accufit, forfamekill as he, being in cumpany with vmq^{le} . . . Morlie, and being fernandis to Williame Borthuik of Johnfouneburne, be his fpeciall directioun and command, and paft to West Lowtheane about Caldermure or thairabout, and thifteouffie ftall, concealit, reffett and away-tuik furth thair of, twa meiris; quhilk he convoyit to the weft end of the toune, and thairfra directit thame hame with . . . Morlie to Johnfouneburne; and cam in hiin felf to Edinburgh to James Lewingfoune hous thair, quhair ye mett the Guidman of Johnfouneburne and tauld him how ye fped.

DITTAY againft James Moffet, fone to . . . Moffet of Helbeth.

FORSAMEKILL as he, accompaneit with Petir Daveis Johnfoune of Kirkhill, Thomas Stewart feruand to Rob of Kirkhill, Jony Lyall and Cryftie Brydene feruandis to the Guidman of Cairteroune, and James Wilfoune vnder Geordie of Kinmonth, in the moneth of . . . I^m.V^c.lxxx . . . yeris, cam to ane hill pertening to Mr James McMath of Dalpever, and thair thifteouffie concealit, reffett and away-tuik aff the famie, fourfoir of fcheip, pertening to the faid Mr James; off the quhilk he gatt fourtene for his pairt.

DITTAY againft Cuthbert Home, fone to vmq^{le} Robert Home of Redheuch.

FORSAMEKILL as he, accompaneit with Johne Broderftanis, younger fone to Johne Broderftane, fefchour in Tranent, and Richard Paterfoune, in the moneth of March, or thairby, I^m.V^c.lxxxviiij yeris, cam, vnder fylence and cloud of nycht, to John Creychtounis daelling-hous at Prefoune-grangemyll, and thair thifteouffie brak the faid hous aboue the dur, enterit thairin, and brak vp his kift, and thifteouffie ftall, concealit, reffett, and away-tuik furth thair of, foure hundred poundis worth of gold and filuer, or thairby, and maift crewallie dang the faid Johne Creychtoune and his wyff, and left thame for deid: Of the quhilk foume he gatt fiftie pound for his pairt. *Item*, ffor the thifteous Refetting of faxtene fcheip, or thairby, pertening to Sir Patrick Hepburne of Lufnes, knycht, and Williame Caldeleuch in Eifter Geummilfcheillis, his feruand and fchiphird; quhilkis fcheip wes thifteouffie ftollen be Mertene Hall: Committit in the moneth of Januar I^m.V^c. yeris. *Item*, ffor Commoun Thift, Commoun Reflett of thift, inputting and outputting of thift, fra cuntry to cuntry, fra land to land, bayth of auld and new.

FOR the quhilkis crymes, the faidis (perfounes on pannell) wer putt to the knowledge of ane Affyfe, of the perfounes after fpecifeit; they are to fay.

ASSISA.

Johne Stenhoip of Stenhopifmyll,	Johne Logane of Cowfoune,	Alex, Horfburcht of Horkas,
Williame McClellane Tutor of W ^m Annand in Tranent,		Johne Henderfoune in Prefoune,
Bombie,	Johne Farguyfoune of the Yle,	Rob ^t Anderfoun burges of Perth,
Dauid Seytoun, elder in Tranent,	George Hereis, fumtyme of the	Williame Polwart, fumtyme of
Capitan Patrik Herring,	Kirkfoune of Edlie, now in	Rottinraw,
James Dalzell eldar, in the Water of Leith,	Edinburgh,	Williame Halyburfoune, fumtyme
	Johne Boifwall of Afflek,	of Inchkairney.

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

VERDICT. Efter the accufatioun of the faidis perfounes be Dittay of the faidis crymes, quhilk wer verifeit be thair awin Depofitiounis and Confeffioun, (the Affyis) removit altogidder furth of Court to the laich Counfal-hous; quhair

¹ Pledge, security.

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

DOME pronounced againſt the Pannels.

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

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

Treason — Uttering baſe Coin, &c.

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

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

VERDICT. The Affyis, be the mouth of William Stalkar, goldfmyth in Edinburgh, Chancellor, ffland, pronunceit and declarit the saidis *Thomas Glas* to be ffylit, culpabill and convict of the crymes aboue writtin, quhairof he was accufit; and als, ffland and pronunceit the said *Johne Gib* to be ffylit, &c. of the crymes whairof he was accufit and perfewit.

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

Horse-stealing — House-breaking — Theft.

JUN. 18.—*NICOLI* alias *NIKKIE MOFFETT*, at the Brigend of Cramond, and *Dauid Adiefoune*, fone to *Johne Adiefoune*, in Dyfert.

NIKKIE MOFFETT was dilatit and accufit for airt and pairt of the thifteous fteing of twa naigis fra *James Bannatyne*, tennent to the Laird of Cleghorne, twa yeir fenfyne or thairbye, furth of ane burnefyde beveft¹ Calder. *Item*, for airt and pairt of the thifteous fteing of ane blak naig fra *Patrik Clarkfoune* in Blakburne; of ane gray meir; and for commoun thift and commoun reffett of thift.—AND ficylke, *DAUID ADIESOUNE* being accufit for the fteing furth of *Margret Strathauchinis* hous, in the Cannogait, of ane naipkyn, quhairin thair was xij aucht mark peiceis, ane hairt of gold, ane pair of grene filk gartonis, and ane cloik of Inglis hewit² grene claith, pertening to *Dauid Drummond*, feruitour to Sir *Johne Ramfay*, committit at *Martymes* laftwas: *Item*, for bryking of *Mark Lord Newbottill* chalmer, and fteing furth thair of ane veluot cloik, ane raife veluet gounne furrin, and vtheris guidis and geir: *Item*, for the thifteous fteing furth of *Robert Erkyne* houfe, in the fit of the Cannogait, of certane gold, filuer, claythis, guidis and geir, with thre hundreth markis: *Item*, for commoun thift, &c.

VERDICT. The Affyis, be the mouth of *Hector Dauidfoune*, fword-flipper in Edinburgh, Chancellor, fflound the pannels to be ffylit, &c.

SENTENCE. To be tane to ane gibbet, ffland vponne the Castell-hill of Edinburgh, and thairvponne to be hangit quhill thay be deid; and all thair movabill guidis to be efcheit, &c.

¹ To the westward of.

² Coloured.

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

Jun. 20.—**JOHNE DUNDAS** of Newlistoune.

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

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

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

DITTAY against Johne Dundas of Newlistoune.

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

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

¹ The fourth of June instant. See Dittay.

² Unknown to him.

³ Attempt, motion.

With the quhilkis premiffes, the Juftice tuik him to be auifit quhill Tyifday nixtocum, the xxiiij day of this infant, that he mycht knaw his Maiefteis will thairin : And ordenit the Bailleis of Edinburgh prefent, to tak the faid Johne Dundas to waird to the Caftell of Edinburgh : And ficlyke, caufit Andro Home, ane of the Officeris of Court, to warne the perfounes fummond vpoun the faid Johne Dundas Affyis, to compeir in the Tolbuith of Edinburgh to pas vpoun his Affyis, vnder the panis contenit in the Actis of Parliament.

Jul. 9.—THE following Precept ordanit to be inferit in the buikis of Adiorvall.

REX,

JUSTICE, Juftice Clark and 5our deputes. We greit 3ow hairtie weill : Forfamekill as Johne Dundas of Newliftoune, being indytit and accufit in ane Court of our Jufticiarie, haldin within our Tolbuith of Edinburgh, þe xx day of Junij laftbypaft, for þe invading and perfewing of Mr James Hammiltoune, lauchfull fone to James Hammiltoune, att þe Weft-port of Lynlythq; and ftrykeing of him vpoun þe face, vpoun þe ferd day of þe faid moneth of Junij, &c. And We having reffaut the faid Johne Dundas in our will, and having weyit and confiderit the hail circumftance of þe cryme contenit in þe faid Dittay, and quhatfumeir thing wes done be the faid Johne the day and place foirfaid ; the faid Johne, according to our will notifeit be ws to him felf, hes payit the foun of ane thoufand fewin hundreth and fiftie merkis, quhilkis wer debarfit in fun of our neccellar affairs ; quhairf we difcharge the faid Johne for ewir be þir prefentis. And ficlyke, according to our directionn Levin to him, as ane vpir pairt of our will, hes comperit in prefens of our Chancillar, Prefident and Lordis of Sefsioune, thay being convenit in full nownmer in þe faid Inner counfal-hous for adminiftratioun of juftice, and thair hes fuallelie fatisfeit þame for ony offence done be him to þame, the faidis day and place. We Will thairfore, and be þir prefentis declairis, that the faid Johne Dundas falbe fred and relewit furth of þe waird, quhairin prefentlie he is ; and We command 3ow to freith and releve him of þe famin : As also, we declair that the faid Johne Dundas fall nocht att ony tyme heirefter be indytit, perfewit or accufit for ony fact or deid committit he him the day and place foirfaid ; bot We acquyte and mak him frie þairf in all tyme cuming : And thairfore We command 3ow, that, in our Juftice-Court to be hauldin in þe faid Tolbnith of Edinburgh, the faid nynt day of Julij infant, in prefens of þe faid Johne Dundas, 3e mak publicatioun of þe declaratioun of our Will, eftir þe forme and tennour of þir prefentis ; and that the faid Johne hes obeyit and fulfillit the famin in all pointis : Kepand þir prefentis for 3our Warrant. Subferynit with our hand, att Halyruidhous, the fewint day of July, the 3eir of God, 1^m.Vj^m. and ane 3eiris.

(Sic fubferibitor)

JAMES R.

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

Wamesucken — Briganey — Oppreffion — Horfe-stealing — Foraying, &c.

Aug. 1.—THOMAS CWININGHAME, fword-flipper, ferwand to (Williame Cwninghame) the Laird of Tourlandis.

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

DITTAY againft the Pannell.

THOMAS CWININGHAME, fword-flipper, funtyme feruitour to Williame Vans, armorar in the Canogait, being enterit on pannell, dilatit and perfewit : Forfamekill as he, accompaneit with Alexander

and Hew Cwninghames, breper to the Laird of Tourlandis, vmq^e Johne Cwninghame alias Potter, Marioune Parker, Ifsobell Parker hir sifter, Williame Speir, serwand to the said Alexander, and ane vther boy, laitlie, in the moneth of Januar lastbypast, vnder scyence and cloude of nycht, be way of Hamefuckin and Brigancie, come to Patrik Gemmill duelling-hous in Tempillous, quhair he, his wyffe and familie was, in sober and quyet maner, takand the nychtis rest, dreadand na evill or harme; and thair brak vp the dur of the said hous, enterit thairin perforce, and tuke the said Patrik and his wyffe furth of thair bedis, band his wyffe fit and hand, and kaitt hir in ane mekill kist,¹ manassit² the said Patrik to delyuer to thame his siluer and gold; and becaus he refusit to do pe samyn, thay band ane tedder³ about his nek, and hang him vp vponne ane balk,⁴ quhair he hang ane lang space, quhill⁵ the said Thomas for pitie cuttit him doune; and thairefter thay pakkit vp his haill infycht guidis and pleneissing in scheittis, and causit the saidis thre wemen convoy the samyn thisteoullie vponne thair bakis: And thairefter tuke and apprehendit the said Patrik Gemmill captiue and presoner, and convoyit him, being ane ageit man of threscoir of yeiris, in ane grit storme, be the space xxvij myles fra his awin houfe, quhill he come to Clyddisholme, quhair he was releivit be the Bailles of Lanerk: Vfurpand thairbye our souerane lordis auctoritie vponne thame; the said Patrik being his hienes frie liege; and the said Thomas was airt and pairt of the saidis crymes. ITEM, for airt and pairt of the cuming vponne ane Sabbath day, ten onkis senfyne or thairbye, in tyme of preching, accumpaneit with Williame Cwninghame of Tourlandis, Alexander Cwninghame, his brother, vmq^e Johne Cwninghame, the potter, and vtheris serwandis of the young Laird of Blaquhannis, and vtheris thair compliceis, to the nower of xliij personis or thairbye, and rynnng of ane forrow⁶ with the Laird of Cwninghames heidis tenentis, for the thisteous steling and reving fra thame of xij horfe and meiris, quilkis war fauld in the cuntrey. ITEM, for airt and pairt of the thisteous steling and away-taking of twa naigis, ane foir⁷ and ane vther broune, pertening to Thomas Bigger in Byres furth of the laudis of Warreikhill, committit in Janij lastwas. ITEM, for commoune thift, commoune reffett of thift, &c.

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

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

Striking Ministers — Obstructing the Designing of Manse and Glebe.

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

Dilatit, accusit and persewit of the crymes following.

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

PRELOQUOUTOURIS for the pannell, Mr Johne Scharpe, Mr Lawrence M^cGill, Mr Robert Cockburne.

DITTAY against the Pannell.

FORSAMEKILL, as it is expresse statute and ordenit be Act of Parliament, maid in our souerane lordis Parliament, hauldin and begun att Edinburgh, the xxix day of Julij, the yeir of God Im.V^e. lxxxvij yeiris, that quhatsumewir person or persones invadit ony Minister, or puttis ony violent

¹ Chest.
or predatory incursion.

² Menaced, bullied.
⁷ Sorrel.

³ Tether, halter or rope.
Fr. saure, Ital. sauritto, a dark reddish colour.

⁴ Beam.

⁵ Until.

⁶ Foray.

bandis in him, for feiking of thair lewingis,¹ or sic vther caussis or quarrellis specifeit in the said Act, falbe pwneit thairfore with all regoure, and incur the pane of tinfall of thair movabill guidis for the said invasioon and violence allanerlie, albeit na Slauchter nor mutilatioun follow thairvpoune; the half of the said movabill guidis to be applyit to our fouerane lordis vse, and the vther half to the partie offendit, but² preiudice of the heichar pwneifchment, gif ony gritar cryme concur with the violence and invasioon foirsaid; and to be callit criminallie thairfore, before our fouerane lordis Justice or his deputtis, att particular dyettis: As the said Act att mair lenth beris. And trew it is, that Sir David Wod of Craig, knycht, accompaneit with vtheris his complices, with convocatioun of our fouerane lordis liegis, to the number of tuelf perfounis or thairbye, all bodin in feir of weir with swordis, gantillettis and vtheris wappinnis, *inuafive*, incontrair the tennour of the Actis of Parliament, laillie, vpoun the xxvj day of March lastbypast, cam to the Kirk of Fordoun, and to the landis occupyt be lyand beyde the said Kirk, and within the Sherefdom of Kincardin, quhair Mr Adam Walker, Minister att Fordoun wes, accompaneit with sum of the Presbiterie of the Mernis, according to the ordinance of the Act of Parliament, and the directioun of the said Presbiterie, cum to haif designt³ ane Manse to Patrik Bonkle, principall Minister att Fordoun, and to his successoris; dreadand na ewill, harme, iniurie or perfruit of ony persoun, bot to haif lewit vnder Godis peax and our fouerane lordis; and thair, fyrr boifit,⁴ manassit and threatit the saidis Ministeris, and speciallie the said Mr Adam Walker, for thair bodelie harmes; and thairefter, fett vpoun the said Mr Adam Walker, and invadit and strak him with the gaird of his sword vpoun the heid, putt violent handis in him, and with his sword, behind his bak, strak att him, and dang him to the eird;⁵ and with thair drawin swordis hurt and woudit him in baith his handis, to the effusioun of his blude in grit quantitie; and thairby, for the quarrell of the designatioun of ane gleib⁶ and manse, quhilk is ane pairt, at the leit, fould be ane pairt, of the said Mr Adamis lewing, he beand ane of the Ministeris of Fordoun, and helper to the said Patrik Bonkill to the cuir⁷ thairof, thay haif putt violent handis in the said Maister Adam, invadit, fraik, dang and bled him with the gairds of thair swordis, and with drawin swordis, in maner foirsaid; and he wes airt and pairt thairof: Quhairby he hes incurrit the payne of tinfall of all his movabill guidis; the ane half thairof to be applyit to our fouerane lordis vse, and the vther half thairof to be applyit to the vse of the said Mr Adam Walker, as partie offendit.

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

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

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

¹ Livings, stipend.
² Without.

³ To designate or appoint a place for the Minister's manse, or dwelling-house, &c.
⁴ Intimidated, brow-beat.

⁵ Struck him to the ground.
⁶ The glebe (*gleba*) is a piece of arable and pasture ground, uniformly allotted to the Parochial Clergy of Scotland, and usually adjoining the manse.

⁷ Viz. the cure of souls.
⁸ At the instance of the public prosecutor alone; not at the instance of the private party, with the Lord Advocate's concurrence.

⁹ Excepting, but, other than.
¹⁰ Viz. that the private party injured shall have no share of any penalties which might be awarded; but that the whole should fall to the Crown, as sole prosecutor.

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

Forder, it is alleget be the said Sir David and his preloquoutouris, that the lettres ar alluterlie¹ irrelevant, takand thair ground and fundament vpon this wordis of the Actis of Parliament, 'anent the invasioun and putting of violent handis in ane Minister, vponne quarrell, for feiking of his lewing;' and that particular cause is only proponit in this lybell; and it is subfunit, that diuerse of the Ministeris of the Mernis, and speciallie the said Mr Adam Walker, wes boifit and manassit² the day lybellit, quhilk alledgeit boifiting and manassing is na relevant cause to induce the penaltie lybellit. Forder, that pairt is generall, nocht condifendand vpon the names of the vther Ministeris. *Item*, thair is ane manifest irrelevancie in ane vther pairt of the saidis lettres and subsumptioun thair of, berand, that the gleib alledgeit designit wes ane pairt of the said Mr Adam Walkeris lewing, att the leifit could be ane pairt thair of, because he is alledgeit to be successour to Patrik Bonkill, quha be the letteris thame selfis is grantit to be the Minister of Fordoune: As also, it is grantit that the said pretendit designatioun wes maid be the said Patrik, and swa is grantit to be alluterlie the said Patrikis lewing: And the Act of Parliament vnderstand in that pairt, to be, of the lewing of the persounes that ar offendit, and nocht of the lewingis he hopis for to be successour; quhilk is *de futuro contingenti*; for he may be depryvit, or deceife, before the deceife of Patrik Bonkill.

The Aduocat repeats the summondis and Act of Parliament, for ane anfuert.

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

Quhairvpon Mr Thomas Hammiltoun askit instrumentis.

ASSISA.

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

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

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

¹ Altogether, entirely.

² Intimidated and menaced or threatened.

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

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

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

Murder.

NOV. 13.—WILLIAME NUKILSOUNE (NICOLSOUNE) in Dirltonne.

Dilatit, accusit and persewit,

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

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

Murder of the Warden of the West Marches.

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

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

¹ The groin or flank, sometimes spelt *leash* or *lisk*. ² Breast. ³ Wipe off. ⁴ The rest of no note. ⁵ This last seems his proper designation, as the Dittayments 'the said Ringane (Ninian) his fader.' The loose mode of designating persons, in the rank of life of the pannell, which was prevalent in the Borders at this period, is apt to lead modern readers into confusion as to identity of persons.

FORSAMEKILL as he, accompaneit with the said Ringane his fader, Lancie, Hew, Archie and Watt Armfrangis his brether, Sym of the Syde, Lancie of the Syde, Rob Sandie, Rob Scott, Thome Tail-
5 eour, Williame Forrefter, Williame Grabame of the Braid of the Grange of Medop, and divers vtheris
his complices, to the number of xx, commoun thewis and traittouris, all bodin in feir of weir,¹ with
jakis, steilbonettis, lances, hagbuttis; haifing, be the instigation of vtheris quhais names he knew,
confultir, dewyfit and interpryfit the crewall, trefsonabill and schamefull Slauchter of vmq^{le} SIR JOHN
CARMICHELL of that ilk, than Warden of the West Marcheis, vpoun ane Soneday, in the moneth of
Junij, the yeir of God I^m.Vj^c. yeiris, att ane meitting at the fute-ball,² quhair dimers borderaris and
freindis was conuenit to that effect: Qulhik purpois being plattit and sett donn³ be him and thame,
and being fuirle aduertest that the said vmq^{le} Sir Johne was to keip Court⁴ at Lochmaben, vpone the
morne thairefter, being Monunday and the . . . day of the said moneth of Junij, the yeir of God
foirsaid; for executioun of the quhilk trefsonabill and vngodlie fact, thay mett altogidder, att thair
tryfling place⁵ of the Blerieheid, quhair thay lay att waitt for the said vmq^{le} Sir Johne Carmichellis
passing by; and as he wes in fobir and quyet maner passand by to the said Court, dredand na ewill,
harne, iniurie or perfruit of ony personnes, bot to haif lewit vnder Godis peax and our fouerane lordis,
he being his Maiesteis Wardene for the tyme, thay altogidder sett vpoune him at the Rae-knowis,
schott thair hagbuttis att him, and thairwith maist schamefullie, crewallie (and) trefsonable schot the
said vmq^{le} Sir Johne Carmichell throw the body, and slew and murdreist him thair; vpoun sett pur-
pois, provisioun and foirthocht felony.

VERDICT. The Affyis, be the mouth of George Ferrie, portioner of Restal-
rig, Chancillar, sfand, pronunceit and declarit the said Thom Armfrang to be
culpabill and convict of airt and pairt of the trefsonabill and crewall Slauchter
and Murthour foirsaid.

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

¹ Arrayed or furnished in warlike manner.

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

³ Plotted and arranged.

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

⁵ Appointed place of meeting.

⁶ Robert Birrel thus notices this event.

⁷ The 11 of July (1600), the Laird of Carmichael buriet; quha wes flaine be the Armfrangis and Carlles, be doing and excenting his office of Wardenrie, vpone the 16 of Junij befor.¹ He thus notices the execution of Armstrang and the Peck, whose trial immediately follows. ² The 14 of November, Thomas Armfrang and Adam Steill, *alias* callit the Peckit, wer baith hangit at the croffe. This Thomas had his hand strak aff with ane stroke, befor he wes hangit, becaus he wes at the slaughter of James Carmichael. This Peckit wes ane of the maist notabill thiefes that evir raid.³

³ This is the earliest notice in this Record of a Criminal being hung in chains which the Editor has yet met with, and was evidently, in this instance, suggested by the atrocity of the crime, and the dignity of the person so basely murdered. The deficiency of facts, in the earlier Volumes, may account for this circumstance; as the particulars were then seldom recorded.

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

Being enterit on pannell and accusit,

For the thifeous steilling, conceilling and away-taking of certane oxin, furth of the Drochellis, pertening to the Eirl of Mortoune and his tennentis. ITEM, for air and pairt of the thifeous steilling of certane scheip furth of ane rowme beyde Lammington. ITEM, for air and pairt of the thifeous steilling (and) conceiling of fourfoir heid of nolt, furth of the landis of the Cairne, pertening to certane Lowthian men, quhill wes in gerling¹ on the famin landis. AND for air and pairt of the slauchter of vmq^{le} Hary Rannald, feruitour to Sir James Sandielandis of Slewmanna-mure, and vmq^{le} Andro Smyth in Auchnowlis-hill, committit in the moneth of August, I^{re}. Vj^{te}. yeiris. ITEM, for air and pairt of the thifeous steilling of foure hors furth of Corfwodburne, pertening to Sir James Sandielandis of Slewmanna-mure. ITEM, for air and part of the thifeous steilling of xvj oxin furth of Lestoun-scheillis, pertening to Alexander Dowglas. ITEM, for air and pairt of the thifeous steilling of certane guidis fra the Guid-wyff of Garvell-fute. ITEM, for air and pairt of the thifeous steilling of certane guidis furth of Ingerfittoun-burne, pertening to Rychard Hodge thair. ITEM, for air and pairt of the thifeous steilling of certane claith furth of Caringtoun-mylne. ITEM, for the cuming to Johne Ker Minister of Lynis hous, breking thairof, taking of him self presoner, and steilling of his infycht and pleneiffing furth thairof. ITEM, for air and pairt of the thifeous steilling of twa naigis furth of Hairburneid, pertening to Adame Johnestoun thair. ITEM, for air and pairt of the thifeous steilling of thrette gers oxin² furth of Corfwodburne, pertening to certane Lowthian men. ITEM, for the steilling of certane oxin, pertening to Adamson in Lestoun-scheillis. ITEM, for the fetting upponne vmq^{le} Rodger Schaw in Craiganbae, George Schaw thair, Quintene McMillane in Craigneill, Downie McMillane thair, Sandie McMillane thair, Johne Chalmeris in Clatteran-schawis, Johne McMillan in Dafelloch, George McMillan his brother, George McMillan in Craiginbae, Andro McMillan in Powfchafkene, James Reid in Stronefchafkene and Williame Gordoune in Knokfchene, att the Sandiehillis; quhair he and his complices slew the said vmq^{le} Rodger Schaw in Craiginbae, and thifeouffie stall xxij naigis fra thame. ITEM, for air and pairt of the thifeous steilling of nyntene nolt furth of the byre of Nether Qulitlaw, pertening to Thomas Ker of Caveris; committit at Martines 1600 yeiris. ITEM, for Commoun Thift and Commoun Reflett of Thift, inputting and outputting of thift.

VERDICT. The Assise³ find, pronunceit and declarit the said Adie Scott to be fyllit, culpabill and convict of the haill cryme of Thift and slauchteris aboue writtin, laid to his charge.

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

Uttering Adulterated Money, &c. — Treason.

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

Dilatit and accusit of,

The Trefsonabill outing⁴ of fals and adulterat money, sic as Hatt-pecis,⁵ cronnes, foure pound pecis,¹ Grazing.² Oxen sent from the Lothians to pasture or graze.³ The same as in

preceding Trial.

⁴ Uttering, issuing.⁵ An early coin of James VI. in which the head

is surmounted with a hat, in place of the crown or laurel.

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

VERDICT. The Affyis, be the mouth of Petir Spens, dagmaker in the Cannogait, chancellor, stand, pronounceit and declarit the said George Drummond to be culpabill, ffylit and convict of the cryme of Treafoune aboue written.

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

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

ASSESSORS, Lords Halyruidhous, Dunkeld and Fentonbarnes.

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

Dec. 15.—WILLIAME CUNNINGHAME of Tourlandis.

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

DITTAY against the Pannel.

WILLIAME CWNINGHAME of Tourlandis, ye ar indytit and accusit, sforsamekill as Alexander Cwninghame, your brother, and certane his complices, hyrit and conduceit fuddartis,¹ haifing, in the moneth of March the yeir of God I^m.Vj^c. yeiris, tane the Hous of Cwninghamehead, and being chargeit be vertew of our fouerane lordis lettres to haif randerit the famin within², vnder the payne of Treffoune; Neuirtheles, it is of veritie, that ye, within fourtie aucht houris efter the taking of the said place, and eftir the charge gewin for randereng thairof vnder the pane of Treffoun, convoyit youre selff and enterit within the said place and hous of Cwninghamehead, and tressonablie affisit the said Alexander Cwninghame, your brother, in keping of the said hous aganis the Lairdis of Dntraith and Vrechill, his Maiesteis Commissioneris, quba wer assaigeing the said place, and that be the space of xxiiij dayes eftir your entrie within the famin; during the quhill tyme, ye and your compliceis tressonablie fchot out of the said place diuers hagbutis att the saidis Commissioneris and thair affisferis; commitand thairby oppin and manifest Treafoune, and iocurrand the tinfall of lyffe, landis and guidis; quhillkis aucht and fould be execute aganis yow, with all regour. To the takin³ that ye ar gyltie of the said cryme, ye haif confest the famin, be youre Depositionn. **ITEM,** ye ar indytit and accusit, sforsamekill as ye, accompaneit with Alexander Cwninghame, your brother, and vtheris your compliceis, being bodin in feir of weir, with secreteis, steilbonnetis, dagis and pistolettis, prohibite to be borne, worne, vsf or fchot with, be our fouerane lordis Actis of Parliament, laidie, in the moneth of September, or thairby, the yeir of God I^m.V^c.lxxxvj yeiris, haifing confanit ane deidlie feid, rancheit and mallice aganis vmq^{le} James Stewinfoune in the Myltoune of Robertoune, come to the Landis of the Myltoune of Robertoune, quhair the said vmq^{le} James wes in sibir and quyet maner, doand his lessell effairis and buffines, dredand na ewill, harme, iniurie or perfruit of ony personnes, bot to haif

¹ Waged, or stipendiary soldiers.

² Left blank.

³ In proof, token, or testimony.

lewit vnder Godis peax and our fouerane lordis; and thair, with your wappinnis foirfaidis, maift schamefullie, crewallie and vnmmercifullie slew the said vmq^{le} James; and ye was airt and pairt of the said crewall Slauchter; committit vpoun sett purpois and provioune, and foirthocht felony. To the talkin that ye ar airt and pairt of the said Slauchter of the said vmq^{le} James Stewinfoune, ye wes, vpoun the xxij day of Januar I^m.Vc.lxxxvij yeiris, denunceit rebell and putt to the horne, for nocht comperand befor the Justice or his deputis, in the tolbuith of Edinburgh, the xxiiij day of November, the yeir of God foirfaid, to haif vnderlyne the law for airt and pairt of the Slauchter foirfaid; att the quhilk horne ye haif remainit continewallie senfyne, and as yit remanis: as the Letteris of Hoirning, produceit heirwith, beris.

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

PRELOQUOUTOURIS for the pannell.

Mr Williame Oliphant,

Mr Johne Ruffell,

The Laird of Reidhall,

Mr Alexander King,

The Laird of Glengarnok,

The Laird of Capringtoun.

The Preloquoutouris produceit ane Warrant of the Lordis,¹ commanding thame to compeir in Defence of the Laird of Tourlandis, now enterit on pannell; quhilk Warrant is subseryuit be the Chancellor, *in presentia Dominorum*.—The pannell takis instrumentis, that the Justice declaris that *Sir Johne Colburne of Ormiston*, Justice clark, fall nocht be judge nor Assessor, nor yit Justice clark in this mater.² Alledgeis, that *Sir George Home*, thesaurer, can nocht be Assessor, becaufe he may win and tyne in the cause, in caise of convictioun. The Aduocat anferis, that the alledgeance aucht to be repellit, in respect he is nocht partie. The said Sir George Home declarit he wold nocht voin in that mater.—The Aduocat takis instrumentis of the admitting of my Loirdis of Halryuidhous, Dunkerd³ and Fentounbarnes to be Assessouris in this cause.

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

The Justice repellis the alledgeance maid be the pannell.

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

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

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

³ Bishop of Dunkeld?

⁴ Taken or apprehended and put in ward.

⁵ Without.

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

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

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

The Aduocat paffis fra the taking away of the horfe, *pro loco et tempore*.

ASSISA.

Nicoll Carnecroce of Calhill,	Capitan Patrik Herring,	Thomas Alexander, portionar of
James Weitchie of North Syntoune,	Archebald Layng, merchand thair,	Drummeldrie,
Robert Hepburne of Markill,	Johne Fairlie, merchand thair,	Williame Dowglas of Erlifmylne,
Johne Baillie of S ^t Johnes Kirk,	James Johnestoune, merchand	Johne Dunbar of Moynes,
Edward Edzer, merchand burges	burges thair,	Thomas Hay of Serogis,
of Edinburghe,	Robert Home of the Hench,	Andro Logane of Grantoune.

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

DEPOSITION and CONFESSION of the Pannel.

AT ED^R, the xij day of December, 1601 5eiris. In prefens of Johne Erll of Montrois, chancillar, S^t George Home of Spott thesaurar, Mr Thomas Hammiltoun of Drumcarne Aduocat, Sir Johne Colburne of Ormiston Justice Clark, and Mr Williame Haert of Lewielandis Justice-depute, WILLIAME CWINNINGHAME OF TOURLANDIS, being sworne, and being demandit, anent þe last taking of þe Place of Cwninghameheid and keeping of þe samin, anfueries, that the hous wes fyrst tane be his broþer Alexander, vpoun quhais aduerteifment, vnderstanding that thair wes sum variance betuix him and the soddartis within the place, the deponer cam to þe place, and enterit þairin, and remanit within þe samin be þe space of twentie or xxiiij dayes; be þe quhilk space he wes befaiget be þe Lairdis of Dunraith and Vrehill, haifing the Kingis Commissioun; during þe quhilk tyme thair wes schuting out of þe hous and schuting in: Declaris, that his broþer Alexander had nochit enterit in þe place of Cwninghameheid fourtie aucht houris, before the deponer cam to him; and the taking of þe plnce wes about March, 1600 5eiris: Denyis that he wes chargeit or putt to þe horne, for nochit randerig of þe Place of Cwninghameheid; bot his broþer wes chargeit, vnder þe payne of Trefoun, befor þe deponar enterit in þe hous, and gatt knowledge þairof quhen he enterit.

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

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

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

VERDICT. Eftir productioun quhairof, and diuers alledgances maid aganis the famin, and anfuers maid thairto be our fouerane lordis Aduocat, the hail perfounis of Affise past altogidder out of Court to the Counfal-hous; quhair, eftir chefing of the said Nicoll Carncorfe of Calhill chancellor, &c., they ffand, pronouceit and declarit the said Williame Cwninghame of Tourlandis to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the said v^mq^{le} James Stewinfoune, committit in the moneth of March, in the year of God J^m.V^c.lxxxvj yeiris, as the Dittay beris: AND als, ffand, &c. the said Williame to be ffylit, culpabill and convict of the affisting of Alexander Cwninghame his brother and his complices, in the keping of the Place of Cwninghameheid aganis the Lairdis of Duntraith and Vrchill, his Maiefteis Commiffioneris; the said Alexander being chargeit, vnder the payne of Treafoune, to haif randerit the famin, conforme to his Depofitiounes, fufcryuit with his hand.

SENTENCE. To be tane to the mercat croce of Edinburge, and thair his heid to be ftrikin fra his body: And als his lands, heretageis, takis, ftedingis, rowmes, poffeffiounes, coirnes, cattell, guidis and geir to be ffoirfaltit, efcheit and inbrocht to our fouerane lordis vfe, as convict of the said cryme.

Adultery.

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

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

The said Dauid confeffis that he had ado with baith Elspeth Hiflope and Margaret Gourlay, as the Dittay beiris; bot knawis nocht quhither the bairnis be his or nocht. For the quhilk he afkis Godis mercie, and cunmis in the Kingis will.

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

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

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

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

ASSESSOURS. My Lord Chancellor, The Bifchop of Dunkeld,
The Lord of Halryuidhous, The Comptrollar, My Lord Collectour.

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

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

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

DITTAY against the Pannels.

FORSAMEKILL as it is flatue and ordenit be diuers of our fouerane lordis Actis of Parliament, that na maner of perfoun or perfoues, of quhatfumewir estait, degrie or conditionn thay be of, fall fchuit, weir or beir culveringis, dagis or piftolettis vpoun thair bodeis, or in thair cumpaneis, in any pairt of this realme, ather to burcht or land, vnder the payne of cutting aff of the rycht hand, and confiscatioun of all thair guidis movabill, being convict be ane condigne Affyis thairof: Neuertheles, it is of veritie, that the faldis perfounis, accompaneit with diuers vtheris thair compliceis, with convocatioun of our fouerane lordis liegis, to the number of xxx perfounes or thairy, all bodin in feir of weir, with jakis, steilbonettis, hagbuttis, daggis, piftolettis, lances and vtheris wappinnis invafue, of thair caufing, command, affitance and ratyhabitoune, the faldis dagis and piftolettis being expresse forbidden, vpoun the fourtene day of September lafbypaft, being the mercat and fair day of the burcht of Jedburghe, can to the fald burcht in ane profellit hoftilitie, nochtwithftanding publict Proclamatioun maid in our fouerane lordis name, and in name of Sir Andro Ker of Pharnyherft knycht, Provest of the fald burcht of Jedburghe, and of the bailleis thairof, that nane fould repair to the fald fair or mercat bot in fobir and quyett maner, keping oure fouerane lordis and the fald Provest and bailleis peax: And yit, in manifest contempt of the fald Sir Andro Ker, thay haifing confaut ane dedlie feid aganis him and vmq^{le} Thomas Ker his brother, and haifing of lang tyme before invadit and perfewit Thomas Ker of Caveris, thair freind and kynnisman, for his flautcher and hurt, and woundit him in diuers pairtis of his body, to the grit effufioun of his blude, nawyis repenting thame of thair former wickit deidis and wrangis, bot continewing thairin, thay adrest thame felfis before his ludgeing in the burcht of Jedburghe, foirnent the mercat croce thairof, he being within the famin in fobir and quyett maner for the tyme, with his (wife?) and famelie: and thair, in publict mercat tyme of day, eftir diuers bragis, infolent behavioure and manaffingis vfit be thame foirnent the fald Provest ludgeing, in contempt of hiu and his feruandis, feiking the occasioun of ane new quarrell, without any offence, harme or iniurie done to thame, nocht only thay wure vpoun thair bodeis and in thair cumpaneis piftolettis and gummis, bot als fchot the famin att the fald Sir Andro, his feruandis, and diuers honest inhabitantis of the fald burcht, of fett purpois, provifioun, auld feid and foirthocht fellony; bot fpecially, fchot the fald vmq^{le} Thomas Ker and vmq^{le} George Gladner, domeftik feruand to the fald Sir Andro: And fwa, thay maift crewallie and vnmercifullie flew the fald vmq^{le} Thomas Ker and vmq^{le} George Gladner with thair wappinnis foirlaidis: And thay and ilk ane of thame ar airt and pairt thairof; and confequentlie, thay and ilkane of thame ar nocht only gilty of the faldis flautcheris, bot lykewyis of fchuiting and

weiring of the faidis dagis and piftolettis, in maner foirfaid; with convocatioun of ourre fouerane lordis leigis: And in respect thairof, thay and ilkane of thame aucht and fould be pwneit in thair perfonnes and guidis, according to the lawis of this realme, in example of vtheris.

PERSEWAR, Mr Thomas Hammiltoune of Drumcarne, aduocat to our fouerane lord; Mr James Ker, brother to (the faid vmq^{lc} Thomas and to) the faid Sir Andro Ker of Phairnyherft.

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

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

The pannell defyris that thir materis may be continewit quhill Tyrifday,² and that it may cum *in pari passu* with the vther caus;³ becaus letteris being rafit be thame of before, before my lord Justice and his deputis, aganis the Laird of Phairniherft and his complices, to ane day of lang tyme bypafst, before ony Lettres wer rafit be the partie aganis thame, it pleafit his Maieftie to command to desert that dyett: And fummondis being rafit now be my lord Aduocat aganis bayth the parteis to this day, for deidis alledgeit committit be thame aganis vtheris⁴ vpoun ane day, viz. the xiiij of September laft; it hes pleafit my lord Justice, with auife of the Nobill men, counfalouris and affeffouris, to continew the perfuit of thais parties nixtocum the xxij day of this instant; off all reafoun, this perfuit aganis thame aucht to be continewit to the famin day; and tryell tane of the factis committit be ather of the parteis aganis vtheris, *pari passu*, and be ane Inqueift, but ony diuifion of the cauffis.⁵

THE JUSTICE, nochtwithftanding of the defyre, Ordanis proces.

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

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

The Aduocat condiscendis and declaris the hurt done to the Gudman of Kaveris, wes committit be the hail perfonnes perfewit, awcht yeris fyne, or thair-by, laftbypaft.

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

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

² Tuesday.

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

⁴ Against each other.

⁵ Without any separation of these two cases.

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

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

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

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

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

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

THE JUSTICE ordanis proces.

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

ordourly enterit our fouerane lordis rebellis, the tyme of the allegit Slauchter; and proponis this allegiance vnder protestatioune forsaide. And for verificatioune of the said allegiance, produceit the extract of the Hoirning; be the quhilk lettres thai wer denunceit to the horne, for the Slauchter of vni^o Henrie Olypher.

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

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

My lord Aduocat anfuertis, the saidis perfonis wer lawchfully relaxit fra the said Horning befor the crymes committit be the pannell and produceit the said Relaxatioune. The pannell yit, as ofbefoir, desyres continuatioune quhill Tyf-day, or to the morne, that thai may, in the mene tyme, aduysé with the Relaxatioune produceit. My lord Aduocat craves proces, and diffasentis fra all continuatioune.

THE JUSTICE ordanis forder proces.

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

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

¹ Never blackened, defiled, disgraced.

² Minuted, noted in the 'Minute book.'

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

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

THE Juges continewis the said mater quhill the morne.

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

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

THE JUSTICE ffindis, that my lord Aduocat may pas fra thame.

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

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

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

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

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

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

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

Quhairvpone my Lord Aduocat askit instrumentis.

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

Quhairvpone my Lord Aduocat askit instrumentis.

ASSISA.

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

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

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

¹ In proof or evidence.

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

³ Red-band, in the fact, 'with the bludie hand.'

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

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

THE JUSTICE findis that the Testimoniall fould nocht be ressaunt.

SPECIAL VERDICT of the Assyse.

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

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

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

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

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

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

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

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

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

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

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

The Aduocat allegis, that the said Laird of Pharnyherft, and remanent perfonis, can nocht be replegeit; becaus the seafing prewis nocht Pharnyherft to be in Jedburghesforrest, or within the regalitie thairof; and except he preve itt,

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

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

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

The Lairdis of Aytoun, Broxſmyth, Traquair, being producit as witneſſis to preve as above; and the Aduocat anſuerand, that thay wer kyn and freindis to the Laird of Pharnyherft, the Juſtice ſtand that thay could nocht be reſſaut for the reſpect foirſaid.

The Laird of Drummalzear wes ſworne, that he cam nocht heir to defend the Laird of Phairnyherft, and wes producit as witneſs to preve Pharnyherft to be within the Regalitie; and being ſworne, deponis that he knawis the Place of Pharnyherft to be within the Regalitie of Jedburghe-fforreft.

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

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

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

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

The Laird of Pharnyherft, being inquiryt, gif he wald adhere to my lord of Angus' defyre and alledgeance, he anfuerit, that he wald gif his procuraturis leif to anfuer for him : And Mr Johne Ruffell, as procuratour for the Laird of Pharnyherft, declarit he wald keip fylence, quhill² the difcuffing of my Lord Angus' alledgeance ; quhairvpoun he aikit instrumentis.

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

THE quhillk day, Sir Andro Ker of Phairnyherft knight, oftymes callit as cawtioner and fouertie for WILLIAME KER, brother to Robert Ker of Ancrum, George Mofcrope, burges of Jedburghe, David Mofcrope his brother, thair, George Ker in Oxnem, Johne Ker in Redden, Andro Ker thair, Charles Robfoune in Wallis, George Pyle in Mylneheuche, David Pyle his brother, and Symmie Hall in Haviefyde, to haif enterit and presentit thame befor our fouerane lordis Juſtice or his deputis, the faidis day and place, in the hour of caufe, to haif underlyne the law for the above crymes ; lawfull tyme of day biddin, and nocht enterand the perfonis abouewritin, as he that become cawtioner for thair entrie, as faid is : Thairfor the Juſtice decernit and ordanit the faid Andro Ker, as cawtioner foirfaid, to be vnlawit and amerciat for thair nocht entrie, in the panis contenit in the Actis of Parliament, vid. for nocht entrie of the faid Williame Ker, in the pane of twa hundreth markis, and for nocht entrie of the remanent ix perfonis, for ilk ane of thame in the pane of ane hundreth markis : And als Adjudget the faidis Williame, &c. to be denunceit our fouerane lordis rebellis, and put to his hienes horne ; and all thair movabill guidis to be efcheit and inbrocht to his Maiefteis vſe, as fugitives fra his hienes lawis for the faidis crymes.

PERSEWARIS.

Margaret Trumbill, freind³ to John Middilmef, Mark Trumbill, brother to Bewlie.*

PRELOQUOTOURIS for the pannell.

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

Dec. 24.—My Lord of Angus declaris, that he infiftis only to haif James Ker of Lintellie and Williame Ker, his fone, repleget ; but vnder proteftatioune

¹ Failure, malversation.

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

³ Relative, blood relation.

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

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

THE JUSTICE Admittis the replegiatioune to my Lord of Angus, for replegiatioun of James Ker of Lintellie and Williame Ker, his sone: And my Lord of Angus appointis the thryd day of the nixt Justice-air of the Regalitie of Jedburghe-fforest, or soner, vpoun fyftene dayis warning, for administratioun of Justice; and ffland Ker (of Caveris) cautioner for administratioun of Justice; and James Commendater of Melroise¹ become fouertie for thair entrie; and the Guidman of Lintellie obleift him to releve my Lord of Melroife.

The Laird of Pharnyherft takis instrumentis that Mark Trumbill of Bewlie infistis in perfuit of his lyffe.—The Laird of Mynto refusis to perfew; quhair-vpoune the Laird of Pharnyherft askit instrumentis.—The Laird of Pharnyherft askit instrumentis, that Mark Trumbill infistis in perfuit of his lyffe.—The pannell, except the Laird of Pharnyherft, askit instrumentis that Mark Trumbill wold nocht infist aganis thame.

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

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

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

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

¹ Afterwards named 'Johne,' in the Record.

Slaughter in Single Combat, in France.

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

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

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

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

REX,

JUSTICE, Justice Clark and 3our deputtis, We greit 3ow weill. Forfamekill as Capitan Johné Rig and vmq^{le} Mr Thomas Strathauchin, Archeouris of þe Gaird of France, and sva being ferwardis to our darrest broder Henrie King of France, the said Mr Thomas Strathauchin appeillit to the said Capitan Johné Rig to þe Singolar Combat; in þe quhilk Combat the said vmq^{le} Mr Thomas was hurt and woundit, and be evill handling and cure of cherurgeanis, deceiffit: Quhilk Combat, and all that followit pairvpoune hes bene tryit be our said darrest broder Henry King of France and his Jugeis, as Jugeis compitent to þe said Tryell, the said vmq^{le} Mr Thomas and the said Capitan Johné Rig being baith subiectis to our said darrest broper: And nochtwithstanding, as We ar informit, the freindis and kyn of þe said vmq^{le} Mr Thomas Strauchin hes raffit our vperis letteris, and hes summond þe said Capitan Johné Rig, to compeir befor 3ow in our Tolbuith of Edinburgh, þe xiiij day of Januar instant, in þe hour of caufe, to vnderlye our lawis for þe Slauchter of the said vmq^{le} Mr Thomas, albeit it be of veritie, that We nor our Justices can nawyis be Jugeis compitent to þe said Capitan Johné Rig, he being ane Archeour of our said derrest broperis Gaird, and sva his subiect; befor quhome and his Jugeis he hes bene alreddie tryit: Lyke as, also, the said Capitan Johné Rig being vpoune þe poynt of his voyage, to pass in France to his seruice, can nocht gudlie attend vpoune þe famin dyett: QUHATROIFOR, We haifing tane sufficient tryell in þe said mater and of þe proceeding þairof, hes concludit that the said Capitan Johné Rig falbe nawyis trublit in tyme cuming for þe said slauchter. Commanding 3ow, that 3e onnawyis proceid aganis him nor his cawtioner, at þe said xiiij day of Januar instant, nor in na tyme cuming, for þe Slauchter of þe said vmq^{le} Mr Thomas; difchargeing 3ow þairof, and of 3our offices in þat pairt: And for þe said Capitan Johnis mair securitie, causo regiftrate þir presentis in our buikis of Adiornall, *ad perpetuam rei memoriam*, and for 3our Warrant. Subferyuit with our hand, at Halyrudehous, þe first day of Januar, 1602 3eiris.

(Sic subfcribitur)

JAMES REX.

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

Treason — Forging and Uttering Base Coin, &c.

Jan. 13.—PATRIK DRUMMOND, in Lenach.

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

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

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

House-breaking — Theft — Horse-stealing.

Jan. 13.—PATRIK MURRAY of Galwald.

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

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

¹ Strangled.

Slaughter.

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

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

PERSEWARIS.

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

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

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

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

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

Murder—Theft.

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

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

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

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

¹ Before, immediately opposite to. ² Skull, 'brain-pan.' ³ On the margin, 'Convict et decollat.'

⁴ Literally, haunting, dwelling, but without any fixed occupation. ⁵ At dawn, immediately before sunrise.

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

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

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

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

Dilatit, accufit and perfewit, be Dittay following,

FORSAMEKILL as thay, accompaneit with Williame Ogilvie, Williame Cumming, Archebald Douglas, Rikard, Ramfay, and vtheris their complices, commoun thevis and brigandis, in the moneth of Junij, the year of God 1^m.V^c.lxxxvij yeiris, being bodin in feir of weir, with swordis, fecreitis, piftolettis and vtheris wappynnys *invafue*, vmbefet¹ the hie way and paffage to Williame Goung and James Blak, cadgearis,² duelland vpoune the fourth fyde of the ferrie of Dundie, and to twa of their fervandis, at the Coittoune of Melgum, lyand within the Sherefdome of Forfar, quhair thay wer dryvand fevin pakis of merchand-geir, on fevin horfis, towards Brechin, to the flair thairof; quhilkis packis pertenit to Patrick Wedderburne, burges of Dundie, and Johne Alexander, burges of Edinburgh, vmq³ John Wrycht, burges thair, and Thomas Allane, tail³geour, burges of the Cannogait; and thair fet vpoune thame oppinlie, in day lycht, at xij houris in the day; and, be way of Stouth-reif, violentlie refit, ftall and away-tuke fra the faldis cadgearis, the faldis fevin pakis and fevin horfis; and thifteoullie and masterfullie convoyit the famy away with thame, togidder with the faldis cadgearis, to the mouth of Gleanmoy, and difponit vpoune ane grit pairt of the fald merchand-geir, at thair pleafour: AND als, the fald James being accufit, forfamekill as he, accompaneit with Williame Cummyng and vtheris his complices, in the moneth of October lathypaft, come to the toune and landis of Auchterlony, pertening to Johne Carnegie, grynter,³ and thair thifteoullie ftall, conceillit, refflet and away-tuke furth thairof, fax oxin and twa ky, pertening to the fald Johne Carnegie and James Pittilach his feruand; quhilk thay draif to the North and fauld, at thair plefour. ITEM, the fald James indytit and accufit for airt and pairt of the thifteous fleilling of ane qulyte horfe furth of Mr Williame Gairdyn ftabill, Vicar of Abirlemnoch, pertening to Johne Mortimer younger of Flemingtoun, committit foure yeir fenfyne, or thairbye. ITEM, the fald George Valleme being indytit and accufit for the thifteous fleilling, conceilling and away-taking of ane horfe fra Johne Kyd.

PERSEWAR.

PRELOQUUTOIRIS for the pannell.

Mr Thomas Hammiltoun of Dramcarne, aduocat.

Mr Thomas Craig, Mr Johne Ruffell.

It is alleget that the Dittay fould nocht be putt to ane Affife, becaus thay fould be fummond vpoun xv dayes wairning, and thay fould haif ane copy. The Aduocat anfuert, that in refpect of the Dittay, quhilk is vpoun thift, the alledgeance aucht to be repellit.

THE JUSTICE findis proces.

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

² In this sense 'cadgers' were carriers, who travelled through the country with their pack-horses, and were employed by small-ware merchants to transport their goods to fairs and markets. At this period, all distant carriages were effected by means of pack-horses; and (as is the present custom of carriers) they usually travelled in companies, for mutual protection and security. The modern term *cadger*, is commonly applied to persons who collect eggs, fowls, butter, &c. from small farmers, &c. and bring them to market for sale. Their present equipage consists of a horse or ass, with *creels*, or panniers, placed across the animal, when foraging and bargaining with small farmers and cottagers; but when they go to market, their accumulated store is commonly brought in carts.

³ Properly, one who keeps or takes charge of a granary or farm. It is sometimes spelt 'grainter, or 'granitour.'

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

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

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

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

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

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

Slaughter — Hearing of Pistolets, &c.

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

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

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

REX,

JUSTICE, Juftice clark and 5oure deptes, We greit 5ow weill. Forfamekill as the thryd

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

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

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

Quhilk Precept the Justice admittit.

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

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

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

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

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

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

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

² The-
fuarario deliberat.²

³ See June 9, 1602.

⁴ Monktonhall?

The said Williame become in our fouerane lordis will; and the Justice, ref-
saueand him in will, ordanit the said Williame to be Baneift this realme, during
all the dayes of his lyffe; and to depart furth thairof within aucht dayes eftir
the dait heirof, and nocht to returne thairin vnder the payne of deid. And the
said Williame obleift himself to the effect foirsaid; vnder the payne to be hangit,
but Assyfe.

Barbarous Murder of a Dumb Young Man.

JUN. 2.—WILLIAME GEIKIE Younger in Kethynniss.

Dilatit for airt and pairt of the crewall Murthour and Slauchter of vmq¹⁶
Patrik Cathrow, in Kethinniss ('ane dumb borne 3oung man'); committit vpoune
the xx day of Februar lastbypast.

PERSEWARIS.

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

DITTAY *against the Pannell.*²

FORSAMEKILL as he, with his complices, being bodin with ane grit sting or rung,³ laitie, vpoune pe
xx day of Februar, the 3eir of God I^m.Vj^c. ane 3eiris, haifing confaut ane deidlie hatrent, rancour and
malice aganis pe said vmq¹⁶ Patrik, quha was ane simpill, pure, dum 3oung man, sett vpoune him
within pe toune of Cowper-in-Angus, quhair he wes in sober and quyet maner for pe tyme, doand his
lesful effairis and buffines, traifiting na ewill, harme, iniurie or perfruit of ony personis, bot to haif leuit
vnder Godis peax, and our fouerane lordis; and pair, crewallie invadit him for his slauchter, hurt and
woundit him with pe said rung on the face and neife, and brak pe girsell of his neife,⁴ to the effuoune
of his blude in grit quantitie; and gaif him diuerse vperis bauch, blaie and bludie straikis, vponn his heid,
bak, wambe and schoilderis; Lyke as, the said Williame Geikie, nocht being fatisfeit with pe crewaltie
done to pe said vmq¹⁶ Patrik Cathrow, in day lycht; he, vpoune pe said xx day of Februar, pe 3eir of God
foirsaid, vnder scyence and cloude of nycht, vmbeset pe hieway and passage to pe said vmq¹⁶ Patrik, in
the Rasche-myre, lyand betuix Cowper and Kethynniss, as he was in sober and quyet maner passand on
the hie way towards the toune of Kethynniss, to his said faper-broperis duelling hous pair, dredand na harme
or iniurie to haif bene done to him be pe said Williame, in respect of the bludie woundis gevin to him
of befor; and pair, of new, sett vpoune pe said vmq¹⁶ Patrik, and with ane rung, best,⁵ straik and dang
him vpoune pe heid, face, bak, filletis and wambe, and brak his haill intrallis, that it was piteous to
haif hard pe lamentabill routis⁶ and cryis of the pure dum man; and left him nocht, quhill⁷ be pe saidis
crewall straikis he slew and murdreift him, and left him deid vpoune pe ground: Committand pairbye
crewall, fehamefull and abhominabill Slauchter and Murthour, being ane dumb borne 3oung man,
vnhabill to haif defendit him self; vpoune sett purpois, provisoune and foirthocht felloune.

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

¹ To be hanged without farther Trial.

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

³ A large bludgeon or cudgel.

⁴ The *gristle*, cartilage, or flexible part of his nose; perhaps implying also the 'bridge.'

⁵ Beat, Old Fr. *basté*, *basted*. It may be 'beft,' *bast*, a synonymous word.

⁶ Bellowings, usually applied to the lowing of cattle, especially when impatient to be milked, or to be driven home in the evening. 'The kye stand routin' in the loan.'

⁷ Until.

⁸ Evidence, *tokens*, proof.

VERDICT. Eftir accufatioune of the faid Williame, be Dittay, of the crymes aboue writtin, quhilk he alluterlie denyit, the Affyis, be the mouth of Sampfoune Ker, in Auchterhous, Chancellor, fand the faid Williame Geikie to be Clene, innocent and acquit of airt and pairt of the crewall murthour and flauchter foirfaid, &c. Quhairvpoune the faid Williame Geikie akit actis and instrumentis.¹

Exercising the Office of Notary without lawful Warrant.

JUN. 9.—WILLIAME NORVELL, fcole-maifter in Cokpen.²

Accufit and perfewit be Dittay, at the instance of Mr Robert Lyntoune, fubftitute to our fouerane lordis aduocat, for the crymes following.

DITTAY againſt the Pannel.

FORSAMEKILL as, it is ftatute be the Actis of Parliament and lawis of this realme, that na maner of perfoune gif him felf furth for ane Notour, or vfe or exerce the office of Notarie, vnles thay be frift prefentit be his Maieſtie, be his hienes Letter of Prefentatioune directit to the Lordis of the Sefsioune, and thairefir admittit be the faidis Lordis to the faid office, efter tryell; and thair Prothogoll-buik fychtit and markit be the Clark of Register and his deputtis; and gif ony man prefwme to do in the contrair, to be pwnest to the death: As the faidis Actis of Parliament at mair lenth beiris. And trow it is, that the faid Williame Norvell hes vfit and exerceit the faid office of Notarie, as ane ordinar Notar, in fyndrie deidis, fik as in Contractis, Obligatiounis, Seafingis, Requisitionis or Redemptiounis; and generallie in all thingis, quhen he was requyrit, continewallie fen the moneth of November, the yeir of God I^o.V^o.lxxxv yeiris, to the day of his apprehenfioune; albeit it be of veritie, that he was never admittit to the faid office of Notarie; lyke as, he never had his Maieſteis Prefentatioune direct to the faidis Lordis of Sefsioune, for his admiſſioun to the faid office; nather had he ane Prothogoll-buik, markit be the Clark of Register or his deputtis, conforme to the ordinance preferyuit be the faidis Actis of Parliament: Quhairin he hes falllie circumvenit and diffauit our fouerane lordis leigis, as ane falſe difflaenar; geveing him felf furth to be ane Notour, he being name: Quhairbye he hes incurrit the panis contenit in the faidis Actis of Parliament.

VERDICT. The Affyis, be the mouth of Robert Snyth, merchand in Edinburgh, Chancellor, fand the faid Williame to be ffylit, culpabill and convict of the faidis crymes.

SENTENCE. Thair be tane to ane gibbet, fandand vpoune the Caſtel-hill of Edinburgh, and thairvpoune to be hangit quhilk he be deid; and all his movabill guidis to be efcheit, &c.

Slaughter.

JUN. 15.—JAMES CWNINGHAME of Glengarnok.

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

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

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

PRELOQUOUTOURIS for the persewaris.

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

PRELOQUOUTOURIS for the pannell.

The Laird of Caprintoune, the Laird of Houftoune, the Laird of Blair, Williame Porterfeild of at Ilk, Mr Johne Scharp, Mr Williame Oliphant.

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

Jun. 16.—The persewar askis instrumentis, that he is reddie to persew, and will infist conforme to the cautioune fundin contrar the Lard of Glengarnok; and proteftis for releif of his cautionar.—The Aduocat declaris, that he will nocht infist in perfeit, becaus he hes na informatioun of the partie nor the Thesaurer.—The pannell takis instrumentis, that Gabriell Cwninghame and the preloquoutouris infistis in his perfeit.

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

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

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

Slaughter — Stouthreif.

Jun. 24.—JOHNE MURE of Auchindrane.¹

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

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

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

The Laird of Langschaw takis instrumentis of the entrie of Johne Mure of Auchindrane; and proteftis, that he be releivit, as cawtioune.—The persewaris

¹ See Jul. and Nov. 1608, Feb. 1609, and Jul. 1611. ² Theft accompanied by violence. ³ A kind of short sword or hanger. ⁴ Sir Niel Montgomery. ⁵ Mure. ⁶ James Boswell. ⁷ John Blair of that Ilk.

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

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

REX,

JUSTICE, Justice Clark and your deputtis, We greit 3ow hairtlie weill. Forfamekill as We, vnderstanding, that the xxiiij day of Junij instant is appoyntit be vertew of our vperis Letteris, direct at þe instance of Dame Elizabeth McGill, relict of vni^qle Sir Thomas Kennedie of Culzeane, kny^t, and James Kennedie, thair eldest lawfull sone, with concurrence of our Aduocat for our intres ; for tryell of Johne Mure of Auchindrane, and certane vperis perfonis his complices, for þe crewall murthour and slauchter of þe said vni^qle Sir Thomas Kennedie ; committit be þame in þe moneth of Maij lastþyast. And We, willing to be condinglie tryit, for þe pairt of þe said Johne Mure of Auchindrane ; and for better tryell pairf, necessar it is, that the boy callit,¹ quha come to Thomas Kennedie in Bargany, a lytill befor þe committing of þe said murthour, war apprehendit and examinat and tryit, quhill we vnderstand is nocht 3it done ; and that the saidis twa boyis ar fugitiues ; quhair-bye þe veritie is suppressit. Thairfor it is oure will, and We command 3ow, incontinent efter þe sycht heirof, 3e continew 3our Court, and all proceeding aganis the said Johne Mure of Auchindrane in þe said mater, qubill the thrid day of þe air ;² or that he be new summond, he þe pairtie, to þat effect. As alsua, that 3e proceid and minister justice aganis all the remanent perfonis content in our saidis Letteris comperand, and that war summond to vnderlye our law for the cryme aboue specifcit. And this 3e fall nocht to do, without ony delay. As 3e will answere to ws vpoune 3our obedience. Anent the quhill, þir presentis falbe 3our Warrant. Subscryuit with our hand, at Falkland, the twentie-foure day of Junij, 1602.

(Sic subscriptor) JAMES REX.

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

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

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

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

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

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

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

¹ William Dalrymple. ² There was only one boy. Dalrymple, however, had been prevailed on to change his name several times. This unfortunate youth was afterwards murdered on the Sands of Girvan, by the elder and younger Mures and James Bannatyne, under circumstances of peculiar atrocity. See Jul. 1611, &c. That Case is perhaps one of the most remarkable, in all its parts, of any one on record. ³ The Justice-air of the Sheriffdom of Ayr. ⁴ A large circular piece of hammered iron, still in common use in Scotland, in place of an oven, for toasting oat-cakes, &c.

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

(Sic subfcribitur)

JAMES R.

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

PERSEWARIS.

James Stewart, portioner of Sandiedab, Katherine Huggoune, at the Burnefyde of Sawling, Cristian Hammiltoune in Lynmylne, Mr Thomas Hammiltoune for his hienes intris, Mr Johne Gib. PRELOQUOUTOURIS for the pannell, Mr Vmphra Blyndfcheillis, Mr Alexander Peblis.

DITTAY *against the Pannel.*

FORSAMEKILL as, the said Alexander, with his complices, in the moneth of Januar lastbypast, come to the landis of Overtonne of Pitvar, and thair thifteoullie stall, concelit, reffett and away-take furth thair of, ane gray horfe pertening to Robert Tempilman thair. ITEM, for airt and pairt of the thifteous steilling, conceling and away-taking of ane blak kow, fra James Inglis, in the Pow of Adie ; committit in the moneth of August or thairbye, the yeir of God Im.Vc.lxxxxvij yeiris. ITEM, for contravening of our souerane lordis Actis of Parliament, in schuiting of ane pistulet, chargeit with twa bullettis, at the said Cristian Hammiltoune, and schuting of hir throw the courfchet¹ thairwith ; committit in the moneth of August lastwas. ITEM, sforsamekill as, he and his complices, in the moneth of December or thairbye, the yeir of God Im.Vc.lxxxxvij yeiris, come to Katherine Huggoune duelling-houfe, at the Burnefyde of Sawling, and thair pat violent handis in hir perfoune, and sett hir bair erfe vpoune ane reid hett² girdill, standand vpoune ane ingill ;³ held her perforce thairon, quhill⁴ ane grit pairt of the fefche of hir hipis was brunt. ITEM, for airt and pairt of the thifteous steilling of certane blak aittis fra the said James Stewart ; committit in the moneth of Februar lastwas. ITEM, for commoune thift and commoune reffett of thift.

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

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

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

¹ Often spelt *courche*, or *curchey*, a sort of cap or *mutch*, shaped to the head like a close hood, but the back part so formed as to descend on the shoulders, and a little over the ears. Old Fr. *couvrechef*. ² Red-hot. ³ Fire. ⁴ Until. ⁵ The punishment of death.

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

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

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

Barbarous Murder, &c.

Jul. 3.—PATRIK STEWART, in Innervak.

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

DITTAY against the Pannell.

FORSAMEKILL as he, accompaneit with Stewart, his brother, and Allester Reoch, his ferwand, laitle, in the moneth of November, the yeir of God I^m.Vj^e. yeiris, haifing confaut ane deidlie malice aganis vmq^e Angus Dow M^eEwir, his ferwand, for alledgeit abusing of Stewart, his dochter, in fornicatioune, take and apprehendit the said vmq^e Angus, band him hand and fit as ane malefactor, brak his rycht leg with ane ax, and thairefter, with ane scharpe knyffe or durk, entit away his secreit memberis fra him, and put in het assis and emmeris² in the bag of his secreit memberis, quhilk restit vncuttit; and crewallie demanit, hurt and woundit him thairbye; and thairefter kuift³ him on horsbak, and convoyit him to the tonne of Blair-in-Atholl; quhair the said vmq^e Angus take bed, and continewand bedfast, in grit dolour and diseas thairof, be the space of fyve dayes or thairbye; at last, he, in the said moneth of November, deceifit, be the said crewall handling; and swa was crewallie and vnmercifullie slane be thame: The said Patrik being airt and pairt of the said crewall slaughter; the lyke of the quhilk crewaltie and tyrannie was never hard to be committit within this cuntrey, nather in hieland nor lawland.

PERSEWAR, Mr Thomas Hammiltoune of Drumcarne, aduocat.

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

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

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

¹ Cleanse, acquit.

² Hot ashes and live-embers.

³ Cast, tossed.

ASSISA.

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

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

VERDICT. Eftir accusatiounne of the said Patrik be Dittay, quhilke was verifeit be his Depositionis, the Assyis, be the mouth of the said Chancellor, stand, pronunceit and declarit the said Patrik Stewart to be fylit, culpabil and convict of airt and pairt of the slauchter of vmq^{le} Angus Dow McEvir.

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

THE famin day, George Leslie Capitan of Blair, Neill Stewart in Fofs, Robert Stewart in Faucaftell, Alexander McIntofch in Tirenle, George M^cIntofche, his brother, Alexander Stewart in Bohespik, John Butter in Eifter Dunfallandie, Andro Burt, eldar in Cult, Johne Stewart McRobert in Archgowll, George Nafmyth in Laclache, and James Nafmyth off Inwar, vulawit, ilk ane of thame in the pane of ane hundreth markis; for nocht compeiring and passing vpoune the Assyife, &c.

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

Jul. 6.—JAMES CHENE of Pennan.²

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

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

PRELOQUOTOURIS for the pannell.

Mr Thomas Craig,

My Lord Home,

My Lord Sanquhar,

The Laird of Donypaice,

Mr Johne Ruffell,

Mr Alexander King.

DITTAY against the Pannel.

FORSAMEKILL, as it is expresse provydit, statute and ordanit be our souerane lordis Actis of Parliament, maid in the tyme of his hienes prediceffouris, that na maner of man commit Rapt or Reveifch-

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

ing of women, vnder the panis contenit in the saidis Actis: And trew it is, that James Chene of Pennan, accompaneit with Alexander Chene, sone to Williame Chene in Orcheartoune, Geddes and Thomas Daudifoune, ferutour to Patrik Chene of Edilmouth, accompaneit with diuerse vtheris thair complices, with conuocatione of his hienes liegis, to the nowmer of twelf perfonis or thairbye, all bodin in feir of weir, with fecreititis, plait-flevis, gantiletis, steil-bonnettis, fwordis, dagis and pif-tolettis, expresse prohibite to be borne, worne, vsit or schot with, be his hienes Actis of Parliament and Secreit Counsale, vnder diuerse panis contenit in the samyn, laillie, in the moneth of July, the yeir of God Im.V^e.lxxxxvij yeiris, come, be way of Hamefuckin, vnder seylence and cloude of nycht, to the said Williame Cuke duelling-hous in Vrinach, lyand within the Sherefdom of Abirdene, quhair the said Mariorie Cuke was, in sober and quyet maner for the tyme, doand hir lesull effairis and buffines, traifting na ewill, harme, iniurie or perfruit of ony perfonis, bot to haif leuit vnder Godis peax and our fouerane lordis; and thair pat violent handis in hir bodie, tuke hir captiue and presoner, and perforce reuefchit,¹ and conuoyit hir away with thame to the said James Chene duelling-hous in Pennan; quhair the said James deforcit and abufit hir bodie, and held and detenuit hir in captiuitie within the said James hous, be the space of xij dayis or thairbye; vsurping thairbye our fouerane lordis autoritie vpoun thame, in taking of the said Mariorie, his hienes frie liege but² commissioun or autoritie: And fwa, he being airt and pairt of the saidis crymes, hes contravenit the tennour of the saidis Actis of Parliament, in rapt and reuefching of the said Mariorie, being than ane virgyn; and hes incurrit the panis contenit in the saidis Actis, quhilkis aucht and suld be execute aganis him with all regour, in exampil of vtheris to commit the lyke in tyme cuming.

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

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

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

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

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

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

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

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

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

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

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

THE JUSTICE continewis this mater to the nynt of July.

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

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

¹ In addition to those formerly entered.

² Patrik Chene, brother of the pannell.

the said alledgeance aucht to be repellit, in respect of the Commiffioun berand na anfer.—Anferit the pannell, the Commiffioun gevis ane Warrant to convocat the Kingis liegis.

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

ASSISA for the Reveiffing.

Alexander Fairlie of Braid,	Robert Flefcheour, burges of	William Bandene, alias Ruth-
Johne Traill of Blebo,	Dundee,	vene, 3ounger of that Ilk,
Johne Johneftoune, callit Johne	Patrik Lyoune, merchand, burges	Hector Rae, merchand, burges
of Elphinfoune, burges of Edr,	thair,	of Edinburghe,
Andro Logane of Grantoune,	Gabriell Merfer, burges of Perth,	Thomas Somervell, merchand,
Alexr Wod of Lammieatham,	Mr Daid Home, brother to the	burgess thair,
David Kynneir of that Ilk,	Laird of Wedderburne,	Mr Archebald Wilkie, in the
Johne Fairlie of Comeiftoune,		Cannogait.

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

Repellis the foure-half-about.

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

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

¹ Token, or proof. evidence upon oath.

² Went, suffered himself to be put to the horn.

³ Testimony, or

⁴ Unless, except.

liame Cukis Depofitiounis, maid before the Counfall, quhairvpoun he askis infrumentis.

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

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

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

Treason — Forging Mark-pieccs.

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

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

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

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

ASSISA.

Williame Stalker, goldfmyth, burges of Edinburghe,	James Lethingtoun, iustar in the Coinzie-hous,	Robert Thomfoun, goldfmyth, burges of Edinburghe,
Alex ^r Bruce, cuttlar, burges thair,	David Lyndfay, fmyth, burges of	Robert Tailzeifeir, cuttlar in Leith
Williame Myller, meltar in the Coinzie-hous, ³	Edinburghe,	wynd,
Thomas Myller, cuttlar, burges of Edinburghe,	James Mynto, forgear in the Coinzie-hous,	George Seytoun, forgear in the Coinzie-hous,
Johne Quhyte, cuttlar,	Walter Mathie, forgear thair,	Moreis Gray, forgear thair,
	Patrik Schaw, prentar thair,	Williame Sinclar, forgear thair.

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

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

Hamesucken — Besieging House of Auchmedden — Adultery.

Jul. 20.—JAMES CHENE in Pennan.⁴

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

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

¹ Without any impression.

² Old Fr. spur-maker, *lormier*. Lorimers, besides selling small iron wares,

generally dealt in saddlery.

³ The Royal Mint.

⁴ See Jul. 9, 1602.

1597, haifing confaut ane deidlie feid, rancour and malice aganis Gilbert Baird of Auchmedden and Lilius Baird his fpous, come, be way of Hamefuckin, vnder feylenche and cloude of nycht, to the faid Gilbertis duelling-place of Auchmedden, quhair the faid Lilius Baird was for the tyme, in fober and quyet maner, accompaneit with hir bairnis and ferwandis, hir huſband being abſent, and thair clam¹ the cloife dykes of the faid place, pullit out the ſtainchellis² of the kitchen wyndois, brak vp ſum duris, and affageit the faid Lilius and hir ferwandis withia the faid place, be the ſpace of thre hours or thair-bye; clam vp to the tops of thair houffis, kaift in ſtanes at the chymnay heid, ſchot in hagbutis and piſtolettis at the duris and wyndois of the faid place; ſchot the faid Lilius throw the claythis, ſcho being grit with barne;³ ffor feir of the quhilk ſchot, ſcho ſchortlie thairefter paitit with the faid barne,⁴ quhilk was crewallie flane be the faid James; and ſwa, ye committit Hamefuckin, Affageing of houffis vnder feylenche and cloude of nycht, and hes contravenit the tennour of the ſaidis Actis of Parliament, in beiring, weiring and ſchuting with hagbuttis and piſtolettis. ITEM, for contravening of our ſouerane lordis Actis of Parliament in abuſing of his bodie in notour Adulterie, with Mariorie Cuke, dochter to Williame Cuke in Vrinot, within his awin duelling-place of Pennan, in the monethis of July and Auguſt, the yeir of God 1597, he being mareit with (Katherine) Rutherfurd, his fpous, and being vnderorecit.

The ſaid James declarit, for obedience of his Maieſtie, that nochtwithſtanding that he was maift innocent of the ſaidis crymes, and that he may vſe his lawfull defence aganis the ſamyn, he vald become in our ſouerane lordis will; provyding alwayes his lyffe may be faiff: Quhairvpoune the faid Mr Thomas Hammiltoun, and als the faid James Chene, aſkit actis and inſtrumentis.

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

REX,

JUSTICE, Juſtice clark and 3our deputtis, We greit 3ow hairtie weil: fforamekill as James Chene of Pennan, being accuſit before 3ow for ſindrie crymes, he voluntarlie become in our will, for pe cryme of Adulterie and ſyndrie Oppreſſionis committit be him. Heirfoire it is oure will, that 3e fall gif furth dome aganis pe faid James, that he fall be Baneifeit this cuntry, and fall nawyis returne within the ſame, without oure Licence, vnder pe pane of death, to be incurrit be him, and of pe ſowme of thre thouſand markis to be incurrit be his cautioner, quhome 3e fall ordane him to fynd for his remaning furth of pe cuntry; and that befor he be put to libertie. Quhairanent thir preſentis falſe to 3ow ane ſufficient Warrant. Subſeryuit with our hand, At Falkland, pe xxvij day of Julij, 1602.

(Sic ſubſcribitur)

JAMES REX.

The quhilk Will the faid Juſtice-depute pronounceit, &c.; and the faid James aſkit actis and inſtrumentis.

Slaughter — Shooting of Hagbutis and Piſtolets.

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

Dilatit of art and part of the Slaughter of vmq^{le} Richard Spens, ſeruitour to Johne Erle of Caſſillis; and for beiring and weiring and ſchuting of hagbuttis and piſtolettis; committit in December.

¹ Climbed.

² Iron ſtauchcons.

³ Pregnant.

⁴ Miscarried.

PERSEWAR, Mr Thomas Hammiltounne of Drumcarne, aduocat.

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

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

Adultery.

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

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

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

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

Slaughter.

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

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

¹ See Jan. 12, 1602.

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

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

Dauid Corbie, merchiand burges of Edinburghe, James Dauidfoune, flescheour burges thair, become cautioneris and fouerteis, coniunctlie and feuerallie, to falsifie the partie persewar, as law will; Lykeas, that he fall pass the said Remiffioun the Grit Seill, vnder the pane of flourtie pundis.

Slaughter — Shooting of a Pistolet.

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

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

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

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

Child-murder.

Nov. 27.—AGNES COWANE in Corstorphin.

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

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

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

Adulterating and Uttering Base Coins, &c.

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

Dilatit ffor the tressonable gilting of twenty fevin fals aucht-merk and foure-merk peces, of the number of threfcoir fals aucht-merk and four-merk peces; quhilkis war fend to him to his duelling-hous in Glesgow, be Campbell of Glenlyell, about tua yeir syne or thairby; togidder with tua licht angell-nobillis, and that with Donald M'nair, ferveand to the said Campbell of Glenlyell.

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

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

Slaughter.

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

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

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

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

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

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

THE JUSTICE repellis, in respect nathing is product to verifie.

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

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

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

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

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

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

Importing and Uttering Base Coin.

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

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

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

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

Murder — Theft.

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

Dilatit of the crewall Murthour and Slauchter of vniq^{te} James Roife, sumtyme thesaurer and burges of Edinburghe; committit vnder silence and clud of nycht, vpon the auchtene day of September, I^{mo}.Vj^{ca}. and ane yeiris; and thifteous Steilling and away-taking fra the said James, of his horse, cloik and purse, at the tyme foirsaid.

VERDICT. The Assyis, be the mouth of David Fairlie merchand, chancellor, sfind, pronuncet and declairit the said Johne Ramsay to be ffylet, culpable and convict of the saidis crymes.

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

Hamesucken—Rapt, Ravisching and Forcing.

June 21.—HENRIE SINCLER of Quhytkirk.

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

FORSAMEKILL as the said Henrie, being accompaneit with James Hepburne, serveand for the tyme to the Laird of Roisling, Andro Anderfone, and vtheris thair complices, with convocatioune of our fouerane lordis leigis, to the number of aucht perones or thairby, all bodin in feir of weir, with swoirdis, secreitis, steil-bonetis, &c. laillie, in the moneth of December, 1^m. Vj^{te}. yeiris, come be way of Hamefukkin, vnder filence and clud of nicht, to vmq^{le} George Carkettillis dwelling hous of the Monkrig, quhair Margaret Carkettill, now spous to Archibald Hammiltoune of Bairfute, was, in fober and quyet maner for the tyme, takand the nichtis rest; and thair brak the said hous, enterit within the samyn, and put violent handis in the said Margaret, had and raveischet hir away with thame perforce; and convoyit hir away to the place of Merkill; quhair the said James forcet and abufet her body: And thaireftir, transportit hir to the place of Quhitelkirk, quhair scho was detenit all the nicht captiue and priffoner, and keipit and detenit hir in captiuitie with the said Henrie and remanent perones foir-faidis, be the space of aucht dayis thaireftir, or thairby; scho being our fouerane lordis frie leige; vfurpand thairby his hienes auctoritie vpon thame: And sua, the said Henrie was airt and pairt, red and counfall of the taking of the said Margaret, and of the Rapt and Raveisching of hir, and keeping of hir in captiuitie; scho being his hienes frie leige; and of the forcing and abusing of hir body, to the greit contempt of our fouerane lord, his hienes auctoritie and lawis: At the leift, of Resfetting of hir, in maner foirfald.

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

ASSISA.

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

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

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

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

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

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

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

[THE CASE OF FRANCIS MOWBRAY 1549, perhaps, be considered as one of the most extraordinary of its kind, in the whole range of the Criminal Records of this or of any other country. There is something monstrous in the idea of wreaking vengeance on the lifeless remains, even of the most atro-

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

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

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

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

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

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

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

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

THE JUSTICE ordanit his Maicestis Precept to be insert and regiftrat in the buikis of Adionall.

REX,

JUSTICE, Justice clerk and 5 our deputis, We greit 5ow weill. Foramekill as vmq^{le} Frances Mowbray, being accuset of maist heich, horrible and detestable poyntis of Treffone and Lesinaiestie, aganis us, our persone and Estait, and for 5e samyn, committit to waird within our Castell of Edinburgh; and the samyn being sufficientlie verifeit be 5e Depositiones of twa or thre witneffis, and 5e tryell pair of fa cleir, 5at 5air remanit na obscuritie of 5e fame. The said vmq^{le} Francis, obduret in mynd, and to all appearance seducet be Satban, quha was the first motioner of theis his devillische interpryses, hes, vpone intention to escaip furth of our waird, procurer his awin miserabile and schamefull death; and hes maid his giltines (be his breck of waird) mair nottour and manifest. It is our will heirfoir, that 5e cause give dome and sentence aganis him, to be demaynit, quarterit and hangit; and his heid and quarteris to be put vppone 5e maist publict partis and places of our burghs of Edinburghe; as ane quha is gillie of 5e saidis crymes. And 5at 5e direct 5e officiaris (to quhome 5e executionn of theis turnes belang) to do 5e same, with all 5e formes accusfomet in sic caiffis: Qubhairnent 5ir presentis full be 5our Warrant. Subfcrynit with our hand, att Halyrudhous, 5e last day of Januar, 1603.

(Sic subscribitur)

JAMES R.

MONTOIS, CAN^{NIUS}. MAR. HEREIS. HALYRUDHOUS.

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

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

PAPERS illustrative of MOWBRAY'S TREASON.

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

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

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

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

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

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

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

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

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

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

¹ With constancy, without prevarication.

² Advocates' Library, A. 4. 35.

³ Escaped. Perhaps for espied.

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

(ii.) CECIL and I are very glad that the Laird of Weemes² had no better warrant for his traffick with this busy body.³ The man is not honest, nor was drawn to this discovery of *Mowbray's Treason* by love to the King, but merely upon spleen and malice to the party, upon the fractions of old amity. In this point we will say no more, but only wish, for the good of the King's service, that he neither have encouragement to come, nor entertainment, though he should chauce to come; which I do not think will happen, because Cecil's angels⁴ have him in charge, for the working out of more stuff, if it be possible; and his pension seasons him in the giddiness of his natural and habitual uncertainties.

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

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

Feb. 1.—SIR HARIE LYNDSEY of Carrestoune.

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

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

¹ Lord Henry Howard to Mr Edward Bruce; without date, but about Aug. 1602. See Vol. II. p. 319. *Note.*
² See Vol. II. p. 276. *Note.* ³ The Master of Gray. ⁴ *Golden angels*, bribery. ⁵ Lord Henry Howard to Mr Edward Bruce—probably written soon after that of the 27th August, 1602.—*Hales.* ⁶ Although Eviot escaped this barbarous attack, he was murdered, five years afterwards, by his wife and her paramour. *Fleming* gives the following graphic account of this transaction, in his curious MS. Chronicle, preserved in the Library of the Faculty of Advocates. (5th Apr. 1608.) 'PARAK Eviot, brother-german to the Laird of Balhousie, was murderit in Blelok, be his wyfe Jonet Ross, quha wes air to the Lairdschip of Craigie and Kynfawnes both (*also.*) He wes schote with ane gun in his bed, sleiping, be James McNair. Thairefter, they wer both taikin and execute; and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 May 1608. His heid and arme putt wp on the Castell gawill port.'

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

The said Sir Harie Lyndfay declairit, for obedience of the Kingis Maieftie, and for the offence done to his hienes, mynding nawyis to vse ony defensis be law, albeit he mycht vse thame ; he will becum in his Maiefteis Will for the Dittay product be the Aduocat : Protesting, that his becuming in will preiudge him nocht, anent ony defens that he will vse aganis ony pairtie that fall happin to persew him, heirefter, for the saidis crymes : Quhairvpoun he askit instrumentis ; and lykwayis our souerane lordis aduocat askit instrumentis of his becuming in his Maiefteis will.

The samyn day, Patrik Eviot protestit, that the said Sir Harie Lyndfayis becuming in will fould nocht preiudge him of ony actioun that he had to persew aganis him.

Slaughter — Sentence of Banishment.

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

Compeirit Johne Mayne, and productet ane Precept contening HIS HIENES WILL, togidder with ane deliuerance of the Lordis of Secret Counsall, quhilk the Justice ordanit to be infert and regifrat in the buikis of Adiornall ; quhair of the tennour followis.

REX,

JUSTICE, Justice Clerk and 3our deputis, We greit 3ow weill. Forfamekill as Williame Wauchope, sone lauchfull to vmq^{le} Robert Wauchope of Nydrrie, being laidle persewit befor 3ow, to haif vnderlyne our law, for airt and part of pe slaughter of vmq^{le} David Edmestoun of Wommet : ffor pe quhilk slaughter he is becum in our will, in hoip of our clemencie and faour : We pairfoir, for dyuerse consideraciones moveing vs, temperand the rigour of justice with clemencie, haif declairit and declairis our will towards him, as followis : That is to say, That the said Williame fall depart furth of our realme to quhatsumeur pairtis he pleissis, betuix pe dait heirof and pe first day of Marche nixto-cum ; and nawyis to retorne agane within pe samyn, without our Licence first had and obtenit pairto : And for pat effect, to find sufficient cautione actit in pe buikis of Adiornall, vnder the pane of fyve hundreth pundis, to be payit to our Thesaurer in our name, in cais of fail3ie. And forder, in cais it fall happin pe said Williame to retorne agane within our realme, eftir his departour, without our licence, as said is, that, in pat caice, he fall die pe deathe pairfoir, quhairreir he can be apprehendit, be ony of our Justices or ministeris of our lawis : And pat jir presentis falbe ane sufficient Warrant and Commissioun to pat effect. Subscriuit with our hand, att Halyrudhous, pe second day of Februarie, 1603.

(Sic subscribitur)

JAMES R.

Followis the (Supplication and Warrant.

VNTO 3our Maieftie and Lordis of Secret Counsell, humlie menis and schawis 3our seruitour, Williame Wauchope, sone to the Laird of Nydrrie : That quhair, eftir I haif remanit this lang tyme in ward, within the Tolbuith of Edinburgh, and haif cum in 3our hienes will and pleafour, foir airt and part of the slaughter of vmq^{le} David Edmestoun of Wommet, it hes pleist 3our Maieftie, of 3our

¹ Iiid, concealed.

² See Jan. 4, 1603.

hienes fauour and mercie, to grant ane Warrant for puting of me to libertie furth of the said waired, I findand cautionne actit in your graces buikis for my departing furth of the cuntry betuix and the first day of Marche nixto cum, vnder the pane of fyve hundred pundis, and onnawayis to retourne agane within the samyn, without your hienes Licence, vnder the pane of deid. As þe said Warrant heir present to schaw beris. Out of the quhilk waired I am nocht as zit releuit, albeit I haif done quhat in me luyis to find caution and fourtie, conforme to þe said Warrant, and hes offerit Johne Robiesoun, flescheour, burges of Edinburgh, cautioner for me to þat effect; and it nawayis lying in my power, as I fall anfuere to God, to get ony vþer persone to becum caution for me, bot sic persones as ar nocht responfall in landis and guidis, as the said Johne is, quhair of your Maiestie and lordis as zit haif had a fauourable consideratioun of me and my estait in tyme bygane; sua I maist humlie besek your lordschippis, that ye will freith and releue me furth of the said waired; and that I may haif command to your Maiesteis Clerk of Counfall or Justice Clerk, to ressaue þe said Johne Robiesoun caution for me: Conforme to the said Warrant and your anfuere.

(Sic deliberatur) APUD Halyrudhous, primo Februarij, anno tertio 1^o. Vj^o. Fiat ut petitur, Johne Robiesoun and John Mayne, coniunctle and feuerallie, cautioneris.

(Sic subscribitur)

MONTROIS, CANRIUS. M. R. YOUNG.

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

House-breaking — Theft, &c.

Feb. 15.—ANDRO REID in Bervie.

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

PERSEWARIS.

Barbara Sincler, Thomas Sym, messinger.

PRELOQUOUTOURIS for the pannell.

Mr Vmpra Blindschell, Mr George Frazer.

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

¹ In terms of the Warrant, which is repeated.

² Apparel, dress. Fr. *habillment*.

the verificatioun thairof, producet the proces subfcryuit be Neilfoun, clerk thairto : And thairfor the said allegeance aucht to be repellit.

The Judge continewis Interlocutor to the morne.

Feb. 16.—The Justice continewis this mater to the morne.

Comperit the hail perfonis of Affyse, and declairit that thai haif onwaittit this tua dayis vpon thair call, and ar superexpendit ; and protestit that thai be nocht vnlawit heirefter, in cais of thair non-compeirance.—Continued to 17th, and afterwards to 18th.

PERSEWAR,¹ Mr Thomas Hammiltoun.

PRELOCUTOR for the pannell, Mr Johne Scharp.

Feb. 18.—The Aduocat askit instrumentis of the productione of the Rolment of Court, producet be the pannell, subfcryuit be Mr Johne Foullertoun, and protestis (that) the samyn remane in proces ; and adheris to the alledgeances, that he is ffylit of the cryme, be his awin Confessioun, be ane Affyse alreddie ; and defyres only that dome may be pronuncet aganis him, conforme to the lawis ; and that in respect of the Rolment producet ; and consentis he pas to na Affyse.—It is ansuerit be the pannell, that na dome aucht of new to be gevin, becaus thair is a judgement alreddie gevin be the Judge, conforme to the Rolment of Court ; and that in respect of the Act of Parliament, quhair it is provydit, that a man anis being elanget, can nocht be of new profewit for that cryme.—The Justice continewis this mater to Wednisday nixt.

JUN. 10.—SENTENCE. The quhilk day, Andro Reid in Bervie, being enterit on pannell, as he that was convict be ane Affyse, in ane Justice-Court halding in Stanchyve, the xv day of September, the yeir of God I^m. fex hundreth and tua yeiris, be Johne Keyth in Coltoun, Sheref-deput of the scherefdome of Kincardin, and Capitan Andro Stewart Judge, be vertew of our fouerane lordis Commiffioun, direct to my Lord Shereff of Kincardin, for cuming to George Sincleris hous, &c. ; quhairvpon na dome wes pronuncet : For the quhilk cause the Justice-depute decernit and ordanit the said Andro Reid to pas furth of this realme, betuix the day and dait heirof, and the tent day of August nixtocum ; and never to returne within the samyn ; bot to remane Banefchit during all the dayis of his lyfe, vnder the pane of deid : And all his moveabill guidis to be escheit and inbrocht to our fouerane lordis vse, as convict of the said crymes ; quhilk was pronuncet for dome.

Compeirit Capitane Andro Stewart, and protestit, that the sentence and dome of Banefchment pronuncet aganis the said Andro Reid in Innerbervie, be na wayis preiudiciall to the actioun of Errour, to be intentit aganis the Affyse, for Clangeing of the said Andro Reid of the crymes confest be him.

¹ In addition to those formerly entered.

² No farther proceedings are entered, until June 10, 1603.

Slaughter.

Feb. 24.—DONALD M^cANGUS of Glengarie, John Dou M^ckeane V^cdonill voir, Donald M^ckeane V^cdonill voir, Angus M^ckeane V^cdonill voir, his brether; Findlay M^cdonill V^cdonill voir, Alexander M^cdonill V^cdonill voir, John M^cdonill V^cdonill voir, thair brether; Rorie M^cmurchie V^cdonill oge, Donald M^cmurchie V^cquhonchie, Tormot M^cmurchie V^ckeane, Johne Moir M^cmurchie Vic doull oige, Johne Dou M^ckeane V^cdoull oige, Inving M^cindowy, in Glengarie, and Eweyne Ockerdane Carfar.

Compeirit Williame Makiefoun, and producit our fouerane lordis letteris, deulie execute and indorfate, purchest be Angus M^cindowie, as brother to Donald M^ckeane V^cdoun, Johne and Dougall M^cmurdo Boweis, as nerrest of kyn to vmq^{le} Donald M^cdonald M^cvolddonich; Johne M^cdonald V^cJok, as brother to Donald M^cdonald V^cJok, with the kyn and freindis of the faidis vmq^{le} perfones; aganis Donald M^cangus of Glengarie, &c.; be the quhilkis Letteris thay ar denunciit rebellis and putt to the horne, in default of finding of fouertie to haif compeirit this day and place, to haif vnderlyne the law for the Slauchter of the faidis vmq^{le} perfones: Quhairvpone he alkit instrumentis; and proteffit for relief of Rorie M^ckenzie of Cultellan, cautioner.

Slaughter.

Mar. 3.—JAMES STEWART, sone to vmq^{le} James Stewart, Maister of Buchan.¹

Sir James Scrymgeour of Dudop, kny^t, oft tymes callit, as cautioner and fouertie for James Stewart, sone to vmq^{le} James S. M^c of Buchan, to haif enterit and presentit him to haif vnderlyne the law, for airt and pairt of the felloune and crewall Slauchter of vmq^{le} Patrik Bryfone, tailzeour, burges of the Cannogait; committit in the moneth of October lastbypast, vpone fet purpois, &c.: The Justice unlawit Sir James Scrymgeour in the pane of tua hundreth merkis, and als adjudget the faid James Stewart to be denunciit, &c., and his moveabill guidis to be escheit, &c.

Murder — Stouthrief, &c.

Apr. 28.—ALLASTER M^cKIE, Gilchriit Kittoche alias Makilmoyle,
 M^cynroyer, Fyndlaw Dow M^colean.

Dilatit of certane poyntis of Thift, and for cuming to the Laird of Luiffis

¹ 'Patrik Bryfone slaine in the Cannogate be sone James Stewart of Buquhane; quha wes apprehendit and wardit in Sir James Ballendine's hous; quhair he remanit still, till the 26 of November, on the quhilck day he brake ward out of Sir James Innes hous.'—*Birrel's Diary*, p. 56.

boundis, in companie with the Laird of M^cGregour, and airt and pairt of the Murthour and Reif committit thairon in Februar last.

DITTAYS against the Pannels.

ALLASTER M^cKIE, ffor airt and pairt of the thiftions Steilling, conceilling and away-taking of foure 3owis, pertening to James Galbraithe in Bolgair, furth of Barroun M^cewins corrie or glen; committit about Michaelmas last. ITEM, for steilling fra the said James of twelf s^cheip furth of the said glen. ITEM, for the thiftions steilling of tua lames in Balglaß, pertening to the Lady Keir. ITEM, for the steilling of tua meirs furth of the landis of Galgerrachene; committit about Midfomer last. ITEM, for the thiftions steilling of thre meiris or fillies furth of Campsie-mure. ITEM, for common thift, &c.—GILCHREIST KITTOCHE, &c., ffor being in companie with the Laird of MakGregour and his complices, and airt and pairt with him of the crewall Murthour and slaughter of dyuerß the Laird of Lufes freindis, feruandis and pairtakeris, to the number of sevin scoir perßones; committit within the Laird of Lufe boundis, in the moneth of Februar last: And for the barieing and s^milzeing and reveing of the hail cuntry thairabout; and thifteons steilling and away-taking with thame, of the number of acht hundreth ky, horße, nolt, s^cheip and vther bestiall; committit be thame at the tyme foirsaid.

Quhair of the saidis perßones war airt and pairt, according as thair Depofitions and Confessions beiris.

VERDICT. The Assyse stand, pronuncet and declairit the pannell to be flylet, culpabill and convict of the hail crymes respectiue aboue specifeit.

SENTENCE. The Justice, be the mouth of James Henderfone, dempfter of Court, ordanit thame, and ilk ane of thame, to be tane to the Burrowmure of Ed^t, and to be hangit vpon the Galloisè thairof quhill thay be deid; and all thair m^oveabill guidis to be escheit, &c.

Intercommuning with the Clan-Gregor.

May 17.—AULAY M^cCAULAY of Ardingapill.

Compeirit Johnne Dunlop, seruitour to my Lord Duik of Lennox, and producet ane Warrant, subferyuit be his Maiestie; quhair of the tennour followis.

REX,

JUSTICE GENERALL, 3our depute, Justice clerk, Aduocatt and 3our deputtis, We greitt 3ow hartlie well: fforfamekill as our louit Aulay M^ccaulay of Ardingapill is summond at þe instance of 3ow our said Aduocat, to compeir on the xvij day of Maij nixtocum, to vnderly the law for the allegit intercommuning with *Allaster M^cgregour of Glenstra*, and vna^q^{le} *Johnne Dow M^cgregour* his broper, our rebellis, and for certane vperis crymes and poyntts of Dittay, specifeit and contenit in þe summondis raisit þairanent. And We, vnderstanding that the said Aulay M^ccaulay is atogidder frie and innocent of þe saidis allegit crymes laid to his charge; and that he is to accompany ws to our realme of England, with our darrest counsling the Duik of Lennox, his maister: Thairfoir, and for certane vperis guid causis and considerations moving ws, it is our Will, and We command 3ow, to desifit and cease fra all calling or accusing of the said Aulay M^ccaulay, the day foirsaid; or ony wayes proceeding aganis him or his cautioner in the matter foirsaid; bot suffer the dyett, appoyntit to that effect, to desert in it self, as gif ony sic Letteris had nevir bene raisit; naþer 3it trubill nor molest þe said Aulay M^ccaulay, for the pretendit cause foirsaid,¹ at ony vper dyet þairefter, quhill the returning of our said

¹ See Note to the Laird of MacGregor's Declaration, Jan. 20, 1601.

derrest coufing furth of our realme of Ingland. As 3e will anfuer to us vpon 3our obedience ; and pat nochtwithftanding of ony vper Warrant gevin or to be gevin in the contrair : Quhairanent pir presentis fall be to 3ow fufficient Warrant. Subfcriuit with our hand, att Beruik, þe fevint day of Apryle 1603. (Sic fubfcribitur) JAMES R.

The quhillk Warrant the Justice admittit, and defertit the faid dyet.

Adultery — Child-Murder.

May 18.—JOHNE RYBURNE of that Ilk.

Robert Montgomerie of Heffillheid produceit our fouerane lordis letteris, purchet at the inflance of Mr Thomas Hammiltoune, aduocat to our fouerane lord, aganes Johne Ryburne of that Ilk, for Adulterie and the Murthour of ane infant bairne, gottin vponn Agnes Dunlop : Be the quhillk Letteris thè faid Ryburne of that Ilk is put to the Horne.

Murder of Seven Score Persons in the Lennox by the Clan-Gregor, &c.

May 20.—GILLESPIE M'DONALD M'INNES DOW, Donald M'clerich alias Stewart, and Johne M'coneill M'condochie.

Dilatit, accufit and perfewit for being in company with the Laird of M'gregour : AND for airt and pairt of the lait grit flauchter and crewall Murthour of fevin feoir perfones in the Lennox,¹ all freindis and fervandis to the Laird of Lufe : AND of the thiftious Steilling and Reiffing of aucht hundreth oxin, ky² and vther beftiall, and herrieing the hail cuntrie ; committit in the moneth of Februare laftbypaft : ITEM, for the thiftious Steilling of tua horfe and ane meir furth of Strabrand, fra Johnne Stewart Neilsoun and his man ; committit at Lambes³ laft : AND for commoun Soirning,⁴ &c.—*Donald M'clerich* dilatit and perfewit for airt and pairt of the thiftious Steilling of nine ky and oxin, tua yeir fyne or thairby, fra Patrik Stewart furth of Innervaik, in Athoill ; and for commoun Thift and commoun Soirning, &c.

VERDICT. The Affyfe, be the mouth of Johnne Douglas, burges (of Edinburgh), chancellor, fand, pronunceit and declairit the faidis thre perfones to be culpabill and convict of the foirfaidis crymes.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and to be hangit thair on ane gibbett, quhill thay be deid, &c.

¹ See Apr. 28, Jul. 5 and 14, 1603, &c. ² The 9 of Februarii, the Laird of Macgregor, with four hunder of hes name and factioun, enterit in the Lennox ; quhair he maid Spulzie and flauchter to the number of sixty honest men, befylde wemen and bairnis. He spared nane quhair he came.—*Birrel's Diary*, p. 58.

³ Kine, cattle.

⁴ Lammas-day, 1st August.

⁵ Taking free quarters by force,

(q. d. *sejournant* ?)

Invasion of a Minister, near the Tolbooth, where the Privy Council were Sitting in Judgement.

Jun. 29.—WALTER GRAHAME, seruitour to Mr Robert Williamfoun, wryter.

Dilatit, accusit and perfeit be DITTAY of the crymes following, viz.

FORSAMEKILL as it is statute and ordanit, be oure fouerane lordis Actis of Parliament, speciallie be ane Act maid in his Maiesteis ellevint Parliament, cap. 27, that quhatfumeur persone or persones Invaids ony Minister,¹ or putis ony violent handis in him for ony forget² querrell, fall be pwnest thairfoir with all rigour, and incur the payne of tynfall of all thair moveabill guidis for the said invasioun and violence allanerlie, albeit na slaughter nor mutilatioun follow thairvpoun; the ane half of the saidis guidis to be applyit to our fouerane lordis vse, and the vther to the pairtie invaidit or offendit, but preindice of the gritter pwneschment, gif ony heicher cryme concour with the violence and invasioun foirsaid: And als, Proclamatioun was maid, in our fouerane lordis name and auctoritie, vpon the . . . day of Junij instant, in the yeir of God, J^m. Vje. and thre, befor the Trinitie s^{ai}r, that na persone sould invaid or perfew ane vther within this burch, during the tyme of the s^{ai}r, vnder the pane of deid: And forder, it is provydit be dyuerse Actis of Secreit Counfall, that na persone fall invaid ony man, be drawing of ane sword, within ane myle to the Kingis Palice, or to his hienes Counfall, vnder the pane of deid. AND trow it is, that the said Walter, in hie and manifest contempt of our fouerane lordis Actis of Parliament and Proclamations foirsaidis, vpon deidlie malice consauet be him aganis Mr Thomas Douglas of Stannypeth, Minifter at Balmirrieno, and haifing forget a quarrell aganis him, for the revenge of certane injurious speiches, allegit gevin be the said Mr Thomas Douglas to the said Mr Robert Williamfoun, his maister, vpoun the xxj day of Junij instant, he, vpon the xxij day of the said moneth of Junij, preparit to him self ane grit foure-nuikit³ battoun, of aik, of purpois to haif fellit the said Mr Thomas Douglas thair: Lyk as the said Walter set vpon him, behind his bak, vpon the hie streit of the burch of Edinburgh, in the tyme of the said s^{ai}r, a lytill beneth the Stinkand-style,⁴ the Lordis of Secreit Counfall being within the said burch, and haifing sittin at Counfall in the Tolbut of the said burch, nocht passand ane half hour befor the violence and invasioun following; and thair, maist schamefullie, barbarullie and crewallie, without regard of the person of ane Minister, and haifing never spokin with him ane word of befor, invaidit him for his slaughter with the said battoun, strak him thairwith tua straikis vpon the heid, behind the richt lug,⁵ and hurt and woundit him thairwith, to the effusion of his bluid in grit quantitie; vpon set purpois, persuasioun,⁶ precogitat malice and foirtocht fellony. And efter the committing of the said crewall and schamefull Invasioun, and hurting of him, as said is, the said Walter fled and gat away; and thairefter was tane and apprehendit for the said barbarus crewallie; and he hes confestit the samyn. Quhilk battouning of the said Mr Thomas, fa neir to his hienes Counfall, meretitit gritter pwneschment, nor gif⁷ he had drawin ane sword to the effect aboue specifit, in respect of the vyle indignitie thairof: Quhairby he hes contravenit the tennour of the saidis Actis of Parliament and Proclamatioun foirsaid, and incurrit the payne of daith, quhilk aucht and sould be execute aganis him with all rigour, in exampill of vtheris, &c.

PERSEWAR.

Mr Johne Nicolfoun of Lefwaid, Advocat, substitute to Mr Thomas Hammiltoun of Drumcainre.

VERDICT. The Assyse, be the mouth of James Lyndefay of Dowhill, chancellor, s^{ai}nd, pronuncet and declairit the said Walter Grahame to be ffylit, culpable (and) convict of the saidis crymes.

¹ Clergyman. ² Forged, feigned, simulate. ³ Four-cornered, square. ⁴ Near the Tolbooth, and almost opposite the door of Haddo's-held, to the eastward of the late New North, or Little Kirk.
⁵ Ear. ⁶ In common style, this word is usually 'provision.' ⁷ Than if.

(Aug. 12.)—Mr Williame Borthuik, Justice-depute,¹ (pronounced Sentence against the pannel,) be vertew, and at command of ane Warrant of the Lordis of his hienes Secreit Counfall, quhairof the tennour followis :

APUD EDINBURGHE, vltimo Junij 1603. The Lordis of Secreit Counfall Ordanis þe Justice and his deputis to pronounce dome vpon Walter Gralame, for þe streking of Mr Thomas Douglas, Minister, with ane batoun ; in maner following, viz. : That þe said Walter fall be feurgit fra þe Castell hill to the Neper boll, throw þis bur^t, and his richt hand to be strukin af at þe Neper boll: And þairfter, Ordanis bim to be Banischet his Maiesteis hail dominiones, and onnawis to returne agane within þe samyn during his lyftyme, vnder þe pane of deid. And that he remove furth of þe saidis realmes betuix and þe last day of September nixtoctm, vnder þe pane foirsaid.

(Sic subscritur) MONTROIS CANRIUS. AL. VCHILTRIE. ELPHINGSTOUN. A. FYVIE. NEUBOTLE. J. COKBURNE. R. COKBURNE. JO. PRESTOUN. CRANSTOUNRIDDELL. QUITTINGHAME.

SENTENCE. The Justice, be the mouthe of Walter Peirie, dempster of Court, decernit and ordanit the said Walter Grahame to be feurgit throw the bur^t of Ed^r,² &c., within tua moneth nixt following, vnder the pane foirsaid : Quhilk was gevin for dome.

Slaughter.

Jun. 30.—JOSEPH BONCLE, burges of Dumbar.

Dilatit and accusit for the Slauchter of vmq^{le} James Loche, induellar in Dumbar, committit vpon the xxvij day of Junij instant, be the straik of ane sword in the lisk³ and the wambe.⁴

Compeirit Williame Kellie, Thefaurer of Dumbar, in name of the Proveift and bailleis thairof, and product the letter vnderwritten ; quhairof the tennour followis.

PROVEIST and bailleis of the bur^t of Dumbar. It is our will, and for findrie guid respectis and considerations moveing vs, We command 3ow, that 3e caus sailfie convoy, bring and present Joseph Bonkle befor our souerane lordis Justice and his deputies, within þis bur^t of Edin^r, to vnderly the law and justice for þe slauchter of vmq^{le} James Loch, smyth, committit be bim vpon þe xxvij of Junij instant. Quhairnant þir presentis falbe 3our Warrant: And bur^t preiudice or ony derogation to quhatsumeur 3our liberteis and privilegis of Schereshcip, disposit and grantit be his Maieste in 3our fauoris, and contentit in 3our new Infeftment, maid þairvpon. Subscritit with our handis, at Edinburghe, þe xxix day of Junij, 1603.

(Sic subscritur) MONTROIS, CANRIUS, J. ELPHINGSTOUN. A. FYVIE. A. VCHILTRIE. QUITTINGHAM. JO. PRESTOUNE. EDCELL. CRANSTOUNRIDDELL. R. COKBURNE. J. COKBURNE.

VERDICT. The Assyse, be the mouth of Patrik Nisbet in Dumbar, chancillar, fland, pronunceit and declarit the said Joseph to be ffylit, culpable and convict of the Slauchter of the said vmq^{le} James Loch.

SENTENCE. To be tane to ane place besyde the mercat croce of Edinburghe,

¹ On Aug. 12, 1603.

groin or flank.

⁴ Belly.

² In terms of the above Warrant of the Privy Council.

³ Without.

³ The

and thair his heid to be strikin fra his body ; and all his movabill guidis to be escheit, &c.

Treason — Forging and Uttering base Money.

ROBERT DOW *alias* MEINZEIS and Allester M'claren, finyth.

Dilatit for airt, pairt, red and counfale, and conceilling of the tressonabill forgering, counterfitting and outputting of fals and adulterat coinzie, sic as fyve-pound-pecis and foure-merk-pecis, quhilkis Arthour Smyth coinzeit fyve zeir fyne or thairby, in his finiddie besyde Banff: And for outing¹ of ane pairt thairof, amangis our fouerane lordis liegis.

VERDICT. The Assyis, be the mouth of Williame Stalker elder, Goldfynth, sfind them to be fflylit, culpabill and convict of the tressonabill conceling of the forgering, prenting and counterfitting of fals coinzie, prentit and forgeit be the said Arthour Smyth, in his finiddie besyde Banff, conforme to thair Depositionis.

SENTENCE. The said Allester M'claren, to be tane to the gallow on the Borrowmure, and thairvpoun to be hangit quhill he be deid : And all his landis, heretageis, takis, stedingis, rowmis and possessionis, guidis and geir, coiruis, cattell, infycht pleneiffing to be forfaltit and escheit, &c.

Continewis dome vpon Robert Dow to the morrow quhill he anise with the Counfall.²

Slaughter of the Laird of Russ's People by the Clan-Gregor, &c.

Jul. 5.—GILLIEMICHELL M'HISCHOK, seruand to vmq^{le} Johne Dow M'gregour, and Nicoll M'pharie Roy M'gregour.

Dilatit for being [' at the ffield of the Lennox³ aganis Sir Vmphray Colquhoun : And for airt and pairt of the Slauchter of sewin scoir perfounes, ' ⁴] in cumpany with the Laird of M'gregour and his complices, at the ffield of the Lennox, aganis Alexander Colquhoun of Lufe : And for airt and pairt of the slauchter of the said Laird of Lufe freindis, servandis, affisteris and pairtakeris, to the number of sevin scoir perfones or thairby : And for reifing and herreing of the haill cuntrey, and fleilling and away-taking of ky, oxin, horse, scheip, gattis and vther bestiall, to the number of aucht hundreth bestiall or thairby ; committit in the moneth of Februare lastbypast.

VERDICT. The Assyse, be the mouth of Robert Oisteane in Edinburghe, chancellor, all in ane voice, but⁵ variance, sfind, pronuncet and declarit the saidis

¹ Uttering, putting out.

² On Jul. 5, he is ordained ' to be tane to the Castellhill of Edinburghe, and thair to be hangit quhill he be dead ; and all his moveabill guidis to be escheit, and his lands and heritageis, gif he ony has, to be forfaltit, ' &c.

³ See Notice prefixed to the Trial of Allaster M'Gregour of Glenstrae, Jan. 20, 1604.

⁴ This sentence occurs at the first entry. See also Apr. 28 and May 17, &c.

⁵ Without.

Gillie-Mitchell M^cschok, alias M^cgilliechallum, and Nicoll M^cfarie Roy M^cgregour to be fylit, culpable and convict of airt and pairt of the crymes foirfaisid.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbet quhill thay be deid ; and thair guidis to be efcheit, &c.

'Field of the Lennox' — Slaughter of the Colquhouns, &c.

Jul. 14.—JOHNE (DOW M^cANEVALICH) M^cGREGOUR, at the Kirk of Comerie.

Dilaitit for being in cumpanie with Allaster M^cgregour of Glenstra¹ and his complices, at the ffeild of the Lennox, againis the Laird of Lufe and his freindis : And airt and pairt of the Slauchteris, thiftis, robbereis committit be thame ; quhairin thair was flane vij feoir perfonis ; committit the aucht day of Februare laft.

VERDICT. The Assyse, be the mouth of James Chalmer, burges of Edinburghe, chancellor, fand the said Johne Dow M^canevalich M^cgregour to be fylit, culpable and convict of the fadis crymes.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair his heid to be strikin from his body ; and all his movabill guidis to be efcheit, &c.

Slaughter — Unmerciful Oppression — Shooting 'Hagbuttis,' &c. Cattle and Sheep Stealing, &c.

Jul. 19.—GEORGE TRUMBILL, of Belfis.

Dilaitit, accufit and perfewit of the crymes *respectiue* following, viz.

For airt and pairt of the Slauchter of vmq^{le} Johne Hammiltoun, callit of Cumnock ; committit the xxij day of Januare, 1^m.V^c. threfcoir nyntene yeiris. ITEM, of airt and pairt of the Slauchter of vmq^{le} Williame Trumbill, sone lauchfull to vmq^{le} Walter Trumbill of Raflat ; committit in the moneth of Apryle, 1^m.Vj^c. yeiris. ITEM, for Vfurpation of our fouerane lordis autoritie, in taking of Adame Trumbill, sumtyme fervand to the said vmq^{le} Walter Trumbill of Raflat, he being his hienes frie subiect, and binding him with fetteris, and hinging him be the feit and schouderis, ouer ane balk, for the space of xij dayis, quhairthrow his feit rottit fra him ; without Commiffioun gevin him to that effect. ITEM, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis, dagis and pistolettis ; and in schuiting of Walter Trumbill, younger of Raflat, betuix the toun of Jedburgh and the place of Belfis, in the airme and thie ; committit in anno 1^m.Vj^c. and tua yeiris. ITEM, for the thiftious Steilling of four nolt fra Johnne Donaldsone, in Melrois ; committit thre yeir syne or thairby. ITEM, for airt and pairt of the thiftious Steilling of sax ky and oxin, xx scheip, tua horfis, with the infycht plessing and euidentis pertening to David Riddell, in St Bofuellis ; committit in the moneth of . . . 1^m.V^c.lxxxviiiij yeiris, or thairby. ITEM, for the thiftious Steilling of xvj nolt, pertening to the Laird of Bemersfyde ; committit in anno 1^m.V^c.lxxxviiij yeiris. ITEM, for the thiftious Steilling of tuentie nolt, ane yeir syne or thairby, pertening to the Lady Newtoun. ITEM, for

¹ In the Verdict of the Assise, it is said to have been in company with 'the Laird of M^cGregour ;' so that Allaster of Glenstra was the Chief of this Clan, either by right of blood, or Chieftain for the time, by election, as was usual among the Clans. See Jan. 20, 1604.

the thiftious Steilling furth of the landis of Belfis, in the moneth of . . . I^m.Vj^e. and ane yeiris of fyve feheip, pertening to ane fervand of George Davidfones. ITEM, for the thiftious Steilling and away-taking of ane meir, pertening to George Wilfoune in Langnewtounne, the thift of his duelling hous in Langnewtounne; committit ane yeir fyne or thairby. ITEM, for a commone briggan^e and notorious cawmone theif, refset of thift, outputing and inputing of thift.

PERSEWARIS, Ifobell Trumbill, as dochter (to Walter) and sifter (to Williame Trumbill); George Rutherford, as kinsman; Mr Johne Nicolfoune, substitute for our fouerane lordis aduocat.

PRELOQUOUTOURIS for the pannell, Mr Johne Ruffell, Mr Thomas Craig, Mr Williame Douglas, Daid Ramfay.

It is allegit be the pannell, that na proces aucht to be grantit vpon the Dittay, vnto the tyme he be fummond vpon xv dayis wairning, in respect the deidis contentit in the Dittay is done xxiiij yeir fyne.—It is anfuert be the Aduocat, that he was denuncet rebell and put to the horne for ane of the slauchteris contentit in the Dittay, viz. ffor the slauchter of vⁿq^{le} Williame Trumbill, and ane Commiffiounne grantit be the Kingis Maieftie and Counfall for taking of him; be vertew quhairof he was takin and apprehendit and presentit to the Counsale, vpon the fyft day of July; att the quhilke tyme, in prefens of the perfewer and defender, than present, this day (being that day xv dayis) was affignit to the perfewer to perfew him for that cryme and all vther crymes could be laid to his charge: And thairfoir, thair being xv dayis grantit to the Counsell to deliberat vpon his defence, thair aucht to be na forder citatiounne grantit.—To the quhilke it is anfuert be the pannell, concerning the Hoirning, he is relaxt. *Secundo*, as to the Commiffiounne, na Commiffiounne can be grantit to preiudge him of his lauchfull defensis, *parte non citata*. As to the laft, he gat na coppie of the Dittay, and thairfoir man be fummond on xv dayis wairning.

As for the slauchter of vⁿq^{le} Williame Trumbill, fayis he was flane be him in his awin defense, he being affageit within his awin hous. As to the slauchter of vⁿq^{le} Johne Hammiltounne, denyis, and offeris him to the tryell of ane Assyse. As to the slauchter of Walter of Raflat, fayis he was flane at the horne, and producet the hoirning for verifeing thairof, raifit at the instance of Andro Commendater of Jedburgh, quhair the said Walter, for nocht removeing fra the landis of Raflat, and half ane quarter of the toun and landis of Belfis; quhilkis letteris ar of the dait the xx day of Apryle 1581, and of our fouerane lordis regne the xiiij yeire; denuncet the xij day of Julij, anno forfaisd.—It is alleget be the Aduocat, to the laft pairt, that albeit he was at the horne, the pannell aucht nocht to vsurpe the Kingis auctorite vponne him, to slay ony man at his awin hand.

THE JUSTICE continewis Interloquitour to the morne.

Jul. 20.—THE JUSTICE Remittis the hail poyntis of Dittay, except for the slauchter of vⁿq^{le} Walter Trumbill of Raflat, to ane Assyse.

It is allegit aganis James Waddell, burges of Jedburgh, that he can nocht pas

¹ Robber; Fr. *brigand*.

vponne this Affyse, becaus thair is deidlie feid standand betuix the hail name of Trumbill, on the ane pairt, and the Laird of Pharniherft, the hail Keris, and the hail inhabitantis of the toune of Jedburgh, on the vther pairt, for the Slauchter of Thomas Ker, brother to the (Laird of) Pharniherft.

The Aduocat protestis for Wilfull error, in caice that thay acquit George Trumbill of the slauchter of vmq^{le} Williame Trumbill, becaus he confest the committing of the Slauchter out of his hous, he being affageit, and allegeit in his defence.

The Aduocat, for instructing of the Dittay, producet ane Testimoniall, beiring the pannell to be excommunicat for Slauchteris, Murthouris, Incestis and Adulteris, &c.; subferyuit be Mr George Douglas, clerk of the Presbiterie of Jedburgh.

VERDICT. The Assyse, be the mouth of Walter Eleise, in Danielstoun, chancellor (be pluralitie of voittis), ffand, pronunceit and declairit the said George Trumbill to be flylit, culpabill and convict of beiring, weiring and schuiting with hagbuttis and pistolettis, contrair the tennour of our souerane lordis Actis of Parliament; committit betuix the toune of Jedburgh and the place of Belfis, in anno I^m.Vj^o. and tua yeiris: And to be Clene, innocent and acquit of the hail remanent crymes abone specifeit, mentionet in the said Dittay; and speciallie, of the slauchter of the said vmq^{le} Williame Trumbill, becaus the samyn was done in his awin defens.

Quhairvponne the said George Trumbill askit instrumentis.

(Aug. 18.)—SENTENCE. The Justice decernit and ordanit the said George Trumbill to be tane ‘ to the mercat-croce of Edinburgh, and thair his richt hand to be strukin frome his airme, as convict of the said cryme; quhilk wes gevin for dome.¹

Sorcery—Charming—Abusing the People.

Jul. 21.—JAMES REID, sumtyme serveand to George Anderfoun in Muffilbur^t.

Dilatit, accusit and persewit, be Dittay, of the crymes following, to wit,

FOR ane cowmone Sorcerer, charmer and abuser of Godis peopill, be geving him selff out to hail all kynd of seiknes: Quhilk craft he lernit fra the Devill, his maister, in Bynnies-craigis and Corstorphin-craigis, quhair he met with him and consultit with him to lerne the said craft; quha gaif him thrie penneis, at ane tyme, and a peice creifche² out of his bag, at ane vther tyme; he haifing appeirit to the said James dyuerse tymes, quhyles³ in the liknes of a man, quhyles in the liknes of a hors: with quhome he lykwayis dyuerse tymes consultit sen his first meiting, quhilk is threttene yeir syne or thairby; quhilk lykwayis

¹ See Aug. 23, 1602.

² Grease, fat.

³ Sometimes, occasionally.

lernit him to tak fouthe-rynnand-watter¹ to cuir the saidis diseiffis. ITEM, for cureing of Sara Borthuik, be his Sorcerie and devilirie, quha was grevouffie trubillit and diseaft, be bringing of fouth-rynnand-watter fra the Schyreff-brayis-wall, and casting a certane quantitie of falt and quheit about hir bed; be the quhilk cuir feho was hailit. ITEM, sforsamekill as he, be the special perfuafoune of Jonet Cryftie, dochter to Johne Cryftie at Cryftiefounis mylne, and his mother, confultit with the Devill, for diftruction of Dauid Libbertoun, baxter, burges of Edinburghe, his fpous, thair coirne and guidis; quha caufit him tak a peice raw flefche, quhairvpone he maid nyne nekkis,² and inchantit the famyn, quhilk he delyuerit to the said Jonet, and caufit hir lay ane pairt thair of vnder the mylne dur, and the rest vnder the stabill dur, for diftructione of his hors and cattell. And als, inchantit to him nyne ftanis, quhilk the said James cuift vpone the said Dauid Libbertones landis, for diftructione of his coirnes. Lyk as, the said James and the saidis Jonet Cryftie and hir mother infformet³ and maid ane pictour of walx, quhilk the Devill inchantit; and he and the women turnit the pictour at ane fyre, in the said Johnne Cryftiefones hous, for diftruction of the said Dauid Libbertones self. ITEM, for cureing of the said Johnne Cryftie, being diseaft of a fwalling, in putting of thre silk poyntis,⁴ in his devillifch maner, about his waift, quhilk remanit ten oulkis⁵ with him; and went away fra the said Johnne, be quhat way he knew nocht.

VERDICT. The Affyfe, be the mouth of Johne Howie, merchand, chancellor (all in one voce), ffind, pronuncet and declarit the said James Reid to be ffylet, culpabill and convict of the haill crimes aboue fpecifeit.

SENTENCE. To be tane to the Caftel-hill of Edinburghe, and thair to be wirreit⁶ at ane ftaik; and his body to be brunt in affis:⁷ And all his moveabill guidis to be efcheit, and inbrocht to his hienes vfe, as convict of the saidis crimes.

Murder — Robbery.

Jul. 27.—THOMAS HORSBURGH, burges of Peiblis.

Dilaitit and accufit of the Murthour and Slauchter of vniq¹⁰ Williame Chifholme in Peibbillis, with his awin quhinger, vnder filence and clud of nycht: And als, of the thiftious fleilling of ten fax li. peces,⁸ and tuentie merkis in quhyte filuer, pertening to the said vniq¹⁰ Williame, vnder the said Williames bed-heid; committit in the moneth of Marche lastbypaft: And ficlyk, for the thiftious fleilling of tuentie tua li.⁹ fra his guid-mother,¹⁰ committit nyne yeir fyne, or thairby.

¹ This superstition still obtains, in many remote places of Scotland; where the virtues of such water are firmly believed in. ² *Nicks*, notches. ³ Formed, constructed. ⁴ Laces, ties. ⁵ Weeks. ⁶ Strangled. ⁷ ⁴ The 21 of Julij, James Reid brunt, for confulting and ufing with Satan and Witcheis; and quha was notably knawin to be ane counfellor with Witcheis.—*Birrel's Diary*. ⁸ Ten £6 pieces. ⁹ £22. ¹⁰ Mother-in-law.

VERDICT. The Affyfe, all in ane voce, be the mouth of Michell Hunter of Polmwid, chancellor, ffand, pronuncet and declairit the said Thomas to be fflyet, culpabill and convict of the saidis crymes.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbett quhill he be deid ; and thaireftir his heid and richt hand to be ftrukin fra his body ; and the heid to be fet vpone ane prik vpoun the ftepill-heid of Peiblis ; and his richt hand to be put on the Eift-pairt thairof : And all his moveabill guidis to be efcheit, &c.

Usurpation of King's Authority — Hurting and Wounding.

Jul. 29.—ALEXANDER SEYTOUN, in Boigin-Johne.

Dilatit for the taking and apprehending of Mr Johne Cardno, convoying him to his hous in Boigin-Johne, and detening him captiue and prifoner, be the fpace of xxiiij houris ; and hurting of him with ane rapper¹ in the body, and vfurpation of our fouerane lordis authoritie vpoun him, in taking of the said Mr Johne ; committit in Nouember laftbypaft.

The pannell afkis instrumentis of his comperance on pannell, and proteftis for releif of his cautioner ; and als, he offerris him reddie to vnderly the law for the said cryme, difaffenting till all continewatioune.

The Iuftice continewis to the Iuftice-air of ' Abirdene, tercio Itineris, (vel fuper premonitione) xv dierum.' James Chene of Straloch, cautioner.

Slaughter.

Jul. 30.—GEORGE HARRETT of the Coittis.

Dilatit for the Slaughte of vmq^{1e} Williame Dowglas, in Muffilburgh, feruitoure to Williame Erll of Angus, lord Douglas, &c. ; committit in the moneth of Julij, the yeir of God I^m.Vj^e. and twa yeiris.

Marioune Wilfoun, the relict, produceit our fouerane lordis Letteris, dewlie execute and indorfat, &c. Thomas Harrett in Lintoune, his cautioner, vnlawit and americiat in the panis contenit in the Actis of Parliament, viz. in the payne of ane hundreth merkis ; and als adiudget the said George Harrett to be denuncitoure our fouerane lordis rebell, and putt to the horne ; and all his movable guidis ordanit to be efcheit.

Murder.

Jul. 30.—MARIOUN WARDLAW, fpous to Johne Kennedie, gantillet maker, burges of Edinburghe.

Dilaitit of airt, pairt, red and counfall of the Murthour committit be Williame Boirthuik, tutour of Boirthuik, Johne Boirthuik his brother, and vtheris

¹ Rapier.

their complices, in cuming to James Frammis duelling-hous in the Cannogait, vnder feylenge of nycht, and strykeing of him nyne straikis in the body and heid, to the effusioun of his body; and levand him for deid.

PERSEWAR, James Framme, gantillet-maker in Edinburghe.

Continued to the air of Edinburghe, ‘tercio Itineris (vel super premonitione) xv dierum.’

‘Field of the Lennox’—Slaughter of Colquhouns—
Stouthreif, &c.

Aug. 12.—DUGALL M’GREGOUR and Neill M’Gregour Pudrache.¹

Dilatit and accusit of the crymes following; to wit, the said *Neill M’gregour* of airt and pairt of the Slauchter of vni^q^{le} Patrik Layng and of vni^q^{le} Johne Reid, wobster, servandis to the Laird of Lufe; committit in December lastwas: AND siclyke, of airt and pairt of the thiftious Steilling of tuelv feoir guidis furth of the Laird of Luffes boundis, in the Lennox;² committit the tyne foir-said. AND siclyk, the laid *Dougall M’gregour*, of airt and pairt of the Slauchter of foure men, servandis to the Laird of Lufe, in the lait feild of the Lennox;³ and being in companie with the Laird of M’gregour and his companie at the same feild; and airt and pairt of the Slauchteris, reiffis, thiftis and foirmingis committit that day, in the moneth of Februare last.

VERDICT. The Assyse, be the mouth of James Broun, burges of Dumfries, chancellor, stand, pronuncet and declairit the saidis Neill M’Gregour Pudrache, and the said Dougall M’gregour to be fylit, culpabill and convict of the hail crymes aboue specifreit.

SENTENCE. Thairfoir the said Justice-depute, be the mouth of Walter Peirie, dempster, decernit and ordanit the saidis Neill and Dougall M’gregour to be tane to the Burrow-mure of Edinburghe, and thair, vpone ane gibbet, to be hangit quhill they be deid; and all thair moveabill guidis to be efcheit, &c.

Incest—Adultery—Theft, &c.

Aug. 23.—GEORGE TRUMBILL, in Belfis.⁴

Dilaitit, accusit and persewit, be DITTAY, of the crymes following, viz.

FORSAMEKILL as it is expresse provydit, statute and ordanit be our souerane lordis Actis of Parliament, that all notorious and manifest Adultereris and Incestuous perfones sould die the daithe, and thair hail moveabill guidis to be efcheit to our souerane lordis vse; and all sic perfones quha ar excommunicat for Adulterie, ar be Act of Parliament estemit for notorious and manifest adultereris; as the saidis Actis at mair lenth beiris: And trew it is, that the said George Trumbill hes in the monethis of Januare, Februare, Marche, Apryle, Majj, Junij, Julij, August, September, October, November and December, in the yeiris of God I^v.V^c.lxxxvij, lxxxix, 1600, 1601, and I^v.V^c. and tua yeiris; at the leist in ane or vther of the saidis monethis and yeiris, abusit his body in the filidie cryme of Incest and

¹ Pudrache signifies of the country or district of Balquhiddar.

² See Mar. 20, 1603, &c.

³ See Jan. 20,

1604.

⁴ See Jul. 9, 1603, and Aug. 18, when he had his right hand struck off for shooting pistols, &c.

Adulterie with Marionn Trumbill, spous to Jok Trumbill in Belfis, his brother fones wyfe; for the quhilk fact he is excommunicat within the Presbiterie of Jedburgh; as the sentence of excommunicatione proportis. ITEM, for the thifteous steilling of ane gray horfe furth of the landis of Raflat, pertening to vmq^{le} Walter Trumbill of Raflat; committit in the moneth of September, 1577. ITEM, for the steilling of xx oxin and ky furth of the landis of Raflat, fra the said vmq^{le} Walter; committit in the moneth of September lxxix yeiris. ITEM, for the thiftious steilling and reising of foure horfe, fra foure mylleris of Jedburgh; committit thre yeir syne, or thairby. ITEM, for the steilling of ane naig fra Walter Trumbill now of Raflat.

PERSEWERIS.

Sir Thomas Hammiltoun of Monkland, kny^t, aduocat to our souerane lord; George Rutherford.

PRELOCOUTOURIS for the pannell, Mr Johne Ruffell, Mr Williame Douglas.

It is allegit be George Trumbill, that he sould nocht be putt to ane Assyis for the crymes of Thift in the Dittay; becaus, within this moneth, he was chargeit befor your lordships of sındrie particuler poyntis of thift and commoun thift; comprehending all pointis of thift, except itt wer for pointis of thift committit fen his clangeing. The Aduocat alledgis it is nocht relevant.

THE JUSTICE ordanis George Trumbill to be putt to the Assyse, for all crymes contenit in the Dittay, except sic as he is alreddie clangeit of.

The Aduocat takis instrumentis of the swerking of the Inqueist; and of production of the Presbiteries Testimoniall, testifeing George Trumbill to be excommunicat for Incest and Adulterie, contenit in the Dittay: And protestis Wilfull Error, in caice thay acquit. And further, producis Letteris of Hoirning, to verifie the vther foure poyntis of Dittay, and of his lang remaning vnrelaxit; and protestit for Wilfull Error, in caice thay acquit, in respect foirsaid.—The pannell takis instrumentis of Halyburtoone of Moreislaw comperance, and swerking of the twa pointis of the Dittay, viz. of the mylleris naigis, and Watt Trumbillis naig. The Aduocat askis instrument of the swerking of the Dittay, be the Guidman of Morislaw.

VERDICT. The Assise, having ‘ be pluralitie of voitis’ chosen Williame Cokburne of that Ilk chancellor, thay sfind, pronuncet and declairit the said George to be sfiylet, culpabill and convict of the hail crymes *respectiue* aboue writtin.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Robert Scott, dempster of Court, decernit and ordanit the said George to be tane to the Castell-hill of Edinburgh, and to be hangit on ane gibbett quhill he be deid; and his hail landis, heritageis, tenementis, annuelrentis, possessionis, coirmis, cattell, infycht pleniffing, guidis and geir, to be forfaltit and escheit to our souerane lordis vsê, as convict of the saidis crymes.

Slaughter — Woughing Oxen — Stouthreik, &c.

Sep. 23.—JOHNE JOHNNSTOUN, callit of Loch-hous.

Dilatit, accuset and persewit be Sir Thomas Hammiltoun of Monkland, knycht,

aduocat to our fouerane lord, ffor airt and pairt of the slauchter of vmq^{le} Johnne Cunninghame, fervand to the Erle of Glencairne ; committit in the yeir of God I^m.V^c.lxxxxvj yeiris, or thairby, within the burch of Edinburgh. ITEM, for airt and pairt of the slauchter of vmq^{le} Gilbert Roriefoune. ITEM, for airt and pairt of the hoching¹ of Robert Cuninghames oxin. ITEM, for airt and pairt of the maifterfull and stouthfull reveing fra James Lichtoun, Johnne Kello, Johnne Byres, George Cuninghame, merchandis burgefis of Edinburgh, . . . Hunter in Glesgow, and Williame Walker at Bellis-mylne, of thair purffis and money being thairin, estimat to thre thousand (and viij^o) merkis ; and away-taking of thair nagis fra thame ; committit in the moneth of Julij 1602 yeiris, at the Rowne-tre-barne, betuix Air and Wigtoune.

ASSISA.

Charles Campbell of Horfleuch,
Charles Campbell of Skeringtoun,

George Campbell of Gelt,
Williame Campbell of Walwoid.²

VERDICT. The Assyse all in ane voce, be the mouth of the said Charles Campbell of Horfleuch, chancellor, ffand, pronuncet and declairit the said Johnne Johnneftoun of Loch-hous, according to his awin Confessoun, maid in judgement, and Depositiones subferyuit with his hand, to be ffylit, culpabill and convict of the hail poyntis of Dittay aboue reherfit.

SENTENCE. To be tane to ane scaffald at the mercat-croce of Edinburgh, and thair his heid to be strukin fra his body. And all his moveabill guidis to be efcheit, &c.

[*Mr Andrew Kneilland, Justice-Depute.*³]

Diet continued owing to Plague in Edinburgh.

Nov. 8.—JOHNNE COLQUHOUN, younger of Campstradden,⁴ Dougall M^cFarlen, and Johnne M^cConell V^cneill M^cFarlane and others.

Compeirit Antoun Whyte, wryter, and product ane delyuerance grantit be the lordis of Secreit Counsall, subferyuit be my Lord Chancellor, &c. as follows.

MY LORDIS OF COUNSALL, vnto your lordschipis humlie menis and schawis we your fermitouris, Sir Johnne Murray of Tulliebarden, kny^t, and James Hadden of Glennageis : That quhair, we and ather of ws haif purchest lettres, quhairwith we haif caufet charge *Johnne Colquhoun, younger of Campstradden*, Dougall M^cFarlane, Johnne M^cConell V^cneill Makfarlane, and certane vtheris perones thair complices, specifcit in the saidis letteris direct thairvpoune, to find caution, that thai fall compeir befor our fouerane lordis Justice and his deputis within the Tolbuthe of Edinburgh, the aucht day of November instant, to vnderly the law for certane crymes mentionet in the saidis letteris : At the raising of the quhilkis letteris, we and ather of ws ffand caution actit in the buikis of Adiornall, for reiporting of the saidis letteris, deulie execute and indorfate, at the day foirfaid, vnder the panes contenit in the Actis of Parliament. And be refloone of the suspitioune and danger of the plague of pestilence

¹ Hamstringing. ² James Johnstone of Lochwood beheidit at the crose of Edinburgh, for oppression, slaughter, and raising of fyre and vther maney crymes.—*Birrel*. ³ The rest of the Assise composed of merchants. ⁴ This Judge is first noticed, Nov. 3, 1603. ⁵ See p. 432, where he is said to have been killed, 7th February preceding!

within the said burcht of Edinburgh, quhilk hes intervenit sen the raising of the saidis letteris, we nor the personis summond on the Assyse of the persones dilaitit, may nocht guidlie repair thither, for feir of the said plaigue. Qubairthrow, necessar it is that the day soirsaid be prorogat and continewit to ane certane vther competent day thairefter, that (gif it pleis God to stay the said plaigue) we may saiflie resbirt and repair to the said burcht of Edinburgh, to the effect aboue specifieit. Heirfoir, we besekie your lordschipis, that ye will give command to our fouerane lordis Justice, Justice-clark and thair deputis, to continew the day soirsaid, to ane certane vther lauchfull competent day thaireftur; and to wairne the partie and the persones summond vpon the said Assyse thairto; qubairthrow we may the mair saiflie repair to the said burcht to the effect aboue writtin: Quhairanent it will pleis your lordschipis to dispense with us, and all panes and vnlawis, quhairinto we or ather of ws, or ony of the persones summond vpon the said Assyse, may ony maner of way be vnlawit or adiudget, for our non-compeirance, at the said vijj day of Noveumber instant: And your lordschipis ansuer humlie we besekie. [FIAT UT PETITUR.] (Sic subscribitur) MONTROISS, CANBUS. M. R. YOUNG.

According to the quhilk Warrant, the Justice continewit the said dyet to the said xxij day of December nixtocum; and ordanit the parteis to be summond, and ane Assyse also to be summond to the said day; and the cautioner to stand obleift for reporthing of the saidis letteris, deulie execute and indorsate, agane the said day.

Slaughter.

NOV. 17.—JAMES KYNNAIRD in Inchtur, Williame Haitlie in Balgay, and Williame Kynnaird, sone to the Laird of Kynnaird.

Patrik Bruce of Fyngask and Johnne Kynnaird, fear of that Ilk, americiated in the pane of ane hundreth merkis, for ather of the saidis James, &c. for nocht entrie of thame to haif vnderlyne the law, for airt and pairt of the fellow and crewall Slauchter of vmq^{le} Johnne Scherp, seruitour to the Laird of Ruthven; committit vpon the first day of July lastbypast, vpon set purpois, prouisioun and foirthocht felony. And James Kynnaird, &c. to be denuncet rebellis, and put to the horne, &c.

Slaughter.

NOV. 23.—JAMES CUMING, fear of Alter, Johne Cuming, his seruand.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Thomas Hay of Edinvaill; committit the xx day of July lastbypast, betuix the place of Alter and the toun¹ of Edinvaill, vpoun sett purpois, provisioune and foirthocht felony.

Williame Hay, as brother, and Robert Hay, as sone, to vmq^{le} Thomas Hay, produced the letteris, dewlie execute, &c.—Alexander Rychardfoun, Minister of Dolese, declarit vpoun his grit aith, tane vpoun ane buik, that the said James Cuming wes heavelie diseifit with ane flux of natour, and ane flux of his body, and that he wes subiect to the said seiknes: And Mr Alexander Cuming offered to prove that 'he may nocht travell,' &c.—Williame Cuming, fear of Ernfyde,

¹ Farm-steading.

as cautioner, was vnlawit for non-entrie of the said James Cuming, in the pane of ane thowfand mark, and for nocht entrie of Johne Cuming, in the pane of ane hundreth merks; and they ordanit to be denunceit, &c.

Nov. 24.—Letters of Horning given in by Robert Hay, feruitour to Frances Erle of Erroll, to be regiftrate against the pannell, with executions and denouciatiounis, &c.

[*CURIA tenta per Archibaldum Ergadie Comitem, Justiciarum Generalem et Magistrum Willelmum Hairt ejus deputatum principalem.*]

Erason — Hamesucken — Oppression — Stouthreif, &c.

Jan. 12, 1604.—GEORGE MELDRUM, younger of Dumbrek.

Dilatit, accufet and perfewit be Sir Thomas Hammiltoun of Monkland, aduocat to our fouerane lord for his hienes entreis, of the crymes following, to witt.

FORSAMEKILL as the said George, haifing confaut ane deidlie feid, rancor and malice aganis Andro Meldrum, his brother, he, accompaneit with dyuerse vtheris his complices and fervandis, to the number of ten perfones, or thairby, all bodin in feir of weir,¹ with hagbutis, dagis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be our fouerane lordis Actis of Parliament, in the moneth of or thairby, the yeir of God Im.Vc. fourfcoir nyntene yeiris, being four yeir fyne, or thairby, come to the Mylnetoun of Dumbrek, quhair the said Andro was, in fober and quyet maner for the tyme, &c.; and thair fet vpon him, and crewallie invaidit him for his Slauchter, and hurt and woundit him in his hand, schoulder and face, to the effusione of his bluid in greit quantitie: And thaireftir tresfonabillie tuik the said Andro captiue and priffoner, had and convoyit him to the place of Dumbrek, quhair the said George detenit him as captiue, be the space of auclit oulkis, or thairby, in ftrait firmance and captiuitie; and thaireftir transportit him to the place of Ernefyde, quhair the said George and his fervandis keipit the said Andro in ftrait firmance, be the space of fyftene or tuentie dayis, quhill he escaipit fra thame perforce: Vfurpand thairby our fouerane lordis auctoritie vpon him, in taking of the said Andro, his hienes frie lege man, but² Commissioun, and detening him in captiuitie, be the space foirsaid; committing thairby manifest Tresfone: AND als, for contravening the tennour of the Actis of Parliament, in beiring, weiring and vfeing of the saidis hagbuttis and pistolettis. ITEM, floramekill as the said George, haifing confaut ane deidlie feid, rancour and malice aganis Andro Meldrum of Achquharteis, laillie, in the monethis of September or October, the yeir of God Im.Vj^c. yeiris, being accompaneit with Patrik Scheill and Alexander Meldrum, his fervandis, bodin in feir of weir, with hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, come be way of Hamefukkin to the place of Achquharteis, vnder flence and clud of nycht, about foure houris in the moirning, befoir day; and thair, the said George darnit³ him selff and his fervandis in ane out-hous, belonging to the said Andro, neir to the said place, quhair he remanit quyet, bequill about ellevin houris of the day, that the said Andro Meldrum come furth to ouerfie his awin turnes,⁴ and thair fet vpon the said Andro Meldrum, and tresfonabillie pat violent handis in his perfone, tnik him captiue and priffoner, and convoyit him away with him as ane malefactor, fra his said duelling-hous, and brocht him south oner to Andro Fyfes hous, in the Burrow-mure of Edinburgh, belyde Merchinfoune; quhair the said George detenit him captiue, be the space of thre or foure dayis thair-efter, quhill the said Andro ('*efchewit*,' or '*escaipit*')⁵ furth of the said hous, by⁶ his knowlege and aganis

¹ Arrayed in warlike manner.

² Without.

³ Hid, concealed.

⁴ Concerns, business, affairs.

⁵ Upon the said Andrew escaped. A word is omitted in the Record.

⁶ Beside, without or contrary to his know-
ledge, unknown to him.

his will: Vfurpand thairthrow our fouerane lordis authoritie vpon him, in taking and keiping captiue of the said Andro Meldrum of Acqubarteis, his hienes frie liege man, but¹ commissioun or auctoritie, and committing thairby manifest Tressone: AND als, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis and pistolettis. ITEM, florflamekill as the said George, haifing consaet aue deidlie feid, rancour and malice aganis Mr Alexander Gibfone, aue of the Clerkis of our fouerane lordis Counsell and Sessioune, he, accompaneit with Nicoll Jardane, Robert Jardane, Johnne Johnston, callit *Seyne-fute*, Johnne Ker, sone to the Tutour of Gradane, and Alexander Bartilmo, with tua fute-bois, aue company of cowmounne and notorious thevis, brigandis and murderouris, all bodin in feir of weir, with suordis, hagbutis and pistolettis, expresse prohibeit to be borne or worne, as said is, laitlie, in the moneth of October or September, the yeir of God, I^m. fax hundreth and aue yeiris, being adverteist of the said Mr Alexanderis dyett, be aue fellow callit Craik, the said George Meldrumis awin man, quhome he send to espy the said Mr Alexanderis dyet within the Citie of St Androis; at the quhilke tyme, he fet vpon the said Mr Alexander Gibfone, Mr Alexander Levingfoun, aduocat, and Robert Guthrie, fervand to the said Mr Alexander Gibfone, within the boundis of the scherefdome of Fyffe, besyde the Watter-syde of Dundie, quhair thay war in sober and quyet maner rydand for the tyme, dreidand na harme, iniurie, or perforce of ony persones, bot to haif levit vnder Godis peax and our fouerane lordis: and thair crewallie Invaidit thame for thair Slauchteris, and compellit thame to rander thame selfis to the said George and his complices foirfaisdis; and tressonabillie pat violent handis in thair persones, tuik thame captiues and prissoneris, had and convoyit thame away with him out of the way, and besyde Couper-in Fyfe, (he being aue landit gentilman,) tressonabillie, be way of maisterful Stouthreif, rest fra thame thair purffis, with certane gold and siluer being thairin, extending to the quantie of thre hundreth merkis or thairby; and thaireftir convoyit thame to the toun of Kinghorne, quhair he demittit² the saidis Mr Alexander Levingfoun and Robert Guthrie: And thairfra convoyit the said Alexander Gibfone, and brocht him with thame selfis ouer the fierrie of Kinghorne to Leyth, and convoyit him captiue to Williame Kayis house in Leyth, quhair Serjand Moffet come to thame; and thairfra the said George maist tressonabillie convoyit the said Mr Alexander Gibfone captiue by³ the Palice zet of Halyrudhous, throw aue gritt pairt of Louthiane and throw Tueddell, to the toun of Melrois; and besoir thair entrie within the said toun, the said George, with his complices, devydit the gold that was in the tua purffis amangis thame, quhair of ilk aue of thame gat tuentie merkis, or thairby, for thair pairtis; and fra the said toun of Melrois thay convoyit the said Mr Alexander captiue vnto Ingland, to George Rattleiffis house; quhair thair detenit him captiue and prissoner be the space of aucht dayis or thairby: Vfurpand thairby our fouerane lordis auctoritie vpon thame, in taking the saidis persones, thay being his Maiesteis frie leigis; haifing na power nor Commissioun to that effect; in manifest contempt of his Maieste: committand thairby manifest Tressone: LYK AS, the said George, being aue landit Gentilman, committit maist tressonabill Thift and Stouthreif, in reiffing of thair purffis, and gold foirfaisd being thairin; AND siclyk, for beiring and weiring of hagbutis and pistolettis, contrair the tennour of the Actis of Parliament. Off the quhilkis crymes *respectiue* aboue writtin, the said George was speciall actour; at the leist, airt and pairt thairof. AND last, the said George being indytit and accusit, florflamekill as he, accompaneit with Johnne Meldrum, his brother, and dyuerse vtheris, his complices, laitlie, in the moneth of November lastbypast, being bodin in feir of weir, with hagbutis, dagis and pistolettis, prohibeit to be borne or worne, as said is, be our fouerane lordis Actis of Parliament and Secreit Counfall, come to the place of Dumbrek, pertening heritable, and being in the lauchfull possessioun of Andro Meldrum, his brother, keipit be him and his servandis, and tuik the samyn place perforce, and held and detenit the samyn be the space of fevin oulks or thairby.⁴

¹ Without. ² Suffered to go, dismissed. ³ Past. ⁴ This latter part of the Dittay is thus shortly given in another place of the Record: And for taking of the place of Dumbrek, and keiping of the samyn aganis the Kingis gaird, quha, be vertue of aue Commissiounne, was commanded to pas to the said hous and chairge him to rander the samyn; quhilke he dissobeyit.

ASSISA.

James Tennent of Kairnes,	William Foulertoun of Arde,	Jo. Creichtoune, Y ^r of Strathurd,
J ⁿ Kynseir, younger of that ilk,	Alex ^r Falconer of Halkertoun,	Da. Haddene, tutour of Glennageis,
Mr Patrik Balfour of Pitcullo,	Johne Veitche of Dawik,	Thomas Ker of Caveris,
George Murray of Brochtoune,	William Burnet of the Bairnes,	Geo. Hereis of Kirkstone of Eshe,
Archebald Ogilvie of Keillour,	Aulay M'caulay of Ardincapell,	Johne Boyle of Kelburne.

For verification quhairof, the said Sir Thomas Hammiltoun producet the said George Depositiones, subscryuit with his hand, beiring his Confessioun of the hail crymes aboue specifeit. The Aduocat askit instrumentis, (1.) Of the fweiring of the Assyis: (2.) That George Meldrum declairis he becumis in his Maiefteis will, for the taking and hurting of his brother, and for the taking of the Guidman of Acquhariteis. (3.) Of George Meldrumis cuming in will, for the offence done to Mr Alexander Gibfoune and his company. (4.) Of the reiding of the pannellis Depositiones to the Assyse judicialle: And (5.) In respect thair-of, and of his Confessioun thairof, in judgement, and becuming in will for the hail Dittay, protestis for Wilfull Error, in cais thai acquit.

VERDICT. The Assyse, be the mouth of the said Alexander Falconer of Halkertoun, chancellor, fand, pronuncet and declairit the said George Meldrum, younger of Dumbrek, to be flyet, culpabill and convict of the hail crymes aboue specifeit.

SENTENCE. And thairfor, the said Justice-generall and Mr William Hairt, his principall depute foirfaid, be the advyse of John Erll of Montrois, chancellor of this realme, and dyuerse vtheris Lordis of his Maiefteis Secret Counfall and Sessioun, than sitting in judgment, as Assessoris, (finding the saidis crymes to be tressonable), be the mouth of Robert Scott, dempster of Court, Ordanit the said George Meldrum to be tane to ane scaffold, besyde the mercait croce of Edinburgh, and thair his heid to be strukkin fra his body; and all his landis, heritages, takkis, feidingis, rowmes, possessiones, coirnes, cattell, inficht pleniffing, guidis and geir to be fforfalt, efcheit and inbrocht to our souerane lordis vse, as convict of the saidis tressonable crymes.—Quhilk wes pronuncet for dome.¹

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

'Field of the Lennox,' or 'Conflict of Glenfruin' — Slaughter of the Colquhouns — Stouthreik — Treason — Fire-raising, &c.

[THE proscription and the cruel and systematic persecution of the CLAN-GREGOR, for a long series of years, although, in the abstract, a subject familiar to every reader of Scottish History, has hitherto been very imperfectly explained. The Criminal Records, and the Acts of the Privy Council, throw much light on all the various branches of this extraordinary event. To save the necessity of future repetition, it appears to the Editor to be necessary, at the outset of these proceedings, to give a very brief sketch of the circumstances which led to 'THE FIELD OF THE LENNOX'—or 'THE RAID' or 'CONFLICT OF GLENFRUON,' and of those events which ultimately terminated in the Execution of

¹ 'The 12 of Januar, George Meldrum of Dumbrek behedit, for Oppression and uther odious crymes.'—*Birrel*.

the Laird of MacGregor, and of many others of his name. All the future oppression and persecution of the race of the MacGregors ostensibly take their rise from this Conflict.

The Clan-Gregor, which, from whatever causes, had been for some time looked upon as an unruly tribe, was, for some years previous to 1603, placed under the control of ARCHIBALD (seventh) EARL OF ARGYLE, who, as King's Lieutenant in the ' Bounds of the Clan-Gregor,' was invested with very extensive powers, and who, by his acceptance of the office, was made answerable for all excesses committed by the Clan. In these circumstances, it might be supposed that it was Argyle's interest, as it certainly was his duty, to have done all in his power to retain the Clan-Gregor in obedience to the laws; but, on the contrary, it appears that, from the time he first, as King's Lieutenant, acquired the complete control of the MacGregors, the principal use he made of his power was artfully to stir up the Clan to various acts of aggression and hostility against his own personal enemies, of whom, it is known, COLQUHOUN of Luss was one. It is to this crafty and perfidious system of the Earl, therefore, that we must solely trace the feud between the Colquhouns and MacGregors, which proved, in the end, so hurtful to both; a result, no doubt, all along contemplated by this powerful but treacherous Nobleman. But it is unnecessary to enlarge upon this point, as the Dying Declaration of the Laird of MacGregor places in a very clear light the cruel and deceitful policy pursued by Argyle, and which was too frequently resorted to by others, in those days, for *quieting* the Highlands. It may be remarked, that this interesting document, besides undoubtedly bearing internal evidence of truth, is corroborated, in almost every part of it, by the Public Records.

It is also to be remarked, as particularly worthy of notice, that at the period of this fatal Conflict, both of the contending parties were, in a manner, equally armed with the Royal authority; the Laird of Luss having raised his forces under a Commission, emanating from the King himself; while the Laird of MacGregor marched to invade the Lennox, under the paramount authority of the King's Lieutenant!

The popular accounts of this transaction charge the MacGregors with two atrocities, committed after the battle, viz. the Murder of Sir Humphrey Colquhoun, who had fled from the field of battle, and had taken refuge in the Castle of Bannachra; and the Slaughter of a number of defenceless boys, from the Grammar School or ' College ' of Dumbarton,¹ who, from curiosity, came to see the fight, and had, by Colquhoun's order, been put into a barn for safety; where, on the success of the Highlanders, they were said to have been murdered. In justice to the Clan-Gregor, it is but fair to mention that, on investigating this subject, it clearly appears that Sir Humphrey was murdered in his Castle of Bannachra, in July 1592, above eleven years before this Conflict, by some of the MacFarlans, under circumstances of extreme atrocity. He was succeeded by his brother Sir Alexander, who was alive *anno* 1610. The then Laird of Luss must therefore have fled from the field of battle, leaving his vassals to be cut to pieces by their victorious antagonists. As to the Slaughter of the schoolboys, it is enough to state that this circumstance forms no point of any of the Dittays against those of the MacGregors who were tried for their share in this battle, although every criminalact which could possibly be adduced against each of them is carefully inserted in their Indictments. Such an atrocious fact could not have escaped the notice of all his Majesty's Advocates, for such a length of time—and there was no lack of informers. It is thought that this massacre is alluded to in the Records of the Privy Council, Jan. 5, 1609, where it is stated, that ' Allan Oig M^cIntnach, in Glenco,' when aiding the Clan-Gregor at Glenfrane, ' with his awne hand, murdered, without pity, the number of forty poor perons, who were naked and without armour.'

According to the Editor's usual plan, some passages from contemporary MSS. are appended, in illustration of the facts.]

¹ So called, probably, from their education being conducted in the Collegiate Church there, or under the auspices of the Clergy of that establishment, by virtue of some charitable endowment.

Jan. 20.—ALLASTER M'GREGOUR of Glenftra, Patrik Aldoche M'gregour, Williame M'neill his feruand, Duncan Pudrache¹ M'gregour, and Allaster M'gregour M'kean.

Dilatit, accusit and perfewit, at the instance of Sir Thomas Hammiltoun of Monkland, knycht, aduocat to our fouerane lord, &c. off the crymes following: FORSAMEKILL as thay and ilkane of thame, accumpaneit with vni^{le} Johnne Dow, brother to the said Allafter M'gregour of Glenftra, and vtheris thair kin, freindis, and of thair counfall, haifing concludit the distructioun of Alexander Colquhoune of Lufe, his kyn, freindis and alya, and the hail surname of the Balquhannanis, and to herrie² thair landis; thay conuenit to thamefelfis the Clanhamrone,³ the Clanauverich,⁴ and dyuerse vtheris brokin men and foirneris,⁵ to the number of foure hundreth men, or thairby, all bodin in feir of weir, with hagbuttis, pistolettis, murrionis, mailzie-coittis, pow-aixes,⁶ tua-handit-swoirdis, bowis, darloches, and vtheris wappones, *invasiue*, incontraire the tennour of the Actis of Parliament: And, for the performance of thair wicked conclusioun, vpon the sevint day of Februare lastbypast, come fordward, in arrayit battell, to the Landis of Glenfrwne, pertening to the Laird of Lufe; quhair the said Laird of Lufe, accumpaneit with certane of his freindis, war conuenit, be vertew of our fouerane lordis Commissioun, to resist the saidis persones crewall interpryses; and thair set vpon him, his kyn and freindis, and crewallie invaidit thame for thair slauchteris, schamefullie, crewallie and barbaruslie murdreift and slew Peter Naper of Kilmahew; Johnne Buchannane of Buchlyvie; Tobias Smallet, bailzie of Dumbarten; David Fallefdaill, burges thair; Thomas and James Fallafdaillis, his fones; Walter Colquhoune of Barnehill; Johnne Colquhoune, fear thairof; Adam and Johnne⁷ Colquhones, fones to the Laird of Campstradden; Johnne Colquhoune of Dalmure, and dyuers vtheris persones, our fouerane lordis leigis, to the number of sevint scoir personis or thairby; the maist pairt of thame being tane captiues be the saidis M'gregouris befoir thair pat violent handis in thame, and crewallie slew thame: And treffonabillie tuik Williame Sempill and dyuerse vtheris, our fouerane lordis frie leigis, and convoyit thame away captiue with thame, and be way of maisterfull Stouthreif, staw, rest and away-tuik sax hundreth ky and oxin, aucht hundreth scheip and gait, fourtene scoir of horse and meiris, with the hail pleniffing, guidis and geir, aff the fourfcoir pund land of Lufe; and at the samyn tyme, treffonabillie raifit ffyre in the houffis and barne-zairdis thairof, brunt, waifit and distroyit the samyn, with the coirnis being thairin. And the foirlaidis persones and ilk ane of thame ar airt and pairt

¹ Of the country of Balquhider.

² Spoil, plunder and devastate.

³ Clan Cameron.

⁴ Quere, the Clan Ian Averiche (Abroch), viz. the MacDonalds of Glencoe?

⁵ Sorners, persons

who violently took free quarters, and committed acts of violence, having no fixed home.

⁶ Morions,

coats of mail, poll-axes.

⁷ See Note, Vol. II. p. 426.

of the faidis crowthall, horrible and tressonabill crymes; the lyk quhairof was never committit within this realme: Committing thairby manifest Tressone, in hie and manifest contempt of our souerane lord, his hienes auctorite and lawis.

ASSISA.

Sir Thomas Stewart of Garnetullie, Johnne Blair younger of that Ilk, Thomas Falladail burgess of Colene Campbell younger of Johnne Grahame of Knokdoliene, Dumbartene, Glennorchie, Moyfes Wallace burgess of Ed¹, Johnne² Herring of Lethindie, Alexander Menzeis of Weyme, Sir Robert Creychtoun of Clwny, Williame Stewart, Capitane of Robert Robertsfoun of Strowane, kny³, Dumbartene, J^{oo} Naper fear of Merchintoun, Robert Robertsfoun of Faskelzie, Harie Drummond of Blair, Johnne Blair elder of that Ilk.

For verificatioun quhairof, the said Sir Thomas Hammiltoun of Monkland, aduocat, product the saidis perfoness Depositiones and Confessiones, maid be thame in prefens of dyuerse lordis of his hienes Secret Counfall and Sesshioun, subseruyt with thair handis.—The Aduocat askit instrumentis, (1.) Of the fweiring of the Assyse, and protestit for Wilfull Error aganis thame, in cais thay acquit. (2.) Of the fweiring of the Dittay be the Laird of Lufe. (3.) Of the productione of the pannellis Depositiones to the Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Blair, elder of that Ilk, stand, pronuncet and declairit the saidis Allaster M^cGregour of Glenfra, &c. to be fylet, culpable and convict of the crymes aboue specifit.

SENTENCE. And thairfoir, the Justice-depute, finding the saidis crymes to be tressonabill, be the mouth of James Henderfoun, dempstar of Court, Ordanit the saidis perfoness to be tane to the mercat-croce of Edinburgh, and thair to be hangit vpon ane gibbet quhill thay be deid; and thairefter thair heidis, legis, airmes and remanent pairtis of thair bodeis to be quarterit and put vpon publick places, and thair haill landis, heritageis, annuelrentis, takis, fteidingis, rowmes, possessiones, coirnes, cattell, guidis, geir and fowmes of money pertening to thame, to be sforfaltit, efcheit and inbrocht to our souerane lordis vse, as convict of the saidis tressonabill crymes.

DOCUMENTS *illustrative of* 'THE FIELD OF THE LENNOX,' or 'CONFLICT OF GLENFRUXE,' and of the *Proceedings against* THE LAIRD OF MACGREGOR and his CLAN.

(1.) EXTRACT from *Caldewood's MS. Church History, Advocates' Library*, (Vol. V. p. 677.)

UPON the eight of Februar, a great company of forners and brocken Highland men of the CLANE of MACKGRIGORE, the number of 400 men, came down to Lennox, to reave and spoyle. The people of the country conueened to make impediment. There were flaine of the country people, specially of the surname of COLQUHOUN, to the number of fourscore persons or therby; of which number were landed men of good rank.² The Laird of Luce himself, Chief of the Colquhouns, escaped narrowly.

¹ In another place called *David*. ² The matter is thus noticed by Birrel and Fleming. 'THE 9 of Februar (1603,) the Laird of Mackgrigour, with four hunder of his name and sectioun, enterit in the Lennox, quhair he maid spuilze and slaughter, to the nwmber of 60 honest men, besyd wemen and bearnis. He spairit name quhair he come.—*Birrel's Diary*. (Apr. 9.) Proclamation summonding all the M^cGregouris to compare and wndely the law for the slaughter of the Laird of Luss, and the men of Dumbartane.—*Fleming's MS. Chronicle*.

They carried away a thousand head of cattell, beside other infight and plenifhing. It was reported, that that was done at the infigation of the Duke of Lennox his lady, seeking the wrack of the Laird of Luce, who held of the King, and not of the Duke !

(II.) EXTRACT from *MS. History of Scotland, Anon. Advocates' Library*, (A. 4. 35.)

NOW, on the secund day of October (1603), THE LAIRD OF ARKINLES takis in hand to THE ERLL OF ARGYLL, to tak THE LAIRD OF MACGREGOUR; and callis him to ane bankatt¹ in his hous, quihilk hous fluid within ane Loche; and thair takis him prifioner, to fend him to Argyll. And putting him in ane boitt, with fyve menne with him, by² thame that rowit the boitt; he, feing him selff betreisfit, gettis his handis lowfe; and striking him our burd that was narrest him, he lowpis in the watter, and out-fowmis³ to the land. And so efcheappis wntene,⁴ for the presentt. Now the Erll Argyll, perseaffing that he wes efchapitt, he fendis to him, defyring him to cum to him, that he mycht confer with him, wnder promeis to lett him gang frie, gif thay culd nocht agrie. Wpoun the quibilk, the Laird Mcgregour come to him; and, at his cuming, was weill ressaunt be the Erll; quha fchew him, that he was commandit be the King to bring him in; bot he had no doubt bot his Majesty wald, at his requesit, pardoun his offence; and he fuld, with all diligenfe, fend tua Gentill menne to Ingland with him, and fuld with all diligenfe follow him selff. Wpoun the quibilk fair promeis he was content; and come with the Erll of Argyll to Edinburgh; quhair, on the 10 day, he was be the Gaird convoyit to Berwick, within Inglis grund, and fyne brocht back to Edinburgh. And on the 20 day was hangitt at the Corfe, with tenne of his kin and freindis hangit with him; to the gritt difcredit of the Erll Argyll, quha wes the doare of the famin.⁵

(III.) EXTRACT from *Robert Birrel's Diary, MS., Advocates' Library*, (p. 138.)

THE 2 of October (1603), ALESTER MCGREGOUR of Glainfre tane be the Laird of Arkynles, bot efscapit againe; bot efter, taken be the Earle of Argyll the 4 of Januar; and brocht to Edinburghe the 9 of Januar 1604, with 18 mae of his freindis, McGregouris. He wes convoyit to Berwick be the Gaird, conforme to the Earlis promese; for he promesit to put him out of Scottis grund. Swa he keipit ane Hieland-manis promes; in respect he sent the Gaird to convoy him out of Scottis grund: Bot thair wer not directit to pairt with him, bot to fetche him bak agane! The 18 of Januar, at evine, he come agane to Edinburghe; and vpone the 20 day, he was hangit at the Croce, and ij (*eleven*) of hes freindis and name, upone ane gallous: Himselff, being chieff, he wes hangit his awin licht aboute the rest of hes freindis.

(IV.) EXTRACT from *Calderwood's MS. Church History*.

UPON the 18 of Januar, MAKGREGORE was conveyed be the guard who attended upon the Counsell to Berwick, because Argyle promised to him, when he rendered himself, that he should be carried to Ingland: But a post was appointed to meet him to cause bring them back againe, which was done! Immediately, upon the 20 of Januar, he and sundrie of his Clane were hanged in Edinburghe. Sevine of thair number came in, long before, as pleadges for performance of certaine conditions, which were to be filled by their chief; but they were hanged with the rest, without the knowledge of ane Assyse. They were young men, and reputed honest, for their own parts. The Laird of Makgrigore was hanged a pinne above the rest. A young man, called James Hope, beholding the execution, fell down, and power was taken from the half of his body. When he was carried to ane house, he cryed, that 'one of the Highland men had flott him with ane arrow!' He died upon the Sabbath-day after.

¹ Invites him to a banquet. ² Forbye, over and above, besides. ³ Swims out, outstrips the boat by his swift swimming. ⁴ Untaken. ⁵ *Fleming*, in his Chronicle, (MS. Adv. Library,) thus records the event. "The Laird of Mcgregour hangit at Edinburghe and xj of his onhappy kin. They hang all nicht on the gallous."— This almost unexampled act of perfidy, on the part of Argyle, the King's Lieutenant, and the Justice-General of Scotland, gives a lamentable picture of the features of those unhappy times; and it would appear that the government seemed to think it no discredit to take advantage of such an infamous breach of trust.

(V.) THE LAIRD OF MCGREGOURS DECLARATIOUN, *producit the tyme of Conviction*.¹

I, ALLESTER MAGRIGOUR of Glenstra, CONFESSE heir before God, that I have bein persuaadit, movit and intyfit, as I am now presentlic accusit and trublit for; also, gif I had usit counsall or command of the man that hes Intyfit me,² I wald have done and committit findrie heich Murthouris mair; sfor trowlie, sen I was firft his Majesties man,³ I culd never be at ane eise, by my Lord of Argylls falschete and inventiones; for he causit M^cClaine and Glenchamrowne⁴ committ herfchip and slauchter in my roum of Rennoche, the quhilik causit my pure men therefter to bege and steill: Also, therefter, he moweit my brother and sum of my freindis to commit baith herfchip and slauchter upone the Laird of Lufs: Also, he persuaidit myfelfe, with message, to weir⁵ aganis the Laird of Boqubanene, quhilik I did refuise; for the quhilik I was contenowalie hostit⁶ that he sould be my unfreind; and quhen I did refuise his desire in that point, then he intyfit me with uther messingeris, as be the Laird of M^cknachtane and utheris of my freindis, to weir and truble the Laird of Lufs; quhilik I behuffit to do for his fals boutgaitis:⁷ Then, quhen he saw I was at ane strait, he causit me trow⁸ he was my guid freind; bot I did persave that he was slaw⁹ therin: Then I made my moyan¹⁰ to pleis his Majestie and Lords of Counsall, baith of service and obedience, to punefche faultouris and to saif innocent men;¹¹ and quhen Argyll was maid foresein¹² thereof, he intyfit me to stay and start fra thay conditionis, causing me to understand, that I was diffavit; bot with fair wordis, to put me in ane snair, that he mycht gett the lands of Kintyre in feyell¹³ fra his Majestie, begane to putt at me and my kin:¹⁴ The quhilik Argyll inventit, maist schamfullie, and persuaid the Laird of Ardkinlafs to dissave me, quba was the man I did maist trest into; bot God did releif me in the mean tyme to libertie, maist narrowlie.¹⁵ Neuertheless, Argyll maid the oppin brutt,¹⁶ that Ardkinlafs did all that falsheid by¹⁷ his knowlege; quhilik he did intyfe me, with oft and findrie messages, that he wald mak my peace and saif my lyfe and landis, only to puneis certane faltouris of my kin, and my innocent freindis¹⁸ to renunce thair surname, and to leif peaseable. Vpone the quhilik conditionis, he was suorne be ane ayth to his freindis; and they suorne to me; and als, I haif his warrand and handvrytt therevpon. The quhilik promeis, gif they be honestlie keipit, I let God be Judge! And at our meting, in oure awin chalmere, he was suorne to me, in witness of his awin freind. Attour,¹⁹ I Confess, befor God, that he did all his craftie diligence to intyfe me to slay and destroy the Laird Ardkinlappill, M^ckallay,²⁰ for ony ganes kyndnes or freindfchip that he mycht do or gif me.²¹ The quhilik I did refuise, in respect of my faithfull promeis maid to M^ckallay of befor.²² Also, he did all the diligence he culd, to mowe me to slay the Laird of Ardkyndlas, in lyk

¹ THE Original of the very interesting and important Paper now given, is preserved in the General Register House, and is in the hand of the then Clerk of Secret Council, James Primrose. It is marked as—'PRESENTIE DE MA WILLIAME HAIRT,' (of Leivlands) as an article of evidence of his guilt, at his Trial. It will be recollected that this person officiated as Justice Depute on the occasion. Glenstray had surrendered to Argyll, on condition of his being permitted to go to England; by which the former meant that he should visit the English Court, and have, if possible, access to the King. It was obviously Argyll's policy to prevent this; but, that he might fulfill his promise, he sent him, under a strong escort of troops, to beyond the river Tweed, at Berwick, where the soldiers, wheeling to the right about, made MacGregor retrace his steps. He was two days only in Edinburgh, after his return from England, when he was executed.—See *Sir James Balfour's Annals*, and Nos. II. and IV. of these illustrative documents. ² The Earl of Argyll, King's Lieutenant in the Bounds of the Clan-Gregor, since July, 1596.—*Records of Secret Council*. ³ He had taken the usual oath to be his Majesty's 'household-man,' 27th July 1596, as appears from the Record of Secret Council. ⁴ Clan-Cameron. ⁵ Wage war. ⁶ Threatened. ⁷ Deceitful courses; literally, 'round-about ways.' ⁸ Believe. ⁹ Slow, slack. ¹⁰ Did my endeavour, moyen. ¹¹ This point is illustrated by an *Original Paper*, preserved in the General Register House, of date July 24, 1599. ¹² Advertised, informed. ¹³ Fee, feudarm. ¹⁴ This refers to the Royal promise of reward to Argyll, after Feb. 7, 1603, for apprehending Glenstray; which reward, as he had earned it, he afterwards received; and it was confirmed to him by the Parliament, 1607. ¹⁵ This refers to that escape from Campbell of Ardkinglass, hereditary Sheriff of Argyllshire, mentioned by *Sir James Balfour* and by *Birrel*. ¹⁶ Report. *French, brutt*. ¹⁷ Without, contrary to his knowledge. ¹⁸ Such of them as were innocent of the crimes charged against the Clan generally. ¹⁹ Moreover. ²⁰ Patrick MacAwlay. ²¹ In the *Lord Treasurer's Books of Scotland*. Nov. 1602, is the following entry: 'Item, to Patrik McOmies, messenger, passand of Edinburgh, w^t Lettres to charge Ar^d Earle of Argyll to compeir personallie befor the Counsall, the xvj day of December next, to answer to sic things as salbe inquirit at him, touching his lying at await for the Laird of Ardkinlappill, vpon set purposis to have slane him, xvj li.' ²² GLENSTRAY and MACAWLAY had entered into a Bond of Clanship, May 27, 1591, in which the latter owns his

maner; bot I neuer grantit therto:¹ Throw the quhilk he did invy me grettumly.² And now, feing God and man feis it is greidenes of warldlie geir quhilk caufis him to putt at me and my kin, and not the weill of the realme, nor to pacifie the samyn, nor to his Majesteis honour, bot to putt down innocent men, to cause pure bairnes and infantis bege, and pure wemen to perish for lungur, quhen they ar hereit of thair geir: The quhilk, I pray God, that thais falsis lycht not upon his Majestie herefter, nor upon his successeione. Quherfor, I wald besek God that his Majestie knew the weratie, that at this hour I wald be content to tak Banefiment, with all my kin that was at the Laird of Luffis slauchter, and all utheris of thame that ony falt can be laid to thair charge: And his Majestie, of his mercie, to lat pure innocent men and young bairnes pas to libertie, and lerne to leiff as innocent men: The quhilk I wald fulfill, but ony kynd of fail:³ quhilk wald be mair to the will of God and his Majesteis honour, nor⁴ the greidie, cruell forme that is devyfit, only for leuf of geir, haueing nether respect to God nor honestie!

Field of Glenfrune — Murder — Fire-raising, &c.

Feb. 17.—JOHNE DOW M^cEWIN M^cGREGOUR, Patrik M^cilvarnoch, his man, Duncan M^cenham M^cgregour, Duncan M^cAllester Vrek, Allester M^cEwin V^ccondochie, Johnne M^cean V^cgregour, Ewin M^ccondochie clerich, Johnne Ammonoche M^cgregour, Duncan Beg M^cgregour V^ccoull chere, Gregour M^cNicoll in Dalveich, Johnne Dow M^ccondochie V^cewin.

Dilatit of certane crymes of Murthour, Thift, Soirning; and for being at the feild of Glenfrune, in companie with vmq^le Allaister M^cgregour of Glenftra,⁵ his kyn and freindis; and of the Slauchteris, flyre-raising, Reif and Herfchippis committit in the moneth of februarie 1603 yeiris, aganis the Laird of Lufe, his freindis and pairtakeris, viz. (1.) *Johnne Dow M^cEwin M^cgregour*, for his intercowmning with vmq^le Allaister M^cgregour of Glenftra, vmq^le Patrik Aulauch M^cgregour and vtheris thair complices, quha war at the tressonabill burning of Robert Watterfones barne of Kallechoit, and at the steilling of the Laird of Merchinstounes oxin; committit in September last. ITEM, of airt and pairt of the thiftious steilling, furth of Andro Allanes houfe in Kipine, of fyve ky; committit in October last. ITEM, for airt and pairt of the slauchter of vmq^le Johnne Drummond in Drony of Cowgask; committit in August last. ITEM, for airt and pairt of the steilling of ane milk zow⁶ fra Patrik M^cboricht, furth of his duelling-hous of Glenmawak; committit in September last. AND ficlyk, of cowmone Thift and cowmone reffet of thift.—(2.) *Patrik M^cilvarnoch*, fervand to the said Johnne Dow, of airt and pairt of the hail crymes aboue writtin; as being in companie with his said maister thairat.—(3.) *Duncan M^cinham V^cgregour*, for airt and pairt of the thiftious steilling fra Eduard Reidochie of

being a Cadet of the House of the former, and promises to pay him 'THE CALP'.—*Paper in the General Register House.* This instrument had, as would seem, been discovered by the Government, and led to the suspicion, alluded to in a former part of this work (See May 17, 1603), that MacAulay had aided Glenstray in the feud of Glenfruin. MacAulay seems to have escaped death, by being under the protection of the Duke of Lennox, and forming one of his train or 'Tail,' in the King's journey to England, to take possession of the English Throne.

¹ Ardinglass, as appears from the *Book of Taymouth*, was Glenstray's near kinsman.

² Bore a great or

mortal grudge at me.

³ Without failure or evasion.

⁴ Than.

⁵ See Jan. 20, 1604.

⁶ Ewe.

fyve horſe and meiris ; committit in the moneth of I^m.V^c. fourfoir and fourtene yeiris. ITEM, of airt and pairt of the thiftious ſteilling fra Allaſter M^ccondochie Vic James Robieſone, in Callewin, of ten horſis and meiris ; committit in the moneth of yeiris.—(4.) *Duncane M^cAllaſter Vrek* in Farne, ffor airt and pairt of the thiftious ſteilling furth of the landis of Air-
 liewicht of fourtie ky, pertening to the Laird of Bandrane ; committit ten yeir
 ſyne or thairby. ITEM, for the thiftious ſteilling furth of the Laird of Strowanes
 crandoche¹ of his hail inficht, worth I^m. lib.² ITEM, for airt and pairt of the
 ſlauchter of v^mq^{le} Donald Dereif. ITEM, for airt and pairt of the thiftious
 ſteilling furth of the landis of Downance in Menteith, of fourtie ky, tuelf horſis ;
 committit in the yeir of God I^m.V^c. fourfoir aucht : And for intercowmoning
 with the Laird of M^cgregour : And for cowmone Thift and cowmone reſſet of
 thift.—(5.) *Ewin M^ccondochie Clerich*, ffor his treſſonabill intercowmoning
 with the Laird of M^cgregour, and ſchawing of fauour and ſupplie to him : And
 for cowmone thift, and cowmone reſſet of thift.—(6.) *Johanne Dow M^ccondochie
 V^cewin*, ffor treſſonabill intercowmoning with v^mq^{le} the Laird of M^cgregour,
 and geving him ſupplie and conforte.—(7.) *Johanne Ammonache M^cgregour* in
 Kingart, ffor airt and pairt of the thiftious ſteilling of ſax ſcheip furth of
 Schandballie ; committit aucht yeir ſyne or thairby. ITEM, for cowmone Thift
 and cowmone reſſet of thift.—(8.) *Allaſter M^cewin V^ccondochie*, in Couldar,
 ffor airt and pairt of the heirſchip of the Downance in Menteith ; and of the
 ſlauchteris than committit ; and ſpeciallie of the ſlauchter of v^mq^{le} Andro
 Grahame.—(9.) *Gregour M^cneill* alias *Cowanache*, ffor airt and pairt of the
 crewall Murthour and Slauchter of v^mq^{le} the ſidler M^ckillope, within his awin
 hous in Dalvey ; committit at Anderſines,³ I^m. ſax hundreth and tua yeiris.
 ITEM, ffor the thiftious reſſetting and treſſonabill intercowmoning (of v^mq^{le} the
 Laird of M^cgregour ?) eftir he wes diſcharged be proclamatioune.—(10.) *Johanne
 M^ckean V^cgregour*, in Glenogill vnder Tawie-barne, ffor the crewall Murthour,
 ſlauchter and drowning of M^ckillopis wyfe, that duelt in Glenartnay, being in
 company with v^mq^{le} Patrik Aulach ; committit in harveſt laſt. ITEM, for
 reſſet of the brokin men of the M^cgregouris, within his duelling-hous, and treſ-
 ſonabill intercowmoning with thame, aganis his hienes Proclamatioune.—(11.)
Duncan Beg M^cgregour V^ccoull Chere, ffor airt and pairt of the crewall Mur-
 thour and ſlauchter of ſevin ſcoir perſones flane at Glenfrwne ; and heirſchip
 than committit thairin, in the moneth of februarye 1603. ITEM, for cowmoun
 thift and cowmoun reſſet of thift : And for the treſſonabill intercowmoning
 with v^mq^{le} the Laird of M^cgregour, eftir he was diſcharged be proclamatioune.

¹ Or *crandoche*, a Highland gentleman's dwelling-house.
 Andrew's-mass, the 30th day of November.

² £1000.

³ St Andrew's day,

ASSISA.

Mr Moreis Drummond of Cul- Mungo Buchannane in Tullie- Jacobi¹ Edmestoun of Newtown,
cherie, chewin, David Drummond in Drymmen,
James Spreull fiear of Cowden, James Dennyftoune of Cowgrane, Johnne Naper of Kilmahew,
Colene Campbell of Aberuchill, Thomas Fallafdaill in Ardoche, Johnne Mufchet at the mylne of
Mungo Lyndfay of Ballull, David Mufchet of Orcheardheid, Tor,
Robert Naper of Blakzairdis, Johnne Buchannane of Ibert, Harrie Mitchell in Darra.

The Aduocat askit instrumentis of the fweiring of the Affyfe; of Johnne Dowis Declaratioune, that Patrik Mⁱlvarnoch his man hes bene with him this tua yeir bygane, and is pairtaker of all his factis. The Aduocat, for verifeing the poyntis of Dittay, producet the Kingis Proclamationne, Actis of Secreit Counfall, contenit in the buik of Secreit Counfall producet, and askit instrumentis thairvpoune: And protestit for Wilfull Errorr aganis the Affyfe, in caife thai acquit.

VERDICT. The Affyis, be the mouth of David Drummond, chancellor, fband, pronuncet and declairit the saidis perfones to be ffylet, culpable and convict of the perticuler poyntis of Dittay aboue writtin.

SENTENCE. The Justice-depute decernit and adjudget the said John Dow, &c. to be tane to the mercait-croce of Edinburgh, and thair to be hangit vpoun ane gibbet quhill thai be deid; and all thair moveabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as convict of the saidis crymes.²

'Field of Glenfrune' — Slaughter of the Colquhouns, &c.

Mar. 1.—NEILL M^cGREGOUR in Meirie (Mewie,) Patrik Gair M^cgregour, Donald Roy M^cgregour, Duncane M^cgregour, Donald Graffiche M^cCadanich.

Dilatit, accuset and perfewit for being in company with vniq^{le} Allafter M^cgregour of Glenftra and his complices, at the ffeild of Glenfrwne,³ and of airt and pairt of the slauchter of fevin fcoir perfones, being all freindis, fervandis, affifteris and pairtakeris with the Laird of Lufe at the said ffeild, and of the heirfchipis thair committit be the said Laird of M^cgregour and his complices: And of the trefonabill raifing of fyre and burning of dyuerfe houffis, within the boundis foirfaid; committit in the moneth of Februare, the yeir of God I^m.Vj^e. and thre yeiris: And ficylk, for intercowmoning with the said Laird of M^cgregour and perfones foirfaidis, his complices, that war at the said slauchter and heirfchip, fen the committing thairof.—AND als, the said Patrik Gair M^cgregour being indyttit and acuset for the hounding out of his thre fones to the said ffeild, and murthouris and slauchteris than committit vpone the said Laird of Luffis freindis: And of airt and pairt, red, counfall, foirknowledge, affiftance and rathabitounne

¹ This person is so named in various places of the Record. ² 'The 18th of Februar, 9 of the name of MacGregor hangit, quho had lain lang in the Tolbuith.'—Birrel. ³ See Jan. 20, 1604.

of the said murthouris and heirfchippis : And siclyke, for the reffett and intercowmoning with the Laird of M^cgregour and his complices that war at Glenfrune, and reffetting of thame with the bludie hand, fen the tyme foirfaid of the said heirfchip and flauchteris.

ASSISA.

Mungo Lyndfay of Ballull,	Constene Moirtoun,	Robert Buchannane in Kippen,
Johne Buchannane, burges of	Hew Glen of Lynthillis,	Robert Buchannane Walterfoune,
Dumbarten,	Johne Buntene of Ardoche,	Dougall M ^c farlen in Murnagane,
George Buchannane in Ladrifch,	Thomas Naper of Barriekynrayne,	Walter Blair of Fynnech,
Thomas Fallafdaille, burges of	Johne Naper of Kilmahew,	David Hadden (Haldene,) Tutour
Dumbarten,	Johne Sempill of Foulwoid,	of Glennageis.

VERDICT. The said Assyse, all in ane voce, be the mouth of the said Robert Buchannane Walterfoune, ffand, pronuncet and declairit the saidis fyve perfones to be fyllet, culpable and convict of the hail crymes aboue specifet.

SENTENCE. And thairfoir, the Justice-depute, be the moutin of Robert Scott, dempftar of Court, decernit and ordanit the saidis perfones to be tane to the gallowe of the Burrow-mure of Edinburghe, and thairupoun to be hangit quhill thay be deid ; and thair hail moveable guidis to be efcheit and inbrocht to his hienes vfe, as convict of the saidis crymes.

Thett — Reset of Laird of MacGregor — ' Field of Glenfrune,' &c.

Mar. 2.—MALCOLME M^cCOULL CLERICH (M^ccherich,) in Innerlochlarg ; Duncan M^cfadrik V^ccoull Chere, in Innerlochlarg, vnder the Laird of Tulliebardin ; Johnne M^ccoull Chere, in the Bray of Balquhidder, and Neill M^cWilliamme V^cNeill.

Dilaitit of certane poyntis of Thift ; and for Intercowmoning with vmq^{le} the Laird of M^cgregour, fen the Raid of Glenfrune, viz. (1.) *Malcolme M^ccoull Cleriche (Cheriche)*, ffor airt and pairt, and being on the grundis at the crewall Slauchter of vmq^{le} Hew Stewart, ferveand to my Lord Athole ; committit threttie yeir fyne, or thairby. ITEM, for airt and pairt of the flauchter of vmq^{le} Patrik M^cgregour, in Glenbokie ; committit in the moneth of September, the yeir of God I^o.V^c. threfcoir faxtene yeiris. ITEM, for geving of counfall to vmq^{le} the Laird of Makgregour, his kyn and freindis, to pas forward aganis the Laird of Lufe to Glenfrune ;¹ and for convoying² the said Laird of M^cgregour agaitwart³ to the fyd of Lochloun, afoir the ffeild : And for airt and pairt of the flauchteris and heirfchippis committit at Glenfrune be the said Laird of M^cgregour and his complices, in the moneth of Februare 1603 yeiris. ITEM, for the trefsonable Intercowmoning with the said Laird of M^cgregour, and Reffett of him and his freindis and pairtakeris that war at the ffeild of Glenfrune, and geving of thame herbrie, help and fupplie, in meit, drink and bedding, wittinglie and willinglie,

¹ See Jan, 20, 1604.

² Escorting.

³ On the way or *gait*.

at dyuerse tymes, fen thai war denuncet our fouerane lordis rebellis and declairit tratouris, and fen his Maieftis Proclamatioune, inhibeiting all our fouerane lordis leigis to intercowmone, reffett or gif countenance or fchaw fauour to the faidis rebellis.—(2.) *Duncan M^cfadrik V^ccoull cheir*, ffor airt and pairt of the Slauchter of the faid v^mq^{le} Patrik M^cgregour; committit in September 1576 yeiris. ITEM, for geving of counfall to the Laird of M^cgregour to pas fordward to the ffeild of Glenfrune aganis the Laird of Lufe, and conuoying him to the fyde of Lochloun, agaitward, to the faid ffeild. ITEM, for wilfull Intercomoning and geving of counfall to the Laird of M^cgregour, and conuening with him in dyuerse meittingis and conuentiones, had and keipit be him and his freindis, fen thai war denuncet his Maieftis rebellis, for the Murthour, Slauchteris and heirfchipis committit be thame at the faid ffeild of Glenfrune, incontract to his Maieftis proclamatioune.—(3.) *Neill M^cWilliame V^cNeill*, ffor the treflonabill Intercomoning with the Laird of M^cgregour, his kin and freindis that war at the murthour and heirfchipis in Glenfrune, and reffett of thame within his hous, and geving meit and drink to thame wittinglie and willinglie, at dyuerse tymes fen thai war denuncet rebellis, &c.—(4.) AND ficlyk, *Johune M^ccoull Cheire*, ffor airt and pairt of the crewall Murthour and Burning of aughtene houfhalderis of the Clanlawren,¹ thair wyues and bairnis; committit fourtie fax yeir fyne, or thairby. ITEM, off airt and pairt of the Slauchter of v^mq^{le} Hew Stewart, ferveand to my Lord of Athole; committit threttie yeir fyne, or thairby: And in taking pairt with the Clan-Gregouris at the Heirfchip, committit the tyme foirfaid, aganis the Tutour of Bofrak. ITEM, for Intercomoning with the Laird of M^cgregour and his complices that war at the ffeild of Glenfrune, fen thair denuncatioune; and geving of conforte, fupplie and freindfchip to thame, contrair the tennour of the Proclamatioune. ITEM, for cowmone Thift, cowmone reffett of thift, outputing and inputing of thift fra land to land, fra cuntrey (to cuntrey), baith of auld and new.

VERDICT. The Affife, be the mouth of Mungo Lyndfay of Ballull, chancellor, fand, pronuncet and declairit the faidis Malcolme, Duncan and Neill to be ffylit, culpable and convict of the haill crymes and poyntis of Dittay aboue writtin: And the faid Johne M^ccoull Cheire to be Clene, innocent and acquit of the faidis crymes.

SENTENCE. And thairfoir the faid Justice-depute, be the mouth of Robert Scott, dempftar of Court, decernit and ordanit the faidis Malcolme M^ccoull and Duncane M^cFadrik to be tane to the gibbet at the mercat croce of Edinburgh, and thair to be hangit quhill thay be deid; and all thair moveabill guidis to be efcheit and inbrocht to his Maieftis vfe, as convict of the faidis crymes.

¹ The M^cLawrens, or Maclarens, a Clan residing in Balquhiddier.

Slaughter — Fire-raising.

Mar. 2.—DAVID ARMESTRANG, sone to *Sandeis Niniane*.

Dilaitit, accuset and persewit of airt and pairt of the Slauchter of vinq¹⁶ Johnne Jahnnefoun, Persone of Tunnergarth. ITEM, for airt and pairt of the Slauchter of Robert Currie, servand to the Baillie of the Watter of Leyth, and thre mafones with him, at the Oisleris-hous in the Lwn : And for the tresonabill Raifing of fyre, and Burning of the said Oisleris-hous.

VERDICT and SENTENCE. The same Assise, as in the above case, pronounced a similar Verdict of Guilty against Armstrang, who was hanged along with M^ccoull and M^fadrik.¹

Masterful Stouthreif — Theft, &c.

Mar. 10.—THOMAS HARDIE, sone to James Hardie of Bounmylnerig.

Dilaitit of the crymes following, viz. Forfamekill as he, with his complices, laitie, in the moneth of Apryle lastbypast, vnder sylvence and cloud of nycht, betuix nyne and ten houres att ewin, vmbesett the hie way and passage, betuix Leith and Edinburghe, to Jaques De la Berge, ane Fleming and strangeare, he being rydand, in peceabill maner, vp fra Leith to the burgh of Edinburghe ; and thair sett vpon him, tuik his horse be the heid, and caust him lycht fra his horse, and thaireftir rypeit him ; and thifteoullie, be way of maisterfull stouthreif, stall, rest and away-tuik fra the said Jaques De la Berge twa pursis, ane mair and ane vther less, with ane grit quantitie of gold and siluer contenit thairin, being for the maist pairt Inglis money : togidder with ane gold ryng, sett with ane dyamond, with ane broun naig quhairon he raid : And he wes airt and pairt of the thifteous steilling, reiffing, ressetting and away-taking thairof. ITEM, ffor the thifteous steilling, conceiling, ressetting and away-taking of ane blak horse fra James Libbertoun, in Nethir Libbertoun ; quhilk horse he fault thaireftir in Bow-castell, in Ingland.

VERDICT. The Assise, be the mouth of . . . Cokburne of Choullie, chan-celler, stand, pronunceit and declarit him to be ffylit, culpabill and convict of the poyntis of Dittay, &c.

SENTENCE. To be tane to ane gybbet, standand beneath the mercat croce of Edinburghe, and thairvpoun to be hangit quhill he be deid ; and all his moveabill guidis, takis, steidingis, &c. to be escheit, &c.

Horse, Cattle, and Sheep-stealing.

Mar. 10.—WALTER DAUIDSOUN, callit of Callelie.

Convicted by the same Assise, and ordained to be hanged along with Hardie,

¹ *Birrel* remarks, ' 7 MacGregors and Armastrangs wer hangit at the croffe.'

for stealing of horses, oxen and sheep, &c. from lands of Pittalifheuch, belonging to Dickfoun of Buchtrig, Sir Johnne Cokburne of Ormifoun, kny^t, Justice clerk, &c.

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

Slaughter.

Mar. 15.—HECTOUR TRUMBILL of Stanyledge; Hector Trumbill of Barnehillis; George Trumbill, his brother; and Gawin Trumbill, thair father-brother.

Dilatit for airt and pairt of the Slauchter of vinq^{le} Williame, James, Robert, Johnne, Andro and Thomas Grameflawis, sones to vinq^{le} Johnne Grameflaw of Lytill Newtown.

Mr Robert Home of Carolfyde, Hectour Trumbill of Belfis and James Douglas of Caveris, as cautioners, amerciati for non-entry of the pannels, viz. the two first in 400 merks; and Douglas of Cavers, along with Trumbell of Barnehillis, in 1000 merks, 400 merks, and 400 merks. The pannels ordained to be denounced rebels, &c.

Cattle-stealing — Stouthreif, &c.

Mar. 20.—JOHNNE RENTOUN of the Scheillis.

Dilaitit of airt and pairt of the Steilling of ffourtene nolt fra James Burnet, &c. LYK AS, in the moneth of September, the yeir of God I^m.V^c. fourfcoir aucht yeiris, or thairby, vmbefet the hie way and passage to certane cadgeris at the Brokin-mofs, quha war dryveand thre or four pakis of Inglis clayth, pertening to certane merchandis, inhabitantis of the burgh of Edinburghe, and thair, be way of Maisterfull stouthreif, staw, rest and away-tuik fra the saidis cadgeris foure pakis of Inglis clayth, and speciallie ane pak of Inglis clayth, pertening to Gray, mercheand burges of Edinburghe, estimat worth the fowme of Thre thousand merkis, money of this realme, &c. &c.

VERDICT. The Affyse, be the mouth of Mr James Home of Goddifcroft, all in ane voce, ffind the said Johune to be Cleane, innocent and acquit of the hail crymes.

Willfully hearing Mass celebrated.

May 9.—ARCHIBALD MACBREK, burges of Perth.

Dilatit, accuset and perfewit, be Mr Robert Lyntoun, Aduocat substitute to Sir Thomas Hammitoune, &c. for the crymes contenit in the DITAY following.

ARCHIBALD M^cBREK, burges of Perth, Ye ar indyttit and accuset; fforfamekill as it is statute and ordanit, be our fouerane lordis Actis of Parliament, and speciallie, be ane Act of his hienes fourtene

¹ The 10 of Marche, twa notabill thieffes hangit at the crosse, ane Thomas Hardie, and ane Davidson.—*Birrel*.

Parliament, haldin and begwn at Edinburge vpon the aucht day of Junij, the yeir of God 1^m. Vc. fourfcoir fourtene yeiris, that in all tymes coming, all wilfull heiraris of Mefs and conceillaris of the fame fall be execute to the death, and thair baill guidis and geir efcheit to his hienes vfe, as thay fall be fund giltye and convict thairof, or declairit fugitiue for the fame, befor the Justice or his deputis, or the lordis of his Maiefties Previe Counfall, as the faid Act at lenth beris : And trew it is, that Mr Robert Abercrombie, ane Jefuite and Preift, in the moneth of Marche laftbypaft, in the oulk (*week*) befor Palme Sunday laft, being refet and ludget, with his man, in the faid Archibaldis duelling hous in Perth, ane haill nicht ; the faid Mr Robert maid the faid Archibald foirfene, that he was to fay ane Mefs vpon the morne, airtie in the moirning, in George Bofuallis hous in Perth, quhair my lord Inchaffera y and his famelie war ludget, and perfuaidit the faid Archibald to cum and heir the famyn : Lykas, vpon the morne, airtie in the moirning, in ane of the dayis of the oulk befor Palme Sunday, the faid Mr Robert paf first over to the faid George Bofuallis houfe ; and the faid Archibald followit him, and paf vp to the vpper Eifer chalmer of the faid ludgeing, quhair the faid Mr Robert Abircrombie faid ane Mefs : And ye, the faid Archibald, wilfullie and willinglie (being of the trew Religiuon befor your away-paffing furth of this cuntrie, and in your abfence furth of the famyn, made defectioun thairfra to Romifch Religioune), bard the faid Mefs, and refauit the Communion after the Romane maner ; and conceillit the faying and heiring thairof, quhill ye was challanget. For the quhilk wilfull heiring of the faid Mefs and conceilling thairof, ye, the faid Archibald, being convict of the famyn, befor the Justice-generall and his deputis, be Act of Parliament, ye aucht to be pwneifchet to the daith ; and your haill moveabill guidis and geir efcheit to our fouerane lordis vfe : To the taikin,¹ ye haif confeftit the haill premiffes to be of veritie, be your Depofitiones, fubfcriyuit with your hand ; quhilk ye can nocht deny.

VERDICT. The Affyfe, be the mouth of James Nicolfoune, tailgeour in Edinburge, chancellor, ffand, pronuncet and declairit the faid Archibald to be ffylet, culpabill and convict of the Wilfull heiring of Mefs, wittinglie and willinglie, but² compulfion ; and conceilling of the fame, quhill he was challanget ; accoirding to the faid Dittay, and accoirding to his Confefsioun maid thairof in judgement, and Depofitiones productet, fubfcriyuit with his hand.³

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

Slaughter — Horse and Cattle-stealing, &c.

May 15.—**JOHNE BATESOUN**, alias *Jok of the Scoir* ; Archibald Batiessoun, alias *Priket vp Archie*, brother to the faid Johnne ; and Adie Batiessoun, brother to the faid Johnne and Archie.

JOK OF THE SCOIR, dilatit, ffor airt and pairt of the flautcher of vniq^{le} Williame Tuedie of Olipher and thiftious fteilling of ane grit number of ky, oxin and naigis furth of Tueddell ; committit threttie yeir fyne, or thairby. **ITEM**, ffor airt and pairt of the fteilling of foure naigis furth of Sandiehillis ; and of threfcoir nolt furth of Langvrđ. **ITEM**, ffor airt and pairt of the fteilling of four ky and tua horfe, with certane inficht, furth of Bankend in Craufurd-Johnne, pertening to Thomas Weir ; committit tua yeir fyne. **ITEM**, ffor airt and pairt of the fteilling fra William McCalla, in Glenbaithe, of ane meir, and certane inficht

¹ In evidence, or testimony whereof.

² Without.

³ The sentence is not recorded.

of his houfe ; and hurting and wounding of the faid Williame. ITEM, for airt and pairt of the steilling of tua naigis fra ane fervand of Sir Johnne Keris, furth of the Spittellis. ITEM, for airt and pairt of the steilling of fyftene fcoir of ky and oxin, with ane grit number of vther guidis, furth of my Lord zetteris boundis ; committit a xvij yeir fyne, or thairby. ITEM, for steilling and away-taking of tua naigis fra Johnne Symfoun, with his cloik, quhinger and purfe, quhairin thair was xxx f. ITEM, for cowmoun thift and cowmoun refset of thift. —PRIKIT VP ARCHIE, dilaitit of airt and pairt of the thiftious steilling of fourtie nolt, furth of the Schereff of Airis boundis ; and hurting and wounding of ane fervand of the Schereffis, in redding thair of. ITEM, for airt of the steilling of tuentie naigis furth of Sandichillis fra the puir cadgeris ;¹ committit a thre yeir fyne : And for airt and pairt of the Slauchter of ane of the puir cadgeris, at that famyn tyme. ITEM, for airt and pairt of the steilling of fax nolt furth of the Nethir Snab ; committit aucht yeir fyne, or thairby. ITEM, for airt and pairt of the steilling of ane grit number of fcheip furth of Brigend, perteneing to the Laird of Fawfydes fervandis. ITEM, for airt and pairt of the steilling of xxxij oxin furth of Lammermure, perteneing to the Laird of Innerleith. ITEM, for cowmoun thift and cowmoun refset of thift, &c.—ADIE BATTIESOUN, dilaitit for airt and pairt of the Slauchter of vmq¹² Johnne Naper, in company of the faid Johnne his brother ; and steilling of ane grit number of ky and oxin furth of Clydheid. ITEM, for airt and pairt of the steilling of the faid Williame McCall his meir, and hail inficht of his houfe ; and hurting of the faid Williame. ITEM, for airt and pairt of the steilling of ten fcheip furth of the Hill-hous of Clyde, fra Gilbert Johnneftones men ; committit a yeir fyne. ITEM, for the steiling of tua naigis a foure yeir fyne, furth of Sandiehillis, fra certane puir cadgeris. ITEM, for cowmoun thift, cowmone refset of thift, outputing and inputing of thift, fra land to land, fra cuntrey to cuntrey, baith of auld and of new.

VERDICT. For the quhilkis crymes, the faidis thre perfones wer put to the knowlege of ane Affyfe, and thair all, in ane voce, be the mouth of Donald Thornetoun, burges of Edinburghe, chancellor, ffand, pronuncet and declairit the faidis Johnne, Archie and Adie Batiefones to be ffylit, culpabill and convict of the crymes aboue fpecifeit, according to thair Depofitiones, gevin vp be thame thair of, and Confefsioun of the famyn in Judgement.

SENTENCE. To be tane to the mercait croce of Edinburghe, and thair to be hangit on ane gibbet, quhill thair be deid ; and thair hail moveabill guidis to be efcheit and inbrocht, &c.

¹ The Carriers, who, for hire, transported goods on pack-saddles, &c. By means of this useful class, most part of the merchandise and heavy carriages were conveyed to all parts of the kingdom. They usually travelled in companies, for mutual protection ; but were often overpowered, and in many cases slain, in faithfully defending the property committed to their charge.

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

Slaughter — Bearing and Weiring of Pistolets.

May 16.—HECTOUR TRUMBILL of Lylslie (Lilliesleaf.)

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Thomas Ker (of Craling), brother to the Laird of Farnihirst, and George Glaidner, his servand : And for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of Piftolettis : And vtheris crymes contenit in our fouerane lordis letteris direct thairypoun.

Hectour Trumbill of Belfis vnlawit and amerciati, as cautioner, for nocht entrie of the said Hectour, in the panes contenit in the Actis of Parliament ; and the pannel adiudget to be denuncet rebell and put to the horne, and all his moveabill guidis to be efcheit, as fugitiue fra his hienes lawis for the saidis crymis.

Slaughter.

May 18.—WILLIAME STEWART, brother to my Lord Vchiltrie, Williame Stewart, sone to Sir Williame Stewart of Carstairs, kn^t.

Dilaitit for the Slauchter of vmq^{le} Robert Cathcart, wryter.¹

Maufe Aikman, relict of the said vmq^{le} Robert, producet our fouerane lordis letteris, deulie execute ; and offerit hir selff reddie to persew.

THE JUSTICE continewis to the thrid day of the nixt Justice-air of Air, quhair thay duell, or soner vpon xv dayis wairning. Andro Lord Stewart of Vchiltrie and James Stewart of Lekprevik, become pleges and fouerties, coniunctlie and feuerallie. Johne Grahame of Knokdoliane relieved of his caution.

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

Slaughter.

Jun. 6.—WILLIAME MYDDILMEST of Lilslie-Chappell and James Myddilmest, his brother-germane.

Dilaitit for airt and pairt of the Slauchter of Thomas Ker of Craling, &c.²

Thomas Trumbill of Mynto, as cautioner, vnlawit in the pane of ane thousand merkis and four hundreth merkis for nocht entrie of the saidis pannels. The Justice ordainit thame to be denuncet rebell and put to the horne, and all thair moveabill guidis to be efcheit, &c.

Murder of the Laird of Warristoun — Punishment of breaking on the Wheel.

[FEW Cases of MURDER have excited so lively an interest in the public mind, at the time of their occurrence, as that of THE LAIRD OF WARRISTON. He was a person of considerable note in Edinburgh, and nearly connected with the ancient family of Kincaid of that Ilk in Stirlingshire, then in

¹ See Mar. 4, 1600.

² See May 16, 1604.

possession of extensive estates in the counties of Edinburgh, Linlithgow, &c. JEAN LIVINGSTOUN, the young and beautiful murtheress, was likewise a person of considerable rank, being a daughter of John Livingstoun of Dunipace, and related to many of the first Families in Scotland.

The property of Warristoun being situated about a mile from the City of Edinburgh, news of the Murder instantly reached the proper authorities. Officers were dispatched, who succeeded in taking, 'red-hand,' 'THE LADY WARRISTOUN,' 'the faufe nourife,' as usual, the prime mover of this deed of darkness and treachery, and her two 'hyred women.' Weir alone, the actual perpetrator, escaped for a time, having refused to take the Lady along with him, in his flight; saying, 'You shall tarry still; and if this matter come not to light, you shall say, "he died in the gallery," and I shall return to my Master's service: But if it be known, I shall fly, and take the cryme on me; and none dare pursue you!' Being taken 'red-hand,' the parties were immediately put to the knowledge of an Assise (without the formality of serving a Dittay, &c., as in ordinary cases), before the Magistrates of Edinburgh; or the Trial may have perhaps taken place before the Baron-bailie of the Regality of Broughton, within whose jurisdiction the property of Warristoun was situated, and sentence of death was passed upon them. Unfortunately, the greater part of the Criminal Records of the City of Edinburgh are lost; and, after many fruitless searches, no trace of the proceedings in these Cases can now be elsewhere obtained. The result is thus briefly and quaintly stated by two contemporaneous writers:— 'JOHNE KINCAID of Waristoun murderit be his awin wyffe and servant man; and her nurishe being also upone the conspiracy: The said gentilwoman being apprehendit, scho was tane to the Girth-crosse,¹ upon the 5 day of July, and her heid struk fra her bodie, at the Cannagait-fit; quha deit very patiently. Her nurishe wes brunt at the same tyme, at 4 houres in the morning, the 5 of July.'—*Birrel's Diary*. 'UPON Fryday the 4 (5) of July,² (1600) THE LADY WARRISTOUN, daughter to the Laird of Dunipace, was beheaded in the Cannogate, for the Murder of her husband. The Nurishe and ane hyred woman, her complices, were burnt in the Castlehill of Edinburgh. The horse-boy fled, being guiltie.'—*Calderswood's Church History*, MS. Advocates' Library.

An authentic and extremely interesting 'MEMORIAL' of her 'Conversion,' 'with an account of her carriage at her Execution,' was privately printed, in small Quarto, pp. 48, Edinburgh, 1827, from a paper preserved among Wodrow's MSS. in the Advocates' Library, by Charles Kirkpatrick Sharpe, Esquire, to whose learning, ingenuity, and high accomplishments, the Public has been so often indebted. The very limited impression of this *marceau recherché*, may plead the Editor's apology for stating, as briefly as possible, that this 'Tractate' is entitled, 'A Worthy and Notable Memorial of the great Work of Mercy, which God wrought in the Conversion of Jean Livingstoun Lady Warristoun; who was apprehended for the vile and horrible Murder of her own husband, John Kincaid; committed on Tuesday, July 1, 1600; for which she was execute, on Saturday following: Containing an Account of her obstinacy, earnest repentance, and her turning to God; of the odd speeches she used, during her imprisonment; of her great and marvellous constancy; and of her behaviour and manner of her death: Observed by one who was both a seer and hearer of what was spoken.' From internal evidence, the writer seems to have been Mr James Balfour, the colleague of the notable Mr Robert Bruce. They were the appointed Ministers, in the North-west part of Edinburgh.

¹ The Cross, situated near the *girth*, or sanctuary of Holyrood, an ancient place of refuge, and still affording protection to debtors, when properly registered; who have liberty to walk within the precincts, free from the molestation of their creditors.

² It is probable that the sentence bore, that the pannels should be executed on the evening of Friday the 4th day of July. The subsequent early execution, at sunrise next morning, was effected, at the solicitation of the family of Dunipace, who indirectly urged the Magistrates precipitately to lead Lady Warristoun to the scaffold, before sunrise, shortly after three o'clock in the morning. Owing to a plan, evidently preconcerted, the 'nurishe' and 'hyred woman' were burnt on the Castlehill at four o'clock, so that the populace, who might be so early astir, should have their attentions distracted at two opposite stations, nearly a mile apart from each other, and thus, in some measure, lessen the disgrace of the public execution. It is recorded that the Laird of Dunipace behaved with much apathy towards his daughter, whom he would not so much as see previous to her execution; nor yet would he intercede for her, through whose delinquency he reckoned his blood to be for ever dishonoured.

A great portion of this Memorial is occupied with a very affecting account of the state of her mind, and a faithful and striking delineation of its gradual opening and developement, through the patient and affectionate attentions of her spiritual advisers, from a state of perfect callousness and indifference to every thing connected with Religion and the awful situation in which she was placed, to perfect resignation to her fate, and a cheerful, but unfeigned repentance for all her past offences and crimes. So far as relates to her CONFESSION, it cannot be better related, than by quoting her own energetic words.—‘ I think I hear presently the pitifull and fearfull cryes which he gave when he was strangled! And that vile sin which I committed, in murdering mine own husband, is yet before me. When that horrible and fearfull sin was done, I defyred the unhappy man who did it, (for my own part, the Lord knoweth I laid never my hands upon him to do him evil; but as soon as that man gripped him and began his evil turn, so soon as my husband cryed so fearfully, I leapt out over my bed, and went to the Hall; where I sat all the time, till that unhappy man came to me and reported that mine husband was dead;) I desired him, I say, to take me away with him; for I feared Tryall; albeit flesh and blood made me think my father’s moen¹ at Court would have saved me!’ ‘ As to these weemen who was challenged with me, I will also tell you my mind concerning them. God forgive the Nurse, for the helped me too well in mine evill purpose; for when I told her that I was minded to do so, she consented to the doing of it; And upon Tuesday, when the turn was done, when I sent her to seek the man who would do it, she said, “ I shall go and seek him; and if I get him not, I shall seek another! And if I get none, I shall do it myself!” (This the Nurse also confessed, being asked of it before her death.)’ ‘ As for the other two weemen, I request that you neither put them to death, nor any torture, because I testify they are both innocent; and knew nothing of this deed before it was done, and the mean time of doing of it: And that which they knew, they durst not tell, for fear; for I had compelled them to dissemble. As for mine own part, I thank my God, a thousand times, that I nm so touched with the sense of that sin now: for I will confesse this also to you, that when that horrible Murder was committed first, that I might seem to be innocent, I laboured to counterfeit weeping; but do what I could, I could not find a tear: And so now I suffer; for the Lord would not have that high sin concealed, but would have it manifest, as it is his gracious will to be done.’

Owing to the rank of Lady Warristoun, and the powerful influence of her father and his friends, the *manner* of her death was, on their intercession, mitigated to decapitation by the well-known ‘ Maiden.’ The usual form of death, for females, in such cases, was of the most ignominious and shocking description,—burning, after being strangled at a stake,—and in atrocious instances, the Criminal was ‘ brunt quick!’ A very unbecoming zeal was displayed by her relations, to have her executed as *privately* as possible, and at such a time as would be unknown to the populace. They had first intended and applied for the unusual hour of 9 o’clock on Friday evening, as the time for her execution; which, however, was overruled. The ‘ Memorial’ states, that, ‘ After 3 o’clock in the morning, upon Saturday, the Magistrates wer brought into prison by her friends,³ to take her forth to suffer. Amongst them, some were too earnest to hast her away, that the might be execute, before any should know of it; albeit she was far otherwise minded, herself; for she purposed not to have gone furth till between 5 and 6 in the morning. On this, many, whom I will not name, came and said, “ Will you deprive God’s people of that comfort which they might have, in that poor woman’s death? And will you obstruct the honour of it, by putting her away, before the people rise out of their beds? You do wrong in so doing; for the more publick the death be, the more profitable it shall be to many; and the more gloriouse, in the sight of all who shall see it,” &c. The Magistrates granted also, that she might stay till sun-rising; but her friends⁴ were so importunate that it was not granted!’

The youth and beauty of Lady Warriston have been much expatiated upon, in the whole of the

¹ Fr. ‘ *moeyen*,’ influence, interest.

² This is remarked by the writer, for the Lady Warriston was beheaded

before the burning of the Nurse.

³ Relations.

⁴ Blood-relations.

numerous popular ballads which were made on this occasion; several of which are *still* sung and recited in various parts of Scotland! To those who feel curiosity in such matters, reference may be made to *Jamieson's* Ballads, l. 109, *Kinloch's* Ancient Scottish Ballads, p. 49, *Buchan's* Ballads, l. 56, &c.—Although, as the 'Memorial' expresses it, she was 'but a woman and a bairn, being the age of 21 years,' 'in the whole way, as she went to the place of Execution, she behaved herself so cheerfully, as if she had been going to her wedding, and not to her death! When she came to the scaffold, and was carried up upon it, she looked up to the Maiden with two longfome looks, for she had never seen it before, &c. This I may say of her, to which all that saw her will bear record, that her only countenance moved,¹ although she had not spoken a word! For there appeared such a majesty in her countenance and visage, and such a heavenly courage in her gesture, that many said, "That woman is ravished with a higher spirit than a man or woman's!"'

'The *summ* of her CONFESSION, which almost was in a form of words, upon the four parts of the scaffold, to which she presented herself, was this.²

"THE occasion of my coming here, is to shew that I am, and have been a great sinner, and hath offended the Lord's Majesty; especially, of the cruell murdering of mine own husband; which, albeit I did not with mine own hands, for I never laid mine hands upon him all the time that he was murdering; yet I was the divider of it, and so the committer! But my God hath been alwise mercifull to me, and hath given me repentance for my sins; and I hope for mercy and grace at his Majesty's hands, for his dear son Jesus Christ's sake. And the Lord hath brought me hither to be an example to you, that you may not fall into the like sin as I have done: And I pray God, for his mercy, to keep all his faithfull people from falling into the like inconvenient as I have done! And therefore, I desire you all to pray to God for me, that he would be mercifull to me!"'

Her conduct on the scaffold appears to have been most heroic. After her devotional exercises were completed, 'she came to her one of her friends, with a clean cloath, to bind about her face.' To the fastening thereof, she took out of her mouth a pin, and gave it out of her own hand. The minister, after receiving her last farewell, 'could not abide longer beside her; but immediately left the scaffold and departed. But she, as a constant saint of God, humbled herself on her knees, and offered her neck to the axe, laying her neck, sweetly and graciously, in the place appointed; moving to and fro, till she got a rest for her neck to lay in. When her head was now made fast to the Maiden, the Executioner came behind her, and pulled out her feet, that her neck might be stretched out longer, and so made more meet for the stroak of the axe; but she, as it was reported to me by him who saw it, and held her by the hands at this time, drew her legs twice to her again, labouring to fit on her knees, till she should give up her spirit to the Lord! During this time, which was long, for the axe was but slowly loosed, and fell not down hastily; after laying in of her head, her tongue was not idle, but she continued crying to the Lord, and uttered with a loud voice, those her wonted words, "Lord Jesus, receive my spirit! O, Lamb of God, that taketh away the sins of the world, have mercy on me! Into thy hands, Lord, I commend my soul!" When she came to the middle of this last sentence, and had said, "Into thy hand, Lord," at the pronouncing of the word "LORD," the axe fell; which was diligently marked by one of her friends, who still held her by the hand, until this time, and reported this to me.']

Jun. 26.—ROBERT WEIR, sumtyme servande to the Laird of Dynniespace.³

Dilaitit of airt and part of the crewall Murthour of vmq¹⁰ Johnne Kincaid of Wariefoune; committit (on Tuesday) the first of Julij, 1600 yeiris.

PERSEWERIS.

Patrik Kyncaid, tuteur of Wariefoune, Thomas, Archibald and Adame Kyncaid, all brether to the defunct.

¹ Her countenance alone would have excited emotion, although, &c.

² That is, she repeated her Declaration or Confession at each of the four corners of the scaffold; which was a stage or platform erected in the centre of the street, at the foot of the Canongate, near the Girth-cross.

³ On the margin, 'Convict and brokin on the row' (*wheel*.)

George Dewer in Plefance,
Johnne Gairdner thair,
Johane Henderfoun thair,
James Nicolfoun tailſeour,
Johnne Airmour merchand,

ASSISA.
Dauid Hoipis ſmyth,
Henrie Kello in Leyth-wynde,
Johnne Roger, Maifter of fence,
Robert Taillfeir maltman,
Thomas Galloway of Cairnehill,

John Coultis ſkynner,
William Chalmer in Brochtoun,
John Myller in the Canno-mylne,
William Bannatyne thair,
George Roife thair.

The Affyſe cheiffis Thomas Galloway chancellor.

QUHILKIS perſones of Affyſe, being choſin, ſworne and admittit, efter accuſatioun of the ſaid Robert Weir, be Dittay, of the crymes following, to witt : FOR-SAMEKILL as vmq^{le} JEANE LEVINGSTONE, Guidwife of Warieſtoun, haifing conſauet ane deidlie rancour, haitrent and malice aganis vmq^{le} Johnne Kincaid of Warieſtoun, for the allegit byting of hir in the arme, and ſtreking hir dyuerſe tymes, the ſaid Jeane, in the moneth of Junij I^m. Vj^e. yeiris, directit Jonet Murdo hir nwreife to the ſaid Robert, to the Abbay of Halyrudhous, quhair he was for the tyme, deſyreing him to cum doun to Warieſtoun, and ſpeck with hir, anent the crewall and vnnaturall taking away of hir ſaid husbandis lyfe. And the ſaid Robert haifing cum doun twyfe or thryfe to the ſaid vmq^{le} Jeane, to the ſaid place of Warieſtoun, he could get na ſpeich of hir. At laſt, the ſaid vmq^{le} Jeane, vpone the firſt day of Julij, 1600 yeiris, directit the ſaid Jonet Murdo hir nwreife to him, deſyreing him of new agane to cum doun to hir ; quhairto the ſaid Robert grantit : Lykas, at eftir none the ſaid day, the ſaid Robert cam to the ſaid place of Warieſtoun, quhair he ſpak with the ſaid vmq^{le} Jeane, and conferrit with hir, concerning the crewall, vnnaturall and abhominable murdering of the ſaid vmq^{le} Johnne Kincaid. And for performance thairof, the ſaid Robert Weir was ſecretilie convoyit to ane laich feller, within the ſaid place, quhairin he abaid quhill mydnycht : About the quhilk tyme, he, accompaneit with the ſaid vmq^{le} Jeane Levingſton, cam furth of the ſaid laich feller vp to the hall of the ſaid place, and thairfra can to the chalmer quhair the ſaid vmq^{le} Johnne was lyand in his bed, takand the nychtis reſt ; and haifing enterit within the ſaid chalmer, perſaveing the ſaid vmq^{le} Johnne to be walknit out of his ſleip, be thair dyn, and to preiſe ouer his bed ſtok, the ſaid Robert cam than rynnand to him, and maiſt crewallie, with thair ſaldit neiffis gaif him ane deidlie and crewall ſtraik on the vane-organe,¹ quhairwith he dang the ſaid vmq^{le} Johnne to the grund, out-ouer his bed ; and thaireftir, crewallie ſtrak him on his bellie with his feit ; quhairvpoun he gaif ane grit cry : And the ſaid Robert, feiring the cry ſould haif bene hard, he thaireftir, maiſt tyrannouſlie and barbarouſlie, with his hand, grippit him be the thrott or waifen, quhilk he held faſt ane lang tyme, quhill he wirreit him ; during the quhilk tyme, the ſaid Johnne Kincaid lay ſtruggilling and fechting in the panes of daitch vnder him.² And ſa, the ſaid vmq^{le} Johnne was crewallie

¹ The jugular vein. It has often, but improperly, been ſuppoſed to ſignify the flank or iliac vein.

² This is preciſely the mode which was, more than two centuries afterwards, adopted by the infamous

murdreit and flaine be the faid Robert; and he is airt and part thairof: As at mair leith is contenit in the faid Dittay.

VERDICT. The Affyfe, all in ane voce, be the mouth of the faid Thomas Galloway, chanceler, chofin be thame, ffand, pronuncet and declairit the faid Robert Weir to be ffylit, culpable and convict of the crymes aboue ffpecificit, mentionat in the faid Dittay; and that in refpect of his Confefsioun maid thairof, in Judgement.

SENTENCE. The faid Justice-depute, be the mouth of James Sterling, dempfter of Court, decernit and ordanit the faid Robert Weir to be tane to ane ffkaf-fold, to be fixt beyde the croce of Edinburgh, and thair to be brokin upoune ane Row,¹ quhill he be deid; and to ly thairat, during the ffpace of xxiiij houris. And thaireftir, his body to be tane vpon the faid Row, and fet vp, in ane public place, betuix the place of Wareftoun and the toun of Leyth; and to remane thairupoune, ay and quhill command be gevin for the buriall thairof. Quhill was pronuncet for dome.

Burning of Houfe of Langholme — Horfe and Cattle Stealing, &c.

Jan. 11, 1605.—INGRIE AIRMESTRANG, in Inzieholme; Archie Airmeffrang, *the Mercheand*, in the Hoilhou; Niniane Airmeffrang, in Tortwne; Johnne Airmeffrang, in the Hoilhou; Johnne Michelfoun, in Tortwne; Cristie Airmeffrang, thair, callit *Nanfè Criflie*; Johnne Thomefoun, in Dwmefcheilburne; Archibald Airmeffrang of Flaifkholme; Archibald Airmeffrang, callit *Nanfè Archie*; Niniane Airmeffrang, callit *Roweis Niniane*, in Murthome; Cristie Airmeffrang, fone to the Guidman of Langholme (Johnne Airmeffrang;) Mathow Twrnour in Hoilhou, and Johnne Couthird.

Dilaitit for airt and pairt of the treflonable Burning of the Houfe of the Langholme; and taking of Harbert Maxwell of Cavenfe captiue and priffoner: And for the thiftious ffelling of certane horfe, nolt, ffcheip, gait: And burning of certane coirnis, pertening to the faid Harbert, Alexander Bell in Eikinholme, Williame Bell in Gallofyde and George Irwing in Holmeheid; committit in the

Burke and his gang, at the West-port of Edinburgh, to ffuffocate the wretched victims of their hellifh traffic. The quaintness of the ancient ffstyle even aggravates the horror of the ffscene.

¹ The cruel and horrible punishment of death on the wheel, has ever been very infrequent in Scotland. Weir was literally broken upon a *cart-wheel*, as appears by the following entry in Robert Birrel's Diary: 'Robert Weir broken on ane cart-wheel, with ane couler of ane pleuch, in the hand of the hangman, for murdering the Laird of Warrifton, quhill he did, 2 Julii 1600.' The case of Weir is the ffirst recorded instance of fuch punishment having been inflicted. This lingering and agonizing manner of execution, borrowed from the practice of France, Germany, &c. had perhaps been ffuggested by the unprovoked and barbarous nature of the murder. It was well calculated to make a deep impression on the minds of the people, corresponding in some measure to the great excitement created in the public mind, by the occurrence of a deed of fo deep a die, and perpetrated fo near to the metropolis.

moneth of September, 1^m.V^c. fourfoir ane yeiris ; and vtheris crymes specifit in our fouerane lordis letteris.

PERSEWARIS, Harbert Maxwell of Kavenfe, Alexander Bell in Ekieholme, Williame Bell in Gsillofyde, George Irrving in Holmeheid.

PRELOCOUTOUR for the pannell, Mr Johne Ruffell, (advocate.)

It is allegit be the pannell, that be the lawis and Actis of Parliament, in all criminal actiones, the partie defender aucht to haif ane autentik coppie of the Dittay and contentis of the fummondis : Bot trew it is, that thair is na coppie delyuerit to the defenderis, bot only tikkettis ; and for verifeing thair of, productet the saidis tikkettis, viz. four in number : And thairfoir na proces.

THE JUSTICE repellis the allegiance, in respect of the executiones.

The pannell askis instrumentis, that the Guidman of Kavenfe abydis at the letteris and executionis, and of the v^sing thair of.—It is allegit, that Johnne and Cristie Airmestrangis, defenderis, the tyme lybellit of the crymes lybellit, war within yeiris (*in minority*;) the said Johnne of the age of viij yeiris, and Cristie of the age of foure yeiris ; and sa war nocht *doli capaces* ; and be the law of this realme, can nocht be put to the tryell of ane Affyse.

The haill perfeweris, vnderstanding that Archie Airmestrang *the mercheand*, Agnes Cristie Airmestrang and Anneis Archie ar Innocent of the crymes lybellit, passis fra thame: Quhairupoune thay skit instrumentis. The perfeweris also passis fra Roweis Niniane Airmestrang *simpliciter* ; quhairupon he skit instrumentis.

Mr Airthour Scott of Newburcht and Gemilfleuch become pledge and fouertie that Harbert Maxwell, his wyfe, bairnis, &c. fall be harmeles and skaythles in thair bodeis, landis, guidis and geir of the saidis Johnne and Cristie A., sones to Johnne A. of the Langholme ; the said Johnne vnder the pane of ane thowland pundis, and the said Cristie vnder the pane of fyve hundredth pundis.

Continued to the air of ‘ Dumfreis, tertio Itineris, (vel super premonitione) xv dierum.’ (See Vol. II. p. 479.)

Burning the Castle of Langholme, &c.

Jan. 11.—JOHNE AIRMESTRANG of Langholme.

Dilaitit of airt and part of the tressonabill Raifing of fyre about Harbert Irwingis hous in Murthholme, and burning ane grit part thair of : And lykwayis for airt and part of the tressonabill Raifing of fyre at the Castell of Langholme, and burning of ane grit part of the barnes, byres, stables and vther office-houffis of the said Place of Langholme : And burning of the haill inficht pleneiffing being thairin ; togidder with thre barnes full of beir and corne ; and xxiiij stakkis of corne, standing in the barne yaird ; and fourfoir dargis¹ of hay, with

¹ Darg usually signifies a day's work, as much as one man can accomplish in a day, or ‘ *dayis-werk*.’

ane kilfull¹ of malt : And for airt and pairt of the thiftious steilling of threttie nolt, with sax or fevin horfe and naigis, furth of the said Place of the Langholme : Quhilkis all and findrie guidis, geir, coirnes, horfe, nolt and remanent guidis, pertenit to Harbert Maxwell of Kavenfe : committit be the said Johnne, the moneth of September, I^m.V^c. fourfcoir ane yeiris : And ficylk, for airt and pairt of the trefsonabill vſurpatioun of his Maieſteis authoritie vpon him, in taking in of the ſaid Harbert Maxwell of Kavenfe captiue and priſſoner ; and tranſporting him in Ingland, at the tyme foirſaid. ITEM, for Burning of Williame Bellis houſe in Gallowfyde, with tua barnes full of beir, and tua ſtakkis of aittis ſtanding in his barne-zaird : AND for the thiftious ſteilling fra him of tuentie nolt, threfcoir ſcheip and tuentie gait, &c. ITEM, for Burning of Alexander, Richerd and Fergie Bellis houffis in Dikinholme, and ſteilling threfcoir nolt, tua hundreth ſcheip and threfcoir gaittis : ITEM, for Burning and deſtroying of Dauid and George Irwingis duelling houffis in Holmeheid, with ſax barnes full of beir and corne, and aucht rokkis of corne, ſtanding in thair corne-zaird, and tuentie dargis of hay ; committit the tyme foirſaid ; vpoun ſet purpois and prouifioun.

Sir James Johnneſtoun of that Ilk of Dumkellie, kny^t, as cautioner, vnlawit and amerciāt in the pane of ane thouſand merkis money.—The Juſtice adjudget the ſaid Johnne Arneſtrang of Langholme, to be denuncet our ſouerane lordis rebell, and put to the horne ; and all his moveabill guidis to be eſcheit, &c.

Reſetting Denounced Rebels, &c.—Reſiſting his Maieſty's Guard.

Mar. 12.—RINGANE² AIRMESTRANG, callit *New-maid Ringane*, and Will Airneſtrang of Rowan-burne.

Dilaitit of contravening the Actis of Parliament, in Reſetting and aſſiſting the Kingis Maieſteis rebellis, &c.

DITTAY *at the inſtance of Sir Thomas Hammiltoun of Monkland, knycht.*

FORSANEKILL as it is ſtatute and ordenit be our ſouerane lordis Actis of Parliament, that nane rebell aganis his Maieſteis perſonne nor his authoritie ; and quha ſa makis the ſaid rebellious, falſe pwneift thairfore, eſtir the quantitie³ of that rebellious ; As the ſaid Act beris. And als, be ane vther Act of Parliament, it is ſtatute and ordenit, that na maner of man, within this realme, wittanlie or wilfullie reſett, ſupplie, mantene, defend or do favouris to ony of our ſouerane lordis rebellis, and att the horne, vnder the pane of deid and confiscatioun of all thair moveabill guidis ; and to be accuſit heivpoun att particuler dyettis ; as the ſaid Act beris. And trew it is, that Johnne Murray of Stable-Gortonne, Caddie of the Bankhouſ, Criſtie of Langholme, Andro of the Langholme and Johnne Baittie of the Scheill, fugitiues and outlawis, being denuncet rebellis and att the horne, att the inſtance of Bernard Lyndſay of the Grange, for nocht making redres and payment to the ſaid Bernard, of the particuler guidis contenit in the Decreit obtenit be the ſaid Bernard aganis thame, for thair maifterfull Stouthreiff and Murthoure, committit be thame, viz. For the maifterfull ſtouthreiff fra Archbald Lyndſay of his horſe and armour ; and fra Williame Lyndſay, brother to the Laird of Co-

¹ Kilful.

² Niuian.

³ Extent, measure.

vintoune, of his horſe and armour; and ſſra James Baillie, guid-ſone to the Laird of Covintoune, of his hors and armour; and ſſra James Lyndſay, of his hors and armour; ſſra Jok Braidwod, of his hors and armour; ſſra Thomas Fiſcher, of his hors and armour; ſſra Robert Gybfoun, of his hors and armour; ſſra Williame Thomfoun, his hors and armour; Jok Fiſcher, his hors and armour; Jok Kay, his hors and armour; ſſra Alexander Lyndſay, his hors and armour; Johne Tod, his hors and armour; Robert Kay, his hors and armour; George Brown, his horſe and armour: Cuthbert Boyd, his horſe and armour; Andro Haddo, his hors and armour; Jok Lyndſay of the Myll, his hors and armour; vmq^{le} Johnne Lyndſay and Edward Tynto, thair horſis and armour: Quhilkis vmq^{le} Johnne Lyndſay, Edward Tynto, togidder with Symone Fiſcher, ſeruitour to Sir James Hammiltoune of Libbertoune, wer crewallie ſlayne be the ſaidis perſones, in following of thame, to red^l leill mennis guidis, in oppin day-lycht; the ſaidis rebellis being rynnand ane day forrow² and heirſchip throw the countrey: AND Robert Hepburne of Alderſtoune, Leutenent of his Maieſteis Gaird, accompaneit with ane number of the ſaid Gaird, being direct to aſſiſt and concur with the ſaid Barnard Lyndſay, vponne the . . . day of Nouember laſthypaft, to poynd and diſtreinzie the ſaidis rebellis guidis and geir, for the valour³ of the ſaidis hors and armour, conforme to ane Decreit gewin aganis thame be Andro Lord Stewart of Vchiltre, Leutenent and Warden of the Weſt Marchis of this realme, in ane Court of Redres, hauldin in the Tolbuith of Drimfreis, the xxix day of December, I^m.V^c.lxxxvij yeiris: IT IS of veritie, that thay and ather of thame, being foirſene of the ſaid Robertis cunning, thay being accompaneit with the ſaidis rebellis, with convocatioun of our ſouerane lordis liegis, all bodin in feir of weir, with jakis, lances and vtheris wappinis, *invafive*, raiſe in hoſtile maner foirſaid, vpon the day foirſaid, at aucht houris before ſone ryſing, within the boundis of Esk,⁴ and thair mantenit, defendit, fuppleit and aſſiſtit the ſaidis rebellis, and fet vpon the ſaid Robert Hepburne and remanent his Maieſteis Gaird, in executioun of our ſouerane lordis authoritie, in poynding of the ſaidis rebellis guidis; perſewit thame of thair lyes, and chaiffit thame be the ſpace of aucht myles for thair ſlauchteris: And ſua, thai and ather of thame hes committit manifet rebelloun aganis his Maieſteis authoritie; and he (they) oppinlie mantenit and defendit the ſaidis rebellis, being at his Maieſteis horne, for the ſaidis crymes: And thairthrow, hes contravenit the tennour of the ſaidis Actis of Parliament; and the panis thairin contenit aucht to be execute aganis (them.)

The Aduocat takis inſtrumentis of the ſweiring of the Aſſyſe, and proteſtis for Wilfull Errour, in cais they acquit. The Aſſyſe takis inſtrumentis of the pannellis Confeſſioun maid be thame, that thai arraiſe and perſewit the Gaird.

VERDICT. The Aſſyſe, be the mouth of Johnne Weir of Clowburne, chancillar, ſtand, pronunceit and declarit the ſaidis Ringan and Will to be culpabill, ffylit and couvict of the crymes aboue writtin.

SENTENCE. The Juſtice-depute, be the mouth of James Henryfoun, dempſtar of Court, decernit and ordenit the ſaidis Ringan and Will to be tane to ane gibbet beyde the mercat croce of Edinburgh, and thair to be hangit quhill thay wer deid; and all thair movabill guidis to be eſcheit, &c.

‘Falset’ — Perjury — ‘Man-swearing’ — Cruel Oppression.

Mar. 15.—ALEXANDER CHENE, in the Haltoun of Balhalvic, Alexander Waſtland, his ſerveand, and Alexander Croy, ſeruitour to the Laird of Auchterallane.

¹ To get restoration, &c. ² Literally, running a day-foray through the country, openly carrying on their violence and depredations in broad daylight. ³ Value, ‘avail.’ Lat. *valor*. ⁴ Eskdale.

Dilaitit of Periurie and menfweiring of thame fellfis, in prefens of the Lordis of Secreit Counfall.

DITTAY, at the instance of Sir Thomas Hammiltoun of Monkland, Advocat.

FORSAMEKILL as thay and their complices, being perfewit befor the Lordis of his hienes Secreit Counfall, for cuming vpoun the xxvj day of December laft, att mydnycht, to George Duncanis duelling hous in Ardo, quhair he, with his wyffe and famelie, wer in peciabil and quyet maner for the tyme, takand the nychtis rest, lipning¹ for na iniurie nor oppreffiou to haif bene offerit to thame; and thair, violentlie brak vp the dur of the said Georgis duelling hous, enterit thairin, and tuik the said George and his wyffe, scho being grit with chyld, out of thair naikit beddis, band thame with coirdis, and maift crewallie and vnmercifullie, but² pitie or compaffioun of the said Georgis wyffis estait, scho being grit with chyld, as said is, strak and dang thame with rounGIS³ and batounis brocht with thame for the purpose; fa that the said George wyfe almaist pairtit with bairne; and haifing maift schamefullie strukin and leifchit the said George him self with beltis: Committing thairby maift oppreffioune. For the quhilk Oppreffioune, the said George, haifing raift oure fouerane lordis Letteris, and thairwith summond the said Alexander Chene to compeir before the Lordis of his hienes Secreit Counfall, the fourtene day of March instant, to anfer to the said Complaint; and haifing, be vertew of the saidis Letteris, lykwyse summond the said Alexander Wastland and Alexander Crag to beir witneffing in the said mater; quhom the said Alexander Chene, haifing fallie subornit to periure and menfweir thame fellfis, to depone fallie aganis thair knowledge and confidence in the said mater, and to conceill the treuth thairof: The said Alexander Chene and remanent persounes, compeirand before the Lordis of Secreit Counfall, the said xiiij day of March instant, and being deiple sworne, be thair grit aithis, to depone and tell the treuth in the said mater, and to beir leill and faithfast witneffing thairin; being vmyndfull of thair dewtie towards God, and haifing na regard nor reverence to our fouerane lordis auctoritie and lawis, and his hienes maift honorabill Counfall, fallie, be thair Depositionnes, Periureit and Menfweir thame fellfis; the said Alexander Croy and Alexander Wastland deponing, that thay wer nather present att the said deid, nor knew nathing in the said mater; and the said Alexander Chene, be his Depositionnis, declairit, that he sould be content to be hangit,⁴ in caice it sould be provin or tryt that he strak the said George Duncan or his wyffe: And lykewyse denying that he had subornit the saidis witneffis, or instructing thame to deny or conceill the treuth: AND nochtwithstanding thairof, the said Alexander and the saidis witneffis being re-examinat, hes all deponit that thay wer all present att the said fact and Oppreffioune, and that the said Alexander Chene strak the said George Duncane with ane rung, and belit him naikit with ane sword-belt; and wer all present att the said manifest Oppreffioune: And als confessit, that the said Alexander Chene had instructit, seducit and subornit the saidis Alexander Croy and Alexander Wastland to Periure and Menfweir thame fellfis, and depone before the Lordis of Secreit Counfall, that thay wer nocht present with him att the said fact, and knew na thing thairof: AND SA, thay and ilk ane of thame hes nocht only committit manifest Oppreffioune be the said fact and hes Periureit and Menfsworne thame fellfis: bot als, hes committit manifest falsheit; and as periureit and fals personis ar nocht worthy to leue; aucht and sould be pwnieit, conforme to the Lawis of this realm and to the Commonn-Law; in terre and example of vtheris faull-les⁵ persounes, to committ the lyke Periurie and falsheit in tyme cuming.

ASSISA.

Robert Hog, sumtyme seruitour to my Lord of Marfchell,	Johne Ramfay of Quhytchill,
Dauid Wod, brother to the Laird of Balbegnocht,	James Stewart, agent for my Lady Atholl,
Robert Crawford of Caverhill,	Johne Mowbray, portioner of Crawmond.

The remainder are burgesfes, &c.

¹ Trusting that no injury, &c. ² Without. ³ Cudgels. ⁴ Other instances are on record of witnesses per-juring themselves, and making this awful asseveration, being taken at their word. ⁵ Soul-less, devoid of conscience.

VERDICT. The Affise, be the mouthe of the said Johnne Ramfay, chancellor, ffand, pronouneit and declairit the pannell to be ffylit, culpable and convict of the crymes aboue writtin, conforme to thair Depofitiounis and Confessioun.

SENTENCE. The Justice-depute, be the mouth of James Stirling, dempftar of Court, decernit and ordained the said *Alexander Chene* to be tane to the mercat croce of Edinburghe, and thair his heid to be ffrikin fra his body: And the said *Alexander Wajfland* to be tane to ane gibbet beyde the mercat croce of Edinburghe, and thair to be hangit quhill he be deid: And the said *Alexander Croy* to be fskurgeit throw the toune; as he that fyrft confest the veritie: And all thair movable guidis to be efcheit and inbrocht to our fouerane lordis vfe, as fugitiue fra the lawis for the saidis crymes.

Slaughter.

Mar. 28.—JOHNE SPOTTISWOID OF THAT ILK.

Dilaitit for airt and pairt of the felloun and crewall Slauchter of vmo^{le} Thomas Quhippo of Leyhouffis; committit in the moneth of Junij, the yeir of God I^m.V^o.lxxxv yeiris; vpon fet purpois, provisioun and foirthocht felony.

James Tennant of Lynhous, as fouertie, ordanit to be vnlawit and amerciat in the pane of ffyve hundreth merkis for nocht entry of the said Johnne, to vnderly the law, &c.; and als, adiudget the said Johnne to be denunceit our fouerane lordis rebell and put to his hienes horne, and all his moveabill guidis to be efcheit, &c.

Messenger Forgeing and Signeting False Letters and Executions, &c.

Mar. 28.—WILLIAME STRAUCHANE, messinger.

Dilaitit ffor the ffalsifeing, fforgeing, Counterfuteing, devyfeing, fubfcryveing and signetting of foure fals Charges and Executiones, with the Denunciatioun of Hoirning following thairupoune, ffalffie vset and execute be him. Quhillkis charges and denunciatioun, and everie ane of them, are, be Decreit of the Lordis of Sesshioun, of the dait the fevint day of Marche instant, civillie and lauchfullie Improvin, and fund be the saidis Lordis to be fals and ffeingit in thame felffis, &c.

VERDICT. The Affise, be the mouth of Peter McDowell of Machermoir, chancellor, ffand, pronouneit and declairit the said Williame (in respect of the said Lordis Decreit, producet aganis him, ffinding the saidis Executiones to be ffalffe and ffenzeit) to be Fylit, culpabill and convict thairof.

SENTENCE. The Justice-depute, be the mouth of James Henderfoun, dempfter, decernit and ordanit the said Williame to be fskurgeit throw this burgh; and to be depryuet of his office of messingerie and notarie, and nevir to vfe the samyn in ony tyme cuming; vnder the pane of hanging, but (*without*) fauour; as he that was convict of the crymes aboue writtin.

Hurting — Wounding — Mutilation.

Apr. 9.—PATRIK CARKEKTILL of Markill, George Carkektill, his brother, Johnne Broune, brother to the Laird of Colfoune, and Robert Smyth, fervand to the said Patrik.

Dilaitit of airt and pairt of the Hurting, Wounding and Mutilatioun of James Libbertoun, fervand to James Lord of Balmirrienoche of his left eie; and remanent crymes contenit in the Letteris.

PERSEWARIS, James Libbertoune, Mr Thomas Hoip, Aduocat-fubstitute.

PRELOCOUTOURIS for the persewer.

The Laird of Henderfoun, Mr Robert Lyntoun, Aduocat-fubstitute for the Kingis Aduocat. PRELOCOUTOURIS for the pannell, the Laird of Wauchtoun, the Laird of Innerleyth, the Laird of Craigmiller, Sir Johnne Prefloun of Valafeld, Mr Johnne Ruffell, Mr Alexander King, Aduocattis.

My Lord President¹ producet the Kingis Maiefteis Warrant; quhairof the tennour followis.

JAMES R.

JUSTICE, Justice Clark and 3oure deputes, We greit 3ow weill. In þe tryell of þe particuler mater persewit before 3ow, at þe instance of James Libbertoun in Neþer Libbertoune aganis Patrik Carkektill of Over Libbertoun and his complices, for þe mutilatioun of þe said James; committit be þame in þe moneth of . . . lastþypast: In cais (it) be fund be 3ow that 3e can nocht, for þe present, refraue þe tryall of þe said mutilatioun, in respect of þe fchorntes of tyme interuening, and before the expyryng of 3eir and day eftir þe committing of þe fact; and fwa 3e falbe forceit to continew 3our proceeding in þe mater: In quibilk cais, it is our speciall will and pleasour, that 3e fall command the saidis perfounes to enter þair perfounes in waird, within þe Castell of Blaknes, thairin to remane, quhill thay be ffynit be our Counfall þair, for þair cryme and offence committit be þame; and frome þame obtene Warrant for þair releif. Quhairanent thir presentis falbe 3our Warrant. Gewin att Grenewiche, this tuentie day of March, 1605.

THE Justice continewis this dyet to the faxtene day of Maij nixtocum; and ordanis the perfones on pannell to entir in waird, within the Castell of Blaknes, within xlviij houris; and to find caution to that effect.²

Sir George Prefloun of Craigmiller, kny^t, become pledge and fouertie, &c.; and that thay fall enter in waird, &c. thairin to remane, and onnawayis to depairt furth thairof, quhill thay be fred be ane Warrant; and that vnder the panes following, viz. for the said Patrik ane thousand merkis, the saidis George and Johnne ffyve hundreth merkis, and the said Robert tua hundreth merkis.

Intercommuning with MacGregors.

Apr. 26.—COLENE BRUCE in Middilhauch of Ruthven (Huntingtoun), Patrik Bruce thair and Alexander Bruce thair.

Dilaitit ffor the tressonable Resfet, Supplie and Intercowmoning with Johnne Dow Galt M^cgregour, Johnne Dow M^cewin M^cgregour and Gregour M^cewin,

¹ James Lord Balmerinoch, President of the College of Justice.

² The case was farther delayed to May 29, but no entry occurs of that date; so that it is likely the parties compounded with the Treasurer and private party, by payment of a stipulated fine.

cowmone theivis, tratouris and rebellis to his Maieftie; and that within thair houffis in the Middill-hanch of Ruthven and dyuerſe vtheris places, mony and dyuerſe tymes, in the yeiris of God, I^m.Vj^c. and thre and foure yeiris; eftir the Murthour of Glenfrwne,¹ and eftir the faidis perſones war declairit rebellis and tratouris, and all our fouerane lordis leigis war lauchfullie prohibeit and dif-charget to reſlett, ſupplie, aſſiſt or intercommown with the faidis M^gregouris, rebellis and fugitiues, as ſaid is, vnder the pane of Treffone.

For the quhilkis crymes aboue writtin, the faidis perſones on pannell becum in our fouerane lordis will. Quhairupone Sir Thomas Hammiltoune (of Monkland, knyht, Aduocat to our fouerane lord) aſkit instrumentis.

Aug. 6.—THE KING'S WILL was this day declared againſt the pannels, as follows.

JAMES R.

JAMES, be þe grace of God, King of Gritt Britane, France and Ireland, defender of the faith. To our Juſtice, Juſtice clerk and 5 our deputis, greting. Forfamekill as Colene, Patrick and Alexander Bruces in the Mydillanch of Huntingtoun, being callit and convenit befor 3ow, for the Aſſiſting, Reſſett, Supplie and Intercowmoning with the CLANGREGOUR, aganis the tennour of our Proclamations maid pairant; that ar becum in our will for the ſame: And albeit thay haif incurrit and meriet the pane of deathe, for that cryme, 3it We, of our ſpeciall grace and mercie, ar content to diſpenſe with the rigour of the law; and haif declairit and declaires our Will as followis, to witt: That þe faidis perſones ſhall be Banetiſt the hail boundis of our dominiones, during þe hail dayis of pair lyf-tymes; vnder the pane of deid, and to be hangit but forder proces: And that thay find ſufficient and reſponſall cautioneris and fouerteis, actit in the buikis of our Adiornall or Secret Counfall, that betuix the day and dait heirof, and the tuentie day of Auguſt nixtocum, thay ſhall depairt and paſs furth of our dominiones; and nocht returne agane within þe ſamyn, during thair lyftymes, vnder the pane of fyve thouſand merkis, to be payit be the faidis cautioneris coniunctlie and ſeuerallie, in cais þe faidis perſones or ony of thame failzie in the premiſſes; the ane half of the ſaid pane to ws and our Theſaurer in our name, and þe vþer half to David Lord Scone,² our Comptroller, befydis the pane of deid to be incurrit be þe criminalis þame ſelfis; with this prouiſioun, that in caice the faidis criminalis or ony of thame ſhall happin to returne within our dominiones, and nawayis commit ony violence, harme or iniurie aganis ony of our ſubiectis afor pair apprehenſioun, in that caice pair cautioneris perſewand and apprehendand thame, and preſenting thame to Juſtice, the executionne of þe faidis criminalis ſhall liberat þe faidis cautioneris of all payment of the pecuniall ſowme foirſaid: And gif thay fall happin to commit ony violence or harme aganis ony of our ſubiectis, eftir pair returning withie our dominiones; in that caice, pair cautioneris to be ſubiect to the payment of the pecuniall ſowme foirſaid, and the criminalis thame ſelfis to vnderly the perſonall pwneſchment foirſaid: Commanding heirby 3ow our ſaid Juſtice to pronounce this our Will judiciaillie; and to cais thir preſentis be inferit in the buikis of our Adiornall. Gevin att Grenewiche, the . . . day of Junij, 1605.

(Sic ſubſcribitur) MONTROIS, Commiſſionar. AL. Cancell.³

Patrik Bruce of Fingask and Mr Alexander Bruce, fear of Culturalindie, become cautioners, and the Bond is regiſtred at length; the witneſſes are George Bruce of Carnok, Sir Johnne Bruce of Airthe, knycht, Johnne Kincaid, writer, and Johnne Kemp, his ſeruitour.

¹ See Jan. 20, 1604. ² Sir David Murray of Gospertie, afterwards Viſcount Stormont, whoſe name ſo frequently occurs in the matter of Gowrie's Conſpiracy. ³ Alexander Lord Fyvie, Chancellor, afterwards Earl of Dufermline.

Hurting and Wounding — Mutilation.

May 9.—GEORGE FORRESTER, sumtyme servand to my Lord of Roxburcht.

Dilaitit, acufit and perfewit be James Skirving in Gilkerstoun of the DITTAY following, viz.

FORSAMEKILL as the said George, haifing confauet ane deidlie feid, rancour and malice aganis the said James Skirving, sumtyme in Humbie and now in Gilkerstoun, for the allegit hurting of him ; the said George, to be revenget thair of, without regard of justice, in the moneth of Januar, the yeir of God 1^m. V^c. fourfoir fyftene yeiris, vnderstanding that the said James was to cum furth of the Place of Humbie, and to pas hame to his awin duelling-hous, than in Humbie nylne, he darnit him self in ane bourtrie bus, at the heid of Wolfatt ; and in the said James bycuming, sett vpon him, and be way of brigancie,² vnder silence and clud of nycht, betuix aucht and nyne houris at evin, with ane swoird and quhinger in his hand, maist crewallie perfewit him for his slauchter, hurt and woundit him in his richt airme and richt hand, and hes mutilat and made him impotent of the samyn ; and gaif him aughtene bludie and deidlie woundis ; and left him lyand for deid vpon the grund : And the said George was airt and part of the hurting, wounding and mutilatioune of the said James Skirving ; committit in maner and at the tyme foirsaid, vpon set purpos, prouifoun and foirchocht felony.

PERSEWER, James Skirving, sumtyme in Humbie, and now in Gilkerstoune.

PRELOCUTOR for the persewer, Mr Walter Bellenden.

PRELOCUTORIS for the pannell.

Mr Johne Ruffell, Sir Jedione Murray, My Lord Cranstoune, Mr Laurence Mc Gill.

It is allegit be the persewer, that the pairtie defender is at the horne ; and thairfoir na prelocutoris can compeir and defend in this persute.—It is answertit be Mr Johne Ruffell, that albeit he be at the horne, and lauchfullie at the horne, yit he may compeir for the rebell. *Secundo*, the Hoirning is null, becaus the pannell being than servand to my Lord of Roxburcht,³ the denunciation at the mercait croce of Edinburghe, and regiftratioune in the Schereffis buikis of Edinburghe is nocht lauchfull, nor accoirding to the Act of Parliament, bot sould haif bene denuncet at Jedburcht, and regiftrat in the Schereffis buikis of the Scherefdome of Roxburcht.—It is replyt be the persewer, that my Lord of Roxburcht duelt, the tyme of the denunciatioune, within the burgh of Edinburghe ; and thairfoir the Hoirning, in the hail poyntis thair of, is sufficient ; and the Hoirning standis vnreduet, quhairin he was charget, personallie apprehendit, to haif fund cautioune for his compeirance, vpon xv dayis wairning.

It is allegit be the pannell, that this matter can nocht be put to ane Assyse, becaus he is persewit for Mutilatioune, and nocht tane *in recenti crimine*, and nocht charget vpon xv dayis wairning, nor na coppie of the Dittay is geuin him. Answertit be the persewer, that he is summond alreddie, vpon xv dayis wairning, personallie apprehendit, and a coppie delyuerit, and put to the horne, and be vertew of Letteris of Captioun, tane and apprehendit and presentit to pannell.—It is allegit that he is nocht summond to this day vpon xv dayis wairning ;

¹ Concealed himself in an elder bush.

² Robbery. Old Fr. *briganderie*.

³ Sir Robert

Kerr of Cessford was created Lord Roxburghe, anno 1600 ; and Earl, in 1616.

and gif he was fummoud of befor for this cryme, be vertew of vther letteris, and put to the horne, the samyn Hoirning is null ; for the caulis aboue writtin. It is anfuert, the Hoirning flandis vnreducet.—It is forder allegit be the pannell, that befor this matter pafs to ane Affyse, this mutilatioune man be tryit be Chirurganes. It is anfuert be the defender, that he referris the cognitioun of the Mutilation to the Affyse.

THE JUSTICE findis this matter to be be put to ane Affyse, nochtwithstand- ing the former allegeances.

It is allegit, that my Lord Justice Clerk and his deputis can nocht be Clerkis in this proces, becaus this perfewer is Tennent to my Lady Humbie, spous to my Lord Justice Clerk,¹ to quhome he payis mail and deutie, and thairfoir na proces ; and Mr Walter Bellenden, as prelocoutour for the perfewer, is brother-in-law to my Lord Justice Clerk ; and thairfoir my Lord Justice Clerk can nocht be Clerk in this proces.—It is allegit be Mr Johnne Russell, that, in respect Mr Walter Bellenden, prelocoutour for the perfewer, compeiris and perfewis, and the perfewer is Tennent to my Lady Humbie, his lordshipis spous, my Lord Justice Clerk can nocht be Justice Clerk in this proces. It is anfuert, that Mr Patrik Bannatyne is ordiner clerk to the Justice, to all the legis.

THE JUSTICE Ordanis Mr Patrik Bellenden, ordiner Clerk, to proceed as Clerk in this proces.

Forder, it is allegit that na proces can be grantit, becaus my Lord Justice Clerk can nocht be Clerk in this proces, feing Mr Walter Bellenden, the prelocoutour for the perfewer, is his brother-in-law ; as also, the perfewer is Tennent to my Lady Humbie of the landis of Gilkerstoun and Gilkerstoun-mylne ; as also, is tennent to my Lord him selff. Anfuert, thair is ane ordiner clerk, viz. Mr Patrik Bannatyne, aganis quhome thair is na exceptione, quha is ordiner Clerk to all our souerane lordis leigis.—The anfuertis foirsaid meittis nocht the declinatour, becaus the alledgeance is proponit aganis the Justice Clerk, without ony mentione of Mr Patrik Bannatyne.

THE JUSTICE findis proces, and Mr Patrik Bannatyne to be clerk, vnles he propones a relevant alledgeance aganis him as ordiner clerk.

Thaireftir the pannell and prelocoutouris declairit that thai only propone the declinatour foirsaid aganis my Lord Justice Clerk, quily he fould nocht be clerk ; and ar content, that quhan his lordship is remouet furth of Jugement, in respect of the declinatour foirsaid, gif sa be fund, Mr Patrik fall remane as clerk ; but² preiudice of sic lauchfull exceptiones as may be proponit aganis him, the said

¹ Sir John Cockburn of Ormistoun, Lord Justice Clerk, married Elizabeth, the eldest daughter of Sir John Bellenden of Auchnoule (by his second wife, Janet Seton), and widow of James Lawson of Humbie.

² Without.

declinatour being first discussit. It is allegit be the pannell and his prelocoutouris, vnder protestatioun that the former declinatour be first discussit, and na vtherwayis, that Mr Patrik Bannatyne can nawyis be admittit to be clerk in this proces, for tua causis; first, becaufe he is Depute to my Lord Justice Clerk, aganis quhome the former exceptionne declinatour is proponit, and hes his office only of his lordship presentlie; and sua the exceptionne competent aganis the Clerk-principall, man be also competent aganis his Depute: Nixt, becaus Mr Walter Bellenden, quha is prelocoutour, and Mr Patrik is thridis or ferdis of kyn to Sir Johne Bellenden of Auchnoul, and James Bannatyne of Newtyle ar thridis or ferdis of kyn; and declairis that Sir Johnne Bellenden,¹ father to Mr Walter, and James Bannatyne, father to Mr Patrik, ather thair guidfchiris or grandfchiris war brether.—And Mr Patrik Bannatyne being sworne, declairit that the former alledgeance of kynreid was nocht trew.

THE JUSTICE findis proces; and ordanis Mr Patrik Bannatyne to be Clerk to this proces, quha is ordiner Clerk to all our fouerane lordis leigis, to the Justice.

The pannell takis instrumentis of the Justice Interlocoutour; and protestis for remeid of law.

The Defender declairis he will nocht feik the perfeweris ayth, vpon the verificatioun of the Dittay; bot ony craves quhat the perfewer produces to verifie. The perfewer declairis that he fall schaw his mutilatioun to the Assyse.

VERDICT. THE ASSYSE, be the mouth of Williame Johnnestoun in Over Keyth, chancellor, be pluralitie of voittis, fand, pronuncet and declairit the said George Forrester to be ffylit, culpable and convict of the Hurting, Wounding and Mutilatioun of the said James Skirving of his richt airme and richt hand, in maner specifeit in the said Dittay.²

Slaughter.

May 22.—WILLIAME THOMESOUNE in Reddene.

Dilaitit of airt and pairt of the Slauchter of vniq^{le} Niniane Edzer.

Sir Andro Ker of Hietoun, knycht, become pledge and souertie that he fall compeir befor the Justice or his deputis in the Tolbuth of Edinburghe, the tuentie-fye day of July nixtoeum, to vnderly the law, &c. vnder the pane of Ten thousand markis; quhair of the ane half fall be payit to the Kingis Maiesteis Thefaurer, and the vther half to the pairtie perfeweris.—On Jul. 25, the Justice continued the case to the air of Roxburcht, ‘tertio Itineris (vel super premonitione) xv dierum, Plegio, Joanne Ker de Bowdene.’

Slaughter — Shooting with Pistolets and Guns.

May 31.—JOHNNE MURE of Auchindrane,³ Johnne Mure of Craigkene,

¹ Of Auchnoule. ² The Sentence is not contained in the Record. ³ See the Trial of this infamous man, Jul. 7, 1600, &c., for the atrocious Murder of Sir Thomas Kennedy of Culzeane, &c.

Moyfes Lokhart, brother to the Laird of Bar, James Bannatyne in Chapel-Donall, David Kennydie, younger of Maxwalktoun, Charles Dalrunpill, burges of Air, George Campbell, younger of Schenkftoune, and Gilbert Kennydie in Machar.

Dilatit, accufit and perfewit, be Richart Spens, in Vgftoune, as father to vniq^e Richart Spens, feruitour for the tyme to Johnne Erll of Caffillis, and Sir Thomas Hammiltoune of Monkland, Aduocat to our fouerane lord, for his hienes interes, ffor airt and pairt of the Slauchter of the faid vniq^e Richart Spens; and for bering, wering and fchuteing of piſtolettis and gunnis,¹ contrair the tennour of the Actis of Parliament; committit vponne the nynt day of December, the yeir of God I^m.Vj^c. and aue yeiris, vponne the landis of Pennyglenne.

PERSEWER, Richerd Spens in Vgftoune, Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOCUTORIS for the pannell, My Lord Vchiltrie, The Laird of Drumlanrig, The Laird of Rowallane, Jofias Stewart (of Boningtoun), Mr Johnne Ruffell, Mr Williame Oliphant.

(The two Mures, Lokhart and Baanatyne,) tuik thame to our fouerane lordis Refpett,² produceit, vnder the Prewie Seil, of the daitt, att Falkland, the tuelff day of Junij, the yeir of God I^m.Vj^c. and tua yeir, for the faidis crymes. Quliik Refpett the Justice admittit; and ordanit thame to find caution and fouertie to fatisfie the partie, for airt and pairt of the faid flauchter: Lyke as, Matho Stewart of Dunduff, Jofias Stewart of Boningtoun, and George Campbell younger of Schauleftoun become cautioneris and fouerteis with thame felffis, coniunctie and feuerallie, to fatisfie the partie, for airt and pairt of the Slauchter of the faid Richard Spens.

George Campbell alfo obtained 'oure fouerane lordis Refpett, produceit, vnder the Prewie Seill; of the dait, at Halyruidhous, the laft day of November, 1602.' Matho Stewart of Dunduff, Jofias Stewart of Boningtoun and Johnne Mure of Auchindrane become pledgeis, &c.

The caſe was continued, as to the remainder of the perfons on pannell, to the Justice-air of 'Air, tertio Itineris (vel fuper premonitione) xv dierum.'

[*Mr William Hairt of Levelandis and Mr William Borthuik, Justices-Deputes.*]

Amputation and Demembration.

JUN. 11.—EDUARD JOHNESTONE, younger, merchand burges of Ed'.

Dilatit of airt and pairt of the Demembring of Johnne Broun, goldfmyth, of the thombe of his left hand; committit vnder nycht, the fevintene of May laft.

PERSEWERIS, Johnne Broun, goldfmyth, Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOCUTORIS for the pannell, The Laird of Johnneftoune, The Laird of Waftrow, Mr Alexander King, Mr Thomas Gray and Mr Johnne Johnneftoune (Advocates.)

It is allegit be the pannell, that this matter can nocht be put to the knowledge

¹ This is the first instance in the Record of the term 'gun'; 'hagbut' being the prevalent name for that weapon.

² Remission, respite.

of ane Affyfe; becaus the fact lybellit is committit vnder feilence of nicht, and the said Johnne Broune, being conuenit befor the Lordis of his hienes Secreit Counfall, he is convict on ane manifest Ryote, for the wrangous invading, trub-billing and molesting of the defender, his wyf and fervand, vnder feilence of nycht, and sua, quhatsumeur fell out be that occasioun, the falt was in the per-fewer; and of the law, albeit he had been flane, the said defender had bene in na danger: In respect quhairof, the samyn aucht nocht to be put to the know-ledge of ane Affyfe. For verificatioun quhairof, productet the Lordis of Secreit Counfellis decret, daitit the xxij day of Maij last, 1605. It is anfuert, that the allegiance nawayis meittis the Dittay; seing the Dittay is the said Johnne Brounes perfute, for redrefs and pwneischment of the Mutilatioun and Dismem-bring of him, quhairof thair was nather complent nor tryell, befor the Secreit Counfall; nather can ony thing, done in that judgement, stay the puting of ane relevant Dittay to ane Affyfe, befor the Justice; seing, the Counfall could nocht be Judges to the samyn; and the matter being put to ane Affyfe, the Affyfouris will try, quhither the fact was done in lauchfull defense of the pannell or nocht.

THE JUSTICE continewis this Interlocutour to the xvij of this instant. ‘Plegio, Waltero Ker, portionario de Diriltoun.’

(Jun. 18.)—On xvij June,¹ The Justice ffindis proces, nochtwithstanding of the allegiance proponit the last dyett, and left at Interloquoutour. And eftir the pronouncing of the said Interloquoutour, of consent of bayth the parteis, continewis this perfute (quhill the) xxvij day of Junij instant. ‘Plegio, M^{ro} Joanne Johnnestoun, aduocato.’

DITTAY against Edward Johnnestoun, Younger.

FORSANEKILL as, vpon the sevintene day of Maj lastbypast, vnder nicht, thair fell out ane debait² betuix the said Eduard Johnnestoun and Patrik Robertfoun, seruitour to George Cuninghame, gold-smyth, burges of the Cannongait, vpon the hie streit of the burgh of Edinburgh, aboue the Stink-and-styles³ thairof: and for eschewing of hurt that might haif fallia to either of the saidis parteis, the said Johnne Broune, amangis vther honest nichtbouris, preiflit to red⁴ thame: Nochtwithstanding, it is of veritie, that the said Eduard Johnnestoun, perfaueing the said Johnne Broun to cum and resist and stay his furie, he left the said Patrik, and but⁵ offence gevin be the said Johnne Broun to him, ather be word or deid, he fett vpon the said Johnne with ane drawin fwoird, and maist crewallie invaidit him for his slauchter, hurt and woundit him in his left hand, to the effusione of his bluid in grit quantitie; and hes Mutilat and dismemberit the said Johnne of the thombe of his said left hand, and cuttit the samyn away; and sa hes maid him alluterlie vnhabill to wyn his leving, in his airt of goldsmyth-craft; to his vtter wrak, and to the grit contempt of our souerane lord, his hienes autoritie and lawis: And the said Eduard Johnnestoun is airt and pairt of the said Mutilatioun, demembring and cuting away of the said Johnne Brounes thombe of his said left hand. For the quhilk he aucht and fould be pwneifhet, conforme to the lawis of this realme, in exampill of vtheris to commit the lyk, in tyme cuming.

¹ Mr Willame Oliphant is added to the *Prelocutours*, and on 27 June, Mr Thomas Craig. ² An altercation and scuffle.

³ A narrow passage to the eastward of the entrance to Haddo's-hold, New North Church, and celebrated for similar rencontres.

⁴ Separate. ⁵ Without provocation, excepting the proverbial fate of those who indiscreetly interfere in such matters. The ‘*redding-straik*’ was no child's play in those days, when sword and dirk were the swift ministers of vengeance!

VERDICT. The Assyse, be the mouth of Daud Fairlie, merchand burges of Edinburghe, chancellor, for the maist pairt, stand, pronounceit and declairet the said Eduard to be Clene, innocent and acquit of airt and pairt of the Mutilatione, &c. ; in respect, vpon thair consciences, as thay haif tryit and considderit, the samin proceidit vpon the said Johnne's awin default ; and was committit and done be the said Eduard, the tyme foirsaid, in defence of him self, his wyfe and fervand, quha war invaidit and molestit be the saidis Johnne Broune and Patrik Robertfoune, vnder nycht. Quhairupoune the said Eduard askit instrumentis.

'Umbesetting'—Rape—Child-murder.

JUN. 18.—JOHNE BROUNE, goldfynth, burges of Edinburghe.

Dilatit for Umbesetting of Katharene Rae, spous to Eduard Johnnestoune, younger, merchand burges of Edinburghe, and preissing to fforce hir ; and caussing hir to pairt with bairne.

PENSEWAR, Eduard Johnnestoune, younger, merchand burges of Edinburghe.

PRELOQUOTOIRIS for the pannell, The Laird of Phillorth, Mr Johne Ruffell, Mr James Donaldfoune.

THE JUSTICE continewis this matter to the xxvij day of Junij instant.

DITTAY *against Johnne Broune.*

(Jun. 27.)—FORSAEKILL as, vpon the sevintene day of May lastbypast, the said Katharene and Eduard, hir husband, haifing foupit in pair saperis hous, and being returning eftir supper, about ten houris at evin, fra pair said saperis houfe to pair awin ludgeing, in peceable and quyet maner, lynning for na harme, iniurie or persute of ony persones, bot to haif past in peceable maner throw the Hie-streit of pe said burgh of Edinburghe to pair said ludgeing, vnder Godis peax and our souerane lordis ; it is of verritie, that pe said Johnne Broun, goldfynth, accompaneit with Patrik Robertfoune, burges of Aberdene, persaucing the said Katharene to be hir self, allane, accompaneit allanerlie¹ with ane fervand woman ; and finding pe gait² to be quyet, sa that nane was pairupone, to mark pair doingis, or to stay thair intentid schamefull and villanuse interpryse ; the said Johnne Broun and Patrik Robertfoune resoluet violentlie to haif forcet pe said Katharene and hir fervand woman : And for pis effect, the said Johnne come to the said Katharene, and brak furth in findrie vncumlie and vnhonnest speiches to hir, belesing to haif perswaidit hir to haif yeildit to his filthie lust and beistlie appetite ; and finding him self disapointit of pat meane, he, in his beistlie rage and furie, as ane possessit with ane wikket spreit, maist schamefullie and crewallie grippit pe said Katharene Rae be the gorget, and violentlie drew hir aff pe hie streit to ane cloise-heid,³ vnder ane stair ; and pair crewallie, with his saldit neifis, strak and dang hir in the face, and causet hir to bleid at mouth and neife in grit quantitie ; raif hir couche⁴ and remanent ornamentis of hir heid, and cuist pe samyn vnder his feet ; and, with his kneysis, punchet pe said Katharene in the bellie, scho being grit with chyld ; and had nocht faillit to haif abuset hir chastitie, gif pe said Eduard, hir husband, and vperis nychtbouris (heiring hir and hir said fervand gif pe sprache and cry⁵) had nocht cum, with diligence, and releuint hir furth of his cruell grippis. BE occasione quhairof, the said Katharene was led hame to hir awin hous, quhairin scho hes layne continuallie bedfast sensyne, in grit pane and dollour, vnder pe cuir of Doctouris and chirurganes ; sa that, vpon the xxj day of May lastbypast, or pairby, scho partit with ane deid bairne ; and scho hir self hes bene, and as

¹ Only. ² Street, way. ³ The numerous narrow alleys running downwards from the north and south sides of the High-street of Edinburgh, are termed *cloises* ; the close-heid signifies the entrance to one of these passages.

⁴ Tore her curtche, a sort of cap or head-dress. Old Fr. ⁵ Give the alarm ; the hue and cry.

5it is, in grit haiyard and danger of hir lyfe: Committing pairthrow manifest villany, vnder nycht, within the said burch of Edinburgh, vpon þe Hie-freit pairf, quibilk fould be ane faittie and place of refudge to all honest men and wemen; speciallie, to the honest nychtbouris, inhabitantis pairntill; Lyk as, þe said Johnne Broune is airt and pairt of the famyn villany and barbarus cryme: As also, is airt and pairt of the Slauchter and distructioun of the said Katharenes infant bairne, quhairwith scho hes pairtit, be occasioun foirfaid. For the quhilkis, the said Johnne aucht and fould be pwnfeischet, conforme to the lawis of þis realme, as ane brigane¹ and Murtherour vnder nycht; to the terrour and exampill of vtheris to commit the lyk, in tyme cuming.

It is allegit that the Summondis is nocht relevant; in respect the fact lybellit is only ane naikit intentione. It is anfuert be the persewer, that he conioynis the hail crymes lybellit togidder, to be tryit be the Assyse.

THE JUSTICE findis the summondis relevant, in respect of the anfuert.

It is forder alledgit, that this matter can nocht pafs to ane Assyse, in respect it is tryit alreddie, befor the Secreit Counfall, and ane Sentence gevin thairin alreddie. It is anfuert be the persewer, that the Secreit Counfall ar nocht Judges Criminall, and that na Precognition tane be thame can be in preiudice of decisioun to the Justice, to put crymes to ane Assyse; as was latlie decydit betuix Johnnestoune of Newbie contrair Williame Maxwell.²

THE JUSTICE remittis this matter to the tryal of ane Assyse.

VERDICT. The Assyse, be the mouth of Dauid Fairlie, merchand burges of Edinburgh, ffand, pronuncet and declairit the said Johnne Broune to be ffylet, culpable and convict of the Invaiding and molesting of the said Katharene Rae, vnder nycht; committit the tyme foirfaid, contenit in the said Dittay: And declairit the said Johnne to be Clene, innocent and acquit of the Murthour and distructioun of the said infant bairne, committit the tyme foirfaid; in respect thair was nathing productit for verifeing thairof: Quhairupoun aither of the fadis parteis askit instrumentis.³

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

Damesucken — Besieging the Tower of Newbie — Shooting Pistolets — Taking Captive, &c.

Jun. 21.—WILLIAME MAXWALL of Gribtounne, Barbara Johnnestoune, his spous, Elizabeth Johnnestoune, relict of vniq¹⁶ Johnne Johnnestoune, appeirand of Newbie (mother to the said Barbara.)

Dilaittit, accusit and persewit, be vertew of THE DITTAY following, viz.

FORSAMEKILL as, albeit be dynerse guid Actis of Parliamant and Secreit Counfall, *respectiue*, our foreane lord hes prohibeit and dischargit the beiring and weiring of hagbuttis and pistolettis vnder certane panes mentionet in the fadis Actis; nochtwithstanding, it is of treuth, that sic is the wicket dispositioun of sun persones, quha preferring thair awin inordinat appetite and revenge, to the dewerence and obedience of his hienes fadis lawis, thay and thair domestik servandis daylie and conti-

¹ Fr. *brigand*.

² See Jun. 21, the following Case.

³ The Sentences are not Recorded.

nuallie beiris and weiris hagbuttis and pistolettis, as thair ordiner and accuscmet wappones; of fet purpois and proufionne to put thair vngodlie determinatioun to executionne, aganis sic of his hienes peceable subiectia, aganis quhom thay beir ony querrell or hattrent: As namelie, the saidis Williame Maxwell, Barbara his spous, and Elizabeth Stewart hir mother, haifing, this langtyme bygane, borne ane secreit and hid malice aganis the said Robert Johnnestoun of Newbie, in respect of the dependance of certaine actiones, depending befoir the Lordis of Counfall and Seffion, movet be either pairtie aganis vtheris; and speciallie, ane actionne of Reduction intentit, and the Summondis thairof lauchfullie execute, at the instance of the said Robert aganis the said Williame Maxwell, Barbara his spous, and the said Elizabeth hir mother, for Reduction of the Retour of vmq^{le} Johnne Johnnestoun of Newbie, that last deceiffit, spous to the said Elizabeth, and for Reduction of his Seafing following thairupoun, and of certane vtheria pretendit Infementis, allegit maid be him to the said Elizabeth his spous, and to the said Barbara his dochter: And ane vther action and cause, perewis be the said Barbara and the said William hir spous, for his entreis, aganis the said Robert Johnnestoun, for randerig to thame the Toure and ffortalice of Newbie: And the samyn action being oft and dyuerse tymes callit, in prefence of the saidis Lordis, and dyuerse guid exceptions and defensis proponit be the said Robert and his procuratouris in his name, quhilk as yit ar vndicuffit, the saidis Williame, Barbara his spous, and the said Elizabeth hir mother, nocht being content to abyde the event of the saidis Lordis Judicatorie in the saidis caussis, bot rather to contempne our souerane lordis autoritie and lawis, and to tak Justice at thair awin handis, as gif thair war na ordiner justice within this realme; thay, during the saidis dependances, and eftir raising and lauchfull execution of the saidis Summondis, in maner aboue writin, haifing consultit and devyfit with Johnne McBrair, Robert Johnnestoune callit of Brwme, ferutouris to the said Williame Maxwell, Thomas Jardane callit of Birnok, Eduard Maxwell, brother to the Laird of Conhath, and Thomas Jardane, fervitour to Johnne Lord Herefis; the saidia fyve perones immediatlie befoir namet, being all bodin in feir of weir,¹ with jakis, suordis, steilbonnetis, lang gwnes, pistolettis, and vtheris wappones *invafue*, prohibeit to be worne in maner soirfaid, laltie, vpon the xix day of Merche lastbypast, be directionne, causing, command, bounding and convoy, reffett, assistance and ratihabitoun of the saidis Williame Maxwell, Barbara Johnnestoun his spous, and Elizabeth Stewart hir mother, come ryding to the place of Neubie, per-tening to the said Robert Johnnestoun, and being in his peceable² possessioun, than, and dyuerse monethis ofbefoer; quhair the said Robert was deidlie feik for the tyme: Eftir thay had send bak thair horfis fra thame, quhairby thair being thair fould nocht be knawin, thay privatlie, be the moyane of the said Elizabeth Stewart and Barbara Johnnestoun, convoyit thame selfis, vnder clud and silence of nycht, within the laiche³ hall and houffis of the said place of Neubie, inhabeit be the said Elizabeth Stewart and Barbara Johnnestoun, be quhome thay war reffett within the saidis houffis; and thair, the saidis perones, awaiting thair awin opportunitie, be way of foirtocht fflony and hamefukin, and vsurping vpon thame our souerane lordis autoritie, besaiget and invaidit the said Tour,³ thay being in the said Robert Johnnestounis possessiounne, as sone and appeard air mail and of tail;⁴ to the said vmq^{le} Johnne Johnnestoun of Neubie, his fither: And the saidis fyve perones maist schamefullie, crewallie and vnmercifullie preiffand, be violence and vnlawfull force, to asslage and tak the said Tour and ffortalice, invaidit and hurt the said Eduard Johnnestoun, brother to the said Robert, and maist crewallie schot him throw the body with ane pistolet; and also maist crewallie invaidit, hurt and woundit the said Airthour Johnnestoun, servand to the said Robert, in the face, with the schot of ane vther pistolet; to the effusioun of thair bluid in grit quantitie, thay being in company and servuce with the said Robert, and in defence of him and his Tour and ffortalice of Newbie; and than, per force, be way of ffoirtocht fflony and Hamefukkin, as said is, and vsurpeand and takand vpon thame our souerane lordis autoritie, thay enterit within the said Robertis Tour and ffortalice of New-

¹ In warlike array.² Low or under-hall.³ Tower.⁴ Son and apparent heir-male and of entail.

bie, and tuik the said Robert and the said Airthour, his fervand, captives and priffoneris; the said Robert being lyand deidlie feik and bedfast within the samyn; crewallie invaidit thame, band thair handis behind thair bakis, and violentlie and perforce sshot¹ thame and thair hail cumpanie furth of the said Tour, thay being our foverane lordis frie subiectis. QUHILKIS crewall, schamefull and abhominable crymes aboue writtin, viz. Vfurpationne of our foverane lordis auctoritie, Hamefukkin, Beiring and weiring of pistolettis, and remanent Invasiones, factis and deidis *respectiue* aboue specificeit, was done and committit be the foirfaidis fyve perfones, of the special command, honnding out, directionne, consulting, devyse, reffett, assiflance and ratihabitoune of the saidis Williame Maxwell, Barbara Johnestoun his spous, and the said Elizabeth his moder: And thairby, thay, and everie ane of thame, ar airt, pairt, red and counfall, and ratiefearis of the saidis hail crymes aboue expremit, and everie ane of thame, viz. Vfurpationn of our foverane lordis autoritie and Befageing and taking of the said hous, Convocationn of his Maiefteis leigis, Beiring and weiring of haghuttis and pistolettis, contrair the tennour of the saidis Actis, Invaiding, schuiting, hurting and wounding of his bienes frie lieges and subiectis, and Invaiding and taking of thame captives and priffoneris, be way of Hamefukkin and floirthocht flouney, binding of thair handis behind thair bakis, schuiting and expelling of thame violentlie furth of thair avin houffis, but² Commiffioune; thay being our foverane lordis frie legis and subiectis, in maner foirfaid.

PERSEWARIS.

Robert Johnnestoune of Newbie, Eduard Johnnestoune his brother, Airthour Johannestoune, fervand to the Laird of Newbie, Sir Tho^o Hammitoune of Monkland, kny^t, Aduocat to our foverane lord.

PRELOCOUTOURIS for the pannell.

The Laird of Gairleis,
Mr Alexander King,

The Laird of Hempisfeild,
Mr Robert Lyntoun,

Andro Ker of Fentoun,
James King.

It is allegit be Mr Alexander King, prelocoutour for Barbara Johnnestoun, that na proces can be led aganis hir, becaus scho being convenit ofbefoir, befoir the Lordis of Secretit Counfall, vpone the hail contentis of this lybell, factis and deidis lybellit, at the instante of my Lord Aduocat and Robert Johnnestoune, perfeweris, scho is assolzeit³ *simpliciter*, be Decreit of the Lordis of Secretit Counfall; and that thairefter the said Lybell was admittit to the said Aduocat and Robert Johnnestoune's probatioune, and thai succumbit⁴ thairintill: For verificatioune quhairof, thay producet the said Decreet-absoluteitour, of the dait, at Edinburgh, the secund Maij last.—It is anfuertit be the perfeweris, the allegiance aucht to be repellit, becaus nathing done befoir the Secretit Counfall, ather be Sentence absoluteitour or condampnitour can stay the Justice to proceed in ane Criminall cause; as was practiket⁵ betuix Eduard Johnnestoune Younger and Johnne Broune.⁶ And gif the Counfall can nocht judge vpone sa heich crymes as ar lybellit, or geve ony penall sentence vppone the samyn, conforme to the law, thair precognitioune can nocht stay the proceeding of the Justice. Last, the summondis befoir the Counfall was fund relevant, and the absoluteitour proceedit vppone nocht probatioune; and as crymes capital can nocht be provin be Wit-

¹ Thrust, ejected. ² Without. ³ Absolved, acquitted, freed. ⁴ Yielded. ⁵ Decided, made matter of precedent or practise.

⁶ See the preceding Case, Jun. 18 and 27, 1605.

nesses, bot be the tryell of an Assyse, sa the nocht probatioune of the samyn, befoir the Counfall, can nocht stay the same to pas to ane Assyse.

It is anfuert be the pannell, that the absoluitour befoir the Lordis of Secret Counfall will stay the Justice of ony forder proceeding: And as to the Practique betuix Eduard Johnnestoune and Johnne Broune, the samyn militatis nathing in this caice. That in that caice, Johnne Broune was convenit befoir the Counfall, for the wrangus Invaiding of Eduard Johnnestoune's wyfe, vnder clud and silence of nycht; and the proces befoir the Justice was ane persute, persewit at the instance of Johnne Broune aganis Eduard Johnnestoune, for Mutilatioune; sua that the Decreit of Secret Counfall nawayis met that persute befoir the Justice: And als, as for the autoritie and power of the Lordis of Secret Counfall, the perseweris can nevir be hard to oppone the samyn; in respect thay authorizet that judgement, callit and persewit befoir thame, as Judge-ordiner, for the factis lybellit, led and deducet probatioune eftir that the summondis was fund relevant in their faouris, and thaireftir succumbit, as said is; and thairby, can nevir be hard to impunge the said Decreit and sentence. In respect quhairof, the allegiance standis relevaut.—The Aduocat adheris to his former anfuert.

The Justice findis proces. Quhairupoune the Aduocat askis instrumentis.

It is forder allegit, that we ar nocht disputing heir vpon the autoritie of the Counfall or of the Justice, bot insistis only on this poynt, that thai ar maid fré of the fact afoir the Counfall.—It is anfuert be the Aduocat, he is nather acquit be ane Assyse, nather yit be ane Remissioune.

The Justice Repellis theallegiance, *locoquo*; reserving the pannellis informatioun thairof to the Assyse.—The Aduocat takis instrumentis of the Justice interlocutour.

It is allegit that the Summondis is nocht relevant, in respect that the factis and deidis lybellit ar nocht capital, and can nocht be put to the knowlege of ane Assyse.—The Aduocat anfuertis, aucht to be repellit, in respect of the Summondis.

The Justice findis the summondis relevant; and ordanis the samyn to be put to the knowlege of ane Assyse.—The Aduocat takis instrumentis of the Interlocutour.

ASSISA.

George Hadden of that Ilk,	Robert Frenche younger of	William Hay of Lynplum,
Thomas Portious of Glenkirk,	Frencheland,	Johnne Tennant of Kairnis,
William Twedie of the Wrae,	James Flemyng of Spittel,	William Sincler of Roiffing,
Mr Alex Menzies of Culterrawis,	James Crawford, goldfmyth, bur-	George Hay of Monktonne,
Patrik Lanctoun elder of Erles-	ges of Edinburgh,	Ja ^s Cranstoun of Monktonhall,
hauch,	Alex ^r Fairlie elder of Braid, Sydseiff of Ruchlaw.

The Aduocat takis instrumentis of the sweiring of the Assyse; and Protestis for Wilfull Error, gif thay Acquit.

The Pannell repeitis the allegiance proponit of befoir to the Assyse; and in respect that the Decreit of Secret Counfall gevin aganis the perseweris, efter probatioun

led be thame, *in foro contradictorio*, vpoun thair awin perfute, Barbara Johnestoune is declairit frie of the hail factis lybellit, the Assyse can nawayis fyle hir. As lykwyis, Williame Maxwell and Elizabeth Steuart are fund Clene and innocent of the deidis and factis lybellit; that the samyn was nocht done of thair causing, command, (or) assistance, but only of ratihabitoun,¹ eftir the committing of the factis: That thai can nawayis be convict, be the Assyse, of the deidis lybellit, as done be thair causing, command and assistance, airt and pairt: And gif thai be claget, as thai man be of necessitie, of the premiffis, thay can nawayis be convict of this lybell, because ratihabitoun *per se* nather is relevant, nor induces a cryme: And forder, befor the Stewart² of Annandaill, the hail pannel being accuset, as culpable of the factis and deidis lybellit, and thairfoir to haif incurrit the vnlawis for scheding of bluid; thay ar Claget be ane condigne Inqueist, and fund innocent, baith of the bluid and bludwyte;³ as the Decreit, heirwith product, beiris. In respect quhairof, the Assyse nawayis can fyle or convict thame; and in cais thay do, Protestis for manifest and Wilfull Errour.

The Aduocat, for informatioun of the Assyse, and to the effect thay be nocht led and inducet to commit Errour, acceptis the Decreit of Secreit Counfall product be the pannell, togidder with the Testimonial of the clangeing of the pannell befor the Stewart of Annandaill, in sa far as the samyn makis for the perfewaris, and na vtherways: And first, allegis that the summondis perfewit befor the Lordis of Secreit Counfall was fund relevant be the Lordis thairof, and the samyn fund provin, in effect and substance, aganis the said Williame Maxwell and Elizabeth Stewart; and gif ony appeirance be of absoluitour gevin in faouris of ony of the defenderis, the samyn procedit vpoune the Depositiones of the Witnessis; becaus Depositiones of Witnessis can haif na forder fayth nor⁴ thay depone to knaw of thair certane knowlege; and thairfoir, that quhilk is nocht deponit be the Witnessis to be done, in thair presence, sicht and certane knowlege, is nocht fund provin, quhairupoune absoluitour may be gevin: Bot becaus crymes, as thai ar vnawabill of thame selfis, sa thai are devyset and done secreteilie, in sic maner as na Witnessis can knaw the samyn; and thairfoir, can nocht depone thairintill; thairfoir, be the lawis of this cuntrie, it is provydit, that crymes neidis nocht, nor may nocht be provin be Witnessis, bot are referrit to the knowlege of ane suorne Assyse; quhais determinatioun, according as thay ar persuadit in thair consciences, is ane sufficient warrand to thame selfis, and ane just cause of convictioun of the pannell; and it is sufficient to thame to convict, gif thai find nocht cleirlye, thay can iustlie quyte⁵ And thairfoir, albeit⁶ the Witnessis knew nathing, that was first vset, and thairby thair Depositiones

¹ Confirmation or approval; from the Law Lat. *ratihabere*.
 The bloodwit was a fine paid for the shedding of blood.

² Steward, *Senescallus*.
⁴ Than.

⁵ Acquit.

³ The
⁶ Although.

gaif occasioun of sum absoluitour, for laik of probatioun be thame; yit that warrandis nocht the Affyse; bot thai man ather ffyle, or commit Wilfull Errour, in respect of the notorietie of this Dittay; to witt, that the Houfe of Neubie was tane, in maner contenit in the Summondis, be the perfones quha for the famyn hes bene continuallie fugitiue fenfyne; tua of thame being Williame Maxwellis feruands, and the vther thre his special freindis, haifing na entreis nather to tak nor keip the houfe for thame selffis, on thair awin respect, bot only at the desyre and be the causing and to the behuif of the said Williame and haill remanent defenderis: Quhilkis defenderis, pretending rycht to the said houfe and landis; as the verificatioun of tua feuerall dependances for the famyn befoir the Lordis of Sessioun, heirwith productet, beiris. The saidis defenderis, expreflie aganis the Act of Parliament maid anent the slauchter and trubbilling of parteis, in persute and defence of thair actiones, being the 219 of the Kingis xiiij Parliament, and vtheris Actis maid thairanent, intyset and caufet the saidis ffugitiues violently to Affage and tak the said houfe, persew, invaid and demane¹ the said Robert Johnestoune and his assistaris being thairintill, in maner contenit in the summondis; quhilk being committit be thame, thay nather pretendit nor retenit ony richt or possessioun thairof; bot only keipit the famyn, quhill² Williame Maxwell come to thame in all haift; to quhais behuif thay haifing tane the said houfe, thay incontinent delyuerit the famyn to him; quha fend thame away vpone his awin horse, and his freindis that come with him. And as to the Gentilwomen, the said fact being lykwayis done to thair behuif, thay refset and hid the committeris, being of intentioun and preparatioun to commit the famyn; and thai ran out of the ane into the vther; and thairby suppryset the said Tour, vpone the occasioun, to the behuif, and of the ratificatioun foirsaid: Lykas, be the Decreit, it is fund to be done of the ratificatioun of the said Williame Maxwell and Elizabeth Stewart; quhilk ratihabitoune, of Law, in ane matter done to the behuiff of ony man, is compairit and pwneifchet as ane preceeding command, be the first Law *de vi et vi armata*, in the xiiij paragraph, in thir wordis: ‘*rectius enim dicitur in maleficio ratihabitouem mandato comparari;*’ to wit, it is richtlie said, that ratihabitoune in crymes is richtlie comparet to ane preceeding command: And the thrid Law of the said Tit. in the tent paragraph, in thir wordis, ‘*cum procurator armatus venit, et ipse dominus armis dejicisse videtur, siue mandavit, siue ut Julianus ait, ratum habuit;*’ that is to say, quhan ane mannis servand cumis airmit, his maister is reput to haif expellit or reiectit with airmes, quhither he commandit, or, as Julian sayis, he ratifeit the famyn. And thairfoir, feing thir servandis and freindis come airnet and did this violent deid, be ratihabitoune of the pannel, togidder with the

¹ Treat, use, handle.² Until.

Decreit finding the famyn, makis thame giltie thairof. Lyk as, the Act 151 of the Kingis 12 Parliament, makis ane criminall Summondis to be relevant, gif it beiris that the defenderis ar airt and pairt of ane relevant cryme; and it is trew that that cryme is fund relevant be the Justice, and remittit to the Assyse; and the notorietye of the pannellis being airt and pairt thairof is befor deducet, feing thair knowlege of the said fact, thair benifeit rypet¹ thairby, and ratihabitoune thairof, is manifest. And as to the clengeing product, the famyn makis aganis the producer; becaus the perfeweris, as pairtie grevit, and the Kingis Aduocat, for his hienes entreis, being necessar and only parteis, and the defenderis knawing thair awin giltines, purchest and deducet ane led Tryell, befor thair awin freindis, being bayth Judges and Assyfouris; na pairtie haifing entreis being present nor wairnit thairto. In respect quhairof, gif the Assyse Clenge, the perfeweris protestis for Wilfull Errorr.—The Aduocat askit instrumentis of the sweiring of the Dittay be the perfeweris, in prefens of the Assyse; as lykwyis the taiknis² product, also suorne be thame.

It is anfuertit for the pannell, to the alledgeance immediatlie preceeding, that the Aduocat wald haif the Assyse, quha kennis³ nathing of the factis and deidis lybellit, bot the commone bruit,⁴ and be thair awin allegeance, to ffyle, nocht-withstanding that the multitude of the Witnesses product be the perfeweris could nawayis preve the fact; thay being Witnesses, duelleris vpon the landis, and round about the famyn; and ane grit number of thame come to the deid, and yit thay wad nocht tak it vpon thair consciences to depone ony thing by⁵ the verritie; sua, the Assyse, quha kennis far lefs, can nocht convict vtherwyis nor⁶ according to the first probatioun. As to the secund pairt of the allegeance, the famyn contenis only ane repetitioun of the Dittay and taikinis, and mereitis na forder anfuert nor is anfuert of befor. As to the thrid pairt, beiring that Ratihabitoune *equo paratur mandato*, and allegeing the first and thrid lawis *de vi et vi armata*; to that, it is anfuertit, that as, *in criminalibus*, Ratihabitoune is never relevant *per se*, sua the famyn can be comptit na cryme, nor na grund to convict the pannell; ffor in crymes, thair is thre thingis to be confidderit, airt, pairt, and ratihabitoune: *Airt*, is command, or devyse, or counfell of doing of the deid; *qulairof* we ar declarit innocent: *Pairt*, is participant of the fact; *quhairof* we ar lykwyis declairit innocent: *Ratihabitoune*, is allowing of the fact, eftir the famyn be committit; quhilk is nawayis drawin bak to ony of the premisses, in criminall matteris: And albeit the said Williame had allowit in taking of the houe, eftir it was tane and the deid committit, yit that makis thame nocht giltie of the factis or deidis committit be the perfonis takeris of the houe, the tyme befor or eftir the taking thairof. And feing the Witnesses

¹ Reaped. ² Tokens, evidence. ³ Knows. ⁴ Excepting the common report or talk of the country. Fr. *bruit*. ⁵ Past, besides. ⁶ Than.

examinat, be thair grit ayth, hes maid the pannell Innocent and clene of the factis lybellit; as lykways, thay ar declairit Innocent, be ane condigne fuorne Inqueift, befor thair Judge-ordiner; the Assyse can nawayis ffyle thame, except thay commit manifest Errour, and declair contrair to the probatioun alreddie led and deducet, and depone contrair to thair awin confience and knawledge.

SPECIAL VERDICT *of the Assysè.*

THE ASSYSE removet altogidder furth of Court to pe Counfall-hous, quhair þai, be pluralitie of voittis, electit and choisit the said Alexander Fairlie of Braid in¹ Chancellor of the said Assysè; and pairrefter reffonit and voittit vpon the hail heidis and poyntis of the said Dittay; and being ryple and at lenth advyfet pairwith, and with the hail talkines and writtis producet for verificatioun pairof, allegiances and anfueries maid, *hinc inde*, in the said matter; thay re-enterit agane in Court, quhair thay, be pe mouth of pe said Alexander Fairlie, ffand, pronuncet and declairit the saidis Williame Maxwell, Barbara Johnnestoun his spon, and pe said Elizabeth Stewart hir moþer, to be ffylet, culpabill and convict, as followis, viz. THE said *Williame Maxwell* of Gribtoun, to be ffylet, culpabill and convict off air and pairt with the saidis Eduard Maxwell, broþer to pe Laird of Couhaithe, Thomas Jardane callit of Birnok, James Jardane, servand to the said Johnne Lord Hereis, Johnne McBrair and Robert Johnnestoune callit of Brwme, of the violent taking of the said Tour and ffortalice of Newbie; committit be the saidis fyve perfones, the tyme contenit in the said Dittay. THE said *Elizabeth Stewart*, to be ffylet, culpable and convict off pe reffet of the saidis fyve perfones, quha committit pe crymes specificit in the said Dittay, and of the Ratihabitoun of pe violent taking of pe said Tour and ffortalice of Newbie: AND pe said *Barbara Johnnestoune* to be ffylet, culpable and convict of the Ratihabitoun of the violent taking of pe said Tour and ffortalice of Newbie, be pe saidis fyve perfones takeris pairof. AND siclyk, ffand and declairit pe saidis Williame Maxwell, Barbara Johnnestoune his spon, and pe said Elizabeth Stewart hir moþer, to be Clene, Innocent and Acquit of the hail remanent crymes and poyntis contenit in the foirsaid Dittay, viz. of air and pairt of pe vsurpatioun of our soverane lordis authoritie, in besageing of the said hous, convocatioun of his Maiesteis leigis, beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, Invaiding, schuiting, hurting and wounding of pe saidis Robert Johnnestoun, Ednard Johnnestoun and Airthour Johnnestoun, his lienes frie subiectis; and Invaiding and taking of thame captives and prissoneris, be way of Hameffukkin and ffoirthocht ffellonie, binding of pair handis behind pair bakis, and schuiting and expelling thame violentlie furthe of the hous and ffortalice foirsaid; committit be pe saidis fyve perfones, takeris pairof, pe tyme and in maner aboue writtin, mentionet in the said Dittay.

Jun. 25.—The Justice continued the case to the 28th of Junij. ‘Plegio, Alexandro Stewart de Gairleis, sub pena in Acto predict.’

Jun. 28.—Alexander Stewart of Gairleis become pledge and fouertie for Williame Maxwell of Gribtoun, &c. to enter and present thame befor the Justice and his deputis, in the Tolbuith of Edinburgh, the thrid day of Julij nixtocum, in the hour of caufe, to heir dome pronuncet vpon thame; vnder the panes following, viz. ffor the said Williame, vnder the pane of V^m li. (£5000,) and for the saidis Elizabeth and Barbara coniunctlie, vnder the pane of vther fyve thousand pundis.

Jul. 3.—Alexander Stewart of Garleis of new becomes pledge and fouertie, that thai and ilk ane of thame fall compeir befor the Justice or his deputes,

¹ To the office of.

quhair evir thay or ony of thame fall be charget, vpone xv dayis wairning, to heir and fie dome pronuncet, &c. ilk ane of thame vnder the pane of tua thousand merkis. Maxwell binds himself to 'warrant releif and keip skaythles' the said Alexander Stewart.

Slaughter.

Jun. 26.—JAMES GLEDSTANES of that Ilk.

Dilaitit ffor airt and pairt of the Slauchter of vmq^{le} Thomas Peiblis, burges of Peiblis; committit in the moneth of Februare, I^mV^c.lxj yeiris, vpone the landis of Kaidmure, besyde the said burgh of Peiblis; vpone set purpois, profioune and foirthocht fellony.

PERSEWERIS.

Thomas and Johnne Peiblis, as fones; Johnne and Daud Peiblis, fones to the said Thomas, (Junior.) PRELOCUTORIS for the pannell, Laurence Scott.

The pannell tuik him to our fouerane lordis Respett, producet be him, vnder his Maieftes Priuie Seill, of the dait the . . . day of Junij instant.

It is allegit be the perseweris, that the Respett producet be the pannell aucht nocht to be admittit, in respect the famyn is grantit contrair to the Act of Parliament; na Letter of Slanes being grantit be thame, for Assythement of the partie.—It is anferit be the pannell, the allegiance aucht to be Repellit, in respect of the Respett; and that thai ar willing to fatisfie, conforme to the lawis of this realme, and offeris Cautioune to that effect.—Quhilk Respett the Justice admittit, and ordanit the said James to find cautioune, &c.: Lyk as, Johnne Gledftanes of Wynnintoun-hauch and Mr Johnne Rutherford, bailzie and burges of Jedburgh, become bundin and obleift, coniunctlie and feuerallie with the said James Gladftanes of that Ilk, his self, to fatisfie the partie for the Slauchter of the said vmq^{le} Thomas Peiblis.

Murder under Trust.

Jun. 27.—JAMES KYNNAIRD, sone to the Laird of Incheture,¹ Williame Haitlie in Balgawie, Williame Kynnaird, sone to the Laird of Kynnaird.

Dilaitit, accuset and persewit be Siluefter Chopman in Kinlevin, conforme to our fouerane lordis Letteris, raifit and direct at the instance of Marioun Chopman, as mother, Margaret Scherp, as sifter, the said Siluefter Chopman and Thomas Chopman in Ragolny, as mother-brether,² with the remanent kyn and freindis of vmq^{le} Johnne Scherpe, feruitour to the Laird of Ruthven, aganis the saidis Williame, &c. and als aganis James Ramsay in Flacraig-mylne; as thay that war culpable and giltie of the crymes contenit in the DITTAY following.

¹ Vmq^{le} Patoun Kynnaird.

² Maternal uncles, mother's brothers.

FORSAMEKILL as the fairs William Kynnaid, &c. haifing laithie, vpon the ffyft day of July, the yeir of God, 1^m. fax hundredth and thre yeiris, conuenit thame felfis within the toune of Rait, quhair the said vmq^{le} Johnne Scherp was for the tyme, attending¹ the cuning of certane his freindis and gentilmen that war at the buriall of the Laird of Dandane, and doand vtheris his lauchfull effairis and buffines, lipning for na harme, iniurie or perfute of ony perfones, bot to haif leuit vnder Godis peax and our fouerane lordis : And thair, in all hamelie and freindlie maner, come to the said vmq^{le} Johnne, and requesit him to pas with thame to the drink ; quha, vpon meir simplicitee and beneuolence, past to ane drinking hous with thame, and haifing fallin in reffoning with the said vmq^{le} Johnne, anent sum speiches that past betuix him and the said James Ramfay in Flacraig-mylne a fewe dayis befor ; the fairs perfones in the meane tyme directt one of thair companie for the said James Ramfay, defyreing him to cum to thame, and thay fould affist him to be reuenged on the said vmq^{le} Johnne : At quhais cuning, the foirfairs perfones, togidder with the said James Ramfay, being all bodin in feir of weir, with fuordis, quhingeris, gantilletis, plait-flevis and vtheris wappones, *inaufine*, incontrair the tennour of the Actis of Parliament, fett vpon the said vmq^{le} Johnne Scherp, vnder trest, and maist trateruslie and barbaruslie, everie ane of thame with thair drawin wappones foirfairs, perfewit him for his slauchter ; and as murthereris, thevis and brigganis, haifing drawin the said vmq^{le} Johnne to drink, as said is, strak the said vmq^{le} Johnne in dyuerse partis of his body, and gaif him nyne bludie and deidlie woundis, viz. thre fraikis in his heid, thre in his bak, ane throw his wambe, ane vther vnder his okter, and tua vpon his schoulder blaid : Off the quhilkis fraikis and crewall woundis the said vmq^{le} Johnne immediatlie deceffit amangis thair handis. And the fairs perfones, and ilk ane of thame, ar airt and pairt of the said crewall Murthour and Slauchter, commitit vnder trest, vpon set purpois, promiffoun and foirtrocht felony ; in hie and manifest contempt of our fouerane lord, his hienes auctoritie and lawis ; and to the evill exampill of vtheris, his Maiefties obedient fubiectis, to commit the lyk schamefull and barbarus crueltie and Murthour, in tymes cuning, gif the foirfairs perfones commiteris thair of be sufferit to remane vnpwneifchet.

VERDICT. Lauchfull tyme of day biddin, and (the perfeweris) nocht compeirand,² the Justice-depute patt the fairs William, &c. to the knowlege of ane Assyse, who all in ane voce, be the mouth of Robert Hog in Gally, sumtyme fervand to my Lord Marfchell, chancellor, ffind the fairs William, &c. to be Clene, innocent and acquit of airt and pairt of the felloune and crewall Slauchter of the said vmq^{le} Johnne Scherp, and haill circumftances aboue writtin. Quhair-vponne the fairs defenderis askit instrumentis.

[*Mr William Hairt and Mr William Borthuik, Justices-Deputes.*]

Maisterful Theft — Stouthreif — Lifting of Cattle, &c.

JUN. 28.—JOHNNE ELLOTE of Copfchaw, Robert Ellote, his fone, Johnne Rutledge and Adam Rakefe, fervandis to the said Johnne.

Being enterit on pannell, quha war fummond be vertew of our fouerane lordis letteris, purchest at the instance of Hectour Trumbill of Wauchope, Thomas Trumbill, younger of Wauchope, George Trumbill, fecund lauchfull fone to the said Hectour, George Trumbill in Wauchope, Thomas Scheill thair, Hob Olipher thair, Harie Trumbill thair, Pait Trumbill thair, Gawin Trumbill in Bullerwall,

¹ Waiting. Fr. *attender*. ² The matter had been compromised with the relations of the deceased, &c. and by the absence of the pursuer, and no evidence being produced, the Jury acquitted the pannel.

Adame Trumbill in Wauchope, and Eduard Scheill in Langhauch : And perfewit be the faidis Thomas T. younger, and George his brother, for thame selffis, and in name and behalf of the said Hectour Trumbill of Wauchope thair fader, and hail remanent perfonese aboute writtun, thair tennentis, of the crymes following.

DITTAY against the Pannels.

FORSAMEKILL as the faidis Johnne Ellote, &c. with thair complices, to the number of ane Hundreth perfonese, allwell brokin-men and borderaris of England, as of Scotland, all bodin in feir of weir, with jakis, speiris, steil-bonnetis, lances, lang-hagbuttis, daggis and pitolettis, exprellie prohibeit to be borne, worne, vslet or schote with, be the Actis of Parliament, laitlie, in the moneth of September, the yeir of God, I^m. fax hundreth and tua yeiris, come opinlie, in the day lycht, to the landis of Wauchope; and thair, be way of Maisterfull thift and Stouth-reif, staw, rest and away-tuik, of the faidis landis, fourfoir of ky and oxin, ane hundreth scheip, and tuelf horse and meiris, pertening to the faidis perfeweris; had and convoyit the samyn away with thame, and dispoit thairupoun at thair pleafour : And thay and ilk ane of thame air airt and pairt of the faidis crymes of Thift and Stouth-reif; for the quhill thay aucht and sould be pwneifhet, conforme to the lawis of this realme, in exampill of vtheris.

PERSEWERIS, Thomas Trumbill, younger of Wauchope, George Trumbill, his brother.

PRELOCOUTOURIS for the pannel, Mr Alexander King, Robert Elliot, Mr Thomas Henderfoune.

The perfeweris protestis for Wilfull Errour, in caice thay acquit; in respect of the notorietye of the fact, and that thay haif gewin thair aithes thairvpoun.

Hectour Trumbill, elder, and the remainder of the pursuers, find Robert Home, younger of the Heuch, as cautioner, that they shall ratify whatever Thomas and George Trumbill do in their names, in this perfuit; and ' Williame Erle of Angus band and obleift him, his airis, executouris and suceffouris to warrand, releif and keip skaythles the said Robert Home, his airis, executouris and assignais, of his cautionrie foirfaid, and of all danger, perrell and expensfis that he may incur thairthrow.'

VERDICT. The Assyse, be the mouth of Robert Wauch of Keip, chancellor, find the faidis perfonese to be Cleane, innocent and acquit, &c. Quhairupoun the faidis perfonese on pannel askit instrumentis.

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

Mutilation and Demembration.

Jul. 2.—JOHNNE HAMMILTOUNE, Persone of Crawford-Johnne, Airthour Colquhoun, than his servand, now in Kirmure, Gawin Murray of Vdstoutheid.

Dilaitt of airt and pairt of the Hurting, Wounding and Mutilatioune of Alexander Lokhart, Tutour of Wikketschaw, of his left hand, and demembring of hin of his mid-finger, nerrest his littill finger, of his said hand : And beiring and weiring of pifolettis; committit in Apryle, I^m.V^c.lxxxv yeiris.

Robert Chancellor of Sheillhill become pledge and fouertie, that thai and ilk ane of thame fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis warning, to vnderly the law, &c.

Slaughter.

Jul. 3.—CHAIRLES CARUTHERIS of Warrambie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Roger Gordoun in Lochinkitt.

PERSEWER, Roger Gordoune, brother-sonne.

Continued to the air of ' Annandaill, tertio Itineris, (vel super premonitione,) xv dierum.'

Forcing (Rape.)

Jul. 3.—WILLIAME BELL, workman in Edinburgh.

Dilaitit, accufet and persewit be Jonet Falconer in Karingtoun, ffor the fforceing of hir aganis hir will ; and drawing hir furth of the way at Boddorne-mure, betuix Caringtoun and Lefuaid, and abufeing hir in ane coill-pott-hoill ; selo being ane young maid of tuelf 3eiris of age, or thairby, &c. ; committit the xxj day of Junij lastbypast, about tuelf houres in the day.

VERDICT. Eftir accufatioun of the said Williame Bell, be Dittay, of the saidis crymes, and verificatioun thairof be the said Williamis Depositiones ; the Assyse, be the mouth of James Ramfay in Caringtoun, chancellor, stand, pronuncet and declairit the said W^m Bell to be ffylet, culpable and convict of the saidis crymes.

SENTENCE. To be tane to the mercait-croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid ; and all his moveabill guidis and geir to be efcheit, &c.

Slaughter.

Jul. 4.—JAMES TAIT in Kelfo, brother to George Tait of Bairerse.

Dilaitit, accufet and persewit by Williame Tait of Chirritreis, as father, Williame and Johnne Taittis, his fones, as brether, with the remanent kyn and freindis of vmq^{le} James Tait, sone to the said Williame Tait of Chirritreis, off airt and pairt of the crymes following, viz.

FORSAMEKILL as the said James Tait in Kelfo, with his complices, being all bodin in feir of weir, with fuordis, knapfka-bonnetis,¹ lances and pistolettis, expresse prohibit to be borne, worne, vsed or febot with be our foverane lordis Actis of Parliament, in the moneth of July, the yeir of God I^m.V^c. lxxxvij yeiris, haifing confauet ane deidlie feid, rancour and malice aganis the said vmq^{le} James Tait, come to the Grene of Chirritreis, quhair the said James was, in fober and quyet maner, &c., and thair fet vpon him, and with thair pistolettis and fuordis, maist schamefullie, crewallie and vnmercifallie slew the said vmq^{le} James Tait : And the said James Tait in Kelfo is airt and pairt of the said slauchter ; committit vpon fett purpois, prouifioun and foirlhoct felony, in hie and manifest contempt of our foverane lord, &c.

PERSEWERIS, Williame Tait, Johnne Tait, as brether.

PRELOCOUTOURIS for the pannell, Mr Thomas Craig, Mr Thomas Henderfoune.

VERDICT. The Assyse, (amongst whom, Thomas Ker of Pryoraw, Thomas

¹ A steel bonnet, or skull-piece.

Tait of the Hoill, and Johnne Ryddell, appeirand of that Ilk¹) be the mouth of Johnne Mow of that Ilk, chancellor, ffind the said James Taitt in Kelfo, to be Cleane, innocent and acquit of airt and pairt of the said Slauchter. Quhairvpone he askit instrumentis.

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

Perjury before the Lords of Council and Session.

Jul. 10.—MR WILLIAME CARBRAITHE (GALBRAYTHE), fumtyme Minister at Pennycuik.

Dilaitit of Periurie, in deponing contrair to his former Depositiones, eftir he was re-examinat thairupone, in the cause perfwit be the Tennentis of Laffudane, contrair Sir Johnne Ker of Hirfell, knycht.

DITTAY against the Pannel.

FORSAMEKILL as the said Mr Williame Galbrayth, compeirand befor the Lordis of Counfall and Sessioun, vpone the thrid day of July instant, as he that was summond to compeir befor the saidis Lordis, to heir witnessin in the cause perfwit be the Tennentis of Laffudane aganis Sir Johnne Ker of Hirfell, knycht, anent the reffait of certane evidentis and writtis be the said Sir Johnne, pertening to the saidis Tennentis, maid his Depositione as followis, viz.—¹ MR WILLIAME GALBRAITHE, Minister, of the age of fourtie yeiris, or thairby, *solutus*,² Deponis, that in the yeir of God 1^m.V^c. fourfoir sevintene yeiris (the special tyme and day rememberis nocht,) the Deponar, being in James Kingis chalmir in Edinburgh, quhair he presentlie duellis, quhair he saw present, for the tyme, Sir Johnne Ker of Hirfell, knycht, ane of the defenderis; Oliver Sincler of Ravinfuk; Enoche Dewar, servand to the said Olipher; Adame Scheill, servand to vmq^l Mungo Tennent, and the said James King; and in all the saidis persones prefens, Oliuer Sincler presentit vpone the buird,³ in all thair prefens, ane littill box, coverit with ledder, of Flanderis mak;⁴ and the said Oliuer said to the said Laird of Littildane, “Thir ar the writis quhilk I promiseit to lat 3ow fie;” and then the box being opnit, James King tuik out all the saidis evidentis furth of the said box, in all thair prefens, and red the samyn, ane be ane. *Interrogatus*, vpone the periculor contentis and daitis of ilk ane of the saidis evidentis, rememberis perfwitlie, that all the evidentis than red be the said James King maid mentiou and dispositioun of the landis of Lessuldane and Newtown; and rememberis that ane of the saidis Chartouris bure dispositioun of the foirsaidis landis of Lessuldane and Newtown to Airthour Sinclair, and his airis mention thairin; and rememberis nocht of ony forder particuler contentis of the foirsaidis evidentis; bot fayis, that thair was ane grit quantitie of thame, all in parchment, and haiffand feillis: And immediatlie efter the reiding of the saidis writis, thay war all put within the said box agane; and ane Obligatioun maid and writtin in all the foirsaidis parteis prefens, beirand the said Sir Johnne Ker to be bundin and obleift to the said Oliuer Sincler in the fowme of Fyve hundreth merkis money, how sone he or ony of his sould obtene the richt of the landis of Lessuldane: And this Deponer saw the said Sir Johnne Ker subfcrue the said Obligatioun; and James King and this deponer subfcruint the same Obligatioun, as witness: And at the samyn tyme, Sir Johnne Ker and his servandis tuik away the said box with thame, and the said Oliuer Sincler tuik the said Sir Johnne Keris Band with him; and seu that tyme, the deponer never saw ony of the foirsaidis evidentis, in ony of the defenderis handis, nor in nane vther persones handis; *reddens causa sciencie*, becaus this Deponer was present, hard and saw as he deponit.—ESTIR the making of the quhilk Depositione, the said Mr Williame Galbraithe being re-examinat, vpone the fourt day

¹ The remainder are feuars.

² According to more modern form, ‘purged of malice and partial counsel.’

³ Heard, t.ble.

⁴ Manufacture, workmanship, *make*.

of July instant, in prefens of my Lord Chancellor and hail remanent Lordis of Sessioune, he past fra his former Depositionn, maid be him the said thrid day of July, and declairit the samyn Depositionn to be altogidder fals and vntrew in the self; and that he was nevir in James Kingis Chalmer, quhair he saw the evidents delynerit to Sir Johnne Ker, nather yit saw he euir Oliver Sincler and Sir Johnne Ker, togidder, in James Kingis chalmer; nor newir saw ane Obligiatioun subferynit be Sir Johnne Ker to Oliuer Sincler; nor nevir subferynit the samyn as witness: And being inqyret, quha movit him to mak the said Depositionne? Declairit, that Dandie Plumber schew him ane Obligiatioun, extractit and subferynit be the Clerk of Register, allegit subferynit be Sir Johnne Ker, quhairin he was witness, as was allegit; and bad him Depone, conforme to the Obligiatioun: The quhilke Obligiatioun, eftir the sicht thairof, movet the deponer to depone as he deponet; and said, that he gat only fra Dandie Plumber his dennar, yisterday, and fourtie schillingis eftir his dennar. As at mair lenth is contenit in the saidis Depositiones. BE the making of the quhilkis tua contrair Depositiones, the said Mr Williame Galbraith hes schawin him self to be manifestlie Periuret, falsse, and vntrew: For the quhilke Periuret and falsset he aucht and fould be puneischet, conforme to the Lawis of this realme, in exam-pill of vtheris.

Quhilke cryme aboue writtin, the said Mr Williame confessit to be of veritie; and offerit him self, and become in our souerane lord and his hienes Counfallis Will for the samyn; quhome the Justice ressaunt in will. And thairfoir the said Justice-depute, at command and for obedience of ane Warrant directit to him, of the dait, the tent day of July instant; subferynit be my Lord Chancellor and vtheris Lordis of his Maiesteis Secret Counfall; quhairof the tennour followis.

DECIMO Julij, 1605. THE Lordis of Secret Counfall ordanis the Justice-general and his deputis to gif this dome following, vpoun Mr Williame Galbraith, eftir that he be convict of Periurie besoir thame, or pat he becum in will, vij. That he fall be tane to the mercait-croce of Edinburghe, with ane paiper on his heid, declairand him to be Men-sworne, Perjuret and Infamous, and to Banishe him the Ile of Britane for euir: And that he depairt furth of the said Ile, betuix and the fyftene day of August nixtocum; and gif euir he repair within the samyn Ile agane, without the Kingis Licence, or 3it fall remane within the samyn, and nocht depairt furth pairof, betuix and the said fyftene day of August nixtocum, that he fall be execute to the daith, without any forder dome to be gevin vpone him.

(Sic subfcribitur) AL. CANCELL(arius,) SECRET(arius,) QUHITTINGHAM, R. COKBURNE.

SENTENCE. The Justice, be the mouthe of James Henderfoune, dempfter of Court, decernit and ordanit the said Mr Williame Galbraith to be tane to the said mercait croce of Edinburghe, and thair to stand, for the space of ane hour, or thairby, with ane paper vpone his heid, contening thir woirdis, in grit letteris, 'MENSURNE, PERIURET AND INFAMOUS:' And to be Banischet the Ile of Britane for euir, &c.¹

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

Sortery—Witchcraft, &c.

Jul. 23.—PATRIK LOWRIE, in Halie (Ayrshire.)

Dilaittit, accuset and persewit, be Sir Thomas Hammiltoun of Monkland, knycht, advocat to our souerane lord, for his hienes entreis, off the crymes fol-

¹ The terms of the Council's Warrant are recited.

lowing, viz. FOR consulting with vmq^{le} Jonet Hunter, a ne notorious Witche, and quha was execute to the daith for Sorcerie and Witchcraft : Quhilk vmq^{le} Jonet and the said Patrik, at Witfunday, in the yeir of God I^m.V^c. and four yeiris, conuenit thame selfis vpon the cowmoun waift Sandhillis in Kyle, maift ewest¹ to the burgh of Irwing ; quhair the Devill appeirit to thame and conferrit with thame, vmq^{le} Katharene M^cTeir, ane vther Witche in Halie, and Margaret Duncane in Lones being also in companie with thame, at the samyn tyme. AND siclyk, the said Patrik, being in company with the saidis vmq^{le} Jonet Hunter, Katharene M^cTeir and Margaret Duncane, Witches, Sorcereris and abuseris of the peopill, att Hallowevin, in the yeir of God foirsaid, assemblit thame selfis vpon Lowdon-hill, quhair thair appeirit to thame ane devillische Spreit, in liknes of ane woman, and callit hir self Helen M^cbrune ; att the quhilk tyme, efter lang consultatioune had be thame with the said wikkit Spreit, the Devill, in the liknes of the said Helen M^cbrune, presentit to the said Patrik ane hair belt ; in ane of the endis of the quhilk belt appeirit the similitude of foure fingeris and ane thombe, nocht far differrent frome the clawis of the Devill : Lyk as, the samyn belt, being presentit be the said Jonet Hunter to the persones that past vpon hir Afflyse, the tyme of hir Convictioun for the said cryme of Witchcraft, was brunt in ane ffyre. LYK AS, at dyuerse tymes thaireftir, thay assemblit thame selfis, in dyuerse Kirkis and Kirk-zairdis ; quhair the said Patrik, and remanent his affociatis foirlaidis, raifit and tuik vp findrie deid persones furth of thair graves, and dismemberit the saidis deid corpis² for the practiizing of thair Witchcraft and Sorcerie. ITEM, for airt and pairt of the Bewitcheing, be Inchantment and Sorcerie, of Bessie Saweris coirnes, and taking away the substance and fisnowme³ thair of, be the space of ten yeiris, yeirlie aftir vtheris.⁴ ITEM, for airt and pairt of the Bewitcheing of certane milk ky, pertening to Johnne Fergushill, younger in Halie, at Beltane, I^m.Vj^e. and foure yeiris ; quhairby the said ky gaif na milk bot bluid and worsome⁵ thaireftir. ITEM, ffor cureing, be Inchantment and Sorcerie, of vmq^{le} Margaret M^cguffok, callit ' the Witch of Barneweill,' hir horse, quhairon scho raid ; committit a tuentie yeir syne, or thairby. AND siclyk, ffor laying on of Sorcerie and Inchantment and devillery vpon Jonet Lowrie, the streking of hir blind ; and be cureing and taking af of the said Witchcraft af hir agane, and restoiring hir to hir former sight. ITEM, for cureing and helping, be Inchantment and Sorcerie, of Elizabeth Craufurd's bairne in Glesgow, quha had bene deidlie feik of ane strange incurable diseise, be the space of aucht or nyne yeiris of before, be taking ane clayth af the said bairnes fface, and sayneing and

¹ Nearest. ² This seems to have been a favourite practice. It is elsewhere called ' *junting*,' (jointing) as may be seen in the description of the midnight orgies of Annie Samson and others of the unhappy wights who suffered for their deceptions of this sort. ³ ' *Fushion*' (*foison*.) pith, strength, flavour, &c. ⁴ For ten successive years. ⁵ Blood and purulent matter.

croceing with his hand the said bairnes face; keiping of the said clayth, be the space of aucht dayis; and thaireftir, haifing returnit to hir with the said clayth, couerit hir face agane thairwith, quha sleipit a tua dayis altogidder, and walknit nocht; and at the tua dayis end, ane of the said barnes eyne, that was ofbefoir tynt, throw the said diseafe, was restoirit to hir; and within fyve dayis thaireftir, the said barne was, be the said Inchantment, curet and mendit be the said Patrik. AND finallie, for ane Cowmone and notorious Sorcerer, Warlok and abuser of the peopill, be all vnlawfull charmes and deவில்liche Incantationes, vsæt be him, this xxiiij yeir bygane.

For the quhilkis crymes *respectiue* aboue writtin, the said Patrik Lowrie was put to the knowlege of ane Assyse.—The Aduocat afkis instrumentis of the sweiring of Assyse.

MR DAVID MYLL,¹ being sworne, att the defyre of Patrik Lowrie, to mak Declaration of his brute² and behaviour; deponit that he wes bruteit and comounlie callit ‘Pait þe Witch!’ And declaris, he gatt his fatheris malefoune,³ and said he wald mak ane ill end: And declaris, that he wes ordanit to mak his repentance, for the brute and sklander he sustenit; and that he maid his repentance.

And thaireftir the said Patrik Lowrie defyrit the Justice and Assyse to trow⁴ the said Mr Dauid Myll.

My Lord Aduocat proteftis for Wilfull Error, in caice thay acquit him of the Dittay.

VERDICT. Eftir accusation of the said Patrik, be Dittay, of the crymes *respectiue* aboue specifeit, and verificatioun of the samyn, be production of certane writtis be the said Sir Thomas Hammiltoun, aduocat; the Assyse, all in ane voce, be the mouthe of Johnne Wallace in Lonese, chancellor, ffind, pronuncet and declairit the said Patrik to be ffylet, culpabill and convict of the hail crymes *respectiue* aboue specifeit.

SENTENCE. The said Justice-depute decernit and ordanit the said Patrik Lowrie to be tane to the Castell-hill of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir, his body to be brunt in asches; and his hail moveabill guidis and geir, gif he ony hes, to be escheit, &c.

Fire-raising — Taking Captive and Prisoner, &c.

Jul. 24.—INGRIE AIRMESTRANG in Inzieholme;⁵ Archie Airmestrang of Flaskholme.

Dilaitit of airt and pairt of the tressonabill Raifing of ffyre, [within the House of the Langholme?] burning and destroying thair of, pteuing to Harbert Max-

¹ Probably the Minister of the parish where this unhappy creature dwelt. reputation. Fr. *bruit*.

² Curse, malediction.

³ Credit, believe.

⁴ Report, fame.
⁵ See Vol. II. p. 450.

wall of Kavense : Taking of the said Harbert captiue and prissoner : Schuiting of hagbutis and pistolettis, &c.

Mathow Findlafoun of Killeyth become pledge and fouertie for Ingrie, and Archibald Batie, burges of Dumfreis, for Airchie Airmestrang, that thay fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdome of Dumfreis or Stewartrie of Annadail, quhair thay duell ; or foner, vpone xv dayis wairning, to vnderly the law, &c. ; aither of the saidis perfones vnder the pane of Fyve hundreth merkis money.

Slaughter.

Jul. 25.—GEORGE ANGUSE, notter ; James Blair, burges of Air ; David Kennydie of Corffis ; and Gilbert Grahame, younger of Craig.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richerd Spens, fervand to the Erle of Caffillis.¹

PERSEWERIS, Richerd Spens, in Vgstoun, as father ; Robert Spens, his sone, as brother.

The perfeweris passis *simpliciter* fra the saidis George Anguse, &c. and declairis thame to be Innocent of the said Slauchter : Quhairupoun the saidis perfones on pannell askit instrumentis, and proteffis for releif of thair cautioneris ; and that thai be nocht callit or perfewit for the said cryme, in tyme cuming.

Slaughter.

Jul. 26.—ALEXANDER BRUNTFEILD of Hardaikeris, and Nicoll Bruntfeild, sone to the Guidman of Eiffieid.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johne Bruntfeild, younger in Tennaendrie.

PERSEWER.

Robert Bruntfeild, as brother.

PRELOCOUTOURIS for the pannell.

Mr Johne Ruffell, Mr Williame Oliphant.

It is allegit be the pannell, that the defunct, for quhais slauchter thai ar perfewit, was flane at the horne, for four feuerall cauffis, contenit in the four Hoirningis presentlie productet be the pannell : Vpoun production quhairof, the pannell tuik instrumentis ; and the pannell proteffit, that the producing thir Hoirningis sould nawayis affirme thame to be culpable of the factis lybellit.—Continued to Nov. 24.

Nov. 28.—Robert Bruntfeild, fear of Todrig, and Nicoll B. of Quhyte-hous become pledge and fouertie, conjunctlie and feuerallie, that thai fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdome, quhair they duell (Roxburghe,) or foner, vpone xv dayis wairning ; vnder the pane of ane thousand merkis for the entrie of the said Alexander, and 500 for the said Nicoll.

¹ See Dec. 6, 1605.

Murder under Trust — Stouthreif — Adultery, &c.

Jul. 26.—WILLIAME ROISE of Dunskeithe.

Dilaitit, accuset and perewit be Sir Thomas Hammiltoun of Mounkland, kny^t, Aduocat to oure souerane lord for his hienes interes, of the crymes following, viz.

FORSAMEKILL as it statute and ordanit be our souerane lordis Actis of Parliament, that the Murthour or Slauchter of quhatsumewir his Maiestis liegis, quhair the partie is slayne vnder traift, credite, assurance and power of the slayer, all sic Murthouris and Slauchteris to be committit in tyme cuning, eftir the dait of the said Act, quhilk is of the dait the xxix day of Julij, the yeir of God, I^m.V^o.lxxxvij yeiris, the famin being lauchfullie tryit, and the peroune dilaitit, & fund giltie be ane Affyise thairof, falbe Trefoun; and the peroune fund culpabill fall forfalt lyffe, landis and guidis: As the said Act ztt mair lenth beris. AND trew it is, that the said Williame Roise, haifing concludit in his haert the crewall Murthour and Slauchter of vmq^{le} Alexander Gybfoune in Nig; for performance of his wicket intencion, he, accompaneit with Farquhair Roise, domestik seruitour to Nicolas Roise of Pitcalany, Andro Grassich, sone to Alexander M^cGilliepedder and Thomas M^cconclie, vponne the fourt day of Februar lastbypast, being Monunday, he being vnder freindschip and familiarie with the said vmq^{le} Alexander, trytit to meit the said vmq^{le} Alexander, in Huchfoun Brabneris hous in Pitcallene; quhair the said Williame Roise and his compliceis foirsaidis, in ane maist freindlie and loving maner intertineit, vnder traift of assurance, the said vmq^{le} Alexander all the day, till the ewening, driking and making mirrie: And about aucht houris att ewin, vponne the famin day, being ane dark nycht, baith mark and mones,¹ convoyit and brocht the said vmq^{le} Alexander furth of the said Huchfoun Brabneris hous, and causit him to vnderstand that he wald transport him to his awin hous; att the quhilk tyme, he maist trefonablie drew and convoyit the said vmq^{le} Alexander out of the way, to ane burne-syde, nocht far distant fra the said Huchfounnis hous, he being than vnder the said Williamis traift, credite and assurance, lipping for na harme, iniurie or hurt to haif bene done to him be the said Williame and his complices, that war with him in his cunpany, bot to haif bene preferuit and defendit be him thair. Efter the said Williame, in forme of freindschip and familiarite, desyrit the sycht of the said vmq^{le} Alexanderis sword, the said Williame and his complices maist trefonablie disarmit him of his armour and wappinnis that was about him, and maist trefonablie murtherit and slew him, ffyrst be slykyng aff his . . . hand, nixt be gewing to him ane crewall and deidlie fraik in his heid, with ane half lang sword, and dineris vtheris crewall and deidlie woundis in dineris vtheris partis of his body; and thairby, maist crewallie and trefonablie, vnder traift, freindschip and assurance, murtherit and slew the said vmq^{le} Alexander Gybfoune; and he wes airt and pairt of the said crewall and trefonabill Murthour; ffor the quhilk he aucht and fould be pwneit as ane Traittour, viz. be sforsalting of his lyffe, landis and guidis. To the takin² that he wes culpabill of the said trefonabill fact, he immediatlie eftir the committing of the said crewall Murthour, and to the intent the famin fould nocht haif cum to lycht, he delyuerit to the said vmq^{le} Williame M^cStein, his cotter, the soun of foure schilling, and the said Farquhair Roise gaff vther four schilling, to the said Andro Grassich, for bureing³ of the said vmq^{le} Alexander in the eird,⁴ or casting of him in the sea: Lyke as, the said vmq^{le} M^cStein and Andro Grassich, being thairsetir tane and apprehendit for the said fact, be thair Depositionnis, grantit and confessit that the said Williame tane was the principall slyrkear and murtherisar of the said vmq^{le} Alexander, with his awin hand; and att the place of execution, quhair thay sufferit, thay paitt to death thairwith. To the takin also, the said Williame Rois is being perewit before our souerane lordis Justice, to haif vnderlyne the law for the said cryme, he past to the horne, and continewallie senfyne hes bene fugitiue thairfoir; as the Letteris presentit beris. ITEM, the said Williame, being indytit and accusit, sforsamekill as it is statute and ordanit, be dinerse our souerane lordis Actis of Parliament, speciallice, be ane Act of his

¹ Dark (*nirk*) and moonless.² In token or testimony.³ Burying.⁴ Earth, ground.

hienes ellewint Parliament, begun and hauldin att Edinburgh, the xxix day of Julij, Im.Vc.lxxxvij yeiris, that in caice it fall happin ony landit men to be lauchfullie and ordourlie convict of the crymes of Commonn Thift, Reffett of thift, or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Treffonne, that is to fay, tinfall¹ and fforfaltour of lyffe, landis and guidis; as the faid Act att mair lenth beris. And trew it is, that the faid Williame Roife of Dunkeith, being ane landit gentilman and heretour of the faidis landis of Dunkeith, accompaneit with the perfounes foirfaidis, his complices, immediatlie at the tyme of his treffonabill Martdlering and flaying of the faid vmq^{le} Alexander Gibfoun, in maner and at the tyme aboue writtin; he, be way of Maifterfull Thift and Stouth-reiff, treffonable, violentlie and thiftioufflie flaw, conceillit, refsett, reft and away-tuik, fra the faid vmq^{le} Alexander, the fowme of ane hundreth merkis money, or thairby, quhilk the faid vmq^{le} Alexander had vpon him, and in his purfe, the tyme of the faid Williame Roife committing of the faid treffonabill Murthour and Slauchter foirfaid; and the faid Williame is airt and pairt of the Stouth-reif, fleilling and away-taking of the faid money; and thairthrow, the faid Williame Roife, being ane landit gentilman, in maner foirfaid, hes commitit manifest Treffonne, and the panes and pwnementil fpecifeit in the faidis Actis of Parliament, viz. tynfall and fforfaltour of his lyfe, landis and guidis, aucht and fould be execute aganis him with all rigour, in exempill of vtheris. To the talkin, that he, being culpabill of the faidis treffonabill crymes of Thift and Stouth-reiff and Murthour vnder tref, the faid Williame was perfewit criminalle thairfoir, befor the Justice and his deputis, to haif vnderlyne the law for the famyn, in the moneth of Maij laft bypaff, he than paff to the horne, and hes bene continuallie fenfyne fugitive for the faidis crymes. As the faidis Letteris of Hoirning, producet iudicialle be our faid fouerane lordis aduocat, at lenth proporis. Lykas, be his awin Depofitiones, he hes confeffit the Murthour aboue writtin, and that he wes airt and pairt thairof. ITEM, the faid Williame, being indytit and accuset, fforfamekill as he, haifing thir dyuerfe yeiris bygane intenteint and kept in companie with him Marie Rannaldoche, ane harlot, committing Adulterie with hir, he being mareit with vmq^{le} Agnes Roife, his lauchfull fpos, and the faid Marie being with bairne to him, fcho and vmq^{le} Williame McStene, fervand and hyred man to the faid Williame, togidder with the faid Williame him felf, confultit and concludit, at diuerfe thair tryftis and meittingis, the treffonabill Murthour of the faid vmq^{le} Agnes, his lauchfull fpos, vnder tref, credeit and affurance; lyk as, for performance of thair wikket purpois and intentionne, the faid Marie, be the faid Williame's directioun, gaif to the faid vmq^{le} Agnes, his fpos, poyfonet drinkis; quhilkis treffonabill drinkis, nocht haifing wrocht vpon hir to the deith, bot the famyn, at findrie tymes, being vomieit bak agane be hir; and finding himfelf difapoyntit be that treffonabill meayne,² and hir daithe postponit and delayit, he thairfoir of new confultit and devyfit with the faid Marie Rannaldoche and Williame McStene, quha, in the moneth of May, Im.Vj^e and foure yeiris, be the faid Williame's speciall caulding, directioun and command, maift treffonabillie, crewallie and vnmerefullie Strangallit and wirreit the faid vmq^{le} Agnes, his fpos, in her bed, within hir awin hous, vuder filence and clud of nycht; ffor performance quhairof, he promeit to the faid Marie Rannaldoche to marie and tak hir to wyfe: Lyke as, the faid Williame McStene, being apprehendit for the treffonabill Murthour of the faid vmq^{le} Alexander Gibfoun, and examinat be certane of the Mimiftrie³ and gentilmen of the cuntry, Confeffit and declairit that he, at the faid Williame Rossis command and direction, accompaneit with the faid Marie Rannaldoche, murdreit and treffonabillie strangillit the faid vmq^{le} Agnies, his fpos; ffor doing of the quhilk treffonabill deed, the faid vmq^{le} Williame McStene Confeffit he refleit fra the faid Williame, as ane reward for his panes, ane rig of beir,⁴ togidder with the haill cleting that was vpon the faid Williamis bak the tyme of the faid Murthour, viz. his bonet, fark, coitt, doublet, breikis, hois, fokis and buittis. Lyk as, for testificatioun of the treuth of the faid treffonabill Murthour, and that the faid Williame wes airt and pairt thairof, the faid Williame, be his Depofitiones maid in prefens of Mr Williame Hairt, Justice-depute, and the Bailleis of Edinburgh, the xxv of this

¹ Loss.² Meun, Fr. *moyan*.³ Clergy.⁴ Ridge of barley.

infant, hes confessit that the nycht appoyntt be him and his complices for performeing of the said trefsonabill Murthour, he withdrew him self furth of his awin hous of Dunskeith, fra his said spous, to his chieff the Laird of Balnagounes houe, quhair he remanit quhill midnycht; about the quhillk tyme, his conscience being sa tuichet and trubillit for the said trefsonabill fact, quhill, be his counfall and directioun foirsaid, was that nycht to be put in executionne, be the persones foirsaid, he arraise out of his bed, putt on his claithes and come to his awin houe, of purpois (as he declairit) to haif stayit the said wicked fact: And he, finding the turne done afoir his cuming, he reiteirit him self bak agane. Quhillk trefsonabill fact he bes continuallie senfyne conceillit to the tyme of his Examination foirsaid. And thairthrow, he is airt, pairt, red and counfall of the said trefsonabill Murthour and strangelling of the said v^mq^{le} Agnes his spous, vnder tref, and aucht and fould be puneithet thairfoir, conforme to the tenour of the said Act of Parliament. ITEM, the said Williame, being indytit and accuset, that he, being ane landit Gentilman, as said is, with his complices, cowmone thevis, in the moneth of . . . the yeir of God thiftioulie, and be way of Maisterfull Thift and Stouth-reiff, staw, rest and away-tuik, fra Williame Micain M^cWilliame in Gany, tua schein, had and dispoinet thairupoune at his pleafour; and he, being ane landit Gentilman, be committing of the said maisterfull thift and stouth-reiff, hes committit Trefson; for the quhillk, he aucht and fould be pwneifchet, conforme to the said Act of Parliament. To the taikin, he being challanget for the samyn, maid redrefs and satisfactioun to the said Williame M^cean, at command of Hucheon M^cTullie, his maister. ITEM, for airt and pairt of the thiftious Steilling, conceilling, refseting and away-taking of ane ox, fra James Corbett in Arkbole, in the moneth of yeiris: And he, being ane landit Gentilman, hes thairby committit Trefson, &c. ITEM, for airt and pairt of the steilling, conceilling, refseting and away-taking fra Findla Mansoun, Minister in Nig, in the moneth of October I^m. fax hundreth and foure yeiris, of fax geife, had and convoyit the samyn away with him, and dispoinet thairupoun: And the said Williame, being ane landit Gentilman, hes thairthrow committit Trefson, &c. ITEM, the said Williame, being indytit and accuset, for cuming with his complices, in the moneth of December, the yeir of God I^m.Vj^e. and foure yeiris, to Dauid Fairnes barne in Nig, and thiftioulie, vnder silence of nycht, brak the said barne, and staw, conceillit, refset and away-tuik furth thairfoir ane sek full of victuall, contening fax firlottis. To the taikin, he come to the said Dauid Fairne, and offerit to get the samyn tryit furth¹ to him, for ane rewarid; and he was airt and pairt of the thiftious steilling, conceilling and away-taking thairfoir; and thairfoir, he being ane landit Gentilman, hes incurrit the cryme and pane of Trefson. ITEM, for airt and pairt of the steilling, conceilling and away-taking of faxtene schein, pertening to Alexander Mansoun, Donald Beroch and Andro Bane, in the moneths of October and November last-bypast, in the yeir of God I^m.Vj^e. and four yeiris, had and convoyit the samyn away with him to the Craigis of Dunskeith, quhair he flew the said schein and cast thair intrallis in the sea; and thairefter, careit the boukkis² thairfoir to his awin hous in Dunskeith, quhairin he and his complices did eit the samyn: And he, beand ane landit Gentilman, be committing of the said theft and maisterfull Stouth-reiff, hes committit Trefson, and incurrit the panis contenit in the saidis Actis of Parliament. ITEM, for Cowmoun thift, cowmoun refset of thift, inputting and outputting of thift fra land to land, fra cuntrey to cuntrey, baith of auld and of new: And thairfoir, he being ane landit Gentilman, be committing thairfoir, hes committit manifest Trefson, and aucht and fould be pwneifchet conforme to the Actis of Parliament, viz. be florifaltour and tyntell of lyfe, landis and guidis, in exampill of vtheris to commit the lyk in tyme coming.

For the quhillkis crymes, the Justice-depute ordanit the said William Roife to be put to the knowlege of ane Assyse, of the perfones following.

¹ Searched out, discovered.

² *Bulks*, carcasses.

ASSISA.

Hucheon Roife, fear of Balmukie,	Williame Dunbar of Hemprigis,	Mark Mawer of Staynies,
Alex ^r Bane of Wester Logie,	Walter Kynnaird of Cowbyn,	Mr James Dunbar of Tarbett,
Donald Thornetoun, burges of Edinburgh,	Johnne Burgie in Haltoun,	Capitane Andro Bruce,
	Alexander Watfoune in Grange,	Robert Dunbar of Burgie,
Mr Rannald Bane, burges thair	Alexander Cruikshank in Lytill	Patrik Dunbar of Blarie.
Ja Adamfoun, burges of Kinlofe,	Pynnik,	

The Aduocat takis instrumentis of the swering of the Affyse; and that Williame Rose grantit the Slauchter of vmq^{le} Alexander Gybloune.

The Pannel, befor his Convictioun, declairis that Ferquhair Roife wes nocht in company with him at the slauchter of vmq^{le} Alexander Gybfoune; nather wes he ather airt or pairt of the said Slauchter.

VERDICT. The Affyse, be the mouth of the said Mr James Dunbar, chancellor, all in ane voce, ffand, pronuncet and declairit the said Williame Roife to be ffylet, culpabill and convict of airt and pairt of the tresfonabill and crewall Slauchter and Murthour of the said vmq^{le} Alexander Gibfoune, indueller in Nig, committit the tyme foirfaid, vnder trest, assureance, freindschip and familiaritie, in maner aboue writtin: AND als, ffand, pronuncet and declairit him to be ffylet, culpabill and convict of airt and pairt, red and counfall of the tresfonable Murthuring, strangling and wirrieing of the said vmq^{le} Agnes Roife his spous, committit the tyme foirfaid, vnder trest, credeit and assureance, in maner as is aboue writtin: AND lykwayes, ffand, pronuncet and declairit the said Williame Roife, to be Cleane, innocent and acquit of the haill poyntis of Thift, quhair of he wes accusit be Dittay, in maner aboue writtin, and of everie ane of thame.

SENTENCE. For the quhilkis tresfonabill crymes of Murthour, of the quhilkis he was convict in maner foirfaid, the said Justice-depute, be the mouth of James Henderfone, dempfter, ordanit the said Williame Rose of Dunkeathe to be tane to the mercait croce of Edinburghe, and thair his heid to be strukin fra his body: And decernit and ordanit all his landis, heritages, takis, steidingis, rowmes, possessiones, coirmis, cattell, inficht pleniffing, guidis and geir, to be ffoirfaltit and escheit to our fouerane lordis vsf, as convict of the saidis tresfonabill crymes.

Slaughter — Shooting of Hagbuts and Pistolets.

Jul. 30.—DAVID JARDANE in Wandeldyke, Alexander Jardane in Wandell, Johnne Symfoun in Mylnehill, and twelve others.

Delaitit, accuset and persewit for the crymes following, viz.

FORSAMEKILL as the saidis Dauid, &c. with thair complices, with convocatioun of our fouerane lordis leigis, to the number of twentie-foure persones, or thairby, all bodin in feir of weir, with jakis, secreitis, speiris, steil-bonnettis, fwoirdis, hagbuttis and pistolettis, expresse prohibeit to be borne, worn, vsf or schot with, be our fouerane lordis Actis of Parliament and Secretit Counfall, vnder dynerse panes

contenit thairintill; haifing confaet ane deidlie feid, rancour and malice aganis vmq^{le} James Clelland¹ (in Vnder-the-bank,) in the moneth of Junij, the yeir of God I^m. fyve hundreth fourcoir fourtene yeiris, came to Wandelholme, upon Clyde, beyde Daviechlaw, quhair the said vmq^{le} James was, in sober and quyet maner for the tyme, ryding at the hunting, in company of Sir James Hamiltoun of Libbertoun, lipning for na harme, iniurie or perfute of ony perfones, bot to haif levit vnder Godis peax and his Maiefties, and thair fett vpon him, schot and dilafchet² thair hagbuttis and pistolettis at him, quhairby thay schott him throw the body, and with swoirdis, quhingeris and remanent wappones foir-faidis, hurt and woundit him in dynerfe pairtis of his bodie, to the effuoum of his bluid in grit quantitie: Off the quhilkis schottis and fraikis, the said vmq^{le} James immediatlie thaireftir depairtit this lyffe; and fa, the said vmq^{le} James Clelland was crewallie and vnmercifullie flane be the saidis perfones: And thay being all vpon the grund, purfuing him with swoirdis and remanent wappones aboue fpecifeit, thay and ilk ane of thame air airt and pairt of the said crewall Slauchter, committit vpon sett purpois, provifoun and foirtocht felony; in hie and manifet contemptioun of our fouerane lordis auctoritie and lawis, in ewill exampill to vtheris his hienes lieges to commit the lyk crewall Slauchteris,

PERSEWERIS, Gawin Kneiland, Roger Kneiland, as fones.

PRELOCOUTOURIS for the pannell, Mr Johne Ruffell, Robert Hamiltoun.

VERDICT. The Affyfe, be the mouth of David Blair in Corflaw, chancellor, fand, pronunceit and declairit the saidis Dauid Jarden, &c. to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the said vmq^{le} James, and of the hail poyntis of Dittay aboue writtin.³

[*Mr Williame Hairt et Mr Williame Boirthuik, Juslices-Deputes.*]

Slaughter — Shooting of Pistolets.

Aug. 6.—ARCHIBALD MAXWALL of Cowhill,⁴ and Williame Maxwell, appeirand of Cowhill, his sone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Maxwell of Kirkhill (Kirkhous, or Croveftanes,) committit in the moneth of Junij 1583 yeiris: And for beiring and weiring of pistolettis, contrair the Actis of Parliament.

PERSEWERIS, Williame Maxwell (of Kirkhouse,) Charles Maxwell, James Maxwell, Robert Maxwell, Dauid Maxwell, Sir Thomas Hamiltounne.

PRELOCOUTOURIS for the pannell, Mr Williame Oliphant, Mr Johne Ruffell, Mr Alexander King, Sir Rob^t Maxwell of the Schottis, Williame Maxwell of Gribtounne, Eduard Maxwell of the Hillis.

DITTAY *againft the Pannell.*

FORSAMEKILL as the saidis Archibald Maxwell of Cowhill, and Williame Maxwell appeirand of Cowhill, with thair complices, with convocatioun of our fouerane lordis lieges, to the number of fax perfones, or thairby, all bodin in feir of weir, with swoirdis, secreittis, ganillettis, plait-levis, lang hagbuttis and pistolettis, exprellie prohibeit to be borne, worne, vset or schot with, be our fouerane lordis Actis of Parliament, vnder dyuerfe panes contenit in the famyn, in the moneth of Junij, or thairby, the yeir of God I^m. fyve hundreth fourcoir thre yeiris, vpon deidlie feid, rancor and malice confaet aganis the said vmq^{le} Robert Maxwell of Kirhous, for teynding⁵ of the said Archibald Max-

¹ Kneiland. The name was indifferently spelt Kneiland and Clelland, at this period.

² Old Fr. *deslascher*.

³ With regard to the rest of the pannels, the pursuers 'past fra' a number; and the remainder were 'repleget to the regalitie of Dalkeyth, be my Lord of Mortoune.'

⁴ See Nov. 6, 1605.

⁵ Tything his lambs and other

small tythes, as having a heritable right to the teinds or tythes of Cowhill. The drawing of small tythes was always considered an oppressive act in Scotland, and had for a long period been disused.

wall of Cowlillis lambes and vtheris smale teyndis, thay fett vpon the said vmq^{le} Robert, vpon the landis of Redbank, lyand within the parochin of Kirkhous, and stewarrie of Kirkcubrycht, quhair he was, in sober and quyet maner for the tyme, doand his lesfull effaires and buffines, in teyding of lambes; dreadand na evill, harme, iniurie or perfute of ony perfones, bot to haif levit vnder Godis peax and our souerane lordis; and thair, schott thair hagbuttis and pistolettis at him, and maist crewallie, schamefullie and vmercisfullie slew the said vmq^{le} Robert Maxwell: And thair and either of thame ar air and pairt of the said crewall Slauchter; quhairby thay haif nocht only committit crewall Slauchter, vpon fet purpois, prouifouin and foirthocht felony, bot in lyk maner hes contravenit the tenour of the said Actis of Parliament, in beiring, weiring and schuiting of hagbuttis and pistolettis, and hes incurrit the panes contenit thairin, quihilk aucht and fould be execute aganis thame with all rigour, in exampill of vtheris to abstene frome the lyk in tym cuming.

It is allegit for Williame Maxwell, younger of Cowhill, that the tyme of the committing of the fact lybellit, viz. in Junij, 1583, that he was nocht past xij yeiris of age, *et sic non doli capax*; and can nocht thairby be put to the knowlege of an Assyse, for the crymes lybellit; and offeris to prove his age instantlie.—It is anfuert be the Aduocat, the allegeance aucht to be repellit, as nawayis releuant to stay the mater to pas to the knowlege of an Assyse, becaus all thingis *in facto* man be tryit be the Assyse: And albeit he had been minor, the contrair quhairof is maist manifest, yit the samyn procures na impunitie, in crymes of this natour; speciallie, being committit eftir the manner lybellit.

THE Justice, nochtwithstanding of the allegeance, findis proces; and Remittis the cryme lybellit aganis Williame Maxwell to the knowlege of ane Assyse; and Remittis to the Assyse anent his age, to tak cognitioun thairin as thay think expedient.

It is forder allegit, that this matter can nawayis pas to the tryell of ane Assyse, becaus the pannell, in the moneth of Februare, yeir of God I^m.V^c. fourfcoir aucht yeiris, hes obtenit our souerane lordis Respett, quhairof thair is dyuerse yeiris as yit to ryn: As the Respett producet beiris.—The Aduocat takis instrumentis of the production of the Respett, be bayth the perfones on pannell. It is allegit, that the Respett is null, becaus the samyn is nocht past be the Thefaurer and the Register, conforme to the Act of Parliament. It is anfuert, aucht to be Repellit, in respect of the Respett, quihilk is past the Previe seill.—It is forder allegit, that the Respett producet is null, in respect of the Act of Parliament, quihilk makis all Respettis to be null, the samyn nocht being grantit be satisfiounne of partie and Letter of Slaines¹ grantit be the pairtie thairvpoune.—It is anfuert, that the Act of Parliament allegit, is only temporall.²

THE Justice declairis, during the tyme of this Respett, he will nocht, for the Slauchtir lybellit, put the pannell to ane Assyse.—Quhairvpoune the pannell askit instrumentis.

¹ A writ granted by the nearest relations of the deceased, acknowledging themselves to be satisfied for the slaughter. It frequently bore their consent to a free pardon by the King. ² Temporary.

The Aduocat product the Kingis Maieftis Letter, direct to the Justice, &c. : quhairof the tennour followis.

JAMES R.

JUSTICE, Justice Clerk and your deputis, We greit you weill. Forasynuche as Archibald Maxwell of Cowhill and Williame Maxwell his sone, being summond to compeir befor you, in our Tolbuith of Edinburgh, the fast day of August instant, to vnderly our law for air and part of the Slauchter of vmq^e Robert Maxwell of Crovetanes, and for contravening our Actis of Parliament, in beiring, weiring and schuiting with hagbuttis and pistolettis, as We are informet, intendis to vse ane Respett allegit grantit to thame by us, quhairof we nevir had ony knowlege: And gif ony be product be thame, the same is senisterusliche purchest by our knowlege,¹ and contrair to our lawis, Actis of Parliament, and equitie. Thairfoir, it is our will, and We command you, that incontinent eftir the sicht heir-of, ye put to ane knowlege of Assyse, for beiring, weiring and schuiting of hagbuttis and pistolettis: And gif they be convict, that ye caus pweisch thame conforme to our Actis of Parliament, by cutting af pair rycht hand; and forder as our saidis Actis prescryues. And gif ye delay the tryell of the Slauchter, vponne the production of the said allegit Respett; than, eftir pair tryell and pweischment, for beiring and weiring of hagbuttis and pistolettis, in maner soirsaid, ye fall put them in sure firmance and keiping within the Tolbuith of Edinburgh, quhill we be adverteist of your proceedingis, and our forder Will be signifeit vnto you pairament. This ye fall nawayis fail to do, as ye will ansuer pair-ponne: Quhairanent pir presentis fall be to you sufficient Warrant. GEVIN at Houghtoun, the penult day of July 1605.

And according to the said Warrant, the pannell aucht to be put to the knowlege of ane Assyse.—It is ansuerit be the pannell, that the Kingis Maieftis Previe Letter is na sufficient Warrant to derogat the Respett, past the Previe Seill; speciallie, in respect that sic privat Letteris ar reprobat be the Actis of Parliament.—It is ansuerit be the Aduocat, that sic previe Letteris as ar purchest for stay of justice, ar disallowit be Act of Parliament; bot this Letter is direct, of certane knowlege, and furtherance of justice, and pweischment of ane odious cryme.

THE Justice findis as of befor, for the Slauchter allanerlie.

It is forder allegit, be the pannell, that that pairt of the Dittay, concerning the schuitting of ane hagbut, can nawayis be put to the knowlege of ane Assyse, becaus thair is ane Respett product for the Slauchter; quhill Respett is fund relevant for the Slauchter, to slay the pannell to pas to ane Assyse; and thair is na thing contenit in the Dittay, for schuiting, beiring and weiring of pistolettis and hagbuttis, bot that the defunct was slane with ane hagbut; quhillk is the maner how the said fact was committit: And as the fact is elydit be Respett, fa the maner of the committing thairof is superceidit be the said Respett; sua that, during the said tyme comprehendit in the Respett, nather can the pannell be put to the knowlege of ane Assyse, for the slauchter, nor schuitting of the hagbut, quhillk was the instrument be the quhillk it is allegit the deid was committit.—It is declairit be my lord Aduocat, in respect of the Justice Interloquitour, he Restrictis his summondis only for persute of the pannell for beiring, weiring and

¹ By sinister means, procured without our knowledge.

ſchuitting of hagbuttis and piſtolettis : And allegis, that the Reſpctt producet can nocht ſtay proces for that cryme; becaus Reſpcttis, being odious of the Law, as grantit for inpunitie of crymes and ſtay of juſtice to pairteis greivit, thay can nevir be extendit faourabillic, be interpretation of the Judge, to ony forder nor (than) the expreſs woirdis thair of beiris : And thairfoir, the bering, weiring and ſchuiting with hagbutis and piſtolettis, being ane cryme pwneifheable of the Law, and nawayis mentionet in this Reſpctt, the pardon of the cryme of Slauchter, contentet in the ſaid Reſpctt, can nevir be extendit to the vther cryme of ſchuiting with hagbutis, &c. ; ſpeciallic, in reſpect of the woirdis of the Reſpctt, pardon- ing the Slauchter allanerlie, and of his Maieſteis Warrant producet; quhilc removes all doubtt that evir his Maieſtie had intention to pardoun the cryme of the hagbuttis and piſtolettis to the pannell.—It is anſuerit, that the Aduocattis declaratioun alteris nathing the tennour of the Letteris, contentis thair of, and Interlocoutour producet. Thair is na mentioun maid in the Letteris of beiring and weiring and ſchuiting, bot only of ane ſchot, be the quhilc it is allegit the Slauchter was committit : And forder, the Reſpctt producet is nocht only extendit to the Slauchter, bot all that mycht follow thairupone; quhilc was the ſchuiting of the hagbut, be the quhilc the Slauchter was committit : And quhair it is allegit, that the Reſpctt grantit for ane cryme can nocht be extendit to ane vther, aucht to be repellit, in reſpect of the Reſpctt, and the coniunctioun of the factis : And forder, of the Law and practik of this realme, ane Reſpctt or Remiſſioun grantit of ane gritter cryme comprehendis leſs crymes, albeit na mentioun be maid of the leſs; ſpeciallic, haifing conſideratioun, quhan the leſs crymes ar ane pairt of the gritt cryme, quhairfoir the Reſpctt is gevin, and all doue *vnico contextu*, at ane tyme; and the leſs cryme the inſtrument of the grit, quhilc is reſpcttit.

It is forder allegit, that this Reſpctt man comprehend the ſchuiting with the hagbut, in reſpect it is exprellie ſtatute, be Act of Parliament maid in the dayis of King James the Fourt, Parlamento ſexto, cap. 62. That in all Reſpcttis and Remiſſiones, mentioun fall be maid of the gritteſt cryme, ſa that be the expreſs meaning of the ſaid Act, the gritteſt cryme being remittit and contentit in the Reſpctt, the leſs crymes man be lykwayis comprehendit thairintill; ſpeciallic, in thir crymes, quhilkis ar ſa coherent and conioynet togidder, that the Reſpctt or Remiſſioun comprehending the gritteſt, of all neceſſitie man comprehend the leiſt.—It is anſuerit be the Lord Aduocat, that that Act of Parliament militatis only, quhair thair is Remiſſioun or Reſpctt, tane only for ane particuler cryme, and ane generall claufe of Remiſſioun ſubioynit thairto; bot in this caice, the Reſpctt producet contenis only the cryme of Slauchter allanerlie, without ony generall claufe of vther crymes ſubioynit thairto : In reſpect quhair of, the allege-

ance aucht to be repellit.—It is anfuerit, be the pannell, that the Respet nocht only comprehendis the slauchter, bot also all thingis that can follow thairupoun, quhilk is the schuiting.

It is forder allegit, be the pannell, that the cryme of schuiting and weiring of hagbuttis and pistolettis was nevir *in viridi obseruantia*, and sic a cryme quhairupoun ony accusatioun or punefchment followit, befor the Act of Parliament, in anno I^m.V^c.lxxxvij; fra the quhilk tyme and Act, that cryme hes only bene obseruet, and the pwneifchment contenit in the said Act hes only had place. And albeit, be Act of Parliament maid in anno I^m.V^c.lxvij, it is statute and ordanit, that the weiring, vfeing and schuiting of hagbutis and pistoletis, fall be tynfall (*loss*) of the rycht hand, yit be ane posteriour Act, maid in anno I^m.V^c.lxxix, the pane of the schuiting and vfeing is only pecuniall, contening the fowme of x li. and tynfall of the hagbut or pistoll: And sa, haifing confidderatioun that this fact is allegit to haif bene done in anno 1583, lang befor the yeir of God I^m.V^c.lxxxvij, the panes of the said Act can nawayis be extendit aganes thir defenderis. It is anfuerit be the Lord Aduocat, that the Act of Parliament, in anno I^m.V^c.lxxix, maid lang befor the committing of the cryme lybellit, levis to the Kingis Maiestie, his optioun of the inflicting of the corporall pwneifchment for the said cryme; quhairanet, his Maiestie hes declairit his will, be the Warrant product.

It is forder allegit be the pannell, that the Act of Parliament, maid in anno lxxxvij, declairis the penaltie of the former Actis to haif place, with the additioun; sa that befor the tyme, the Kingis Maiestie nevir declairing his Will, his Maiesteis Will and penaltie man be only extendit fra the dait of the last Act.—The Aduocat anfueris, the maist solemne Declaratioune of his Maiesteis Will is be Act of Parliament.

THE Justice Repellis the allegeance, in respect of the Act of Parliament, Respett product, and his Maiesteis Warrant; and Ordanes forder proces.

It is forder allegit, be the pannell, that the pannell, for weiring and vfeing of pistolettis, can nawayis be put to the knowlege of ane Assyse, becaus it is confessit in the Dittay, that the weiring and schuiting of the hagbut or pistolettis was committit vpoun the landis of Reidbank, quhair the defenderis duelt and remanit for the tyme; and it is nawayis prohibeit be the Act of Parliament, bot be the contrair, it is permitted to perfones to beir, weir and schuit hagbuttis and pistolettis, within thair awin houffis, yairdis and cloiffis: And trew it is, gif ony hagbut was schott, borne or worne, the samyn was within the house of the saidis landis, at the leift, hard be the yettis and durris thairof: And albeit ony persone wald schuit and weir within his awin house, or at the yettis or within the cloiffis

thairof, that is na cryme of the law. And now it man be respectit, that thair is na mair in our Dittay, bot only the beiring, weiring and schuiting, &c. ; vnder proteftatioun, that the pannell nawayis grantis the famyn.

ASSISA.

Johnne Lyndfay of Auchinfeach, Jo. Mertene, bailzie of Blaikfchaw, Michell Anderfoun, burges of George Reidik of Airdrie, Adame Strudgeoun of Myllerland, Dumfreis, Johnne Turnour of Ardwell, Harbert Strudgeoun of Towcroce, Clement Edzer of Kirkblane, Williame Williamefoune, burges Johnne Richiefoune, burges of Harbert M'kie in Prefloun, of Dumfreis, Dumfreis, Robert Edzer of Blaikfchaw, Johne Slowane¹ of Garroche, Johnne Gibfoun, burges thair. Robert Rediche of Barnehowrie.

OBJECTION to an *Affisor*.—It is allegit that *Williame Maxwell of Merfyde* can nocht pass of this Affyse, becaus he was nocht of perfyte age, viz. vpon the age of xiiij yeiris, the tyme of the committing of the fact lybellit.—It is anfuierit, be the Aduocat, the allegiance aucht to be repellit, in respect of his present age.—The said Williame Maxwell being inquiryt be the Justice and fuorne, ‘Quhat age he was presentlie of?’ Declairit he was outwith xxv yeiris of age.—It is allegit be the pannell, that the said Williame Maxwell of Merfyde, the tyme of the committing of the fact lybellit, was nocht foure yeir auld.

THE JUSTICE Repellit *Williame Maxwell*, in respect of his awin confessioune, quha declairit that he was tennet to Harbert Maxwell of Kavenfe.

The Aduocat takis instrumentis of the sweiring of the Affyse, and proteftis for Wilful Errorr gif thay acquit: As also of the sweiring of the Dittay be the perseweris; and that the defunct was flane be Williame Maxwell appeirand of Cowhill, be ane schott.

SPECIAL VERDICT of the *Affyse*.

THE saidis perfonas of Affyse, be the mouth of the said Johnne Lyndfay of Auchinfeach, canceller, ffland, pronuncet and declairit, all in (ane) voce, the said ARCHIBALD MAXWELL elder of Cowhill to be Clene, innocent and acquit of the beiring, weiring and schuiting of hagbuttis and pistolettis, committit vpon the saidis landis of Reidbank, in the moneth of Junij, the yeir of God I^m.Vc. fourfcoir thre yeiris: AND sicklyke, ffland, pronuncet and declairit, all in ane voce, be the mouth of the said Chancellor, the said WILLIAME MAXWELL, appeirand of Cowhill, to be fylet, culpabill and convict of the beiring, weiring and schuiting of ane hagbut; committit in the moneth of Junij, the yeir of God I^m. fyve hundreth fourfcoir thre yeiris, vpon the grund of the saidis landis of Reidbank, withiu ane speir-lenth to the hous thairof, pertening than to the said Archibald Maxwell; the said Williame Maxwell than being within the age of fourtene yeiris. In witnefs quhairof, the canceller, for him self, and in name of the hail remanent perfonas of Affyse, hes subfcriyuit thir presents with his hand.

(Sic subfcribitur)

JHONNE LYNDESAY.

Quhairupoun the saidis Archibald and William Maxwellis alkut actis and instrumentis: and the said Charles Maxwell, in name of our said fouerane lordis Aduocat, Proteftis for remeid of Law and Wilfull Errorr aganis the said Affyse.

¹ ‘Aflowane’ in another place. ‘A’ was then a common prefix to many names in the south of Scotland, as Amulligan, Acannan, Alasone, Alaunay, &c.

[*Per Comitem de Ergyle, Justiciarium Generalem; et Magistrum Wilelmum Hairt, ejus Deputatum.*]

**Fire-raising — Burning the Place of Littlegill — Slaughter —
'Rapt' — Adultery — Theft, &c.**

Aug. 9.—THOMAS JARDANE of Birnok, Vmphra and Alexander Jardanes, his fones.

Dilaitit of airt and pairt of the tressonabill Raifing of ffyre, burning and distroying of the Place of Littillgill, with the haill laiche houffis, barnes and byres thairrof, and haill insicht and pleniffing being thairin; and for the crewall Burning and slaying of vmq^{le} Alexander Bailzie of Littilgill, Rachaell Bailzie, dochter to Mathow Bailzie, now of Littillgill, and vmq^{le} Achiesone, fervand to the said Mathow; the saidis vmq^{le} thre perfones being all within the said place the tyme of the burning and distroying thairrof; committit in the moneth of . . . the yeir of God, I^mV^c fourfeoir nyne yeiris. AND siclyk, for airt and pairt of the Slauchter of vmq^{le} Robert Broun in Culter; committit in the moneth of Junij, the yeir of God I^mV^lxxxxvj yeiris: AND siclyk, for airt and pairt of the Rapt and Raviefching of Katharene Johnestone, spous to . . . Airnefrang of Arkiltoune; committit in anno I^mV^lxxxxv yeiris: AND for the cryme of Adulterie, committit be him with hir, contrair the tennour of the Actis of Parliament,¹ &c. &c.

William Creichtoun of Darnehauche and Johnne Carmichell younger of Pottiefchaw, as cautioners for the appearance of the pannels, vnlawit in the pane of tua hundreth merkis for ilk ane of thame. The Jardanes ordained to be denounced Rebels, and their moveables to be efcheit, &c.

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

Bestiality.

Sep. 17.—JOHNE JAK, alias SCOTT, fervand to Thomas Boirthuik, in Roifling.

Dilaitit of the abhominabill and monftrous fact of Sodomic,² &c.

SENTENCE. 'To be tane to the Castell hill of Edinburghe, and thair, he to be first bund to aue staik and wirreit thairat; and thaireftir, with the said meir to be brunt in aches, as he that, vpon his awin Confessioun, was convict of the crymes aboue writtin; and his haill moveabill guidis to be efcheit to his Maiefteis vse,' &c.

¹ There are also numerous acts of theft of horses, cattle, sheep, &c. enumerated, but unnecessary to be noticed here.

² A case of a similarly disgusting description (the *only* instance in the early part of the Record) was purposely omitted, Sep. 1, 1570. The crime (Sodomy) is designated 'wyild, filthie, execrabill, detestabill and unnatural.'—'Johnne Swan and Johnne Liffter, fnythis and feruandis to Robert Hannay,' the pannell, were likewise burnt on the Castle-hill of Edinburgh.

Slaughter.

Nov. 5.—WILLIAME JARDANE in Yle, Johnne Carfane in Erfik, Fergus Heroune at the Kirk of Glastrune, Johnne Aflowane in Tyllochbloun, Nicoll Dungalfoun in Claymadie, Robert M^cBay in the Maynes of Quhithorne, James M^cconene in Caringdone, and Harie Stewart in Lagane.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert Maxwall, callit *Harbert of the Coittis*; committit in September I^mV^lxxxxvij yeiris.—Johnne Dumbar of Mynnieweik become pege and fouertie, that thai fall compeir befor the Justice, the xvij day of December nixtocum.

(Dec. 17.)—Johnne Dumbar vnlawit in the pane of ane hundreth merkis, for ilk ane of the faidis perfonas: The Justice ordanit that thay be denunceit rebellis, &c., and all thair moveabill guidis to be efcheit.

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

Slaughter.

Nov. 6.—HARBART MAXWALL of Kavenfe.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Sir Robert Maxwall of Dynwiddie, knycht.

PERSEWARIS, Archibald Maxwell of Cowhill,¹ Williame Maxwell, appeirand of Kowhill, Archibald Maxwell, his brother, Sir Thomas Hammitoun of Monkland, knycht.

The Guidman of Kavenfe takis instrumentis of this entrie, and proteftis for releif of his cautioner.

The Justice continewis the matter to the Air of Dumfreis, or soner, vpone xv dayis warning. Johnne Broune, of the Land, cautioner.—Archibald Myller, bailzie-depute to my Lord of Moirtonne, of the Regalitie of Moirtonne, Proteftis, that the Guidman of Kavenfe finding of Cautiounne, preiudge nocht the previledge of my Lord of Moirtonnes Regalitie; quhilk the Justice admittit.

Mutilation and Demembration.

Nov. 23.—ROBERT M^cDOWELL and JOHNNE M^cDOWELL, fones to Peter M^cdowell of Machirmoir.

Dilaitit of airt and pairt of the Mutilatiounne of Patrick Murdoche of Camloddene and Alexander M^ckie, his fervand, of thair richt handis.

PERSEWER, Patrik Murdoche of Camloddene, Alexander M^ckie, his fervand, Sir Thomas Hammitounne (knycht), Aduocat to our fouerane lord.

PRELOCOUTOURIS for the pannel, Mr Alexander King, Peter M^cdowell of Machirmoir, The Laird of Mondurk, Robert Dougall, merchand.

Peter M^cdowell of Machirmoir become pledge and fouertie for Robert and

¹ See Aug. 6, 1605.

Johne M^dowellis, his sones, that thay fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the Sherefdome of Kirkcald-brycht, or soner, vpon xv dayis wairning, to vnderly the Law,¹ &c.

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

Slaughter.

Dec. 6.—DAVID MARSCHELL, messinger.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richard Spens.²

Continued to the Justice-air of ' Air, tertio Itineris (vel super premonitione), xv dierum. Plegio, Roberto Stewart de Pitheveles.'

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

Murder — Shooting of Wagbutts and Pistolets.

Dec. 11.—JOHNE JOHNSTOUNE of Auchrynnie; James, Johnne and Patrik Forbes in Mylnebowie.

Dilaitit, accuset and perfewit off the crymes following, viz.

PERSEWER, Alexander Irwing, as fader.

PRELOCUTORIS (for the pannell), Mr Laurence McGill, The Laird of Corfindae.

FORSAMEKILL as thai, with thair complices, with convocatioun of our souerane lordis leigis, to the number of ten perfones or thairby, all bodin in feir of weir, with jakis, secreitis, steil-bonnetis, plait-flevis, speiris, lance-flalfis, fuordis, quibingeris, gantilletis, hagbuttis, dagis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be dyuerse our souerane lordis Actis of Parliament and Secreit Counfall, vnder dyuerse panes, mentionat thairintill; haifing confaet ane deidlie feid, rancour and malice, canfeles, aganis vmq^{le} Robert Irwing in Baddis, laillie, in the moneth of Februar last-bypast, come to the toun and landis of the Kirktoun of Skene, quhair the said vmq^{le} Robert was for the tyme, accompaneit with certane freindis and nichtbouris in the cuntrey, at ane bankett, making mirrie, lipning for na harme, iniurie or perfute of ony perfones, bot to haif leuit vnder Godis peax and our souerane lordis; thair, about ten houris at evin, vnder silence and clud of nycht, enterit within the said hous of the Kirktoun of Skene, quhair the said vmq^{le} Robert was, as said is, and schot and dilafebet thair hagbuttis and pistolettis at him, quhairwith thai schot him throw the body; and thaireftir, with thair fuordis, hurt and woundit him in dyuerse partis of his body. Off the quhilkis schotis and crewall straikis, the said vmq^{le} Robert departit this lyfe; and sa, was maist crewallie flane and murtherit, vnder nycht, be the saidis perfones; and thai, and ilk ane of thame, ar airt and pairt of the famyn Slauchter and Murthour, committit vpon set purpois, prouisioune and foirthocht felony; in hie and manifest contempt of our souerane Lord, his hienes auctoritie and lawis.

VERDICT. The Assyse, be the mouth of Robert Watfoune in Auchincloche, ffand, pronuncet and declairit, all in ane voce, the saidis Johnne, &c. to be Clene, Innocent and Acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Irwing; and haill remanent poyntis of the said Dittay.

¹ ' James Gordoune, burges of Kirkcubrycht (and 26 others) amer(iat in payne of ane hundreth merkis,' each, for not appearing to pass upon the Assise of the M^dowells. ² See Jul. 25, 1605.

Jamesucken — Slaughter.

Dec. 11.—Mr ROBERT IRWING of Moncoffer, Daud Gray in the Lyn, Alexander Maynie in Adiestoune, and Andro Many in Auchquhartene.

Dilaitit of the crymes vnderwritten, viz.

PERSEWARIS, Johnne Forbes of Mylnebowie, as father; Patrik Forbes, James Forbes, brether; Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOQUOTOURIS for the pannell, the Erle of Home, the Maister of Marschell, the Maister of Moirtonne, Mr Johnne Ruffell, Mr Robert Lyntoune.

FORSAMEKILL as thai, with thair complices, with convocatioune, &c. laillie, vpon the tent day of Februar lasthypast, haifing confanet ane deidlie feid, rancour and malice aganis Johnne Forbes younger in Mylnebowie, be thame selfis and thair complices, of thair special caufing, fending, bounding out, refetting with the bluidie hand, airt, pairt-taking, command, assistance and ratihabitoune, come be way of Hame-fukkin to James Hallis duelling hous at the Kirk of Skene, quhair the said vmq^o Johnne Forbes was for the tyme, doand his liefull effaires and buffines, traifing na evill, &c.; and thair violentie brak vp the durris of the said hous, enterit within the samyn, fet vpon the said vmq^o Johnne, and maist crewallie and vmerciefullie slew the said vmq^o Johnne, be geving of him of dyuerse bluidie woundis, in the wambe; and thai and ilk ane of thame ar airt and pairt, &c.

The persfeweris passis *simpliciter* fra the persfute of Mr Robert Irwing, for the crymes contentit in the Letteris.—The perfones accuset denyis the haill Dittay, and haill circumstances thairof; alfwieil of the Slauchter asy of the beiring of pis-tolettis. Mr Johnne Ruffell, prelocoutour for the pannell, declairis, that Daud Gray and Andro Many war absent fra the Slauchter; and Daud Gray, the tyme of the committing thairof, was sleipand in his bed, and knew nathing of the doing thairof, quhill¹ it was done.

VERDICT. The Assyse, be the mouth of the said chancillar, all in ane voce, fand the saidis Daud, &c. to be Clene, Innocent and Acquit, &c.

[APUD LYNLYTHGOW, *Mr Williame Hairt of Levelandis, Justice-Depute.*]
Treason—Declining the Jurisdiction of the Secret Council—Holding a General Assembly of the Kirk, after being charged, &c.

Jan. 10, 1606.—Mr JOHNNE FORBES, Minister at the Kirk of Airfurd, (Moderator,) Mr JOHNNE WELSCHÉ, Minister at Air, Mr ROBERT DURIE, Minister at Anstruther, Mr ANDRO DUNCANE, Minister at Carrail, Mr ALEXANDER STRAUCHANE, Minister at Creiche, Mr JOHNNE SCHERPE, Minister at Kilmany.²

Dilaitit, accuset and persfuit be Sir Thomas Hammiltoun of Monkland, kny^t,

¹ Until. ² As the circumstances are so very fully detailed in the course of the following proceedings, it seems to the Editor only to be necessary to refer the enquiring reader to *Wodrow's Church History*, pp. 506—516; *Hailes' Memorials and Letters*, James I. pp. 1—4; *Cook's History of the Church of Scotland*, II. 160, &c. An elaborate account of this remarkable struggle is also given, by he learned *Dr McCrie*, in his interesting *Life of Andrew Melville*, Vol. II. p. 201, &c.

Advocat to our foverane Lord, for his hienes entreis, of the crymes of Treffone fpecifeit in the DITTAY following, viz.

FORSAMEKILL as, he the first Act of our foverane lordis Parliament, haldin at Edinburgh in the moneth of Majj, 1^m. V^o. fourfoir four yeiris, it is statute and ordauit, that our Souerane Lord, his airis and fuccesfouris, he thame felfis and thair Counfallis, ar, and in tyme cuming falbe, Judges competent to all perfones his hienes fubiectis, off quhatfumeuir estait, degre, functioun or conditione that euir thay be, of spirituall or temporall, in all matteris quhairin thay or ony of thame falbe apprehendit, fummond or charget, to anfwair to sic thingis as falbe inquiryet of thame, be our said Souerane Lord and his Counfall; and that nane of thame, quhilk fall happin to be apprehendit, callit or fummond, to the effect foirfaid, presume ar tak vpon hand to declyne the Judgment of his hienes, his airis and fuccesfouris, and thair Counfall, in the premiffes; vnder the pane of Treffone: NOCHTWITHSTANDING it is of verritte, that the saidis Mr JOHNNE FORBES, &c. being charget be our foverane lordis Letteris, raist at the instance of his Maieftis Advocat, for his hienes entreis, to compeir befoir his Maieftie and the Lordis of Secreit Counfall, vpon the xxiiij day of October lastbypaft, to haif anfwairit for thair vnlauchfull and contemptuous conuening, proceeding and halding of ane pretendit Generall Affembly,¹ at Aberdene, the second day of July lastbypaft; and appointing of ane new Generall Affembly, to be haldin at Aberdene, the laft Tyftlay of September thairefter; without the content, and esfir the expres refusall of the Laird of Lowriestoun,² his Maieftis Commissioner, being than present in Aberdene; and in contempt of the charges of Hoirning, lauchfullie execute vpon the first day of the said moneth of July lastbypaft, at the said mercat croce of the burgh of Aberdene, discharginge, in our foverane lordis name, all conuening and halding of ony sic Affembly, at that tyme and place, vnder the pane of rebelloun; and aganis the will and command of the Lordis of his hienes Secreit Counfall, signifieit to the saidis Ministeris be the Counfallis Letter than delyuerit to thame be the said Laird of Lowriestoun, befoir thair said proceeding, beiring, that becaus thair Lordschipis vnderftuid that the halding of ane Affembly, thair, at that tyme, wald heichlie offend his Maieftie, and be estimat be his hienes ane heich contempt, thairfoir it was thair Lordschipis will and plesour, that the saidis Ministeris sould nocht hald ane Affembly, at that tyme, nor mak ony indictione of ane new Affembly, but suffer the famyn to desert. As lykwayis, the said Mr JOHNNE WELSCHIE, Minister at Air, being charget to haif comperit befoir the Loirdis of his hienes Secreit Counfall, the said xxiiij day of October lastbypaft, to haif anfwairit for his vnlawfull resorting to the said burgh of Aberdene, vpon the fourt, fyft and faxt dayis *respectiue*, of the said moneth of July lastbypaft; and vnderftanding, as it was maist nottour and manifest to all men thair, how vndeutfullie and contemptuouffie the saidis Ministeris procedit, in the halding of thair said vnlauchfull pretendit Generall Affembly, to the contempt of his Maieftis authoritie, and of the directione of the Lordis of his hienes Secreit Counfall, in maner aboue specifcit; nenertheles, the said Mr Johnne Welsche, without all ordour, forme, necessitie or preceding exampill, conuinit vnlawfullie with ane number of his complices, within the Kirk of the said burcht of Aberdene, the time foirfaid, and Ratiefcit and approvet the proceedingis of thair said bretherene foirfaid, in halding of thair said vnlauchfull Affembly, and making indiction of ane new Affembly, as said is, and taik instrumētis thairpoune. And in respect of the premiffis, all the foirfaidis Ministeris, being charget as said is, to compeir befoir the Lordis of his hienes Secreit Counfall, to haif hard and sene it ffundin and declairit, that thai had verrie contemptuouffie conuinit thame felfis, and procedit in thair saidis actiones, the tyme foirfaid; and thairfoir, the said Affembly, and approbatioun thairof, declairit vnlauchfull, and sua to be repute and haldin in tyme cuming; and thay to be punieifchit in thair perfones and

¹ Of the Church of Scotland. ² Sir Alexander Stratton of Laurenstoun, knight, one of the Commissioners for the Union of England and Scotland, July 11, 1604. A Letter of Gift and Pension, for all the dayes of his lyfetye, of the blenche-deutie of the Lordschip of Scone, extending to 1000 merks, was Ratified by Parliament, July 11, 1606. Vid. *Acta Parl.* Stratton was appointed to represent the King, in Ecclesiastical Judicatories.

gudis, for thair vnlauchfull conuening, halding and approveing of the foirfaid Affemblie, in maner aboue writtin: AND the foirfaidis Ministeris, all compeirand befor the saidis Lordis of Secreit Counfall, the said xxiiij day of October lastbypast, to anfuwer in the said cause, the samyn being ane actionn maist competent and propper to the Jurisdictionn of the Lordis of Secreit Counfall, becaufe the samyn conernit the tryell and puneishment of ane heich offence, contempt of his Maiesteis autoritie, and diff-obediencie of his Maiestie and Lordis of his hienes Secreit Counfall: Neuertheles, the foirfaidis Ministeris, and ilk ane of thame, tresfonabillie declynit the judgement of his Maiestie and Lordis of his hienes Secreit Counfall *simpliciter*, be thair Declinatour, substreyuit be everie ane of thair handis, and gevin in be thame, in Judgement, befor the said Lordis; to the quhilk, it being replyit be the said Aduocat, that the samyn fould be Repellit, in respect of the said Act of Parliament, declairing all sic Declinatouris to be null, and the proponeris thairof to incur the pane of Tresfone: And, in respect of the quhilk anfuwer and reply, your said Declinatour was repellit be the saidis Lordis of Secreit Counfall, all in ane voce: The saidis Ministeris, nenertheles, persistit sa obstinatlie thairin, that eftir the samyn was repellit be the saidis Lordis, as said is, quhairby thai could nocht pretend ony probable dout or ignorance of thair Jurisdictionn, the saidis Ministeris gair in thaireftir, thair remanent Defenssis, in writt, vnder protestatioun alwayis, that thair adheirit to thair said Declinatour: Be proponing quhairof, as also be adheiring to the same Declinatour, eftir that it was Repellit, thay, and euerie ane of thame, hes committit Tresfone, and fould incur the panes thairof.

PERSEWER, Sir Thomas Hamiltoun, Aduocat to our foverane lord.

PRELOCOUTOURIS for the pannell, Mr Thomas Gray, Mr Thomas Hoip.

THE LORDIS OF SECREIT COUNSALL, vnderwritten, declairis thay will assit the Justice, as ASSESSOURIS in this cause.

ASSESSORS.

Johne Erle of Montroife,	James Lord of Balmoryrie, Mr Johane Prestoun of Pennycaik,	
Alexander Erle of Dumfermeling, Lord Fyvie, Chancellor,	Secretar to his Maiestie, and	Collectour to his Maiestie,
Johne Erle of Mar,	President of his hienes Colledge of Justice,	Sir Richard Cokburne of Clerkingtoun, Lord Previe Seill,
Alexander Erle of Lynlythgow,	Mark Lord Neubottill,	Johne Lord Murray of Tylliebairne,
George Erle of Dumber,	Walter Priour of Blantyre,	
Patrik Lord Glamefs,	Johne Commendatour of Halyrudhons,	Sir Robert Meluill of Mourdocarney, kny ^t ,
Alexander Lord Elphinstoune,	Sir James Douglas of Quhittinghame,	Alex ^r Maister of Elphinstoune,
James Lord Abercorne,	 Levinstoun of Killythe.
Dauid Lord Scone, Comptroller to his Maiestie,		

It is allegit be the pannell, that thair aucht to haif bene charget vpone xl dayis warning, seing thay ar to be accuset for crymes of Tresfone.—The Aduocat anfuweris, that it is daylie practik, in bringing the persones put in waired to pannell, to put thame fummerlie to ane Tryell; and specialie, the practik of the Laird of Bonytoun, quha was tane and put in waired for the breking of his fatheris houe and cofferis, and fleilling and away-taking of his fatheris eidentis, &c., was brocht fra the waired to the bar, and put to ane Assyfe.

THE Justice Repellis the allegeance, and findis forder proces:—Quhairupone the Aduocat askit instrumentis.

It is forder allegit be Mr Thomas Hoip, prelocoutour for the pannell, that this

matter can nocht pass to ane Assyse, vpon the declinatour gevin in be thame aganis the summondis perfewit contrair thame, befor the Lordis of Secreit Counfall, in sa far as thay ar perfewit vpon the first Act of Parliament, haldin in May 1584 yeiris; becaus the meaning and intentioun of the said law is only to establische the Kingis Maiesteis royall power and Jurisdictione ouer all persones; quhilk the pannell, in all humilitie and submissioun, confessis: And albeit the said law appeiris to be generall, and vniuersallie to comprehend all matteris, yit the samyn can nocht be vniuersallie vnderstuid; becaus, quhairfoeur a law speikis generalle, gif vpon the generall speiking, ony absurditie or incommuditie may follow, quhilk may tak away former lawis, or confound distinct and diuerse¹ jurisdictiones, establischet be lawis of befor, the samyn, in that caise, man be restrictit to thais matteris that may fall vnder the compts of the law; quhilk specialle aucht to haif place, quhair the matter is odious: But sa it is, gif this law war vniuersallie vnderstuid, of all matteris, it fould follow, that the Jurisdictiones of the Secreit Counfall, the Lordis of Sessioun, and Justice Generall, quhilkis ar supreme, Jurisdictiones Ciuill fould be counfoundit, infasar as the woirdis of this law being attendit, na persone being conuenit befor the Lordis of Secreit Counfall for ane cryme quhilk is competent to the Justice, or for ane ciuill debt, quhilk is competent to the Sessioun, nicht nocht, nor could nocht, without the perrell of the Law, allege² that the Lordis of Secreit Counfall ar nocht Judges competent in Criminall or Ciuill caussis: Bot this is sic ane inconuenient, and sa improper for the caise, mynd and intentioun of the law, that thair is na persone will mak questioun thairin: And as this war competent in the distinct Jurisdictione of the Lordis of Secreit Counfall, Sessioun, and Justice, sua the samyn is als competent in Jurisdictione Ecclesiasticall, quhilk is an feuerall and distinct Jurisdictione be the self, haifing the Warrant and grund of the word of God, and being autorizet be his Maiesteis lawis; specialle, be ane Act of Parliament maid in anno I^m.V^c.lxxix, ane vther in the lxxxj and lxxxij yeiris; sua that the pannell, being than conuenit befor the Lordis of Secreit Counfall, in ane matter quhilk was altogidder Ecclesiasticall, pertening to the Jurisdictione of the Kirk, quhair of the cheif poynt consistit vpon the lawfulness or vnlawfulness of the Assemblie haldin be thame, thay nicht lauchfullie, without the perrell of this law, haif gevin in thar Declinatour, declyneing the saidis Lordis of Secreit Counfall, as nawayis Judges competent of the vnlawfulness or lawfulness of the Assemblie; and in doing thair of, thay could nawayis, nor can nawayis be decernit to haif committit aganis the said law; seing the said law, possibillie, can nocht be extendit bot to sic caiffes quhilk hes nocht ane speciall, ane separat, or distinct Jurisdictione, be the self;

¹ Separate. ² Plead. This verb is almost universally made use of throughout these Records, and indeed in nearly the whole of the Forensic proceedings of that period, chiefly in that sense.

and quhair, it may appeir, that the pannell, in the Summandis befor the Secret Counfall, war nocht samekill ceitit vpon the vnlawfulnes or lawfulness of the Assemblie.—As for the contemptuous convening being dischargit be his Maiefties Letteris, aganis the requeit of the Lordis of Secret Counfall, and the Comissioner of the Kirk, quhilk matter mycht properlie appeir to pertene vnto the Jurisdictione of the Lordis of Secret Counfall, and that thairby the Declinatour man fall vnder the compas of this law; it is anfuert, that it fould nocht be confidderit, quhat was the middis¹ quhairupone thay war convenit befor the Secret Counfall; bot the conclusioun of the Summandis man be attendit, feing it is the conclusioun and nocht the premisses that maks the natour of the actioun, quhairvpon ane caufe and grund²; and vpon ane fact thair may concur of the law twa actiones or ma,³ quhilk ar dinofcet⁴ be their conclusiounes; as in an actioun of spuilzie, perfewit ciuillie, the cognitioun thair of will pertene to the Lordis of Counfall, the lybell being sa formet, that it conclud the restitutioun of the guidis spuilzeit; and vpon that same fact, the spuilzeit may be convenit befor the Lordis of Secret Counfall, for Oppressioun, the Summandis concluding to heir and sie ordour tane with him for committing of the said fact; sa that albeit the fact be ane, yit tua diuerser conclusiounes produces tua feuerall actiones, the cognitioun quhair of pertenis to tua feuerall Jurisdictiones. And as this is trew, in all vther matteris Prophane, sa it is alyk trew, into the caise intentit and perfewit aganis the pannell befor the Lordis of Secret Counfall, quhairin it aucht nocht to be respectit, quhat was the deid quhairupone thay war summond, bot it aucht to be confidderit quhat the summondis concludit: Sa that albeit the allegit fact or deid committit be thame mycht be puneschet be the Secret Counfall, and sa pertene to thair Jurisdictione; yit, feing the conclusioun beiris nocht allanerlie for the said fact, quhilk gif it had bene sa confaet, the pannell could nevir nor would nevir haif declynit, lyk as, *in facto*, thay haif nocht declynit the samyn; bot concludis to heir and sie the Assemblie haldin be thame vnlawfull: Quhilk conclusioun makis the matter to be altogidder Ecclesiasticall, only subiect to the Jurisdictione of the Kirk establischet be his Maieftie and be the lawis of this cuntrie; the actioun being comptit of that nature, quhair of the conclusioun is, of all deutie and conscience thay aucht and mycht haif declynet the samyn, without the perrell of the said law; and thairfor, &c. *Secundlie*, It is allegit, that the Act of Parliament can nocht be extendit to the Declinatour vsfet and proponit be the pannell; becaus in all Lawis, the intentioun and resson of the Law aucht to be attendit; bot sa it is, that the intentioun and resson of this Law was only maid, in sic matteris, quhair ony persone was summond *super inquirendis*, as appeiris be the verrie expres wordis of the Law, saying, in all matteris quhairin fall be apprehendit, &c. sua that the

¹ Medium, means.² Illegible.³ More.⁴ Lat. *discernere*, distinguished, judged of.

law being only confauet vpon ane fingular¹ caice, it can na wayis be extendit to ony vther caiffis or matteris, quhilk ar nocht expreffit in the Law; and confequentlie, can nocht be extendit to the actiounes perfewit aganis the pannell befor the Lordis of Secreit Counfall, becaus thair war nocht perfewit *super inquirendis*, bot vpon ane perticular fact and lybell; and the reffone of this Law, quhairfor it fould nocht militat *super inquirendis*, becaus gif ony perfone, being fummond *super inquirendis*, wald declyne the Lordis of Secreit Counfall, the fact nocht being knawin to him, it war ane manifest contemptuous Declinatour of his Maiefties fowerane authoritie, and ane exeilling of his perfoun fra his Maiefties maift royall power, quhilk war maift worthie of the pane of Treffone; fua that this reffone, nocht being militat in the caufe of the perfute perfewit aganis the pannell befor the Secreit Counfall, the faidis perfones, in vring of thair Declinatour, hes nawayis fallin vnder the compas of the faid Law. And forder, the faid Law can nocht be perticulerlie extendit aboute the perticuler caife mentionet thairintill *quia odiofa sunt restringenda*; and that, be the consent of all Doctouris, is countit odious, quhilk is aganis the difpofitiounes of the Cowmoun Law, or quhilk may preiudge a thrid perfones lauchfull rycht; quhilk is the nature of this Law; feing by it the punifment of Treffone is imponet² vpon ane fact, quhilk nather be the Cowmoun Law, nor be the Lawis of this cuntrey is treffonabill. *Thridlie*, the pannell can nawayis be accufet for committing of Treffone, be proponing of the Declinatour, becaus, be the Law, the proponing of the Declinatour is nocht comptit ane treffonabill deid, bot only prohibeit to do the fame, vnder the pane of Treffone; fa that the Affyfe, without committing manifest Errour, can nocht convict thame of the faid fact, as Treffone. *Finallie*, the pannell can nawayis pas to the knowlege of ane Affyfe, for the Declinatour, be vertew of this Act of Parliament, becaus, fen the making thair of, viz. in the moneth of . . . , anno 1592, all lawis, actis, statutes and ordinances, quhilk may derogat to the Jurisdiction of the Kirk ar abrogat and annullit; lyk as, be the fame Law, it is declairit be his Maieftie and the thrie Estaitis, that the foirfaid Act of Parliament quhairupovn the pannell is accufet, being the 129 Act of the Parliament haldin in Maj 1584, fall nawayis be prejudiciall, nor derogat ony thing to the privilege that God hes gevin to the spirituall office-beiraris in the Kirk, concerning heidis of Religioun, matteris of errofie,³ excommunicationne, collatioun and depriviatiounes of Ministeris, and vtheris ficylke effentiall cenfours ecclesiasticall, expreflie groundit and haifing warrand of the woird of God; be the quhilk Law, the Kingis Maieftie and the Estaitis hes declairit, that the faid Act of Parliament quhairupovne the pannell is accufet, fall nawayis be prejudiciall to ony Ecclesiasticall effentiall cenfours, foundit vpon the woird of God, being of that nature quhair of the particuleris preceding thairin contenit ar: Bot trew it is, that

¹ Special, individual.² Imposed.³ Heresy.

the Generall Affemblye is an effectuall Ecclesiasticall cenfoure, expreflie warrandit be the woird of God, and be that fame Act in the fourfoir tuelf,¹ Ratifeit and approvyn be his Maieftie, and decernit to be lauchful and Godlie in the felf, and is of the lyk natoure with the particularis contenit in the faid Act; becaus the intreiting of the heidis of Religioune, matteris of erraffe,² excommunicatioune, collatioune and depriuatioune of Ministeris, ar proper pairtis of the Generall Affemblye, and of the office and Jurifdictioun of the fame, *et ejufilem est nature cum suis partibus*: And thairfoir, the pannell, in the proponing of the faid Declinatour, haifing done nathing bot that quhilk pertenit properlie to the Jurifdictioun of the Kirk, in defyreing the queftioune anent the faid Generall Affemblye to be remittit to the Kirk, thay did na wrang in proponing of the faid Declinatour, nor yit can the faid Declinatour be drawin in queftion, be vertew of the faid Act, quhilk be the foirfaid pofteriour Act, in that poynt, is *tacite* abrogat be ane expref declaratioune, that the famyn fall nawayis be extendit to the effectuall cenfours of the Kirk; fua that the pannell was *in optima fide*, in refpect of the faid pofteriour Declaratioun, to vfe the benifeit of the famyn; and thairfoir, &c.

Thaireftir, the pannell for cleiring to his Maieftie of thair intentione in vfeing of the faid Declinatour, hes declairit, and be thir prefentis declairis, that thair nawayis thairby meanit to exeme³ thame felfis fra ony lauchfull fubiectioun to his Maiefties royall authoritie, nor yit frome the Jurifdictioun of the Lordis of Secreit Counfall, in ony thing quhairin ony vther fubiect is fubiect to thair authoritie; bot ony, to haif that caufe, tuiching the lauchfulnes or vnlawfulnes of the faid Generall Affemblye, being ane mater meir fpirituall, to be judget be his Maieftie and the Kirk, as ony Judges competent thairto, according to the law of God, and eftableifchet Actis of Parliament within this realme; declairing be thir prefentis, that his Maieftie fould judge Ecclesiasticall matteris with Ecclesiasticall perfones, lyk as he judges Ciuill matteris with Ciuill perfones; and acknowledging thame felfis, in all matteris Ciuill or Criminal, to be fubiect to his Maieftie (and) all the lauchfull Jurifdictiones eftableifchet for sic caiffis within this land; vnto the quhilkis, in all humble reuerence, thay fubmit thame felfis; lyk as, in all Ecclesiasticall matteris, thair ar reddie to be judget be his Maieftie with the Generall Affemblye, and vtheris eftableifchet ordouris of the Ecclesiasticall Jurifdicties.

IT IS ANSWERIT to the *ffirft* allegiance, that the Actis of the Parliament lxxix and lxxxj can mak na derogatioune to the Act of Parliament maid in Maij, anno 1584, quhairupoun the Dittay is foundit, being pofteriour to thame, geueing expres Jurifdictioun to the Kingis Maieftie and Lordis of his hienes Secreit Counfall over all perfones, ather fpirituall or temporall, according to the tennour of the faid Act: And as to the nature of the caus perfewit aganis the pannell

¹ A.D. 1592.² Heresy.³ Exempt, free.

befoir the Loirdis of Secreit Counfall, accoirding to the tennour of the Dittay and Decreit of Secreit Counfall productet, the Lordis of Secreit Counfall was maift competent Judges to the haill contentis thair of, alſweill anent the tryell and puneifchment of thair contempt, as of the vnlawfulnes of thair Affembly, at that tyme and place, thay being expreflie difcharget be his Maieftis Letteris of Hoirning and be the Counfallis command, in writt, to hald na Affembly at that tyme, or indict ane new Affembly to ane new tyme and place: Lyk as, thay haifing proponit thair Declinatour befoir the ſaidis Lordis, the ſamyn was Repellit, and Decreit gevin in the haill caufe; in reſpect quhair of, the Dittay ſtandis relevant.—To the *ſecund* allegiance, anſueris, that the woirdis of the Act of Parliament, anent Declinatouris to be proponit in actiones *ſuper inquirendis*, befoir the Secreit Counfall, can nocht exeme the caufe contravertit, fra thair Jurisdictione; albeit that fauour was ſchawin to the partie, to foirwairne thame of the caufe thair war to anſuer: Bot generallie, the Law is vnderſtand, and hes alwayis bene interpret, that all Declinatouris proponit in matteris competent to the Jurisdiction of the Counfall ar of thame ſelfis treſfonabill, as was ſolempnatlie decydet in the Kingis Maieftis awin preſence aganis vmq^{re} Mr David Blak: And thairfoir the Declinatour proponit be the pannell, and adheirit to be thame, eftir the ſamyn was repellit be the Counfall, fallis vnder the woirdis, meaning and tennour of the Act of Parliament.—To the *thryd* allegiance, anſueris, that all crymes ordanit to be pwneift be the payne of Treafoun ar treſfonabill.—To the *ffourt* allegiance, anſueris, that the claus of the Act of Parliament, in the yeir of God I^m.V^c.lxxxij, being ane exceptioun frome the Act of Parliament, in the yeir of God 1583, confermis the ſamyn Act, in all heidis nocht expreflie exceptit; lyk as, the exceptioun is only of heidis of Religion, materis of erraſie, excommunication, collatioun or deprivation of Miniſteris, or ſicyke eſſentiall cenſouris, ſpeciallie groundit and haifing warrand of the word of God; and it is of veritie, that the keeping of ane Affembly at ane certane tyme and place, and appointing of ane new Affembly, aganis the Kingis Maieſtie expreſ charge vnder the payne of rebelloun, and aganis the will and command of the Counſale, and aganis the diſſenting of his Maieſties Commiſſioner, is nather ane heid of Religion, mater of erraſie, excommunication or eſſentiall cenſour; and thairfore, is nocht exceptit fra the ſaid Act, bot fallis vnder the prohibitoun and danger thair of: And thairfore, nochtwithſtanding of the alledgance and declaratioun foirſaid, the Dittay ſould be putt to the knowlege of ane Aſſyſe.

It is lykwyiſe alleget be the Pannell, that the Juſtice can nocht putt thame to the knowlege of ane Aſſyſe, for Treafoun, becaus thay ſtand at the horne vnrelaxit.—The Advocat anſueris, that the Juſtice hes admittit the preloquouris to compeir in the ſaid mater; and thairfoir the Dittay for Treafoun ſould be putt to ane Aſſyſe.

THE JUSTICE admittit the said preloquoutouris to compeir as preloquoutouris in the said mater : And with auife of the hail Affeffouris, in ane voce, in respect of the anfuieris maid be my Lord Aduocat, Ordanis the Dittay to be putt to ane Assyfe.—Quhairupoune my Lord Aduocat askit instrumentis.

ASSISA.

Sir Johne Home of North-Ber- uik, knycht,	Sir Archibald Sterling of Keir, kny ^t ,	Gawin Home of Johnnefleuch, Johne Levingstoune of Donypace,	Thomas Levingstoune of Pantoun,
Sir George Home of Broxmouth, knycht, elder,	James Schaw of Sauchie,	Ro ^t Levingstoune of West-Quarter, Mark Swyntoun in Innerkething,	James Gib younger of Carriber,
Sir James Forrefter of Carden, knycht,	Harie Stewart of Craigiehall, George Home of Deanes,	Alexander Home of Rentoune, Sir Patrik Home of Polwort, kny ^t .	

The Aduocat askis instrumentis of the admitting and fuciring of the Assyfe, and eftir accufatioun of the perfonis on pannell, be Dittay.—The Aduocat, for verificatioun of the Dittay, produceit the Declinatour, subferyuit with thair handis acknowledgeit be thame self in Judgement ; Repetit the Act of Parliament ; produceit the Decreit of Secreit Counfall, the charge of Hoirning, and the pretendit proces,¹ subferyuit be the pretendit Moderatour and the pretendit Clark of the Generall Assambleie, granting the resait of the Counfallis Missiue, of the tennour lybellit, and the Declaratioun of his Maieftis Commissiouner, bering that he disassentit fra thair hail proceeding ; and seing my Lord Justice, be the auife of the hail Counsale present, hes discuffit the pannellis hail defensis, and ffund the Dittay relevant ; and that thair restis na forder to the Assyfe bot to declair, quhider the factis contenit in the Dittay haif bene committit be the pannell or nocht, the samin fact being sa manifestlie provin be the writtis produceit, and nawyife denyit be the pannell, bot ratifeit and renewit in Judgement, as the proces beris ; in caise thay acquit the pannell, the Aduocat protestis for Wilfull Errour and remeid of Law, with all regour.—The pannell protestis for Errour aganis the Assyfe, in caice thay ffyle thame of Treasoune.—The Aduocat askis instrumentis, that the pannell confessis to gefing in of the Declaratour.

VERDICT. The Assise, be the mouth of the said Harie Stewart of Craigiehall, chancellor, ffand, pronuncet and declairit the saidis fax Ministeris, and ilk ane of thame, to be ffylet, culpable and conviet of the tressonabil declyneing of the Judgement of his Maieftie and Lordis of his Secreit Counfall, conforme to the Dittay aboue specifeit.

WARRANT and DOME of BANISCHEMENT² pronuncet aganis THE MINISTERIS, in Pretorio de Ljnylythgow, xxij die mensis Octobris, 1606, per Magistrum Willielmum Hairt de Presloune, Jusliciarium Deputatum.

[Oct. 23.]—COMPEIRIT M^{ris} Thomas Henderfoun and Robert Lyntoune,

¹ The procedure which took place at their Assembly.
to insert the ' DOME' here, rather than under its proper date.

² It has been thought most convenient

substitutis to our sowerane lordis Advocattis, and producet to my Lord Justice his Maiesteis Warrant ; quhilk the Justice caufit be oppinlie red in Judgement, and ordanit the samyn to be infert in the buikis of Adiornall ; quhairof the tennour followis.

JAMES R.

WHEARAS, in our Justice-Court, held at Lynlythgow, the tenth of Januar lasthyppail, Mr Johne Forbes, &c. war convicted of the cryme of Tressone, for pair contemptuous and tressonable declyneing þe Judgement of us and þe lordis of our Secreit Counfall, *simpliciter*, be a declinatour subf-cryuit with pair handis, and gevin in be pame, in Judgement, befor the saidis Lordis of our Counfall ; as in the said proces of Convictionne at mair lenth is contenit : And þe pronunceioun of the Dome being by our Justice, vpon grave and wechtie respectis continewit, till our farder plefour war knavin pairin, WE now considering þe grit insolence of that proud contempt, and quhat dangerus exampill it might be, if it sould pas vnpwnseifched, haveing, in our accustomed lanity, gevin to thaise declared Traytouris moir þan sufficient tyme to haif implored and maid humble sute for our mercie ; zit, finding in thame nathing bot a continwing obdured obstinacie and wilfulness, without likliehoid or appearence of resipience and repentance in thame, for pair former committed foieis : And albeit þe gritnes of pair offence, and speciallie in men of that functioun (quhais lyves sould be lanternes and lichtis to vþeris, to cary thame selvis in all dentie and obedience, and pairfoir pair ouerfights requyreing þe moir feveir animaduersion and pwneifchment,) hath most iustlie demerited the extremitie of the regour to be inflicted vpon thame, for ane exampill to afray all vþeris to attempt þe lyk ; zit, becans heir-tofoir that Law haith nevir bene putt to executioun, quhairby sum men may perhaps pretend that þai had þe moir probabill ignorance pairof, (albeit in reasone the same can be no excuse,) We haif with our wounded clemency, vpon that respect only, spared to inflict the rigour of the Law, at þis tyme : It being our Will and plefour, that our Justice or his depute sould fence and affix a Justice Court, to be held at Lynlythgow, or ony vþer pairt else that our Counfall fall think expedient, the xxiiij day of October nixtocum, and pair cause Dome to be gevin out against the saidis traytouris, to be BANISHED all our dominiones, during all þe dayis of pair natural lyves ; vnder pane of daeth : And þe Dome being pronounced, oure Will and plefour is, that þai be returned to pair wairdis, thair to remane for þe space of ane moneth, for making pair preparatiounes for pair departour ; befor þe expyreing quhairof, gif þai do nocht depart, wind and wedder ferveing, oure Will and plefour is, that þe ordinarie death vsuallie inflicted vpon Traytouris be directed to be execute vpon thame : And gif þai fall nocht departe within þe said space, or being departit, fall returne into oure dominiones, without our License, thay fall incur þe pane of death, and all vþer panes dew to perones convict of Tressone. Quhairin these presentis fall be to our said Justice a sufficient Warrant. AND becans this our spare dealing and grit clemencie, extendit towards those aboue named offendouris, in this thair so haynous a cryme and offence, may perhaps move in sum vtheris sum presumptioun to think, that for trespassis of this qualitie no gritter rigour will be heirefter vsed : for removing of which pair foolfische opinione and conceate, and that everie ane may haif notice of our full determinioun in any suche lyk case heirefter, Oure Will and plefour is, that in our said Justice Court, to be keipit þe said day, for pronunceing of þe said Dome, speciall intimatioun be maid, in open Court, by our said Justice, to all our leigis pair present, that it is our resolutioun, that gif any heirefter fall offend, in such a leich trespas, that þai fall be procedit against with all seneritie ; and that the death dew vnto Traytouris fall be inflicted vpon thame with all rigour ; the example of this our present lenitie at þis tyme, nevir remaying any motiue to induce ws to schaw any such clemencie to such as fall commit þe lyk offence heirefter : And our will is, that þir presentis be recordit in the buikis of Adiornall, and that publicatioun be maid heirof at the mercat croce of Edinburge, and all vþer places neidfull. GEVIN at our Court of Hamptone Court, the xxvj day of September, 1606.

According to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoune, dempfter of Court, pronuncet dome, and decernit and ordanit the saidis perfones to be Banifchet all our fouerane lordis dominiones, during all the dayis of thair naturall lyves : And ordanis thame to returne to thair wairdis, thairin to remane for the fpace of ane monethle, for making of thair preparatioun for thair depairtour ; befor the expyreng quhairof, gif thay depairt nocht, wynd and wedder ferving, the said Justice-depute, according to the said Warrant, decernis and ordanis the ordinarie daeth vsuallie inflictit vpon perfones convict of Treffone to be execute vpon thame : And gif they fall nocht depairt within the said fpace, or being depairtit, fall returne within his hienes dominiones without his Maiefteis Licence, decernis and ordanis thame, according to the said Warrant, to incur the pane of daeth, and all vther panes vsuallie inflictit vpon perfones convict of Treffone : Quhilk was pronuncet for dome.

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

Murder of the Warden of the West Marches.

[THE Clan or 'Name' of ARMSTRONG was perhaps the most distinguished of the warlike Thieves of the Scottish Border, having possession of the largest portion of Liddisdale and the Debateable Land. For the exploits of many individuals of this name, reference may be had to the Works of Sir Walter Scott, and especially to the Introduction to the Border Minstrelsy, and the Notices prefixed to '*Johnie Armstrong*' and '*Kinnmont Willie*,' &c. The almost unparalleled act of bravery of the LAIRD OF BUCCLEUCH, who achieved the deliverance of *Kinnmont Will* from the Castle of Carlisle, in April 1596, has been adverted to in a former part of this Collection.¹ A very interesting 'Relation' of this remarkable feat, taken from a contemporary MS., is also given in the Minstrelsy,² which the reader will find well worthy of perusal. This event is likewise narrated in the Anonymous History of Scotland, already quoted ;³ and as his Narrative is very brief, it has been thought proper to preserve a transcript here.—NOW Auld WILL ARMSTRANG of *Kinnmont* being tane be Inglis men, and is wairdit in the Castell of Cairleill, within ane strait priffoune, and yrnifs on him ; and being to thoil the tryall of the Law, knew perfytlie that thair was no faifty for him. He vritis in Scotland to his freindis, to sie gif thay culd mak him relief. Quhairpoun THE LAIRD OF BALCLEUCH past within⁴ thrie feoir tenne horfe to the saidis Castell, and with ladderis clam the fame, and brak the priffoune ; and bringand the said Williame Kinnmnt hame with him, he cauffit blaw his trumpett and cry sum slughorns,⁵ puttis the toune and cuntry in sic ane fray, that nene durft firr: Quhairy, he brocht the said Will Kinnmont away, but⁶ ane straik, to the grit honour of his cuntry. This wes done the sext day of Apryill, 1596.]

The Murder of SIR JOHN CARMICHAEL, knight, the Warden of the West Marches, sealed the fate of many of the Armstrongs, and led to the adoption of measures of the utmost severity against all those of the name who were thereafter convicted, or even suspected, of mal-practices.⁷ On Nov. 14, 1601, Thomas Armstrong, 'fone to Sandeis Ringane,' was convicted for being accessory to this barbarous act of butchery, and is the first instance on record, in Scotland, of a criminal having been hung in chains. The above mentioned Anonymous Historian⁸ narrates the event very quaintly, in the following terms. 'Now the Bordouris being werry euill brokin, thair war dyuerfe Reidis⁹ in all fydis, bayth be Scotland

¹ Vol. I. pp. 363—365.
Library, A. 4. 35.
pp. 450, 451, and 452.

² See *Scott's Poetical Works*, 8vo. 1821, Vol. I. p. 180.

⁴ Under the number of.

⁵ Slogans, war crys.

⁶ Without.

³ MS. Advocates'

⁷ See Vol. II.

⁸ MS. Advocates' Library.

⁹ For Raids, hostile incursions.

and England; and THE ERL OF ANGOUS, heaffand gewin the famin owir, quha wes Wardane, the King makis THE LAIRD OFF CARMICHAEL Wardane; quha, finding the *Airmifrayngis* to be the gritteff occaifoune of the trubbillis, wes myndfull to pvneife fum of thame, quha wes notorius theiffis; and thay heaffing intelligenfie thairoff, fendis to him ane broder of *auld Williame Airmifrayngis of Kennwnt*, quha wes callit Alexander Airmifrayng, *alias Sandeis Ringand*. This Ringane being in his cumpny, and entiring in confarence with the Wardanis, findis that thair wes na frendfchip to be luikit for at his handis; and also, thair wes fum young menne with the Wardane, quha begane to mok this *Ringane*, be fleilling out of his fuord, and putting zokis of egis in the fkbart, quhairby the famin wald not draw; quhilk he perfaiiffing, faid, that "he awowit to God, that thai fuld fie his fuord out, and (if) he and thay vent on the grond quhair he myecht be partie!" And cuming hame to his awin hous, in this readge, sayis to his fonnis, that he wes "maid fchame of fum," awowing to God, "to be equal with the famin!" And knawing THE WARDANE to ryd on the morne, he and his fonnis fettis for him with fum wtheris, and flayis him be the fchott of ane hagbutt. And thaireftir, for the famin caus, this *Ringane* and his fonnis wer tane and execut to deith, as Tratouris to his Maiefty, be putting handis in the Kingis Wardane. This was done the 16 day of Junij, yeiris 1600.

Sir Walter Scott fuppofes the well-known verses, '*Armstrong's Good Night*,' to have been composed by Thomas Armstrong, who is called by him '*Ringane's Tam*,' previous to his execution, Nov. 14, 1601. The reader is referred to the *Minstrelsy* for the exploits of the Armstrongs, and of other Worthies of the Scotch Border, whose names frequently occur in the Criminal Records.]

Feb. 13.—ALEXANDER ARMSTRANG, callit *Saudie of Rowaneburne*.

Dilatit and accufet be Johnne Commendater of Halyruidhous, fone-in-law to vinq^{le} Sir Johnne Carmichell of that Ilk, knycht.

FORSAMEKILL as he, accompaneit with Thom Airmstrang, fone to *Sandeis Ringane*,² the faid Ringane and vtheris, his fonnis and complices, to the number of fewintene perfonis, or thairby, commounne thewis and tratouris, the maiff pairt being on horfbak, and he on fute; came all bodin in feir of weir, with hagbuttis and piftolettis, lance-ftalfis and vtheris wappinnis, invafue, to the Murthumleis; quhair thai, in the moneth of Junij, I^m.Vj^c., altogidder confultit and dewyfit the crewall and treafonabill Slauchter of the faid vinq^{le} SIR JOHNNE CARMICHELL of that Ilk, knycht, WARDEN OF THE WEST MARCHES;³ and for performance thairof, paff fra Murthumleis to Coloneheid, quhair he and his complices lay att wait for the faid vinq^{le} Sir Johnne paffing by to ane Court; and as he wes, in fobir and quyet maner, paffand by to the faid Court, vpone the . . . day of the faid moneth of Junij, quhilk wes to be hauldin in Lochmabene, he and his complices fett vppone him att the Raeknowis, quhair, with fchottis of hagbuttis and piftolettis, thay fchot him throw the body, and crewallie flew and murdreift the faid vinq^{le} Sir Johnne Carmichell, being his Maiefteis Wardene for the tyme: And the faid Alexander Armstrang wes airt and pairt of the faid

¹ Where he might avenge his own quarrel.

² See Vol. II. p. 363, where he was sentenced

to be 'hangit vp in *irne-cheinis*,' after having his right hand struck off. ³ Robert Birrel gives the following notice, in his Diary, Jul. 11, 1600. 'The Laird of Carmichael bureit; quha was flaine be the Armstrangis and Carliles, he doing and executing his office of Wardanrie, vpone the 16 of Junij befor.'

crewall and treffonabill Murthour, he being than vpoun the ground with his complices, att the committing of the said vngodlie fact : To the takin¹ he confest the famin be his depositeiounis ; lyke as, he, be Depositioun, declarit him self to be innocent of ony vther haynous crymes, except the foirsaid innocent² Slauchter of the said vmq^{le} Sir Johnne ; quhilk he declairit he wes brocht vpoun aganis his will. ITEM, for commoun Thift, commoun Ressett of thift, inputting and outputting of thift, fra land to land, fra cuntry to cuntry, baith of auld and new.

PERSEWER, My Lord (‘ Johnne Commendater’ of) Halyrudhous.

ASSISA.

Robert M ^c brair of Almagill,	Andro Ker of Mylnerig,	Michell Adamefoun, flescheour in
Johnne Weir, brother to Auchtie-	Gylbert Halyday, merchand bur-	Edinburghe,
fardell,	ges of Edinburghe,	William Mow, hatt-maker thair,
R ^t Johnneftounne, burges of Ed ^r , Allane	Cathcart, staibler thair,	Andro Greir, burges thair,
Vthrid McDonell of Mondurk,	Robert Dalzell, Y ^r of that Ilk,	Alexander Bowie, staibler thair,
. . . . Hunter of Polmude,	James Johnneftounne or Wafraw,	J ^m Steill, funtyme of Houftounne.

VERDICT. The Assyse, be the mouth of the said James Johnneftounne, chancellor, stand, pronunceit and declarit the said Alexander Armfrang to be ffylit, culpabill and convict of airt and pairt of the crewall Slauchter and Murthour of the said vmq^{le} Sir Johne Carmichell, conforme to his Depositiounis. And als, to be ffylit, culpabill and convict of commoun thift, commoun ressett of thift.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be hangit vpoune ane gybet quhill he wes deid ; and all his movabill guidis to be escheit and inbrocht to our souerane lordis vs^e, for the said crymis.

Slaughter — Shooting Hagbuts, &c.

Feb. 21.—ADAME BRUNFEILD, in Gordone maynes.

Dilaitit for airt and pairt of the fellone and crewall Slauchter of vmq^{le} Thomas Cranftoun ; committit vpone the xxij day of July, the yeir of God I^m.V^c. fourcoir fyftene yeiris, within the boundis of the landis of Moriestoun, at that pairt thairof callit the Kame, be the fchot of ane hagbut throw his body ; vpone fet purpois, prouifioun and foirthocht fellony.

PERSEWER, Johnne Cranftounne, as brother.

PRELOCOUTOURIS in perfute, Sir Johnne Cranftounne of that Ilk, Mr Thomas Cranftounne.

PRELOCOUTOURIS for the pannell, Mr William Oliphant, Adnocat, James Brounfeild of Nether Maynes.

It is allegit be the pannell, that he can nocht be put to the knowlege of ane Assyse, vpone this Dittay, and crymes contenit thairin ; becaus the Kingis Maiestie hes grantit his Remiffiounne, vnder the Grit Seill.³—It is anferit be the persewer, that this Remiffiounne, aenent the tyme of the committing of the said (slauchter) lybellit, meittis nocht the tyme specifiteit in the Dittay.⁴

¹ In token or testimony whereof. ² Sic. ³ Apud Edin. Dec. 20, 1605. ⁴ ‘ In menfe . . . 1594, commissi.’

THE Justice admittis the Remiffiounne product.

It is allegit be the perfewer, that the Remiffioun vset be the pannell, is contrair to the Act of Parliament, ordaning na Remiffiounne to be grantit, without satisfaciounne of pairtie, and productione of ane Letter of Slanes, vtherways to be null.—Anfuerit, the alledgeance aucht to be repellit, in respect of the Remiffiounne; and offeris cautionne to fatisfie the pairtie, conforme to the Lawis of this realme.—James Brounfeld in Nether-maynes, Johnne Brounfeld in Gordone-maines and the said Adame (become) cautionne, coniunctlie and feuerallie, for satisfaciounne of pairtie, &c.

Slaughter — Shooting Hagbutis and Pistolets.

Feb. 25.—HEW CAMPBELL in Mauchline, sone to vmq^{le} Thomas Commandator of Halywoid.

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Johnne Glencorfe of that Ilk, be schottis of hagbutis and pistolettis; committit vpon the xiv day of September, the yeir of God 1581 yeiris, vpon the ground and landis of Gribtounne; vpon set purpois, prouisioun and foirthocht felonie.

PERSEWERIS, Ifobell Glencorfe, sifter; Robert Glencorfe, neir kynsman.
PRELOCOUTOURIS for the pannell, Mr Robert Lyntoun.

Tuik him to our fouerane lordis Remiffiounne, for the said cryme. ('Apud Edinburgh, Feb. 14, 1606.') Williame Campbell in Grienoek-maynes, Alexander Nisbet of Greneholme, and the said Hew, become cautionne and fouertie, coniunctlie and feuerallie, to fatisfie the pairtie, as law will.

Slaughter.

Feb. 26.—WILLIAME M^cINTOSCHE, sone to the Laird of M^cIntosche; Angus Williamfoune of Termet; Donald M^cIntosche, sone to Persone M^ccondowie; Williame M^cJames, sone to James Glas; Angus M^cRannald, sone to vmq^{le} Johnne M^cAngus; Lauchlane Williamfoune, eldest sone to Angus.

Dilaitit of airt and pairt of the slauchter of vmq^{le} Alexander Anderfoune in Balnaglak and vmq^{le} Johnne Barrone thair.

PERSEWER, Johnne Elphinstoune of Balnaglak, as neir kynsman to the saidis vmq^{le} perfones.

The said Johnne Elphinstoune, perfewar, for himself, and takand the burding on him for Thomas Anderfoun, brother to vmq^{le} Alexander Anderfoune, past fra the perfute of the perfones on pannell, *pro loco et tempore*. Lauchlane M^cIntosche of Dynnachten becomes fouertie for the entrie of the perfones on pannell, the thrid day of the air (of 'Inuernese,') or soner, vpon xv dayis wairning; vnder the panes contenit in the Actis of Parliament.

Breaking the Place of Kilbirnie — Theft, &c.

Feb. 26.—**JOHNE CRAWFURD**, funtyme in Auchincloch, now in Auchinbothie.

Dilaitit of airt and pairt of the Breking of the Place of Kilbirnie; and steilling of certane evidentis and abulzimentis, pertening to Johnne Craurfurd of Kilbirnie, &c. viz.

FORSAMEKILL as he, accompaneit with Thomas Wilfoun in Wallafe, with divers vtheris thair complices, cownoun thewis, in the moneth of Nouember, the yeir of God 1^m.Vc. and twa yeiris, come to the Place of Kilbirnie, the Laird being than furth of this realme, and his Lady being than in Grenok, ten myle diftant fra the said place of Kilbirny; and thair, vnder fyence and cloud of nycht, brak the said Place, at the North syde thairof, enterit within the samyn, and thiftiouffie ftall, concealit, refsett and away-tuik, furth thairof, and furth of the cofferis than ftanding within the said Place, ane figured velvet gonne, ane blew bend of taffetie, ane ryding cloik and skirt of broun cullerit clath, wrocht with finer pafment; ane blak velvet dowblet, cuttit out and wrocht with filk cordounis; ane pair of broun veluet breikis, wrocht with cordounis of gold; ane lowfe gown of grograne, ane skirt of broune fatene, ane broun faittene dowblet, twa hwidis with craipis; togidder with ane pair of blankettis, quhairin he band all the saidis clathis and abulziments: Quhilkis guidis and geir pertenit to the said Johnne Craurfurd of Kilbirnie and his fpons. **LYKE** as, att the samyn tyme, he with his complices, brak vp the said Johnne Craurfurdis Charter-kiit, ftanding within the said Place, and thiftiouffie ftall, concealit, refsett and away-tuik, furth thairof, ane grit number of the said Laird of Kilbirnes fpecial evidentis and writtis,¹ togidder with the saidis guidis and geir and abulziments, he and his complices had and convoyit away with thame, and difponit thairvpoun att thair pleaour; and he wes airt and pairt of the thifteous fleilling, concealing, refsetting and away-taking of the saidis guidis, geir, writtis, evidentis and vtheris aboue writtin, and of the breking of the said Place, in maner, and att the tyme foirfaid; quhill wes notourlie knawin. To the takin,² he, with his wyffe and feruand-wemene, delynerit bak agane to the Lady Kilbirny, within the duelling houfe of Cuthbert Craurfurd in Parkfut, in prefens of the said Cuthbert Craurfurd, Hew Gawin in Boig, Williame Allane in Mauis, Thomas Harvie in Broklichill, Mungo Allane in Sarlie, Hew Starrie in Bankfyde, and George Kelfo in Brighill, the perticular abulzimentis following, viz. the saidis cuttit ont velvet dowblet, the broun velvet breikis, the lowfe grograne goune, the broun fatene skirt, ane broune fatene dowblet, the faid figurit velvet gonne, the faid broun ryding cloik and skirt, with the saidis twa huidis, quhilkis wer thifteouffie ftollin and away-brocht be him and his complices, furth of the said place, att the tyme foirfaid: To the takin also, he being examinat him felf, in prefens of the Minister, eldaris and deakinnis of the Kirk of Kilbirnie, he grantit and confeffit the hafing of the said blew taffatie bend, with certane of the said Laird and Ladies writtis and evidentis, bot wald nocht declair how he came be thame; as the Extract of his Confefsioun, heirwith produceit to fchaw, beiris: To the takin lykwayis, the said Johnne, being charget of befoir to find cautionne to haif comperit before the Juftice, at ane certane day bygane, to vnderly the law for the foirfaidis crymes, he than, for diffobedience of the said charge, paff to the horne; as the Hoirning lykwayis fchawin beiris.

PERSEWARIS, Johnne Craurfurd of Kilbirnie, Sir Thomas Hamiltounne of Monkland, kny^t, Aduocat. **PRELOCOUTOURIS** for the pannell, Mr Johnne Ruffell, Williame Speir, wryter, Mr Patrik Hamiltounne.

The Laird of Kilbirnie takis instrumentis of the productiounne of Thomas Wilfounne at the horne, and lykwayis of the productiounne of the Letteris aganis

¹ Principal title-deeds and writings.

² In token, or proof.

the cautioneris for the Entrie of Johnne Craufurd, and of the roll of his Affise; and offeris him reddie to perfew the said Johnne for the crymes contenit in his Dittay; and protestis, in respect thair of, that he be relevit of his cautionerie.

VERDICT. The Affise, be the mouth of Williame Orr in Lochrig, chancellor, for the maift pairt, fand, pronuncet and declairit the said Johnne Craufurd to be Clene, innocent and acquit of airt and pairt of the breking, &c.

Slaughter — Demembration.

Mar. 7.—NINIANE AIRMESTRANG, callit *Niniane of Tueidane*, Andro Henderfoune, fervand to the Laird of Mangertoune, Archibald Airmestrang, callit *Fair Archie*.

Dilaitit of the Slauchter of vmq^{le} Andro Smyth, and demembring of Thomas Tueidie of his neife (*nose*.)

PERSEWERIS, Johnne Smyth, sone to vmq^{le} Andro Smyth, Thomas Tueidie in Dwnfyre.

The perseweris passis fra the perones in pannel, *pro loco et tempore*.—Robert Scott of Hayning become fouertie for the entrie of Niniane and Andro, and Sir James Johnnestoune of that Ilk, for the said Archibald, the thrid day of the air (of Dumfries) or soner, vpone xv dayis wairning, to vnderly the Law, &c.

Mutilation and Demembration.

Mar. 7.—GAWIN ELLOTE of Fiddeltoune, callit *Johnne's Gawin*.

Dilaitit for Disinembring of Thomas Twiedie in Dunfyre of his neife (*nose*.)

Robert Ellote younger of Fallinesche oftymes callit, as cautioner for the said Gawin, to haif enterit and presentit him befor the Justice this day, vnder the pane of thre thousand merkis; as he that become fouertie actit in prefens of Sir Williame Seatoun of Kylefinure, Sir Johnne Charteris of Amisfeld, and Sir Jedione Murray of Elibank, knyth, his Maiesteis Commiffioneris, in ane Court of Justiciarie held be thame, within the tolbutth of Peiblis, the tuentie tua day of December lastbypast. The said Robert vnlawit in the said pane.

Cattle and Horse Stealing — Slaughter — Fire-raising — Shooting of Pistolets — Cutting down Timber, &c.

Mar. 19.—HECTOUR TRUMBILL of Wauchope, George Trumbill his sone, Adame Trumbill in Bullerwall, ('*past fra,*') George Trumbill in Howa, ('*past fra,*') Johnne Trumbill, sone to Hectour of Wauchope, Hectour Trumbill of Stanyledge, ('*past fra,*') Andro Trumbill, brother to Bullerwall, ('*past fra,*') Hectour Trumbill in Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accufet and perfewit for airt and pairt of the crymes *refpectiue* following, viz.

FOR the thiftious Steilling, conceilling, refetting and away-taking, fra Margaret Trumbill Lady Apotefyde, furth of the toun and landis of Hairwood, tua hundreth ky and oxin, threttie fcoir of fcheip, threttie horfe and meiris, with the hail inficht and pleniffing, worth the fowme of ane thowfand pundis money; committit in the moneth of Junij, the yeir of God I^m.V^c. fourfcoir aughtene yeiris (1598). ITEM, for airt and pairt of the thiftious steilling, conceilling, refetting and away-taking furth of the landis of Apotfyde, of ane hundreth ky and oxin, tua hundreth fcheip pertening to the faid Margaret, with hir hail infycht and pleniffing being within the faid place, worth V^c lib.; committit in Junij, the yeir of God foirfaid. ITEM, for airt and pairt of the thiftious steilling, conceilling and away-taking, be way of Maifterfull thift and fouth-reif, furth of the faidis landis of Apotefyde, of xxx ky and oxin, pertening to the faid Margaret Trumbill, with hir hail inficht pleniffing, worth the fowme of V^c merkis; committit in Januar, the yeir of God I^m.V^c. fourfcoir nyntene yeiris. ITEM, for airt and pairt of the treflonabill and awfull Raiding of fyre about the place of Apotfyde, and burning and diftroying of dynerfe houffis within the faid place, togidder with tua horfis, price of the peice! V^c pund; with certane inficht and pleniffing; committit in the moneth of Maij, I^m.V^c. fourfcoir nyntene yeiris: And for airt and pairt of the crewall Slauchter of vmq^{le} Williame Lorane,² ane young boy of xij yeiris of age; committit in the moneth of Julij, the yeir of God I^m.Vj^c. yeiris, within the wood of Lorane, vpone fet purpois, prouifoun, auld feid and foirthocht felony. ITEM, for airt and pairt of the crewall Slauchter of vmq^{le} Hectour Lorane of Harwoid, with fchotis of hagbutis and piftolettis; committit in the moneth of Junij, the yeir of God I^m.Vj^c. and foure yeiris. ITEM, for airt and pairt of the Slauchter of vmq^{le} Lyell Broun, fervand to the faid Margaret: AND als, for airt and pairt of Steilling fra the faid vmq^{le} Lyell, furth of his landis of Harwoid, of threttie ky and oxin, threfcoir fcheip, thre horfe and twa meiris, with the hail inficht and pleniffing of his hous, worth the fowme of thre hundreth merkis; committit in the moneth of Junij, the yeir of God, I^m.V^c. fourfcoir aughtene yeiris. ITEM, for contravening of the Actis of Parliament, in beiring, weiring and fchuiting of hagbutis and piftolettis, vpone the faidis landis of Harwoid, Apotefyde and remanent places foirfaidis, fchuiting and flaying of the faidis Hectour Lorane of Harwoid, and vmq^{le} Williame Lorane, his brother, the tymes *refpectiue* aboue writtin of the committing of thair faid Slauchteris. ITEM, for contranening the Actis of Parliament, in cutting down and diftroying, in the monethis of Januare, Februare, Marche, and remanent monethis of the yeiris of God I^m.V^c. fourfcoir aughtene, 1599, 1600, 1601, 1602, 1603, 1604 and 1605, at the left in ane ar vther of the faid monethis and yeiris of God, of the hail grit growand ^{trayis,}³ within the woidis of Apotefyde, pertening to the faid Margaret Trumbill, viz. ane thoufand birk treyis, fyve hundreth grit aikis, thre hundreth allouris, four hundreth haifaillis;⁴ and hes waifit and diftroyt the faidis woidis.

PERSEWERIS.

Margaret Trumbill, Lady Apotfyde; Mr Robert Lyntoun, Aduocat, fubftitute to my Lord Aduocat.

PRELOCUTORIS for the panell, Mr Alexander King, Mr Lawrence McGill.

Compeirit perfonallie WILLIAME ERLE OF ANGUS, Lord of the Regalitie of Jedburghe-fforrest, and producet his Seafing, comprehending the faid Regalitie, and defyrit to Repledge the particular perfones following, duelling within the faid Regalitie, viz. The Laird of Wauchope, George and Johne Trumbillis, his fones, and Thomas Trumbill of Hoppifburne, as houfhold man to Thomas Trum-

¹ Price of each, £500.

² Brother to the Laird of Harwood.

³ Large growing timber.

⁴ 1000 birch trees, 500 great oaks, 300 allers (elder, or mountain ash), 400 hazels.

bill younger of Wauchope, all duelland within the said Regalitie. It is anfuert be the Aduocat, that the perfones defyrit to be repleget can nocht be repledget for Treffone, viz. ffyre-raifing,¹ contenit in the Dittay.—It is anfuert be Mr Alexander King, that thair aucht to be repledget, nochtwithstanding of the Ad-uocatis allegeance; becaus (thair is) na Treffone, bot that quhilk is committit aganis the kingis awin perfone.—It is duplyt be the Aduocat, that ffyre-raifing is Treffone; and thairfore the said perfones can nocht be repledget, bot fould pafs to ane Afflyse, quithir it be committit aganis his Maiefteis perfone, or for ony vther cryme impoirting Treffone.

THE Justice, eftir probatioune led that the saidis perfones duelt within the Regalitie, Admittis my Lord of Angus Replegeatioun, repledeand thame for the hail crymes contenit in the Letteris, except the Treffone of ffyre-raifing: And my Lord of Angus, present, fand cautioune, viz. Adame Trumbill in Bullerwall, to administer Justice, in Lyntelleis, the xv day of Apryle nixt; and the said Adame become cautioune for the entrie of the saidis perfones.²

The perfewer paffis fra Hectour Trumbill of Clarielaw, for the cutting and distroying of the greine-woid, contenit in the Dittay, *pro loco et tempore*.

Treasonable Fire-raising — Cattle-stealing — Slaughter, &c.

Mar. 19.—HECTOUR TRUMBILL of Wauchope, George Trumbill and Johnne Trumbill his fones, Hectour Trumbill of Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accuset and perfewit of the crymes *respectiue* following, viz.

THE said *Hectour Trumbill of Wauchope* and *Hectour Trumbill of Clarielaw*, of airt and pairt of the tressonabill and awfull Raifing of ffyre, vpone the landis of Harwod, and burring and distroying of fourtie dargis of turves,³ pertening to the said Margaret Trumbill Lady Apotefyde; committit in the moneth of Junij, the yeir of God, I^m.V^c.lxxxviiij yeiris. ITEM, the saidis *Hectour Trumbill, elder of Wauchope, George and Johnne Trumbillis* his fones, *Hectour Trumbill of Clarielaw*, and *Thomas Trumbill of Hoppisburne*, for airt and pairt of the tressonabill Raifing of ffyre about the Place of Apotefyde, and burning of findrie houffis of the said Place, togidder with tua horfis, worth ane thousand pundis, and hail infycht and pleniffing within the saidis houffis, worthe ane hundred pundis; committit in the moneth of Maij, the yeir of God I^m.V^c.fourfoir-nyntene yeiris. ITEM, the said *Hectour Trumbill of Clarielaw*, for airt and pairt of the Steilling of tua hundred ky and oxin, threttie fcoir of scheip, threttie horfe and meiris, pertening to the said Margaret Trumbill Lady Apotefyde; with the hail inficht and pleniffing of hir houffis, worth the sowme of ane thousand pundis; committit in the moneth of Junij, the yeir of God I^m.V^c.fourfoir aughtene yeiris: AND of the hail remanent crymes of Thift, Slauchteris, Cutting doune of grene growand treys and vtheris contenit in the Act of adjudicatioun of Thomas Trumbill, of the daif of thir presentis.⁴

¹ Being one of the pleas of the Crown.

² This, evidently, is one of the instances which the Editor has before referred to of the evil effects resulting from the Heritable Jurisdictions possessed by the Barons of Scotland, before the Act, abolishing such powers, was passed. The purpose of the 'Replegation' was undoubtedly to quash all proceedings, and suppress the administration of justice.

³ Darg usually signifies a *day's-work*. This may, therefore, signify a quantity of peats or turfs, equivalent to the labour of forty days' work, in casting, &c.

⁴ See the first Dittay.

VERDICT. The Affyse, be the mouth of Williame Ryddell in Woidhous, chanceller, all in ane voce, ffand, pronuncet and declairit the saidis Hectour Trumbill of Wauchope, &c. to be Cleane, innocent and acquit of airt and pairt of the crymes perticularlie aboue specifeit.

Theft — Slaughter — Fire-raising, &c.

Mar. 19.—THOMAS TRUMBILL, younger of Wauchope.

Dilaitit of airt and pairt of the thiftious Steilling, conceilling, resfletting and away-taking fra Margaret Trumbill Lady Apotefyde, &c.¹

THE Justice decernit and ordanit James Gleditanes, appeirand of Coklaw (as cautioner for his entry), to be vnlawit and americiat in the panes contenit in the Actis of Parliament, viz. ffor nocht entrie of the said Thomas, to the effect foir-faid, in the pane of Fyve hundreth merkis money: And ficylke, Decernit and ordanit the said Thomas Trumbill, younger of Wauchope, for his non-compeirance, to be denuncet our fouerane lordis rebell and put to his hienes horne, and all his moveabill guidis to be efcheit and inbrocht to his Maiefteis vfe, &c.

Slaughter.

Mar. 20.—LAURENCE LORD OLIPHANT.

Dilaitit of airt and pairt of the Slaucher of vniq^{le} Gilbert Gray in North Banderane; committit in the moneth of September laft.

PERSEWERIS.

Helene Rattray, the relict, Mr Thomas Henderfoun, Aduocat-fubstitute to his Maiefteis Aduocat.

PRELOCUTORIS for the pannell, Mr Williame Oliphant, Mr Alexander King.

My Lord Aduocat takis instrumentis of the productionone and reding of his Maiefteis Letter, direct to the Counfall; quhairof the tennour followis.

JAMES R.

RIGHT trustie and weilbelouit conseignis and counfallouris, WE greit 3ow hairtie weil. Quhairis it is heuillie complened vnto us, be Patrik Gray, of the crewall Slaucher of vniq^{le} Gilbert Gray his faper, by certane perfones speciallie houndit out be pe Lord Oliphant, and sum of jame being his domestik feruitouris; quich offence doith so muche pe moir greve us, that now, quhair as in the lait Bordouris and in pe verrie Hielandis of pat our realme, pair is such vniuersall obedience, that nocht-peles in pe verrie hairt of pat cuntrey, and so neir to pe ordiner place of residence of our Justice pair, such ane vylde fact fould be committed, without pwneishment inflicted vpon the doaris pairof; and pat to delude our Justice, any of our nobilitie pair, absenting him self from pe action, fould hound out vperis to execute his privat revenge, and be his craftie conveyance of pe malefactoris out of pe way, fould tak away all meanis of pe tryell of his awin giltines in that cryme; quich doing, inferring so dangerous anc preparatiue^e as that name of our subiectis, gif jis be nocht prevented, can be in furetie of his life. WE ar pairfoir to recommend to 3our special care and diligence, as 3e respect our pleafour and seruice, that na menis be vnslayid by 3ow, to bring pe treuth of jis matter to light; ffor as WE ar most grevonlie offendit with pe cryme committed, so if pe doaris be nocht apprehendit, pe matter

¹ See the first Dittay.

² Example, precedent.

halytie tryit, and justice ministrat accordring pairto, it will so much pe moir discontent us. And so We bid 3ow fairweill. FROM our Court at Quhytehall, the eght of Januare, 1606.

Eftir the reiding of the quhilk Letter, my Lord Aduocat defyret, that, accordring to the said Letter, this matter fould be tryit, and my Lord Oliphant committit, quhill¹ the perfones contenit in the Letteris be exhibeit and presentit to justice.

The quhilk day, Lawrence Lord Oliphant, being enterit vpone pannell, be him self, with Mr Williame Oliphant and Mr Alexander King, aduocattis, his prelocutouris, exponet and declairit,² fforfamekill as he, being charget, be vertew of our fouerane lordis Letteris, purchest at the instance of Patrik Gray, in North Bandirrane, eldest sone, Gilbert and Johnne Grayis, also sones, with the remanent kyn and freindis of vmq^{le} Gilbert Gray, in North Bandirrane, and Sir Thomas Hammiltoune of Monkland, knycht, aduocat to our fouerane lord, for his hienes entreis, to find caution, actit in the buikis of Adiornall, that he found compeir befor the Justice and his deputis this day, and place, in the hour of caufe, to vnderly the law, ffor airt and pairt of the felloun and crewall Slauchter of the said vmq^{le} Gilbert Gray, allegit done and committit be the said Laurence Lord Oliphant, vpone the . . . day of September lastbypast, vpon the landis of North Bandirrane; at the leif, the samyn being done of the special causing, sending, hounding out, devyfeing, airt, pairt-taking, directioun, counfalling, refetting with the bludie hand, command, affistance and ratihabitoune of the said Laurence Lord Oliphant, as the Letteris beiris. For obedience of the quhilk charge, he than fand Williame Moncreif of that Ilk fouertie for his entrie, this day and place, to the effect foirsaid; ffor quhais releif and tryell of his innocencie in the said matter, he compeirit, and offerit him self reddie to abyde the tryell of the law for the saidis allegit crymes, quhairof he was maist innocent; difassenting to all continuatioune. And in respect that the saidis Patrik, Gilbert and Johnne Grayis, perfeweris specifeit in the saidis Letteris, being oft tymes callit, compeirit nocht to infist in his lordschipis persute, for the crymes aboue specifeit, protestit for releif of the said Williame Moncreif of that Ilk, his cautioner, of his cautionerie foirsaid; and that he be nocht callit nor perfewit at the instance of ony pairtie, for the saidis crymes, in tyme cuming.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of the sheresdome of Forfar, or soner, vpone xv dayis wairning: And ordanis my Lord Oliphant to find cautione for his compeirance, to the effect and in maner foirsaid; quha fand Sir George Toures of Innerleyth, knycht, fouertie for his entrie, vnder the panis contenit in the Actis of Parliament.

¹ Until. ² It is thus expressed in a sentence immediately preceding, 'My Lord Oliphant offeris him self reddie to abyde the tryell of the Law, difassenting to all continuatioune; and feing thair is ane sufficient number of noble men in this burgh to pas vpone his Assyse, desyres he may be put to the Tryell of ane Assyse, instantlie, for the crymes lybellit.'

Slaughter — Bearing and Shooting of Hagbutts, &c.

Mar. 22.—GILBERT GRAY of Bandirrane, Patrick Gray, his sone, and Williame Broun in Hagfishhall.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Maister of Oliphant and of James Reid, sone to David Reid of Thridpairt, &c.

Compeirit Hew Reid, and produceit our souerane lordis Lettres, deulie execute and indorsat, and askit instrumens of the productioun thairof; and protestit for his cautioneris releif, and offerit him selff reddie, with the assistance of the Kingis Maiesteis aduocat, to perfew Patrik Gray and Williame Broune for the slauchter of vmq^{le} James Reid, his brother. Compeirit Mr Johnne Russell and Mr Thomas Hoip, aduocattis, and presentit the Kingis Maiesteis Letter, quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clerk and your deputtis, We greit you weil. Forfamekill as it is vnderstand to us, that our vtheris Letteris ar direct at the instance of pe kyn and freindis of vmq^{le} James Reid, sone to David Reid of Thrid-pairt, and our Aduocat for our intreis, ffor calling of Gilbert Gray, &c. to vnderly our lawis befor you, for airt and pairt of pe Slauchter of pe said vmq^{le} James, as our saidis Lettres beiris: As lykways, for Convocatioun of our leigis in airmes, and beiring, weiring and schuiting of hagbuttis and pistolettis, aganis pe tennour of our Actis of Parliament and Proclamations, maid and direct, expresse prohibiting pe same: Nochtwithstanding, being informet pat pe said Slauchter was committit, and pe saidis forbidden wapones borne and vsed in the executioun of our Commissioun, direct for searching and apprehensioun of Gilbert Gray, sumtyme seruant to Gilbert Gray of Mekill Bandirrane, our denounced rebell, for pe crewall Slauchter of vmq^{le} Johnne Shipbird, for findrie crymes of Thift and vperis odious crymes committit be him: And that vmq^{le} Johnne Maister of Oliphant, and pe said vmq^{le} James Reid, in not withstanding of our saidis Commissiouneris, and assisting and plane partaking with pe said Gilbert our rebell, wer baith flane: ffor quhilk beiring, weiring and schuiting with pe saidis hagbuttis and pistolettis, our said Commissioun, conteneing a speciall Remissioun to our saidis Commissiouneris, and all vtheris our subiectis assisting same, in executioun pairof: And considering pairwith, pat pe executioun of jis our Commissioun, in pat foirt, may terrifie pe lyk malefactoris to continew¹ in thair wicked deidis, contempt and rebellious. It is pairfoir our Will, and We command you, that vpon pe sicht heirof, you flay all maner of proceeding agaisnt pe saidis Gilbert Gray of Bandirrane, Patrik Gray his sone, and Williame Broun, for pe said Slauchter of pe said vmq^{le} Maister of Oliphant and James Reid, the beiring, weiring and schuiting with pe saidis hagbuttis and pistolettis, or ony vtheris crymes expressed in our saidis Letteris, alreddie raist, or to be raist aganis same for pe same, in tyme cuming, sua pat pai may inioy pe benefeit of our Remissioun, exprest in our Commissioun foirsaid: As you will ansuer to vpon your office and obedience; Quhairnant jis present fall be your sufficient Warrant. Gevin at our Court, in Quhytehall, pe penult day of Maij, 1604.

Mr Robert Lyntoun, Aduocat, substitute to my Lord Aduocat, allegis *ante omnia*, the persones perfewit aucht to be enterit on pannel; and thairfoir, in respect of thair nocht entry, defyres of the Justice that thair cautioner may be vnlawit, and thai, for thair nocht compeirance, adiuget to be denuncet rebell and put to the horne; and that in ane Criminnal perfute, according to the daylie

¹ From continuing.

practik, the defenderis, befor ony proces, fould be first enterit. The said Mr Johnne Ruffell allegit in the contrair, in respect of his Maiesteis Warrant; and forder, that his Maieste, be his auctoritie, may ather command the Justice to hald Court or to continew the dyet, at his Maiesteis plesour.

THE Justice, in respect of his Maiesteis Letter, producet, continewis this matter to the thrid day of the air,¹ or foner, vpon xv dayis wairning, in the famyn estait as it was of befor, aganis Patrik Gray and Williame Broune: And ordanis Johnne Lyndefay of Evlik, cautioner, in respect of thair nocht entrie this day and place, to remane still cautioner, conforme to the Act of Adiornall maid thair upone of befor. Quhairupoun the saidis personeris and the said Mr Johnne Ruffell askit instrumentis.

Cattle and Horse-stealing.

Jun. 13.—ROBERT BEIROPE of that Ilk.

Dilaitit of airt and pairt of the Steilling of certane ky and oxin, pertening to Sir Johnne Ker of Hirfell, viz. fforfamekill as he, accumpaneit with Robert Selbie of Bittilfdane, Loukie Davidfoun and diuers vtheris, his complices, common and notorious thewis, broken men, in the moneth of November 1596 yeiris, cam to the said Sir Johnnis place of Lytildane, and thair, vnder sylence and cloud of nycht, brak vp the byre-duris of the said place, and thiftcoullie stall, concelit, refset and away-tuik furth thair of saxtene ky and oxin, with sax horse and meiris, &c.

PERSEWER, Sir Johnne Ker of Hirfell.

PRELOCOUTOURIS for the pannell, The Lairdis of Pharnihert, elder and y^r, Mr Johnne Ruffell.

VERDICT. Found by the Assyse² to be 'Clene, innocent and acquit.'

Slaughter.

Jun. 18.—JOHNE M^cDOWELL of Freuchie; Johnne M^cdowell, his ser-vand; Eufame Dunbar, Lady Garthland; Alexander M^cdowell of Barjarg; Alexander Neilfoun, fear of Craiggaffie;³ Patrik M^cdowell of Creoches; Williame Bigholme in Galderioch; Gilchryft M^cmaiffer, thair; Vthreid M^ckie in Innermessene;⁴ and Nicol M^cgowne in Trotincoroche.

Dilaitit of airt and pairt of the Slauchter of vniq⁵ Quintene Boyd; committit in the moneth of Apryle lastbypast.

¹ Of Perth. ² Chiefly feuars. The chancellor was Johnne Mow of that Ilk. Johnne Halyburtoun of Mertoun, James Ker of Steiltokbrayis, Johnne Robfoun of Burvanes, and Patrik Dikfoun of Belchefer, are the only persons of note who appear on the Inquest.

⁴ 'Pait fra simpliciter.'

³ 'Pait fra simpliciter.'

PERSEWER, Adame Boyd, as brother.

The perfounes enterit on pannell afkis instrumentis of thair entrie, and protestis for releif of the Laird of Mondurk, thair cautioner: And in respect of thair innocencie of the crymes lybellit, offeris thame felffis to the tryell of the law thairfoir, and disassentis to all continuatioune.—The perfewer passis fra the Lady Garthland *simpliciter*, in respect of hir innocencie.

THE Justice Ordanis the remanent Defenderis to find caution to the thrid day of the air, or foner, vpone xv dayis warning.

QUESTION of the Pannels being entitled to their expenses.

It is allegit be the perfones on pannell, that in matters Ciuill, protestatioun being admittit in fauouris of the defender aganis the perfewer, the Lordis are in daylie vse to modifie the parteis expensfis; *multo magis*, in matters Criminall, a partie being perfewit and compeirand, offerand him felff to abyde the tryell of the law, for the cryme quhairrof thay ar indyttit, thair expensfis aucht to be modifeit, and the perfeweris decernit to pay the samyn.

THE Justice declairis to this perfewer, gif he raise Letteris of new agane, contrair thir defenderis, vpoune the crymes foirfaidis, gif thay fall happin to be clanget, he fall be adiudget to pay the defenderis expensfis, bayth for this dyet and the dyet following: And ordanis the Clerk to tak cautiuone of him at the raising of the Letteris to the effect ffoirfaid: Quhairvpoun the perfones on pannell alkit instrumentis.

The ' Affyfouris' also protested, that ' thai be nocht fummond heirefter, for this cause.'

Oppression — Taking Captive — Murder.

JUN. 20.—THOMAS CALDER in Clwnes, Johnne Oir in Calder, and

Walter M^robie Roife in Mekil Geddes.

Dilaitit of airt and pairt of the Taking and Apprehending of vmq^{le} David Dunbar of Lochileis captiue and presoner; and conveying him captiue to Ergyll, and detening him in captiuitie, be the space of tuell oukkis.¹ And for airt and pairt of the Slauchter and Murthour of vmq^{le} Williame Lyoun and vmq^{le} Alexander Daidfoun, feruandis to the said vmq^{le} Dauid; committit in the moneth of October, the yeir of God I^m.V^o.lxxviiij yeiris, within the toune of Aulderne.

PERSEWARIS, Alexander Dumbar of Lochieleis, (as sone,) Johnne Lyoun, as sone to vmq^{le} Williame Lyoun, Andro Daidfoun, as brother to vmq^{le} Alexander.

PRELOCOUTOURIS for the pannell, Mr Thomas Henderfoun, aduocat, Mr Henrie Kynroife.

The faidis Thomas, &c. tuik thame to our souerane lordis Remissioun, producit, vnder the Greit Seill, of the dait, at Halyruidhous, the thryd day of Apryll,

¹ Weeks.

the yeir of God, I^m.V^c.lxxx and nyne yeiris; Quhilk Remiffioun, the Justice admittit, and Johnne Campbell of Calder, with thame fellfis, become cautioneris and fouerteis, coniuinctlie and feuerallie, to fatisfie the parttie, as law will.

[CURIA JUSTICIARIE *f. d. n. Regis, tenta in Aula Inferiori de Ormestoun-hall, per M. Willielmum Hairt, Jusiciarum Deputatum.*]

Murder of a Pregnant Woman — Child-murder.

NOV. 10.—PATRIK DEANIS, in Gilcherstoune.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of vmq^e Katharene Butler his spous, and of ane infant bairne in hir wamb; be streking hir with his feit vpon the wamb, and with ane swyngill-trie,¹ on the bak and schoulderis, and dyuerse vtheris partis of hir body, scho being with quik bairne for the tyme; be ocafioun quhairof, scho immediatlie thaireftir, with the said bairne in hir wamb, depairtit this lyfe: Committit the fevint of Nouember instant, at his awin hous-dur in Gilcherstoune, betuix aucht and nyne houris at evin, &c.; conforme to his awin Confessioune.

VERDICT. The Assise, be the mouth of Johnne Harlaw in Laistoune, chancellor, ffand, pronuncet and declairit the said Patrik, conforme to his awin Confessioune, maid iudiciallie in thair presens, to be ffylet, culpabill and convict of the said crewall and detaiftable Murthour.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Johnne Hammiltoun, dempfter of Court, decernit and ordanit the said Patrik to be tane to the ground quhair the said fact was committit, and thair to be hangit vpon ane gibbet, quhill he be deid; and all his moveable guidis to be efcheit, &c.

Slaughter.

Dec. 19.—EDUARD NISBET, merchand burges of Edinburghe, and Thomas Nisbett, sone to the Laird of Nisbet.

Dilaitit of airt and pairt of the Slauchter of vmq^e James Carmichell, sone to the Guidman of Vderine.

PERSEWERIS, Richerd Carmichell, brother, Williame Carmichell, father-brother, Marioun Carmichell, father-sister; and Mr Johnne Russell, Aduocat, Mr Robert Boyd, curators to the said Richerd.

PRELOCUTORIS for the pannell, Mr Alexander King, Aduocat, Sir Williame Cranstoune, Mr Thomas of Moriestoune, Mr Johnne Nisbet, James Nisbet, merchand.

Compeirit Richerd Carmichell, &c. with Mr Johnne Russell and Mr Robert Boyd, curaturis to the said Richerd; and the said Mr Johnne, as spous to the said Marioun; and producet his Maiesteis Warrant to the Justice; quhairof the tennour followis.

¹ The wooden-beam, or 'tree,' to which the plough-traces are attached.

JAMES R.

JUSTICE, Justice Clark and 3 our deutes, We greit 3ow weill. Having directit to continew the perfute of Thomas and Edward Nisbettis, for þe slauchter of vmq^{le} James Carmichell, quhill the informatioun gewin vnto ws of þair committing of þat fact in þair awin defence, war fyrst tryed by our Counfall; from quhom we have ressaunt ane cleir testimony of þair innocency of þat fact: And being most willing that Justice be administrat to all our lwyng subiectis: It is thairfore oure Will, that 3ow affix and keip 3our Justice Court againt the saidis personis, att sic place as falbe maist convenient; and putt þame to þe knowledge of ane Inqueit; fo that the accusatiounes and defences of both the parteis may be weill considered of by 3ow, before that mater be adiudgēt: And that, nochtwithstanding ony command or directioun gewin by ws or our Counfall in þe contrair; as 3e will anfuere to ws vpon 3our office and obedience: Quhairnant þir presentia falbe 3our Warrant. Gewin at our Court of Roystoun, the xiiij day of October, 1606.

And siclyk, product our fouerane lordis Letteris of Assyse and Dittay formet aganis the pannell; and tuik instrumentis of the productioun thairof.—The pannell declairis, nochtwithstanding of thair innocencie of the Slauchter, they ar content to enter in cownoning, and to offer satisfacioun and assythement for the slauchter, at the sicht of freindis.—The perfeweris declairis, in respect that the bairne is minor quha perfewis; and thairfoir, the remanent perfeweris can nocht tak the burding of that mater vpon thame; and desyret proces. Thair-after Mr Alexander King, prelocutour for the pannell, product his Maiesteis Warrant, direct to the Justice, for continuatioun of this matter to the xxviiij day of Januare nixt; quhairof the tennour followis.

JAMES R.

It is our pleaffour and Will, that 3e continew all actione and proces before 3ow, at þe instance of þe kyn and freindis of vmq^{le} James Carmichell in Dyfert, aganis Edward and Thomas Nisbettis, for þe slauchter of þe said vmq^{le} James; committit in þe moneth of . . . lastbypast; and navyise proceid and grant ony proces thairin, before the xxviiij day of Januar nixtocum: ffor þe quhill 3our delay and continewatioun, thir presentis falbe to 3ow sufficient Warrant. Gewin at our Court off Qulytehall, the nynt of December, 1606. To our Ry^t trustie and weilbelouit, oure Justice, Justice-clark, and þair deputis.

It is anfuereit be the perfeweris, that the said Warrant of continuatioun aucht nawayis to be respectit be the Justice; bot nochtwithstanding thairof, the per-fones now on pannell aucht presentlie to be put to the knowledge of ane Assyse; for tua causis: *firs*, In respect of the former Warrant product, quhairin tua spciall poyntis ar maist remarkable; first, his Maiestie thairby hes declairit, that he hes ressaunt na cleir testimony of thair innocencie, be the tryell¹ tane at Leyth, befor the Counfall; and thairfoir, accoirding to his hienes good affectioun to justice, of his certane knowledge and proper motiue directit the first Warrant: The nixt, is the command gewin thairin to the Justice, with this qualite,² that he fall obey the samyn, nochtwithstanding of quhatfumeuir vther command thair gewin be his Maiestie or Counfall in the contrair. *Secundo*, the

¹ Examination, *precognition*.

² Qualification.

faid pretendit laft Warrant is direct expres contrair the Act of Parliament 1592, quhilk fayis, it is statute and ordanit, be his Maieftis speciall will and direcc-tioun, that na Warrant for continuatioun of Justice Courtis fall be admittit be the Justice and his deputis, in tyme cuming. *Laß*, nocht only is it exprefs aganis the faid Act of Parliament, bot aganis the daylie ordour and practik oberfuet baith befor the Lordis of Counfall, in Ciuill cauffis, and befor the Justice in Criminal cauffis, that Warrantis purchest be the fute of partie, finifter informa-tioun, and for stay of Justice, fall nevir be respectit; quhilk is also conforme to the cowmoun law.—It is anfuferit, that the hail allegances aucht to be repellit, in respect of the Kingis Maieftis Warrant.

THE Justice, accoirding to his Maieftis Warrant and directioun, continewis this matter to the xxvij day of Januare nixt: And ordanis the perfonen on pan-nell to be wairdit within the Tolbuith of Edinburgh to the faid day,¹ and the Affyfe, fummond to this day, wairnit, *apud acta*, &c.

Cruel Slaughtur.

Dec. 19.—JOHNNE and WILLIAME RUTHERFURD, fones to Stewin Ru-therfurd in Chatto, boirne vnder James Ker of Greneheill.

Dilatit, accufet and perfewit be DITTAY,

FORSAMEKILL as, thay haifing confaut ane deidlie feid, rancour and malice aganis vmq^{le} Thomas Bell in Spiddope-fute, in England, because he had hurt and lameit the faid Williame, vnderftanding the faid vmq^{le} Thomas to haif bene in his fomer-scheill besyde the fellis,² in the moneth of Junij, or thairby, lastbypast, thay, vpoun cullour and in a counterfute forme, feinzeing thame selfis to be in feiking of ane kow that was tynt³ amangis the scheillis, come to the faid vmq^{le} Thomas Bell, in an howp⁴ callit Spittope-howp, quhair he wes, in fober and quyet maner for the tyme, with his wyfe and ane young lafs, milking thair ky; and thair, the faid William Rutherfurd, haifing ane grit grene kent and squarit batoun⁵ in his hand, eftir fun wordis past betuix the faid Williame and the faid vmq^{le} Thomas, he crewallie invadit him for his Slaughtur, and gaif the faid vmq^{le} Thomas ane crewall and deidlie fraik in his heid, and claif the famin afunder: Off the quhilk fraik he immediatlie thaireftir fell douu deid. Lyke as, the faid Johnne Rutherfurd, for quhais caufe the faid deidlie feid was con-faut, stude afyde, awaiting gif his brother had bene overthrawn, or the faid vmq^{le} Thomas, to haif fortifeit and affistit him. And immediatlie eftir the famin Slaughtur wes committit, thay baith mett togidder at the nik of the fell,⁶ and hering the sprach⁷ ryife, and the cuntry to follow thame, thay baith fled in England; quhair thay were fugitive, quhill⁸ thair apprehensiou for the faid Slaughtur. And fa, the faid Slaughtur wes committit be thame; and thay and ather of thame ar airt and pairt thairaf, vpoun settur purposis, provisioun, auld feid and foirthocht felony; in hie and manifest contempt of our fouerane lordis auctoritie and lawis, &c.

¹ There is no entry on Record of further proceeding in this case; but it is likely the Nisbets compounded with the private prosecutors, and obtained Letters of Remission.

² The summer schells or *scheillings* on the 'fells' or hills, were temporary huts, for the use of those who attended the cattle during their grazing on commons, &c. They are still kept up in many parts of Scotland. It is the practice to dismantle them at the end of the grazing season.

³ Lost.

⁴ Or *hope*, a sloping hollow between hills, a common term in the south of Scotland. *Slack* is synonimous.

⁵ A large *ring*, staff, or bludgeon, and a batoun or stick made square, (i. e. with angular edges), to give a more severe and deadly blow.

⁶ Nik is a narrow cleft or opening, at the summit of two hills.

⁷ Hue and cry. By reference to the Works of Sir Walter Scott, it will be seen with what astonishing alacrity the country was

⁸ raised, on such occasions. The pannels showed no small address in effecting their escape.

⁸ Until.

VERDICT. Eftir accufatioun of the pannell, be Dittay, of the crymes aboue writtin, quhilk wes grantit be the faid Williame, and alluterlie¹ denyit be the faid Johnne, the Affyfe, be the mouth of Murray of Brochtoun, chancellor, fand and pronuncet the faid *Johnne* to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the faid vmq^{le} Thomas Bell, and of the hail heidis of the Dittay aboue writtin: And alfe, ffand, pronuncet and declairit the faid *Williame* to be flylit, culpabill and convict of airt and pairt of the faid Slauchter.

SENTENCE. For the quhilk caufe, the faid Justice-depute decernit and ordanit the faid *Williame Rutherford* to be tane to the Castellhill of Ed', and thair, his heid to be ftrikkin from his body; and all his movable guidis to be efcheit, &c.

Breaking into the Place of Torwoodlee — Taking Captive — Murder — Stouthrief, &c.

Jan. 8, 1607.—JOHNE ELLOTT of Cappfchaw.

Dilaitit, accuset and perfewit be George Hoppinggill of Torwoidlie, James and David Hoppinggillis, as oysis,² with the remanet kyn and freindis of vmq^{le} George Hoppinggill of Torwoidlie, thair guidfchir,³ of the crymes following, viz.

FORSAMEKILL as the faid Johane Ellote of Copfchaw, Robert Ellote, callit *Mairtenis Hob*, and Jok Airmeftrang, callit *the Lairdis Jok*,⁴ with thair complices, with convocatioun of the hail Clannis of the Airmeftrangis, Ellotes, Batiefones, Grahames and remanet Clannis, duelland alfweill on the Inglis as Scottis Bordouris, all comwone thevis, outlawis and brokin men, to the number of thre hundredth perfones or thairby, bodin in feir of weir, with jakis, fpeiris, fteit-bonnetis, lance-ftalfis, hagbutis and piftoletis, exprellie prohibeit to be borne, worn, vfet or fchet with, be dyuerfe our Actis of Parliament and Secreit Counfall, in the moneth of December, the yeir of God I^m.V^c. threfcoir aucht yeiris, (1568,) come forward, in hofteill maner, baith on horfe and fute, to the Place of Torwoidlie, and thair, vnder filence and clud of nycht, with foir-hammeris and geiftis,⁵ dang up the zeittis⁶ of the faid Place, and be force and violence enterit within the famyn; and tuik the faid vmq^{le} George [Hoppinggill] furth of his bed, and convoyit him away, as captive and prifoner with thame, to the Skaldeneife, within the Sherefdom of Selkirk; and thair maift crewallie and vnmerciefullie Murdreift and flew the faid vmq^{le} George: Committing thairthrow, nocht only crewall and abhominabill Murthour and Slauchter, bot alfo Vfurpatioun of our fouerane lordis auctoritie vpon thame, in taking of the faid vmq^{le} George Hoppinggill captive, but⁷ power or commiffioun, be being our fouerane lordis frie lege. AND ficylke, at the famyn tyme, the faid Johnne Ellott and remanet perfones, with thair complices, to the number aboue writtin, at the tyme foirfaid, brak up the baill kiftis, cofferis and lokfaft houffis within the faid Place, and thiftiouffie ftaw, conceillit, reffet and away-tuik with thame, furth of the faid Place of Torwoidlie, and ftabillis thairrof, fevintene horfis pertening to the faid vmq^{le} George, price of the peice ourheid⁸ ane hundredth pundis money; togidder with the fowme of ane thousand pundis of gold and money furth of the faid vmq^{le} George Hoppinggillis purfe. ITEM, thre filuer peices,⁹ wey-

¹ Altogether, wholly. ² Grandchildren. ³ Grandfather. ⁴ A personage well known to the public, from various anecdotes contained in the *Border Minstrelsy*, and the graphic story contributed by *Sir Walter Scott*, in that exquisitely beautiful Annual, 'THE KEEPSAKE,' for 1829; to which publication (pp. 186-192) the Editor refers for interesting Notices of this Border worthy, his family and associates. ⁵ Forehammers, and joists or beams. ⁶ Broke up the gates. ⁷ Without power. ⁸ Overhead, on an average. ⁹ The nature of these massive pieces of plate is not elsewhere specified. They convey a favourable idea of the wealth and splendour in which many of the Border Chieftains lived.

and fourfoir vnces of siluer or thairby, price of the vnce fourtie schillingis. ITEM, tua duffane of siluer spvnes, ilk spwne weyand tua vnce of siluer, price of the vnce fourtie schilling: Togidder with the hail bedding, näprie, clothing, abuilzementis, inficht and pleniffing being within the said place, worth the sowne of fyve thousand merkis money of this realme, had and tranfpoirtit away with thame, and dispoit thairvpoun att thair pleafour.

THE Justice decernit and ordanit Williame Elliot of Fallinafch, cautioner and fouertie for the entrie of the said Johnne Elliot of Capfchaw, to be amerciat and vnlawit for his non-entrie, in the payne of fyve hundreth merkis: And als. adiudget the said Johnne to be denunceit our fouerane lordis rebell, and putt to the horne; and all his movabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as fugitive fra his hienes lawis, for the saidis crymes.¹

Justice-Depute appointed.

Jan. 20.—THE quhilk day Mr ROBERT COKBURNE, Aduocat, was creat JUSTICE-DEPUTE; and gaff his ayth *de fidei administratione*, during his office.

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

Liability Anent the General Band.

Jan. 21.—SIR JAMES JOHNNESTOUNE of Dunsfellie, kny^t (of that ilk).

Compeirit the Laird of Johnneftoune, and producet the Warrant vnderwritin, superferyuit be his Maiestie; quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clark and 3our deputis, We greit 3ow weill. Forfamekill as it is knawin to ws, that thair ar diuerfe Criminall perfuitis movit at þe instance of findrie perfounes aganis Sir James Johnneftoune of Dunsfellie, kny^t, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis, for quhom the (said) Sir James is anfuercable, be þe General Band and law of our realme; and that, for diuerfe crymes alledgeit committit be þame, befoir þe moneth of Apryll, 1^m. V^o. the 3eiris, quhilk wes þe tyme of owre repair hither: Albeit it be naper our will nor mynd, that the regour of þe lawis be profecutit aganis thais perfounes for ony crymes or offences committit be thame before þe foirsaid tyme; hoping that our lenitie fall move þame to keep our peax, and be þe moir obedient subiects in tyme cuning: IT IS þairfore our Will, and We command 3ow, that þe on nawyis gif proces in any of þe saidis Criminall perfuitis alreddie movet aganis the said Sir James, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis for quhom he is anfuercable, be þe General Band and lawis of our realme; nor that 3e on nawyis direct any Criminall Letteris, for perfuit of þe saidis perfounes, or any of þame, in tyme cuning, for any cryme or offence allegeit committit be þame or any of þame, preceeding þe moneth and tyme abone specifit; nor nawyfe gif proces þairvpoun heireftir: Dischargeing 3ow þair of, and of all hauling of Courtis to þat effect, and of 3our office in þat pairt: Dispenfand alwa with þe saidis perfounes and everie ane of þame, anent þair non-comperance att quhatfamewir dyettis. As 3e will anfuere to ws þairvpoun: Quhairanent thir presentis falbe 3our sufficient Warrant. Gewin at our Court of Quhytehall, the saxt day of Apryll, 1606 3eiris.

THE JUSTICE Depute continewis the admitting of this Warrant to the fourt day of Februar nixtocum: And ordanit the perfoune that stand caution for

¹ The denunciation and letters are recorded, at full length, on Jan. 9.

their entrie to this day, to find new caution for thair entrie to the said fourth day of Februar nixtocum.

The famin day Sir James Johnnestoune (of Dunskeillie, kn^t.) becom pledge and fourtie for Johnne Grahame in Dryffe, Mungo Johnnstoun in Lokarbie, &c.

(Feb. 4.)—Sir JAMES JOHNNSTOUN of Dunskeillie, kny^t, is ‘americiat for nocht entrie of the saidis fyve personis, for ilk ane of thame in the payne of ane hundreth merkis.’ He is also americiat in 1100 merks, for the non entry of Johnne Johnnestoun in Howgill, and ten others.¹

THE Justice adjudgeit the principall persones nocht comperand to be denuncit our souerane lordis rebellis, and all thair movabill guidis to be efcheit.²

Cutting Growing Timber.

Jan. 28.—GEORGE HENDERSOUN in Wynningtoun.

Dilatit, accusit and perfeit be Robert Ellote of Reidheuche, of the crymes following, that is to say,

THAT quhair, it is expresse provydit, statute and ordanit be our souerane lordis Actis of Parliament, speciallie, be ane Act of the ellivint Parliament, cap. lxxxij, that quhatsumevir person or personis wilfullie cuttis doune and deftrois growand treis and coirnis, false callit and perfeit thairfore, before the Justice or his deputis, at Justice-airis, or perticuler dyettis; and being convict thairof, to be pwnessit as thewis to the death; as the said Act at mair lenth beris. And trew it is, that the said George Henderfoun, with his complices, expres contrair the tennour of the Act of Parliament, in the monethis of Junij, Julij, August, September and October *respectiue*, at the leif, in ane or vther of the saidis monethis, in the yeir of God I^m.Vj^e. and fyve yeiris; and siclyke, att the fleif of Martimes last-bypast, come to the said Robert Ellottis wod, callit Birkwod, and thair, wilfullie, by³ the said Robertis knowledge or consent, cuttit doune and distroyit, at ilk tyme, the perticuler number and quantitie of growand treis following, to witt, ane hundreth grit growand birk treis, thre hundreth grit growand allouris, thrie hundreth grit growand heiffillis, with foure hundreth grit growand fauch treis;⁴ quilkis growand treis, the said George and his complices had and transpourtit away with thame, and disponit thairvpoune att thair pleafour; and the said George is airt and pair thairof.

PERSEWER, Robert Ellote of Reidheuche.

PRELOCOUTOURIS for the pannell, Mr Thomas Henderfoune, Mr Johnne Dempfter.

It is allegit be the pannell, that this matter can nocht be put to the knowlege of ane Inqueist, becaus the persewer schawis na sufficient entreis to persew, nather is this persute raisit at the Kingis Aduocatis instance.—Anfuerit be the persewer, that he ferris the notorieit of his entreis to persew for the cutting of the treis lybellit, to the defenderis ayth; in respect that he knowis him to be sufficientlie infest in the woid lybellit; and as to the secund part, anent the Aduocatis compeirance, anfuerit, he may persew without the Aduocatis compeirance. It is allegit be the pannell, that he can nocht be vrget, vpoune the

¹ (On margin) ‘Nota, ordanit to be gewin out be þe Counfall.’

to be given out.’

³ Without, contrary to.

⁴ Nota, ‘this nocht ordanit
Birch, *allar* (alder or elder), hazel, and willow trees.

perfewaris exceptioun, to geve his ayth; feing the samyn will tend to the hazienda of his life.—The perfewer in the contrair.

It is allegit forder be the pannell, that this matter can nocht be Cryminallie tryet, without a Ciuill precognitioun, before the ordinar Judge; becaus the famin is a maisterfull depridatioun.—It is anfuert, that the perfewer repeitis the Act of Parliament, quhairupoune the summondis is foundit.—It is anfuert be the pannell, that the Act of Parliament of the 1587, concernis the puneifchment allanerlie; and nawyis invertis nor derogatis the Act of Parliament made be King James fyft, Parlamento quarto; and speciallie, feing of the daylie practik, ffalletis man be first Ciuillie tryet, befor it cumnis to ane Criminal Judge; Wilfull error in Assyse in Reductioun of Retouris man be first Ciuillie tryit, befor it tak effect befor the Criminal Judge.—The perfewer, as of befor, repeitis the Act of Parliament.

THE Justice continewis this matter, and Interlocutour vpoune the allegeances foirfaidis, to the fourt of Februar nixt. The pairties and Assyse wairnit *apud acta*.

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

(Feb. 4.)—THE Justice, nochtwithstanding of the allegeances maid be the pannell, the last dyet, Ordanis this matter to pas to ane Assyse.

VERDICT. The Assyse, be the mouth of Johnne Gledstanes of Winningtounlaw, chancellor, ffand, pronunceit and declarit the said George Henderfoune to be Cleane, innocent, acquit, &c.

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

Slaughter.

Feb. 14.—JOHNE BEK in Lytill Kirkbryde.

Dilatit of airt and pairt of the Slauchter of vmq^{le} James M^cCulloch of Barholme.

PERSEWER, Thomas M^cCulloch in Barholme.

The said Thomas tuke him to ane Remiffioun vnder the Grit feill, of the dait the xxj day of Februar, 1606; and siclyke, produceit ane Letter of Slaynes, subferyuit be Elizabeth Kirkpatrik, relict of vmq^{le} James M^cCulloch of Barholme, Henrie M^cCulloch hir spous, and Thomas M^cCulloch now of Barholme, and Johnne M^cCulloch burges of Kirkcubreycht, off the dait at Edinburgh, and the xvij and dayes of Februar, 1607 yeiris.

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

Witchcraft — Sorcery — Incantation, &c.

Mar. 10.—ISSOBEL GREIRSOUNE, spous to Johnne Bull, warkman in the Pannis.¹

¹ Prestonpans. Of all the Trials for Witchcraft, &c. hitherto published from the Record, this is perhaps the most absurd and *outré*; and the circumstantial detail is perhaps *unique*. It is of course

Indytit, accufit and perfewit of the crymes vnderwritten, viz. FORSAME-KILL as fcho, haifing confaut ane crewall haitrent and malice aganis Adam Clark in Prefounpannis, fcho has continewallie, this haill yeir and ane half by-gane, vfit all develifch and vngodlie meanis to be avangeit vpoun him ; fpeciallie, in the moneth of Nouember, the yeir of God I^m.Vj^c. and fax yeiris, betuix xj and xij houris at ewin, the faid Adam being lyand in his bed with his wyffe, and his feruand woman being in ane vther bed ; att the quhilk tyme, fcho, in the liknes of hir awin catt, accompaneit with ane gritt number of vther cattis, in ane develifch maner, enterit within hir hous, quhair thay maid ane grit and feirfull noyfe and trubill ; quhairby the faid Adam, than lying in his bed with his wyffe, and feruandis that wer than in the hous, apprehendit fic ane grit feir, that thay wer liklie to gang mad : At the quhilk tyme, the Devill, in liknes of ane blak man, apperit in the hous, eftir ane feirfull maner, com to the feruand woman, than ftanding in the flure, and drew hir vp and down the hous be the hair, eftir he had caffin hir curfeh² aff hir heid, and caffin the famyn in the fyre : Quhairvpoun the pure woman contractit fic ane grit feiknes, that fcho lay bedfast, in grit danger of hir lyffe, be the fpace of fax oulkis³ thairefter ; and as yit hes nocht returnet to hir perfyte health ; qubilk is notourlie⁴ knawjn.—ITEM, fcho wes accufit, fforfamekill as fcho, haifing confaut ane deidlie feid, rancour and ewill will, aganis vinq⁶ Williame Burnet in Prefoun-pannis, fpous to Margaret Myller, wedow, fcho dewyfit be all devillifch and vngodlie meanis to bereif him of his naturall lyffe ; and for performance thairof, feche, as ane manifelt Sorcerer and Wich, in the moneth of Januar, I^m.Vj^c. yeiris, laid on ane feirfull and vncouth feiknes on him, be cafting in of ane tailzie⁵ of raw inchantit flefh att his dur : And thaireftir, the Dewill, in liknes of ane naikit infant bairne, nichtlie, for the fpace of half ane yeir, appeirit in his hous ; quha appeirit befor the ffyre, haifing ane inchantit pictour in his hand : And thaireftir, the Dewill appeirit, in hir liknes, within the faid vinq⁶ Williamis hous, before the ffyre thair-of, and in diners vtheris pairtis within the faid hous ; quhair, in ane maift vn-honeft and filthie maner, fcho pifchit vpoun the faid Margaret Myller, and in diverfe pairtis of the faid hous ; that in end,⁶ the faid vinq⁶ Williame, haifing namit the faid Ifobell, be hir name, fcho immediatlie thaireftir vaneifchit away : Eftir the quhilk tyme, the faid vinq⁶ Williame Burnet continewallie dwynit and pynit away, in the faid vnkawin feiknefs, for the fpace of thre yeiris, nocht habil to obtene ordinar cnir ; and at laft, in the moneth of September, or thair-by, I^m.Vj^c. and ffyve yeiris, he, in grit dolour and payne, departit this lyffe : And

given *literally* from the Books of Adjournal. The reader is left to draw his own inference as to the death (murder ?) of the luckless mate of *John Bull*.
² Curche, a kind of head-gear, or cap. Fr. *coureche*.
³ Six weeks.
⁴ Notoriously.
⁵ *Taille*, Fr. A piece, 'gobbet,' or cut.

⁶ At last.

fa, wes maift deweliffchlie bewichit be hir, in maner forfaid ; and fcho is airt and pairt of the faid vni^{le} Williamis death and feiknes.—ITEM, accufit for cafting of ane greit feiknes, be hir develiffch meanis, vpoun Robert Peddan, in the Pannis ; and that in the moneth of October, I^m.V^c.lxxxxij yeiris ; quha, haifing remanit feik be the fpace of ane yeir and auchtene oulkis, fwerving and vaneiffching away ;¹ and vfiing all ordiner meanis to recover his health, bot daylie growing war,² att laft he callit himfelf to remembrance, that he wes addettit to the faid Ifobell in nyne fchillingis and iij d. ; and that, befoir the taking of the faid feiknes, becaus he refufit to pay hir the faid foune, vnto the tyme fcho deluyerit to him certane plaittis that fcho kepit of his ; fcho then, eftir vtering of diuerfe blaſphemous ſpeichis to the faid Williame, faid, he ‘ fould repent itt !’ And ‘ fould nocht haif bayth his health and haill clathis togiddir !’ Quhairvpoun, he than come to hir, and fatisfeit hir the faid foune, and thryſe askit his health att hir, for Godis faik ; ſaying, ‘ Gif ze haif done me ony wrang or hurt, repair pe famin and reftoir me to my health !’ And thaireftir, the faid Robert Peddane, within, xxiiij houris, recoverit his health.—ITEM, fcho wes accufit, that in the moneth of Junij laftbypaſt, or thairby, fcho, haifing wantit hir katt, be the ſpace of half ane yeir befoir, in hir bycumming the faid Robert Peddanes window, fcho patt in hir hand and drew furth hir catt ; at the quhilk tyme, thar wes working in the fattis³ ane brewing of guid new aill, quhairof findrie honeft neychtbouris wes than drinkand ; bot be hir develiffch Incantatioun and Sorcerie, fra that tyme furth, the faid brewing of aill turnit,⁴ in ſic ſoirt, that it becau altogidder rottin and blak, thik lyk gutter-dirt, with ane filthie and peſtilent odour, that na man mycht drink nor feel the finell thairof.—ITEM, being indytit and accufit, fforſamekill as fcho, haifing confautit ane deidlie ewill will, haitrent and malice aganis Margaret Donaldſoune, fpous to the faid Robert Peddane, about Hallowevin, in the yeir of God I^m.Vj^c. and fyve yeiris, fcho, in hir devilliffch maner, come vnder ſcilence and cloude of nycht to the faid Robert Peddanes houſe, and enterit eſter ane devilliffch and vnknawin way within the faid houſe. the faid Margaret Donaldſoune being than lying in hir bed with hir faid huſband, found ſleeping ; at the quhilk tyme, fcho drew the faid Margaret be the ſpald⁵ out of her bed fra her huſband, and violentlie ruſchit hir to the fluir ; be occaſioun quhairof, the faid Margaret hir ſpreit faillit hir, that fcho continewit ane lang ſpace aſound ;⁶ and thaireftir, cuming to hir ſelf, fcho fell in ane feirfull and vncouth feiknes, that anes in ilk xxiiij houris, her hed and breift was ſa vehementlie trublit, that fcho was, for the ſpace of ane hour, mad, and knew nocht quhat fcho did ; quhilk continewit the ſpace of fyve or

¹ Swooning and fainting away.² Worse and worse.³ Vats or tuns.⁴ Ale is ſaid tobe *turned* when it is affected by lightning, &c.; milk, when ſoured by ſun or heat, &c. A large nail is uſually thrown into the churn, to prevent this diſaſter. By attracting the electric fluid, it is ſaid to preſerve the contents ſound.⁵ Fr. *epaule*, the ſhoulder or ſhoulder-blade.⁶ In a swoon.

fax dayes thairefter, in grit vehemencie : And at the fax dayes end, scho heiring hir self to be bruittit¹ with the said wicked and devellifch turne, scho defyrit the nyethouris to caufe hir and the said Margret to drynk togidder ; quihlk being done, scho recoverit agane hir health, and fa continewit in perfyte health, the fpace of aucht or ten dayes : Eftir the quihlk time, scho heiring hir name to be fklanderit, and scho to be namit a Witche, quha had skill to lay on and tak af feiknes ; scho, movit with rage and invy, of new agane, come to the said Margrattis hous, and fpak to hir mony devillifch and horribill wordis, faying to hir, ‘ The fagget of Hell lycht on thé, and Hellis culdroune may thow feith in !’² And with thais, and vther the lyk devillifch fpeicheis, scho pafst away. Eftir the quihlk tyme, the foirfaid feirful feiknes tuke the said Margaret ; quha continewit thairin ilk xxiiij houris, for the fpace of ane hour, be the fpace of nyne oulkis³ togidder, in maift feirfull maner ; vnto the tyme ane pure woman come to the said Margrettis hous-dur, to afk meit ; quha, feing the said Margret wiffet⁴ with the said feirfull feiknes, declairit to hir, that scho was witcheit, and had the rycht champ⁵ thairof : Eftir the quihlk tyme, the feiknes ceiffit, and came nocht to hir agane, quhill the beginning of December laft, that scho, cuming thair by hir dur, with ane creill⁶ on hir bak, faid to hir, ‘ Away theiff ! I fall haif thy hairt, for bruitting of me fa fallie !’ And immediatlie thairefter, the feiknes of new agane come vpoune hir ; quhairintill scho hes bene maift havelie vexit and trubillit fenfyne, to the xxvij day of Januar laft, that scho and scho war confrontit togidder, and examinat, in prefens of my Lord Juftice, of your devillifche crymes abouewrittin.—ITEM, for ane commoune Sorcerer and ane Witche and abufer of the peple, be laying on and taking af of feiknes and difeiffes, and vfeing all devilleifch and vngodlie meanis to wyn hir leving ; and Vfer of charmes and vther devilleifch practizes.

PERSEWAR, Adam Clark, fmyth in the Pannis, Margaret Myller, relict of vinq⁶ Williame Burnet, Robert Peddane, and Margaret Robiefone, his fpous.

PRELOCOUTOUR for the pannel, Robert Hammitoune, John Bull in the Pannis.

VERDICT. The Affyfe, be the mouth of David Seatoun, (bailzie in Tranent,) chanceallar, fand, pronunceit and declairit the said Ifobell Grierfoune to be ffylit, culpabill and convict of all and findrie the heidis and poyntis of Dittay aboue writtin, and crymis contenit particulerlie thairin.

SENTENCE. The Juftice-depute, be the mouth of James Henderfoun, dempftar, decernit and ordanit the said Ifobell to be tane to the Caftell-hill of Edinburgh, and thair to be wirreit⁷ at ane ftaik quhill scho be deid ; and her body to be brunt in affis, as convict of the faidis crymis ; and all hir movabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as convict of the faidis crymes.

¹ Ifobell hearing herself to be reported. Fr. *bruit*. ² Caldron may thou feethe in. ³ Weeks.
⁴ Visited, tormented. ⁵ Stamp, mark, token. ⁶ Basket, *creel*. ⁷ Strangled.

Forestalling and Regraiting.

May 19.—JOHNNE REULL, indueller in Leyth.

Dilaitit for contravening the Actis of Parliament, in ffoirstalling and regraiting of tymmer.¹

PERSEWER, Sir Thomas Hammitoune of Monkland, knycht, Aduocat.

PRELOCOUTOURIS in defence, Mr Alexander King, James King.

It is allegit be the pannell, that he can nocht be put to the knowlege of ane Assyse for the cryme lybellit, becaus the tymmer lybellit was bocht be his fervand in Norruay, enterit in the townes buikis, as his awin proper tymmer, and hes payit his Maiesteis custome thairfor : And for verificatioun thairof, producet the entrie of the tymmer in the townes buikis of Edinburgh, as his proper tymmer, and quhair he payit the custome thairof.—It is anferit be my Lord Aduocat, that the allegiance aucht to be repellit, in respect nathing is producet to preve the bying of the tymmer, be him self or his fervand ; and is contrair to the summondis, quhilk beiris the ffoirstalling of tymmer, befor the famyn was presentit to marcat.

VERDICT. The Assyse, be the mouth of James Forman, (water bailzie,) chancellor, fand, pronuncet and declairit the said Johnne Reull to be sylit, culpable and convict of cowmone Regraiting and ffoirstalling of all foirtis of tymmer, cumand and aryveand at the said Poirt and hevin of Leyth, and sa to be repute and haldin : And Clanget and acquit him of the hail remanent poyntes of the said Dittay.—Edward Edjer, merchand burges of Edinburgh, become fouertie for the entrie of the said Jolmue the morne, to heir dome pronuncet, &c.

SENTENCE. The Justice, being resoluet thairwith, and with the Act of Parliament maid thairanent, Decernit and Ordanit the said Johnne Reull to content and pay to our souerane Lordis Thefaurer and his deputis, the sówme of fourtie pundis money of this realme of North Britane,² as penaltie designat in the said Act of Parliament aganis cowmoune Regraiteris and ffoirstalleris, for the first falt. And als, ordanit the said Johnne to find cautione actit in the buikis of Adionnall, to abstene fra all maner of foirstalling or regraiting of tymmer in tyme cuming, vnder the pane of ane hundreth merkis.³

Appointment of a Justice-Depute.

Jun. 2.—MR ALEXANDER COLUILL, sone to Alexander, Commendator of Culrois,

Gaif his ayth *de fidei administratione* in the Office of Justice-deputrie ; and thaireftir was creat and admittit Justice-depute.

¹ Timber. ² This is the first time Scotland is so designated in this Record. Indeed it is very unusual, even for a century after this period. ³ Edjer again becomes his suretie.

Slaughter.

Jun. 26.—WILLIAME GUTHRIE of Ravenfbie.

Dilait of airt and pairt of the Slauchteris of vniq^{le} Patrik Gairdin of that Ilk, and vniq^{le} Robert Gairdin of Tullois, committit in the moneth of . . . I^m.V^c. threfcoir aughtene yeiris.

PERSEWER, Mr Robert Gairdin Younger of Blairtounne.

George Leflie, fear of Kincragie, become plege and fouertie that he fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the fcherefdome of Abirdene, or foner, vpoun xv dayis warning.

Slaughter — Lebying ‘Skatt’ or Black-mail — Stouthreif, &c.

Jun. 27.—ALLASTER STEWART M^cGILLIECHALLUM, brother to Johnne Stewart, *alias* Johnne Dow M^cgilliechallum of Tennandrie.

Dilaitit, accuset and perfewit be DITTAY following, viz. That is to say, of airt and pairt of the Slauchter of vniq^{le} Johnne Stewart of Bonfkeid; committit in the moneth of December, the yeir of God I^m.Vj^c. and fyve yeiris, betuix Dunkeld and Atholl, vpoun sett purpois, provifion and foirthocht felony. ITEM, for airt and pairt of the Slauchter of vniq^{le} Johnne Stewart, secund fone to the said vniq^{le} Johnne Stewart of Bonfkeid; committit about Paifch,¹ in the yeir of God I^m.Vj^c. and fax yeiris, vpoun the landis of Kilbrochene. ITEM, for airt and pairt of the Slauchter of vniq^{le} Williame Leith, att the Kirk of Crathie in Cromar; committ about tuell yeiris fyne, or thairby. ITEM, for cuming with Johnne Dow, his brother, to the boundis of Strathardill, in the moneth of July lastby-past, and compelling of the tementis of the landis of Strathardill to pay to thame ane skatt² of foure hundreth merkis or thairby; committand thairby manifest Oppressiounne. ITEM, for the thiftious Steilling and reveng, be way of maisterfull Stouthreif, fra . . . Donaldfoun, chapman, of his pak, with certane merchandice thairin; committit thre yeiris fyne or thairby.

PERSEWER, Mr Robert Lyntounne, Aduocat-substitute.

ASSISA.

Alexander Dumbar, fchereff of Murray,	Patrik Moncur of Chapelton,	Tho ^s Farguisfoun of Bellewchane,
Sir Thomas Stewart of Garnet- lie, knycht,	Johnne Moncur, fone to the Laird of Moncur,	Williame Stewart of Kynnaird, Colene Campbell of Bothe,
Dauid Drummond, Chalmerlane to my Lord Drummond,	Mr Alex ^r Hay of Kynmwdie, Alexänder Flemyng of Moness,	Angus Williamfoun of Ternet, Robert Chrystie, tail;eour, burges of Edinburgh.

VERDICT. The Assyfe, be the mouth of Thomas Otterburne, chancillar, fband, pronunceit and declarit the said Alexander Stewart to be ffylit, culpable and con-

¹ Pash, Lat. *Pascha*, Easter.

² A compulsory tax, contribution, or fine, somewhat similar (ip

vict of airt and pairt of ilk ane of the pointis of Dittay, *respectiue* aboue writtin, and of the crymes contenit in the famin, conforme to his Confessioun product in judgement, quhilkis he ratifeit.

SENTENCE. And thairfore, the said Justice-depute, be reasoun thairof, and of his speciall Convictioun, of the thiftious steilling and reving, be way of masterfull Stouthreiff, fra Donaldsoun, chapman, of his pak and merchandice contenit thairin, be the mouth of Robert Montgomerie, dempstar, Ordanit the said Alexander Stewart to be tane to the mercat Croce of Edinburgh, and thair to be hangit vpoun ane gibbet, quhill he be deid; and all his landis, heretageis, takis, fedingis, rowmis, possèssiounis, coirnis, cattell, guidis and geir to be fforfalt and escheit, &c.

Slaughter of Alexander Lord Spynie.

Jul. 8.—DAVID LYNDSAY, fear of Edzell; Thomas Lyndfay, sone naturall and seruitour to David elder of Edzell; Harie Lyndfay, sone to David L. of Kynnettillis; Mr Johnne Lyndfay, sumtyme Minister at, sone to Johnne L. of Barrese, seruitour to the auld Laird of Edzell; George Lyndfay, brother to the Laird of Covingtoun, also seruitour to the Laird of Edzell elder; Mr James Lyndfay, sone to L. of Brodland; Andro Stratoun; Home, sone to Robert Home of the Heuche; Gawin Lyndfey, father-brother to the said Laird of Covingtoun.

COMPERIT George Guthrie, seruitour to vmq^{le} Alexander Lord Spynie, and product our souerane lordis Letteris, dewlie execute and indorfat, purchest att the instance of Dame Jeane Lyoun Lady Spynie, the relict; Alexander Maister of Spynie, eldest sone; David Erle of Craufurd Lord Lyndfay, &c., Sir Harie L. of Carriestoun, knycht, Sir Johnne L. of Woidwrae, knycht, as brether, with the remanent kyn and freindis of vmq^{le} Alexander Lord Spynie; to tak souertie of the said David, &c., that thai sould compeir befor the Justice or his deputis this day and place, in the hour of cause, to vnderly the law, for airt and pairt of the Slauchter of the said vmq^{le} Alexander Lord Spynie. Be the quhilkis Letteris, the saidis personis war denunceit our souerane lordis rebellis and put to the horne. Vpone the productioun quhairof, the said George Guthrie askit instrumentis, and protestit for releif of Harie Lyndfay of Carrestoun, cautioner for reproductioun thairof.

this instance at least) to *Black-mail*. *Scatt*, properly, was a feudal tax anciently paid, in Shetland, to the King of Denmark; and at present Lord Dundas draws a considerable sum of Scatt; which is understood to be payable chiefly in kind, *e.g.* butter and oil, &c.

Treason—Celebration of the Mass, &c.

Sep. 25.—WILLIAME MURDOCHE alias M'KIE, Preift, borne in Dunkeld.

Dilaitit, accufet, and perfewit be Mr Robert Lyntoun, Aduocat, fubftitute to our fouerane lordis Aduocat, FOR contravening his Maiefteis Actis of Parliament, in the treflonabill faying of Mefs, at dyuerfe tynes, within the houffis and places following, in the monethis of Januare, ffebruare, Marche, Apryle, Maij, Junij, Julij, Auguft, September, October, November and December, in the yeiris of God I^m.V^c. fourfcoir fourtene, fyftene, faxtene, fevintene, auchtene, nynthene, fax hundreth, fax hundreth ane, tua, thre, four, fyve, and fax hundreth and fax yeiris ; at the leift, in ane or vther of the faidis monethis and yeiris of God : And that within the places and houffis of Strabogie, Boig of Geicht, the Lady Sutherlandis houfe in Suderland, Dwnrobyn, the Lady Auchindownis houfe, in Mr Alexander Leflieis hous, Patrik Butteris houfe, befide Aberdene. ITEM, for faying of ane Saul-mefs (*soul-mass*) for the Lady Auchindoun, in ane puir mannis houfe in Strabogie, a littill eftir hir deceife. ITEM, in the Guidman of Carrones hous, callit Grant, and in Williame Leflie of Conrakis houfe ; and in dyuerfe vtheris places and houffis in the North ; being accompaneit with dyuerfe our fouerane lordis leigis at the faidis Mefs : Committing thairthrow the cryme of Treflone, and incurring the panes fpecifeit in the faidis Actis of Parliament, maid aganis the fayeris of Mefs, viz. tynfall and fforfaltour of lyfe, landis and guidis ; as at mair lenth is contenit in the Dittay and Depofitiones maid be the faid Williame thairupone.

VERDICT. The Affyfe, be the mouthe of Abrahame Hamniltoun, fmyth, chancellor, in respect of his Confeflioun, maid judiciallie, of the hail Dittay and Depofitiones producet, fand, pronunceit and declairit the faid Williame Murdoche to be flylit, culpable and convict of the crymes aboue fpecifeit.

Thairefter, the faid Mr Robert Lyntoun, fubftitute to our fouerane lordis Aduocat, producet ane Warrant of his Maiefteis, vnder his hienes hand-writt, defyreand the Justice, accoirding thairto, to pronunce DOME aganis the faid Williame Murdoche, Preift, quhairof the tennour followis.

To OUR right truſtie and weilbelouit confens and counfallouris, the Erle of Dumfermeling, our chancellor, and remanent Lordis and vperis of our Previe Counfall, in our kingdome of Scotland, theſe.

JAMES R.

RIGHT TRUSTIE and weilbelouit confeingis and counfallouris, We greit ſow weil. Whearas, ane Murdoch alias M'kie, Preift, was apprehendit by the Biſchope of Murray, and is preſentlie in waird, within the tolbuthe of Edinburgh, wher he hes lyne this long tyme paſt : OUR pleaſour and Will is, that ſow caufe him be proceedit aganis, in maner following : firſt, that he be preſentit befor our Justice pair, and abyde his ordiner tryell, wher in no dout he will be fund culpable, vpon his awin Confeflioun ; and than our pleaſour is, that our faid Justice do pronunce the judgement eftir following aganis him ; in appointing him to be tane to the mercat croce of Edinburgh, being clad in his Mefs-

claithes, in the same forme that he wes takin ; and eftir he hes bene presentit to the vew of the hole people, he than be strypped of all his Mefs-clothes ; and the same, with all his vther Popifch baggadde that was apprehendit with him, to be presentlie cast into the fyre, pair reddie for the purpose, to be confwmed and brunt to asches : And pairwith, that he be adiudget to be BANISCHET furth of all our dominions, indureing his naturall lyfe ; vnder the pane of daith, in caice of his retorne bak to ony part of þe fame : And willing 5ow to give vnto our Justice particuler directioun heiranent, and to be cairfull to see the same, in everie poynt, execute, We bid 3ow hairtie fairweill. FROME our Court at Theobaldis, the xvij of September 1607.

SENTENCE. Accoirding to the quhilk Warrant and directioun, the Justice-depute decernit and ordanit the said Williame Murdoche, preist, to be takin, on Monunday nixt, to the mercat Croce of Edinburge, cled in his Mefs-claythis, and thair to stand clenzeit, fra ten houris to tuelf befor none ; and thaireftir, ane fyre being kyndillit at the said Croce, the said Mefs-claithes to be cassin af him and brunt in the said fyre, with all his vther Popifche baggadde that war apprehendit with him. Quhilk solemnitie being vsct, Ordanis the said Williame to be Banischet furth of our souerane lordis haill dominions, during his lyfytyme ; and naways to retorne within the samyn, vnder the pane of daith : And to be transportit bak agane fra the said mercat Croce to the said Tolbuith of Edinburge, thair to remane quhill ane schip be in reddines to transport him. Quhill was pronuncet for dome.²

Cruel Oppression — Murder.

Nov. 5.—WILLIAME BONAR, in Condy.

Dilaitit, accuset and persewit be Dittay following, viz. FORSAMEKILL as he, in the moneth of October, the yeir of God I^m.Vj^c. and fyve yeiris, haifing requyret Patrik Philp in Condy, his coitter,³ to geve him the lane⁴ of his horse, for leiding of certane his schorne peis, than standing stoukit⁵ vpon ane pairt of the saidis landis of Condie, occupyt be him ; lyk as, for fatisfeing of the said Williames defyre, haifing directit his naig, with vmq⁶ Robert Qulyte, his servand, and ane sled,⁶ to the leiding of his peis. Trew it is, that the said Williame, vpon the . . . day of October, the yeir of God aboue writtin, at the said vmq⁶ Robertis cuning to the feildis, quhair the saidis peife war roukit,⁷ becaus the said Robert refusit to tak on sic extraordinar burding as the said naig was vnhable to draw, he thairfor maist prouddie and contemptiousely lousct his belt, and with the bukillis and remanent irnes thairof, maist crewallie strak the said vmq⁶ Ro-

¹ Chained. ² *Sept. 27, 1607.*—A Preist, who had been a certaine time in ward before, in the Tolbuith of Edinburgh, was brought down, on the mercat day, to the Mercat-croce, with all his Messe-cloaths upon him, wherewith he was taken, with his chalice in his hand. He stayed at the Croce from ten hours till twelve. Then all his Masse-cloathes and chalice were burnt in a fire beside the Croce, and himself carried backe to ward.—*Calderwood's MS. Church History.* ⁵ Cottar.

⁴ Loan. ⁵ Put up in *stouks* or shacks, to win or cure. ⁶ Sledge, a sort of cart without wheels, still in use, in mountainous districts, for leading in meadow hay, turf, &c. ⁷ Put up in rucks, *ricks*.

bert in the heid and face, and with his feit and kneis strak him in his breift, bellie and fydis, and brak his hail intrallis within him : And thaireftir, fchot¹ him fra him doun ane watter-bra,² quhair he fell in ane watter, and remanit bleiding thairin ane grit fpace thaireftir, at mouth and neife ; be occafoun of the quhilkis crewall woundis and fraikis, gevin to the faid vmq¹⁶ Robert, he immediatlie thaireftir tuik bed, quhairin he continewit bedfaft, in grit dollour and difeafe, be the fpace of tuentie dayis thairefter, or thairby ; and at laft, vpon the . . . day of November thaireftir, he depairtit this lyfe, of the faidis hurtis and woundis ; and fa, he was maift crewallie flane be the faid Williame Bonar : And he is airt and pairt thairof ; committit vpon fet purpois, prouifion and foirthocht felonie.

VERDICT. The Affyfe, be the mouth of Williame Birlfoun in Clow, ffind, pronuncet and declarit, all in ane voce, the faid Williame Bonar to be Clenget, innocent and acquit of the cryme aboue writtin, and hail circumftances thairof. Quhairvpoun the faid Williame askit instrumentis.

Slaughter — Shooting of Hagbutts and Pistolets.

Nov. 6.—JOHNE FORBES, brother to Williame Forbes of Corfindae.

Dilaitit of airt and pairt of the Slauchter of vmq¹⁶ Williame Broun, fervand to Johnne Irwing of Ardtanfurd, committit be him and his complices, callit ‘ THE COMPANIE AND SOCIETIE OF THE BOYIS,’ vpon the landis callit the Peill of Lumfannen, in the moneth of November, the yeir of God I^m.Vj^c. and fyve yeiris. ITEM, for airt and pairt of the Slauchter of vmq¹⁶ Robert Merfar in Tombeg, committit be him and his complices foirfaidis, in the moneth of Junij laftbypaft, at Magnus Garioches hous, in Drumnahoy. AND laft, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and piftolettis, daylie and continuallie, this thre yeir bygane ; speciallie, for invading and perfewing of Williame Irwing, brother to the Laird of Drum, and fehuiting of ane piftolet at him, betuix his awin duelling hous and the Kirk of Kyncairdin, in the moneth of July or thairby, I^m.Vj^c. and fax yeiris.

PERSEWAR, Sir Thomas Hammiltoun.

PRELOCOUTOUR in defence, Mr Johnne Ruffell.

The Aduocat produceit the Dittay aganis Johnne Forbes, with the Letteris of Hoirning, and defyrit proces.—Mr Johnne Ruffell producet ane Letter of Relaxatioune, be the quhilk he is relaxit fra the horne, for the crymis contenit in the Dittay, and thairupoun askit instrumentis.—The pannell takis instrumentis that na partie infiftis in the perfute of this Dittay, except my lord Aduocat. It is allegit, that na proces can be led in this matter, becaus he aucht to be fummond vpoun xv dayis warning, feing he is the Kingis frie fubiect ; and for instruct-

¹ Forcibly pushed, *shoved*.

² A brae or sloping bank above a stream.

ing thair of, citit the practik betuix the Montgomeries and Cuninghame, and the vther of Newarkis.—It is anfuert, aucht to be repellit, in respect of the Relaxatioune producet, beiring the pannell to haif bene at the horne of befor, for the crymes contenit in the Dittay ; vpoun the quhilk Hoiring Commiffiounne was direct to apprehend the pannell, rebell and at the horne ; and being apprehendit, is brocht fra the waird to the bar ; and thairfor, na delay aucht to be grantit vpoun xv dayis.

THE Justice findis proces, nochtwithstanding of the Alledgeance : Quhair-upone the Aduocat takis instrumentis.

It is alledgit be the pannell, that the Justice can nocht proceed in the mater aganis *Johne Forbes*, for the crymes contenit in the Dittay ; becaus, be Act of Secreit Counfall, my Lord Forbes wes maid Justice to pronounce dome (of) Baneifment aganis the said Johnne ; quho hes pronunceit the said Dome, in ane Justice Court, hauldin be him ; and gif he hes nocht pronunceit the said dome, the said Johnne offerit him to be Baneift, and to find caution, actit in the Buikis of Adiornall, to pass aff the countrey, vnder sic panis (as) the Justice will modese ; and thairfor na proces : And for verificatioun thair of, producet the Act of Counfall ; and eikis,¹ that he was tane before the expyryng of the tyme appointit to his baneifment. The Aduocat anfuert, that the Act of Counfall can nocht stay proces ; feing that (there) is na thing producet, declaring him to be exilit ; nather yit is the Dome pronunceit : And siclyke, the said Johnne man² be putt to ane Assyse, except he can schaw Respett, Remiffioun or clangeing ; and alse, the Aduocat acceptis the Secreit Counfallis ordinance.

It is allegeit, that the pannell can nocht be putt to ane Assyse for *Merfär*, feing he wes ordanit to be Baneift for Brounis Slauchter ; and thairfor the Sentence and dome of Baneifment standing, he can nocht be put to ane Assyse for *Merfär*. It is anfuert be the Aduocat, the Argument makis him nocht lauchfull to slae in Junij, he being baneift in March. ITEM, it is allegeit that na proces for *Merfäris* slauchter, becaus he wes nocht apprehendit for the samin. It is anfuert, he wes att the Horne for the Slauchter, and he may be challengeit for the samin ; and producet the Hoiring.—The Commiffioun of apprehensiounne being producet, it is alledgit, that Commiffioun fallis, in respect of Assythemment, and ane Act, makeand Arthour Lord Forbes Justice, to pronounce dome of Baneifment. It is anfuert be the Aduocat, that the caus of the Commiffioun wes rebellious, quhilk wes nocht purget, quhill eftir his taking.

THE Justice findis proces, nochtwithstanding of the pannellis fyrst alledgeance maid, that Brounis Slauchter fould nocht be put to ane Assyse.

It is allegeit, of new, that gif ye will pitt the mater to ane Assyse, and be

¹ Adds farther, subjoins.

² Must.

convict, ye can nocht pronounce na forder Dome nor¹ according to the Act of Counfall. It is allegeit for the Slauchter of Merfar and weiring of piftoletis, he can nocht be putt to ane Affyse, feing he wes nocht tane for that cryme; and that wes nocht *in rerum natura* quhen the Commiffioun wes grantit. It is anfuerit, that the pannell wes fummond vpoun xv dayis warning, for the saidis crymes; and being in ward, he may be brocht out and put to ane Affyse. And the Aduocat produceit the Hoirning aganis the pannell for the Slauchter of Merfar.—The Letteris (of Hoirning being) produceit, it is allegeit that the famin s null, becaus the said Johnne Forbes is fummond only att the mercat croce of Abirdene. The Aduocat anfueris, that he aucht (to) reduce; and the Justice is nocht Judge to the nulling² of Hoirningis.

THE Justice Ordanis the mater to be putt to ane Inqueist, nochtwithstanding of the allegeances.—The pannell offeris him felf in his Maiesteis Will, for the weiring and schuiting of piftolettis.

ASSISA.

James Cunningham, father-brother to the Laird of Barnis, James Dikfoun of Hirdrig, Andro Abircumbie of Staruthie, Williame Sydferff of Ruchlaw, Johnne Airmour, mercheand burges of Edr.³

The Aduocat, for verificatioun of the Dittay, produceit twa Letteris of Hoirning, and the said Johnne Forbessis Depositiounis, confessing the crymes contenit in the Dittay.—It is allegit aganis *Harie Skirving*,⁴ that he can nocht be ressaunt on this Affyse, becaus thair is feid⁵ standing betuix the Laird of Drum, on the ane pairt, and the name of Forbes, on the vther pairt; and the Erle of Marfchell, to quhom this Affysour is vassall, is sister-bairnes to the Laird of Drum. It is anfuerit, aucht to be repellit; in respect of the Act of Parliament discharging all feidis; and that thair is na deidlie feid qualifeit betuix the Erle Marfchell and this pannell.—The pannell, eftir reiding of the Dittay, denyis the Slauchter of Robert Merfar, or that he was ather airt or pairt thairof.—The Aduocat repeittis to the Affyse the pannellis Confessioun, with the Letteris of Hoirning for the crymes contenit in the Dittay and Act of Counfall. The Aduocat protestis for Wilfull Errorr aganis the Affyse, in cais thay acquit; and that the Affyse be reteanit in the Tolbuth, quhill the Kingis Maiestie and his Counfallis will be knawin.—The pannell takis instrumentis of the Affyses determinatioun, in Clengeing of the pannell, for the Slauchter of Broun; and desyres the Justice to be advyset with the Counfall, anent the dome, in respect of the Act of Counfall, producet be him in this proces.

VERDICT. Eftir accusatioun of the said Johnne Forbes, be Dittay, of the hail crymes aboue writtin, and verificatioun thairof, be his Depositiounes, sub-

¹ Than. ² Annulling, reducing. ³ The remainder of the Assise composed of 'mercheandis.'
⁴ Of that ilk. ⁵ Feud, deadly enmity.

feryuit with his hand, as also subferyuit be my Lord Halrudhous and Mr Johnne Prestfoun, Collectour, product be my Lord Aduocat, togidder with the Letteris of Hoirning, &c., the Affyse, be pluralitie of voittis, be the mouth of the said Williame Syderf of Ruchlaw, chancellor, ffand, pronuncet and declairit the said Johnne to be Clene, innocent and acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Merfar : AND ffand, pronuncet and declairit, be pluralitie of voittis, the said Johnne to be ffylit, culpabill and convict of airt and pairt of the flauchter of the said vmq^{le} Williame Broun ; and for beiring, weiring and fchuiting of piftolettis, contrair the tennour of the Actis of Parliament. And that, in respect of his awin Depositiones and Confessioun product, subferyuit with his hand.

SENTENCE. For the quhillk caufe, the said Justice-depute decernit and ad-iudget the said Johnne Forbes, be the mouth of James Henderfoun, dempfter, to be tane to the mercait Croce of Edinburgh, and thair, vpone ane scaffold, his heid to be ftrukin frome his body ; and all his moveabill guidis to be efcheit and inbrocht to his hienes vfe, as convict of the crymes aboue-writin : Quhillk wes pronuncet for dome.

Sorcery — Witchcraft — Incantation — Poisoning, &c.

[THE singularity of the following Trial cannot fail to be remarked by all who have bestowed any attention upon the history of the Superstitions of their native country. In illustration of several of the circumstances detailed, the Editor considers that the CONFESSIONS of ISSOBELL HALDANE, preserved amongst the Warrants of the Privy Council of Scotland, will prove an acceptable accompaniment. The Editor has not yet discovered whether that unfortunate woman suffered the usual death which awaited such a Confession. It is, however, but too probable that she was put to death, by being ‘brunt,’ at Perth, in terms of her own Depositions.]

Dec. 18.—BARTIE PATERSON, taker in Newbottill.

Dilaitit of the cryme of Sorcerie and Witchcraft, in abufeing of the peopill with charmes and dyuerse foirtes of Inchantmentis ; and ministring, vnder forme of medicine, of poyfoneable drinkis : AND of airt and pairt of the Murthour of Johnne Myller in ffurd-mylne, about Martimas laft, and of vmq^{le} Elizabeth Robiefoune, be the saidis poyfoneable drinkis, viz. FOR cureing of James Broun in Turnydykis of ane vnkawin difeafe, be ministrating to him of drinkis, rubbing him with fawis' maid of dyuerse grene herbis, and caufing him pas hame to his awin hous : and at his bed fyde to fitt down on his kneis, thre feuerall nychtis, and everie nycht, thryfe nyne tymes, *to ask his helth at all leving wichtis, aboue*

¹ Salves.

and vnder the earth, in the name of *JESUS*. And thaireftir, ordanit the said James to tak nyne pickillis of quheit, nyne pickillis of falt and nyne peces of rowne-trie,¹ and to were thame continuallie vpone him, for his helth; committing thairby manifest Sorcerie and Witchcraft. *ITEM*, for abufeing of the people, with ane certane watter, brocht be him furth of the Loch callit the Dow-Loche, befyde Drumlanrig, and cureing of his awin bairne with the said Loche watter, be wafching of the said bairne, at everie nuke thairof, thryse; and casting in of the bairnis fark² in the said Loche, and leveing of the fark behind him; affirming, that gif any fould come furth of the Loche, at that tyme, the patient wald convalesce, and gif na thing appeirit to him, the patient wald die: *AND* for cayreing of the said Loche watter to findrie of the cuntrie, that war visseit with feiknes, or quhais beistis war feik or foirspokin:³ Speciallie, for the miniftrating thairof to Alexander Clerk, in Creichtoun, for his helth; be caufing him, at ilk tyme quhan he listit the stoupe,⁴ quhairin it was, to spaik thir woirdis: '*I listit this watter, in the name of the Father, Sone and Haly Gaijt, to do guid for thair helth for quhom it is listit;*' quhilkis wordis fould be repeatit thryse nyne tymes. *AND* for vfeing of thir charmes following, for charmeling of cattell; '*I CHARME thé for arrow-schot, for dor-schot, for wondo-schot, for ey-schot, for tung-schote, for lever-schote, for lung-schote, for hert-schot, all the maijt, in the name of the Father, the Sone and Haly Gaijt. AMEN.*' *AND* for behaifing him self as ane cowmone Sorcerer, in abufeing of our fouerane lordis leigis, thir diuerse yeiris bygane, be his devillifche practizes, vpone dyuerse feik folk and feik bestiall; and vfeing of dyuerse vther foirtis of Inchantment, expres aganis the lawis of God and Actis of Parliament.

As at lenth is contenit in the said Barteis Depositiones, maid in prefens of the Presbiterie of Dalkeith, and Dittay formet thairupoune.

VERDICT. The Assyse, be the mouth of Thomas Megget of Maistertoun, chancellor, ffind, pronuncet and declairit the said Bartie to be ffylet, culpable and convict (conforme to his awin Confessioun) of the haill crymes aboue writtin.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir his body to be brunt in asches; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, &c.

¹ The mountain-ash. Its virtues are even yet held in great repute, as a charm against Witchcraft, &c.

² Shirt. The purpose of so doing was to leave the disease on the shirt, and to make an offering to the *genius loci*. In Ireland, at this day, 'Holy Wells' are commonly resorted to by the sick, &c., who, after ablation and drinking of the spring, leave pins and pieces of rag, torn off some part of the patient's dress.

³ Bewitched, charmed.

⁴ A sort of wooden bucket or picher, used for holding or carrying water.

DEPOSITIONES of ISSOBELL HALDANE, *ſuſpect of Wiſchcraft,*
 CONFESSIT *be hir the 15 of Maij 1623, as followis.*

BEING convenit befor the Seſſioun of Perth, eftir prayeris maid to God to oppin hir hairt and loufe hir toung to Confes the treuth :—Being alkitt, ‘ Gif ſcho hed onye ſkeill of cureing men, wemen or bairneis that war diſeiſt?’ Scho anſuerit, that ſcho had nane. Being requirit, ‘ Gif ſcho cureit Andro Duncanes bairne?’ Anſuerit, that, according to the direction of Jonat Kaw, ſcho went with Alexander Lokart dwin¹ to the Turret-Port, tuik watter frome thence, being dwin; brocht it to Andro Duncanes houſe; and thair, wpon hir kneis, in the name of the Father, Sone and Halye Gooft, weuſch² the bairne! Eftir that, tuik the watter, with the bairneis fark, accompaneit with Alexander Lokart, and kuiff³ baith in the burne; bot in the going, ſcho ſkaillit⁴ ſwm, quihlk ſcho rewis ane evil rew,⁵ becaus that if onye hed gone ower it, thay hed gottyn the ill.⁶ ITEM, being alkitt ‘ If ſcho hed ony conuerſatioun with the ſfarye-folk?’ Anſuerit, that ten yeiris ſyne, lying in hir bed, ſcho was takin furth, qulidder be God or the Deuill ſcho knawis nocht; wes cariyt to ane hill-ſyde: the hill oppynit, and ſcho enterit in. Thair ſcho ſtayit thrie dayis, viz. fra Thurſday till Sunday at xij houris. Scho mett a man with ane gray beird, quha brocht hir furth agane.

ITEM, that ſame day JOHNE ROCH deponit, that about that ſame tyme, he beand in James Chryſtie the wrichtis buith, cauſing the wricht mak ane cradill to him, becaus his wyff wes neir the down-lying; the ſaid Iſobell Haldane com by, deſyret him nocht to be ſa haiftie, for he neidit nocht; his wyff ſould nocht be lichter⁷ till that tyme ſywe oulkis,⁸ and then, the bairne ſuld neuer ly in the cradill, bot be borne, hapteift, and never ſouk, bot die and be tane away. And as the ſaid Iſobell ſpak, ſo it cam to paſs, in euerie poynt.

THE ſaid Iſobell being demandit, ‘ How ſcho knew that?’ Anſuerit, that the man with the gray beird⁹ tauld hir. ITEM, the ſaid Johne Roch deponit, that Margaret Buchannan, ſpous to David Rind, being in helth, at hir ordinare wark, the ſaid Iſobell Haldane come to hir, and deſyret hir mak hir for deith;¹⁰ ſfor befor Faſtingis-ewin, quihlk wes within few dayis, ſcho ſuld be takin away. And as ſcho ſaid, ſo it wes; befor that terme the woman died. Being alkitt, ‘ How ſcho knew the terme of hir lyfe?’ The ſaid Iſobell anſuerit, ſcho hed ſpeirit at that ſame man with the grey beird, and he hed tauld hir.

THE *xvj day of May 1623.* PATRIK RUTHVEN, ſkynner in Perth, compeirit and declairit, that he being wiſchit¹¹ be Margaret Hornſcleuch, Iſobell Haldane com to ſie him; ſcho com in to the bed and ſtrauchit¹² hir ſelf aboue him, hir heid to his heid, hir handis ower him, and ſo furth, mumbling ſum wordis; he knew nocht quhat they war.

THE ſaid Iſobell Confeſſit the ſaid cure; and deponit, that befor the ſaid Patrik wes wiſchit, ſcho mett him, and foirbad him to go till ſcho hed gone with him.

THE *xix day of Maij 1623.* Compeirit STEPHANE RAY in Muretoune, and deponit, that thrie yeiris ſyne, that Iſobell Haldane haueing ſtollin ſum bere furth of the Hall of Balhouſie, he followit hir, and brocht hir bak agane; ſcho chaipit¹³ him on the ſchulder, ſaying, ‘ Go thy way! Thow fall nocht win thy ſelf ane bannok of breid for yeir and day!’ And as ſcho threttinit, ſa it cam to paſs. He dwynnit,¹⁴ hanelie diſeiſeit.

THE ſaid Iſobell Confeſſis the away-taking of the bere, the diſeiſe of the man, and affirms, that onye ſcho ſaid, ‘ He that delyueret me frome the ſfarye-folk fall tak amendis (on) thé!’ ITEM, the ſame day ſcho confeſt ſcho maid thrie generall caikis, euerie ane of thame of ix curneis¹⁵ of meill, gottin fra ix wemen that wer maryit madynnis; maid ane hoill in the crowne of euerie ane of thame, and

¹ Down. ² Washed. ³ Cast, threw. ⁴ Spilt ſome. ⁵ Regrets or *rues* bitterly. ⁶ Had any one ſtepped ower the place, the evil or diſeaſe would have been transferred from the ſick child to him. ⁷ Lighter, i. e. delivered of her child.

⁸ Five weeks. ⁹ This familiar ſpirit ſeems to be the ſame as ‘*Thom Reid*,’ mentioned in the extraordinary Trial of BESSIE DUNLOP.

¹⁰ Prepare for death. ¹¹ Bewitched, *fore-spoken*.

¹² Stretched. ¹³ Clapped. ¹⁴ Fined away, without any apparent cauſe. ¹⁵ Handfuls, ſmall quantities.

pat ane bairne throw it thrie tymeis, 'in the name of the Father, Sone and Halye Goost,' to wemen that pat the saidis bairnes thryfe throw bakward, wfeing the saidis wordis. *ITEM*, the said Iffobell confest, that scho went, silent, to the Well of Ruthuen,¹ and returneit silent, bringing watter from thence, to wafch Johne Gowis bairne: Quhen scho tuik the watter frome the Well, scho left ane pairt of the bairnes fark at it, quhilik scho tuik with hir for that effect; and quhen scho cam home, scho weufche the bairne thairwith. In lyk maner, scho Confest, scho had done the elyk to Johne Powryis bairne.

THE xxvij day of Maij 1623. THE said Iffobell confessit, that scho had gewin drinkis to cure bairneis; amongis the rest, that Dauid Moreise wyff com to hir, and thryfe for Goddis saik alkit help to hir bairne that wes ane scharge:² And scho fend furth hir sone to gether fochsterrie leaweis,³ quhair- of scho directit the bairnes mother to mak a drink.—Bot the bairnes mother deponit, that the said Iffobell Haldane, on-requirt, cam to her houe and saw the bairne; said, 'it wes ane scharge talkin away;' tuke on hand to cure it; and to that effect, gaiff the barne a drink; efter the ressait quhair- of the bairne died.

WILLIAME YOUNG, Scribe to pe Presbiterie of Perth, at command of pe samyne, with my hand.
JONAT. DAUIDSONE, Notare Publict and Clerk to the Sessioune of Perth, at their command and directiounne, with my hand.

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

Slaughter.

Feb. 3.—JAMES MURE, Younger of Auchindrane.⁴

Dilaitit of airt and pairt of the Slauchter of vint^{le} Sir Thomas Kennedye of Cullane and Williame Dalrumpill.

PERSEWER, Sir Thomas Hammiltounne of Bynnie, knycht.

PRELOCUTORIS for the pannell.

The Lairdis of Blair, Cauldwall, Heifilheid, Rowallane, Mr Johnne Ruffell, Mr Laurence Mcgill.

My Lord Aduocat producet the Letteris deulie execute and indorsat, quhairby the defenderis thairin contenit ar denuncet to the horne. Mr Johnne Ruffell producet Letteris of Relaxatiounne, of the dait the thrid of Februare instant; be the quhilikis the pannell is relaxit for the crymes aboute writtin. The pannell takis instrumentis of his entrie; and efter reiding of the Summondis, offeris him self reddie to abyd the tryell of the Law, for the crymes contenit thairin- till; and difassentis fra all continewatiounne. The Aduocat producet the Coun- fallis Warrant for continuatiounne of this dyet to Fryday nixt; and committing the pannell to waird in the meane tyme.

THE JUSTICE, for obedience of the Counfallis Warrant, continewis this mat- ter to Fryday nixt, and ordanit the pannell to be wairdit in the Tolbuith of Edinburgh, in the meane tyme.

¹ The superstition of fetching water from *Holy- Wells*, as they were and still are often called, was very prevalent in Scotland, as well as in all Catholic countries. Some shred of dress belonging to the diseased person was left on the brink of the well, in token of the disease having passed away along with it. In Ireland, the bushes near to such wells are entirely covered with rags of every colour, as offer- ings to the *Genius loci*.
² SHARG, a creature pined away, by Witchcraft, an evil eye, &c. A changeling.
³ Leaves of an herb. Perhaps star-grass, bog-star-grass.
⁴ Vid. Jul. 17, 1611.

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

Feb. 5.—THE JUSTICE continewis this matter to the secund day of Marche nixtocum; and ordanis the pannell to be wairdit in the Tolbuith, in the meane tyme.¹

Slaughter.

Feb. 5.—GEORGE MURRAY of Brochtoune.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} James M^cCulloche, appeir- and of Torhoufe; committit in November last.

PERSEWARIS.

Johne M^cculloche, as brother; William M^cculloche of Mertoune, Thomas M^cculloche of Barholme.

THE JUSTICE continewis this matter to the morne.²

Feb. 6.—The perfewaris passis fra the perfute of the Laird of Brochtoun for the said Slauchter, conforme to the cowmoning.³

Mutilation.

Feb. 19.—JOHNNE DUNCANE, elder, myller in the Brig of Hailes, and Johnne Duncane, younger, meilmaker in Edinburgh.

VERDICT. Fylit, culpable and convict of airt and pairt of the Mutiliatioun of Robert Daidfoun of tua fingaris of his left hand; committit be thame in the moneth of September I^m.Vj^c. and sax yeiris, vpone set purpois, prouifoun and foirthocht felonie.

SENTENCE. To be wairdit within the Tolbutth of Edinburgh, thairin to remane vpone thair awin expenffis, ay and quhill thay haif satisfit the said Robert Daidfoun, pairtie, for his hurt and skayth aboue writtin, and obtene his letteris of Slanes thairupoune: And alfe, Ordanit thair hail moveabill guidis to be efcheit to our fouerane lordis vsf, as convict of the said cryme.

Slaughter.

Feb. 23.—WILLIAME KEITH, sone lauchfull to Alexander Keith of Auchquhirfk.

Dilaitit, accuset and perfewit be Mr Thomas Hendersone, Aduocat, substitute to our fouerane lordis Aduocat, of the crymes following, viz. sforfamekill as, vpone fryday the nyntene day of februar instant, the said Williame haifing fallin out, in som iniurious speiches with vinq^{le} Thomas Colftoun, Inglifman, at the drink, in Griffell Russellis hous in Bruntieland; he thaireftir rancounterit with the said vinq^{le} Thomas, beyde the fchoir of the said burch of Bruntieland;

¹ It is again continued; and Mure ordered to be kept in ward.

² Plegio, Johanne Vaufe de Barnebarroche. ³ Commoning. It is likely that the private parties compromised the matter, and that Letters of Remission were procured upon their joint application, on producing Letters of Slains.

and thair, maift crewallie, with his drawin fwoird, frak the faid vmq^{le} Thomas vnder the left pape, and slew him thairwith: And the faid William is airt and pairt of the slauchter of the faid vmq^{le} Thomas.

PERSEWERIS, Mr Thomas Henderfonne, Mr Robert Foullis, aduocat.

PRELOCOUTOUR for the pannell, Mr Johnne Ruffell.

ASSISA.

Aulay Mc'caulay of Ardincapill,	Arch ^d Edmeftone of Ballintone,	Hew Dalzell, merchand burges of
George Murray of Brochtoun, ¹	Johnne Abannay, Provoft of	Edinburgh,
James Lokhart of Ley,	Wigtoun,	Symone Brentoune, burges thair,
William Blair of Balgillo,	Patrik Somervel, merchand	George Redik,
. . . Leith of Harthill,	burges of Edinburgh,	Geo. Rollok, portioner of Craigie,
Sir Alex ^r Colquhoun of Lufs, kny ^t ,	Donald Thornetoun, burges thair,	Vthreid M ^c dowell of Mondurk.

VERDICT. The Assyfe, be the mouth of the faid Vthreid M^cdowgall of Mondurk, chancellor, ffand, pronuncet and declairit the faid Williame Keith to be ffylit, culpable and convict of airt and pairt of the Slauchter of the faid vmq^{le} Thomas Colftoun; committit in maner and at the tyme ffpecificeit in the faid Dittay.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair, vpone ane fkaffold, his heid to be ftrukin frome his body; and all his moveabill guidis and geir to be efcheit and inbrocht to his Maiefteis vfe, as convict of the faid cryme. Qubilk was pronuncet for dome.

Child-murder.

Feb. 24.—ISSOBELL THOMESOUNE, dochter to Robert Thomefoun in the Watter of Leyth.

Dilaitit of the crewall and vnnatural Murthour and diftruction of hir awin infant bairne; committit be hir, immediatlie eftir hir delyuerie thairof, vpone the aucht day of Februare infant, fecretlie, within hir fatheris dwelling hous in the Watter of Leyth.

VERDICT. The Assyfe, in ane voce, be the mouth of Thomas Clerkfoun, buterman, chancellor, ffand, pronuncat and declairit the faid Ifobell, conforme to hir awin Confeffioun, to be ffylet, culpable and convict of the crewall Murthour and diftruction of the faid bairn.

SENTENCE. To be tane to the Caftell-hill of Edinburgh, and thair to be hangit, quhill fcho be deid; and hir haill moveabill guidis, gif fcho ony hes, to be efcheit, &c.

Treason — Murder under Trust, &c.

Mar. 2.—JAMES WATSOUN, fone in law to James Hammiltoun of Scheirell; and James Hinchelwoid, feruitour to James Hammiltoun Younger of Spittelcheill.

Dilaitit of airt and pairt, red, counfall and foirknowledge of the crewal Mur-

¹ See Feb. 5, 1508.

thour of vinq^{le} George Tuedie; committit be the said James Hammiltoun of Spittelcheill, vpon Sanct Leonardis-evin, in Nouember last, within ane barne of Spittelcheill; the said James, the tyme of the committing thairrof, haifing consultit and devyfet the samyn with Robert Craufurd, his guid-brother, and with the saidis James Watfoun and James Hinchelwoid, of the forme and maner thair- of, viz. THAT the said James Hinchelwoid fould secreitlie convoy ane mell¹ in the barne, quhair the said George Tuedie fould be murthourit; and that the said George (his) bed fould be maid in the said barne, and the said James Watfoun to ly with him: LYK AS, about tuelf houris at evin, in the said nycht, the said vinq^{le} George Tuedie being lyne down in his bed, within the said barne, luyking for the said James Watfones cuming to ly down with him, the said James Hinchelwoid, James Hammiltoun and James Watfone come all in togidder within the said barne; and as the said James Watfone was taking af his claithes, the said James Hammiltoun, with the said mell in his hand, in presens of the said James Watfoun and James Hinchelwoid, come to the said George Tuedeis bed- heid, and thair maist crewallie gaif him tua grit fraikis in his heid, and Murdreift him thairby; the said James Hinchelwoid haifing brocht in the candill in his hand, and deluyering the mell to the said James Hammiltoun, to commit the said Murthour; AND eftir the committing thairrof, the said James Watfone, taking away with him the said vinq^{le} George Tuedeis horse, with the sadill and brydill, and the said James Hinchelwoid helping the said James Hammiltoun to beir him to ane lyme hoill, ane littill frome the hous, quhair he wes bureit.

VERDICT. The Assyse electit and choisit Hammiltoun of Sillertoun- hill² chancellor, ressonit and voittit vpon the poyntis of the said Dittay, and being ryplie and at lenth advyfet thairwith, togidder with the saidis James Watfone and James Hinchelwoidis Depositiones made be thame in the premif- ses; thay, be the mouth of the said Chancellor, ffind, pronuncet and declairit the saidis James Watfone and James Hinchelwoid to be flylet, culpable and con- vict of airt, pairt, red, counfal and foirknawlege of the said abhominable Mur- thour, and conceilling of the samyn, sa lang eftir the committing thairrof.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thay be deid; and all thair moveabill guidis efcheit to our souerane lordis vfe, as convict of the saidis crymes.

Cattle-stealing.

Mar. 11.—THOMAS FRAM, sumtyme fervand to James Hammiltoun of Spittelscheill.

Dilaitit of airt and pairt of the thiftious Steilling, conceilling, ressetting and

¹ Mallet. ² Robert Bailzie of Jerristoun, Johnne Grahame brother to Watfraw, and James Mureheid younger of Lachope, are the only other landed persons. James Levingitoun of Jerifwoid was fined 100 merks for non-appearance.

away-taking of thre oxin and ane kow pertening to James, Lord of Balmirrinoch, furth of his landis of Mulrum; committit in the moneth of Auguft I^m.Vj^c. and fax yeiris.—**VERDICT.** Guilty. James Levinftoun of Jerifwoid, chancellor.

SENTENCE. To be tane to the mercait croce of Edinburgh, and thair to be hangit quhill he be deid; and all his moveabill guidis, gif he ony hes, to be conficat to our fouerane lordis vfe.

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

Murder.

Mar. 18.—**JOHNE SWAN**, burges of Dumbar.

PERSEWERIS, Williame Clerkfoune, brother-fone, Johnne Kellie, fister-fone, Johnne Learmonth, guid-fone, Williame Ruthven also fone-in-law.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter of vinq^{l^e} George Clarkfoune, merchand burges of Dumbar; committit be him within the faid vinq^{l^e} George awin barne, lyand at the bak of the toune of Dumbar, vpon the fyftene day of Marche instant, betuix thre and foure eftir none; be geving to him of ane crewall and deidlie fraik vpon the left fyde of his heid, alongis his vane-organe,¹ with ane grit fork, quhairof he immediatlie depairtit this lyfe.

VERDICT. Guilty. Johnne Kellie, elder in Dumbar, chancellor.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair his heid to be strukin frome his bodie; and all his moveabill guidis to be efcheit and inbrocht to his hienes vfe, as culpable and convict of the faid cryme.

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

Sorcerie, Witchcraft, &c.

Majj 27.—**BEIGIS TOD**, in Lang-Nydrie.

Dilaitit, accuset and perfewit, at the instance of Mr Robert Foulis, Aduocat, fubstitute to our fouerane lordis Aduocat, of the crymes of Sorcerie following, viz. **FORSAMEKILL** as scho, accompaneit with vinq^{l^e} Cristiane Tod, hir fister, Johnne Graymeill, Margaret Dwne and Erfche Marioun,² in the moneth of Auguft, the yeir of God I^m.V^c. four fcoir fourtene yeiris,³ convenit thame felffis, with thair complices, all Witches and abufearis of the people, at Deane-fute of Lang-Nydrie, quhair the Deuill appeirit to thame, and reprovit the faid Beigis Tod verrie fcherplie, for hir lang tayreing; to quhome scho maid this anfuwer, ‘Sir, I could wyn na foner!’ And immediatlie thaireftir, thay pafit altogidder to the faid Beigis hous in Lang-Nydrie; quhair, eftir thay had drukkinn togidder a certane fpace, thay, in thair devillifche maner, tuik ane katt, and drew the famyn nyne tymes throw the faid Beigis cruik;⁴ and thaireftir come with all thair fpeid to

¹ Jugular vein.
that period.

² Irish or Highland Marion, a personage who figured in the Witch Trials of

³ A.D. 1594.

⁴ Of iron, on which the ‘*kail-pat*’ is usually hung over the fire.

Seaton-thorne,¹ be-north the zet;² quhair the Devill callit for the said Cristiane Tod, and past to Robert Smartis hous, and brocht hir out; and as scho was cumand with him, scho tuik ane grȳt fray,³ and said to the Devill, ‘ Sir, quhat will ye do with me?’ Quha anfuerit her, ‘ Tak na feir, for ze fall gang to your sifter Beigis, and to þe rest of hir cumpanie, quha ar stayand vpon your cuming at the Thorne!’ And thay theireftir past altogidder, with the Devill, to the irne zet of Seatoun, quhair of new thay tuik ane cat, and drew the famyu nyne tymes throw the said Irne-zett: And immediatlie thaireftir, come to the barne, foirant George Feudaris dur,⁴ quhair thai cristenit the said catt, and callit hir *Margaret*: And thaireftir come all bak agane to the Deane-fute, quhair first thai convenit, and cuist the kat to the Devill. For the quhilkis devillische practizes the saidis Cristiane Tod, Johnne Gray-meill, Ersche Marioun and Margaret Dwne war convict and brunt. And the said Beigis Tod is airt and pairt of the cryme of Sorcerie and Witchcraft aboue writtin; quhilk wes noutourlie knawin: ITEM, forfamekill as the said Beigis Tod, haifing fallin furth at variance with the vni¹⁶ Alexander Fairlie in Lang-Nydrrie, scho, to be revendget vpon him and his bairnis, in the moneth of Junij I^m.V^c.lxxxij yeiris, be hir Sorcerie and Witchcraft, cuist ane heavie and vnkawin seiknes vpon Alexander Fairlie, his sone, quha vanischet away⁵ with vehement sueiting and continuall burning at the heart; quhilk seiknes indurit with him the space of tua monethis, that nane luikit for his lyfe;⁶ and nichtlie the said Beigis appeirit to him, in hir awin similitude; vpon quhome he cryit continuallie for help: And in the day, scho appeirit to him, in schape of a dog; quhilk pat him almaist out of his witts: Vpon occasioun quhairof, the said Alexander, his father, past to the said Beigis Tod, and efter he was reconceillit to hir, maist earnestlie besocht hir to cum and remedie his sone of the said seiknes; quha refuist to cum; yit, at the ertainest desyre of Archibald Galloway, scho, accompaneit with hir tua sones, come to the hous, and sa sone as the said Alexander saw hir, he eftir that tyme became bettir and bettir, and convalessit of the said seiknes. And sa, scho committit manifest devilirie and Witchcraft, in on-laying and aftalking of seiknes, in maner foirsaid. AND lykwayes, was accuset be the said Aduocat and Robert Woid, litfter, for the casting of the lyk vncouth seiknes vpon the said Robert, be hir devilirie and Witchcraft, in the moneth of Nouember last.

VERDICT. The Assyse, all in ane voce, be the mouth of David Seatoun, bailzie of Tranent, flyet the said Beigis of the first tua poyntis of Dittay aboue writtin: And, be pluralitie of voittis, stand, pronuncet and declairit hir to be Clene

¹ Thorns were favourite trysting-places of witches as well as lovers.

² To the north of the

gate. ³ Fright. Old Fr. *frayeur*.

⁴ Door.

⁵ Swooned, fainted away.

⁶ None

thought he could possibly sur-vive.

and acquit of the Sorcerie and Witchcraft vsēt be hir aganis the said Robert Woid, in laying the said feiknes vpon him ; in maner spēcifeit in the Dittay.

SENTENCE. For the quhilkis tua crymes, quhairof she is convict, the Justice ordanit hir to be tane to the Castell-hill of Ed^r, and thair to be wirreit at ane staik, and her body to be brunt in afches ; and hir haill guidis to be efcheit, &c.

[CURIA JUSTICIARIE. *f. d. n. Regis, tenta in Pretorio de Lynlythgow, vltimo die Maij 1608, per M. Willielmum Hairt de Prestoun, Jusficiarium Deputatum.*]

ASSESSOURIS TO THE JUSTICE.

My Lord of Balmirrienoeh,¹ My Lord Abercorne,² My Lord Lynlythgow,³ Sir Peter ȝoung.⁴

Abstracting Pearls and Jewels belonging to the Queen.

May 31.—MARGARET HERTSYDE, spous to Johnne Buchannane, sumtyme seruant to his Maiestie, and the said Johnne Buchannane, for his entreis.⁵

Dilaittit, accufet and perfewit be Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our souerane lord.

DITTAY *againſt the Pannell.*

MARGARET HERTSYDE, ȝe ar indytit and accufet, florflamekill as ȝe, being many ȝeiris in credeit and benefice with our souerane lordis darrest spous, the Queinis Maiestie, and haifing reſſauit many grit beneiftis frome hir Maiestie, during þe tyme of ȝour seruice, at dyuerſe tymes, to ȝour heich advancement, baith in credeit and welth : ȝe, nochtwithſtanding thairof, maift vnlauffullie and vndewtiefullie ſubſtractit, ſlaw and detenit frome hir Maiestie, furth of our ſouerane lordis Palices of in England, at the leiſt furth of ane or vther of our ſaidis Palices, ane Perle, of the valour and pryce of ane hundreth and ten pund ſterling, pertening to hir Maiestie ; togidder with dyuerſe vtheris perles, precious ſtanes, jowallis and goldmyth wark, lykwayis pertening to his Maieſteis darrest spous, worth the ſowme of thre hundreth pund ſterling ; committit be ȝow in the monethis of, the ȝearis of God I^m. ſax hundreth thre, ſax hundreth foure, ſax hundreth fyve, ſax hundreth ſax, and I^m.Vj^c. and ſevin ȝeiris ; at þe leiſt in ane or vþer of þe ſaidis monethis and ȝeiris. For the quhilkis, ȝe being ſworne and examinat, fiſt vpon the fyft day of October 1607, and þaireſtir vpon the thrid day of Nouember laſtbypaſt, anent ȝour vnlauffull haifing of ſindrie of hir Maieſteis jowellis ; and haueing declairit, vpon ȝour grit aithe, that ȝe had nane, and gif it war fund that ȝe had ony vther jowallis of worth, quhilkis pertenit to hir Maiestie, that þe perticularis than confeſſit be ȝow, (quhairin the jowallis lybellit war nocht comprehendit,) ȝe acknowlegit that ȝe had thame nocht lauchfullie : And lykwayis declairit, be ȝour ſaid Depoſitioun, that at ȝour fiſt cuming frome Court to Scotland, ȝe had delyuerit to hir Maieſtie all þe jowallis quhairof ȝe had þe credeit,⁶ and nevir ſenſyne had charge of þame, or meltit⁷ with ony of thame. NOCHTWITHSTANDING quhairof, ȝe þaireſtir, vpon the ſaid thrid day of Nouember laſt, Confeſſit that ȝe had abstractit frome hir Maieſtie ane grit perle, pertening to her bienes, quhilck cam to ȝour handis, amangis ane number of counterfute ſtanes, and many perles pairwith : Quhilck grit perle, ȝe ſauld, for ane hundreth and ten pund ſterling, eſtir that ȝe had preſentit the ſame, hung at ane dymond, to be ſauld, to hir Maieſteis ſelf ; ffor the quhilck ȝe cravet her Maieſteis pardoun, and

¹ For his interest ; only as husband to the pannell. ² Sir James Elphinston, first Lord Balmerinock, Lord President of the Court of Session. See his Trial, Mar. 10, 1609. ³ James Hamilton, first Earl of Abercorn. ⁴ Alexander, seventh Lord Livingston, was created Earl of Linlithgow Lord Livingston and Calendar. ⁵ His Majesty's 'Eliamosinar' or Almoner, &c. ⁶ Trust, charge of. ⁷ Meddled, had to do with. Fr. *Meler*.

be your said Deposition cum in hir Maiefties gracious Will for it. And lykways Confessit, be your Deposition foirsaid, that, without hir Maiefties knowlege or gift, ze had fault and convenit to your awin proffeit and vse, vther precious stanes and perles, worth thre hundreth puad sterling, pertening to hir Maieftie; and acknowlegit pat your ouersicht and offence committit, in melling with the jowallis confessit be your at pat tyme, pat your in hir Maiefties Will: And ze ar airt and pairt of je saidis crymes: for je quibilkis ze aucht and fould be pweinefched, conforme to je lawis and daylie praktik of your realme.

PERSEWAR, Mr Thomas Hamiltoun of Bynnie, knycht, Aduocat to our fouerane lord.

PRELOCOUTOURIS for the pannell, Mr Williame Oliphant, Mr Thomas Hoip, Mr Alexander King, Mr Johnne Ruffell, Aduocatis, Mr Robert Buchannane, Minister at the Kirk of Ceres, Mr Williame Buchannane, Minister at Methven.

The Aduocat productet our fouerane lordis Letteris, deulie execute and indorfate, purchest at his instance, as Aduocat to our fouerane lord, for his hienes entreis. The Aduocat, estir cheifing of the prelocoutouris for the pannell, productet his Maiefties Warrant to the Justice to proceid and minister Justice; togidder with ane vther Warrant, directit to my lord Aduocat, to insift in this perfute.—Mr Johnne Ruffell, for him self and the rest of the prelocoutouris, productet ane Warrant of the Lordis of Secretit Counfall, commanding thame to compeir, as prelocoutouris, in defence of the pannell.

My lord Aduocat productet ane EIK to the Dittay, for cleiring thair of, and circumstances of the poyntis of Dittay contenit in the Letteris.

Margaret Hertfyde, *olim in carcere*, and now at libertie, productet ane Letter, containing anedesyre, ane Reuocatioun and protestatioun, quhair of the tennour followis.

I, MARGARET HERTSYDE, acknawleging my long captiuitie, and that I haif bene seperat fra my husband, dyuerse tymes examinat and demandit vpon sundrie wechtie matteris and articles, to the quibilkis I was forct to ansuer, nocht being weill resolut, bot be je contraire, being hevelie trubillit, be apprehensioun¹ of my husband, my self, wairding of our perones, and ceasing² vpon our hail guidis; my Depositionis nocht perfytle knawin to me, and I being ane woman, *juris ignara*, nocht haifing sa guid memorie as is requisit in sic ane wechtie caus; I desyre that now, being ane frie persone, exhibit in Judgment,³ my Declaratioun and Deposition may be productet, to the effect that I may reduce my self to ane perfyte memorie; and, gif my Declaratioun be set down according to je treuth, I am content to abyde pairt; vtherways, in caice pair be any thing omittit or erroneoullie declairit, that I may be hard to correct my error and eik⁴ pairto, quabtsbeuir is omittit: And in cais of non production of my said Declaratioun and Depositiones, to the effect foirsaid, I, be jir presentis, revoikis quabtsbeuir Deposition maid by me, concerning the lybell and Dittay pairt contenit, and hail contentis pair of: And protestis, in caice je said Deposition be productet, at any time heireftir, in this Judgement, that je samy be oppible red in my prefence, to the effect foirsaid.

The Pannell, vpon productione of the Eik to the Aduocat, desyrit this matter to continew to the morne, to be advysed thairupoune. My Lord Aduocat declairis, that he vsis this Eik productet, as ane qualificatioun and explanatioun of the Summondis; bot intendis nocht thairby to challenge the perfewar of any new cryme; and thairfoir desyrit present proces.

¹ Imprisonment.

² Seizing.

³ Presented in Court.

⁴ Add, subjoin.

THE JUSTICE and ASSESSOURIS continewis this mater to the morne, at viij houris ; and hes delyuerit the Eik product to the Prelocoutouris, to he advyfet thairupoun.

OBJECTIONS *against the Affessors.*

(Jun. 1.)—It is allegit aganis *Sir Peter zoug*, that he can nocht be Affesour in this caufe, becaus he is his Maieftis domestik feruitour ; and Margaret Hertfyde being callit in this Judgement for steilling and substracting of Jowellis pertening to hir Maieftie, quhilk also pertenis to his Maieftie, na domestik feruitour to his Maieftie can be Judge or Affesour in this caufe.—To the quhilk it is anfuert, be the Aduocat, the allegeance is nocht relevant ; becaus it hes bene practikket¹ in this Judgement, ofbefoir, that his Maieftis servandis and domestikis hes bene admittit vpon Affyses : speciallie, the practik of Barbara Naper² and Mr Thomas Cranftoun and George Craigengelt.³

It is allegit aganis *my Lord of Lynlythgow*, that he can nocht be Affesour, becaus his Lordschippis spous and the Kingis Maieftie ar of kyn.⁴—It is anfuert be my lord Aduocat, the reknng was nocht relevant, becaus kyn to the King makis nane suspect, in his caus.—It is allegit aganis *my Lord Balmirrienoach*, that he can nocht be Affesour, becaus the Aduocat being persewar, be directioun of the Quenis Maieftie, that the Aduocattis spous and my Lord Prefident ar ferds of kyn ; and sa can nocht be Affesour.—To the quhilk it is anfuert, the allegeance is nocht relevant ; and thairfoir mereitis na anfuert.

THE JUSTICE, be Interlocoutour, finds that the noble men nominat Affesouris may fit as Affesouris in this caufe, nochtwithstanding of the allegeances proponit be the pannell in the contrair. Quhairupone the Aduocat askit instrumentis.

My lord Aduocat declairit, that he insittit nocht aganis Johnne Buchannane, bot allanerlie as spous to Margaret (Hertfyde) for his entreis ; quhairupone Johnne Buchannane askit instrumentis.—The pannell acceptis the Summondis and Dittay contenit thairin, as the samyn is qualifeit.

It is allegit be the pannell, that the Summondis is blank, bayth in the tyme and place of the committing of the fact lybellit ; quhilk man be fillit befoir forder proces. It is anfuert be the Aduocat, that the pannell man say, quhairin the blankis ar prejudiciall to thair defenslis.—It is duplyit, that the exceptioun standis relevant, nochtwithstanding of the anfuert maid thairto, in respect that of the Law Ciuill thair is a solempne forme prescryuit anent accusationis, that thairin tyme and place fall be determinat ; *quia non oportet in Criminibus vagari : Lege libellorum § de accusationibus, &c. significasti, extra de libelli oblatione.* Bald. Confilio, 1420, vol. iv. Julius Clarus, paragrapho finali, questione

¹ Decided, made matter of practice (practice) or precedent. ² Witchcraft. ³ Gowrie Conspiracy. See Aug. 22, 1600. ⁴ Alexander, seventh Lord Levingstoun, married Lady Helenor Hay, only daughter of Andrew, seventh Earl of Errol. They were entrusted with the care and education of the Royal children.

xij. *Speculator*, in titulo *de furtis*, numero 2. Quhilkis folemniteis ar vniuerfallie obseruit, bayth in Scotland, and in the haill warld. And forder, thair is ane grit necessitie to condiscend vpone the special moneth, becaus the Dittay beiris, anno 1603; and it is noutour, that in dyuerse monethis of the said yeir, hir Maiestie was resident in Scotland, albeit the Dittay beir the place to be, 'out of his Maiesteis Palaces in England.'—It is anfuert be my lord Aduocat, that I haif alreddie declairit the Crymes lybellit to haif bene committit fen (*since*) the passing to England, furth of some of his Maiesteis Palaces thair; quhairby the Summondis is special aneuch, vnles the pannell wald allege, quhat particuler tyme and place wald mak the fact lybellit lauchfull.—It is anfuert, that my lord Aduocattis declaratioun is mair generall nor the lybell; and of the law, *debet prius constare de delicto*, &c., quhilk man be circumferyit, *tempore et loco defenito*. This Julius Clarus, libro v. Sententiarum—finali questione, iv. et v.

SECUNDO, it is allegit that thair woirdis of the Dittay, 'subferyuit and denit,' ar nocht relevant, *et non sunt verba juris*, to infer a cryme.—It is anfuert, that the Lybell standis relevant, as it is consuēt.¹

TERTIO, it is allegit, that the last pairt of the Dittay, anent the generall woirdis of 'perles, pretious stanes and goldfynth-wark,' is nocht relevant, becaus the particuler number is nocht designet, and qualitie thairof; becaus of the Law, in *furto rerum plurium, designandus est numerus; quia, sine designatione numeri, non possunt res intellegi, ubi sunt plures*. L. in actione furti, § de ffurtis. In auro infecto pondus in facto et signato numerus et inteste color dicendus est. And the expres text of the same matter, in L. si quis vxori, § si linea margaritarum surrepta est, dicendus est numerus, et non satis est res surreptus demonstrari per estimationem: With this woird, that vpone ane generall claufe, *neque in Ciuili neque in Criminali*, na proces can be grantit.—It is anfuert be my Lord Aduocat, that the conclusion of the argument is, that gif he fra quhome ane chenze, or perles, or ane Jowell composet of mony stanes is stown, can nocht condiscend vpone the particuler number thairof, the theif fall bruk the samyn, but remeid² of Law; quhair of I refer the relevancie and consequences to the Justice and Assessoris.—The pannell repeittis the exceptiones, quhilk is foundit vpone the Law; and as to my lord Aduocattis anfuert, it meitis nawayis; becaus the samyn speikis *de corpore vnito et de gemmis inclusis in vno auro*, and the exception oppingis directlie the lybell; becaus it condiscendis nocht vpone the stanes, Jowellis and goldfynth-wark, quhilk ar bayth *distincta corpora, numero et specie*, mony of thame and of dyuerse natures. To the quhilk is maid na anfuert.

QUARTO, it is allegit, that, feing the Dittay is foundit and makis expres relation to certane Depositiones, allegit maid be the pannell, at tua feuerall tymes, in

¹ Conceived, framed.

² Without legal remedy or redress.

October and November, thairfoir my lord Aduocat, of all reffone, aucht to produce the faidis Depositiones, nocht only to the effect that the pannell and hir prelocoutouris may confidder thame, for the caufe contenit in hir first Proteftatioun, bot also, to the effect scho and thay may be hard to reffone befor the Judge, anent the conformitie and difconformitie of the faidis Depositionis and with the Dittay; quhilk man be confidderit and tryit be the Judge; feing the famyn confitis *in jure*: And gif this be nocht done, thair will follow ane grit inconvenient, to wit, that the Affyse, gif this matter fall pas to thair knowlege, fall be forcet to reffone and difcus vpon the faid conformitie and difconformitie, quhilk is nocht proper to thame, the famyn being *juris et non facti*.—It is anfuert be my Lord Aduocat, that vnles ather the pannell, be thair consent, or the Justice, be his Interlocoutour, will find the Summondis relevant, he can nocht be aftrictit to produce his probatioun.

QUINTO, it is allegit, that the Dittay is naways relevant, setting down only generallie that the perles, alleget fubtractit, pertenis to the Quenis Maieftie, and naways condifcending in quhais poffeffioun thair war, the tyme of the allegit fubtracting thair of; quhilk man be condifcendit; for gif thair war nocht in the Quenis Maieftis poffeffioun, than the pannell could nocht commit Thift, in melling¹ thairwith; for of the Law, in *Lege prima*, § *fi qui testamento liber*, &c., it is faid, *quod furtum est tantum poffeffionis*: And Baldus, Concilio 238, vol. ii., fayis, *quod proprietatem nemo alteri fubtrahere potest*, &c.; and gif thair wer in the pannellis poffeffioun, scho could nocht commit Thift be difponing thairvpon, *Lege*, *qui vas*, § *qui voluntate*, ff. de ffurtis, *qui ex voluntate domini fervum recepit, qui neque fur neque plagiarius fit, plusquam manifestum est; quis enim voluntate domini habens fur dici potest*, &c.—Anfuert my lord Aduocat, the exceptioun aucht to be repellit, in respect of the lybell, vnles the pannell will allege and instantlie verifie, that scho ottenit lauchfull poffeffioun of the guidis lybellit, and had hir Maieftis consent and allowance to the alienatioun thair of, quhilk is nevir fubfomit.—It is duplyit, that na pairtie, of the Law, can be compellit to propone, be peremptour (defence), or verifie the famyn, except the Dittay be ffund relevant: And forder, allegis, that gif my lord Aduocat will produce the Deposition, quhairpoune his lybell is foundit, the famyn Deposition will verifie, that the perles lybellit cam in the pannellis hand lauchfullie.

SEXTO, the pannell acceptis the fummondis and Dittay thairin contenit, speciallic that pairt thair of, beirand, that the faid Margaret was mony yeiris in credeit and feruice with hir Maieftie, and hath reflaut many grit benefeitis from hir Maieftie, the tyme of hir feruice, at dyuerfe tymes, to hir heiche advancement, baith in credeit and welth; and that the faid Margaret vndewtfullie and

¹ Meddling, intromitting. Fr. *meler*.

vnnaturallie, at the tyme lybellit, flaw, &c. : And allegis, that the Summondis is nawayis relevant aganis the said Margaret, being ane woman of credeit, as is confest ; lyk as, it is noutour to the Judges and Assesouris, that scho was ane ser-vand of credeit, at the tyme lybellit, befor, and dyueris yeiris thaireftir ; sua, of necessitie, in respect of hir credeit, the maner and forme of the steilling of the stanes and perles lybellit man be condiscendit vpon, viz., quhidder the samyn was committit be force and violence, be breking vp of the durris of the houffis, and lokis of the cofferis, quhair the samyn war ; or was done pruelie, in the nycht, be taking the samyn af hir Maiesteis garmentis, or fra hir hienes jowellis, or out of hir hienes cabinettis ; or that scho, vpon the conscience of the said cryme, fled furth of hir Maiesteis seruice, and transportit the samyn with hir ; quhilk may be condiscendit vpon, of all necessitie ; becaus ther can nocht Thift be committit, be ane ser-vand of credeit, except the saidis qualiteis concur, to manifest violence *et animum furandi* in the seruand ; *quia, de jure, furtum sine affectio furandi fieri non potest* L. 1. ff. de furtis *et ut ait* Bart. ad L. 5, is qui rem § si tu Titium ff. de furtis. *ffurtum est nomen juris, hoc est, non omnis contrectatio rei aliene est ffurtum, nisi accedat dolosus animus furandi* L. Po- test. et L. furtum ff. de vfù, &c.¹—It is anfuertit to the *fact* exceptioun, be my lord Aduocat, that, nochtwithstanding thair of, the Summondis is relevant, becaus the qualitie of the defender is nocht ane occasioun to extenuat the cryme, bot to aggravat the samyn, seing the gritter credeit scho had, scho sould the mair faythfullie dischargit the samyn : And it is expresse lybellit, that it was sa far fra the Quenis knowlege or consent, that the pannell sould haif convertit ony of thir jowellis to hir awin vse, (in quhilk caice na policie neidit to haif bene vsed) gif hir Maiesteis consent had bene had thairto, that the pannell, to mak hir Maie- stie to misken hir awin grit perle, causit hing the samyn to ane dyamont, and offerit to sell the samyn to hir Maieste, as ane jewell nocht pertening to hir self. Forder, the persewar acceptis the instance proponit be the defender, anent ane schein-herd steilland his maisteris schein, for the quhilk he may nocht be persewit Criminallie ; quhairin the persewar is direct contrar to the defender, and affirms, that of the law and cowmone practik of the cuntrie, schein-herdis steilling schein, committit to thair keiping be thair maister, is ordinarlie hangit thairfor : Lyk as, David Forrester greve to my Lord of Menmuir, and Robert Loch, his ser- vand, being accuset for steilling fra him of aittis, beir, woll and lynning clayth, the summondis was sfund relevant, albeit the greve had charge of all theis thingis, be his office, and had his maisteris credeit ; and being put to ane Assyse, was convict for the maist pairt thair of : Quhairby, it is manifest, that ser-vandis put in trust and credeit be thair maister, and steilling ony pairt of the geir,

¹ Here a number of sentences abridged from the Doctors follow.

quhairof thay haif the keiping and credeit, ar ordinarlie put to the knowlege of ane Assyse, and convict, gif thai be fund giltie: And quhair, it is exceptit, that in thift committit be ane fervand of credeit (forceing?¹) of duris or kiftis is requisit, the perfewar affirnes to be ane absurd allegiance.—It is anfuenerit (replied), that the pannell, in hir laft and faxt exceptioun, querrellis only the irrelevancie of the Dittay, and naways meanis to extenuat ane cryme committit be ane fervand; for gif it be certane and tryit that ane fervand hes committit ane cryme, he is maift worthie of double pwneifchment, bot the thing that the pannell contendis for in the exceptioun, is, that na Dittay for Thift can be relevant aganis ane fervand of credeit, except sic qualities and actiones be contenit, quhilk may infer *animum furandi*; and the instances proponit be my lord Aduocat beiris, that fervandis committand crymes and fund culpable war justifeit;² quhilk naways meittis the said exceptioun.—It is declairit be my lord Aduocat, for eschewing of difputatione vnnecessar, that he infistis only vpone tua poyntis of Dittay; to wit, the steilling, &c. the grit perle of the pryce of an hundreth and x li. sterling, for the first article; and the vther jowellis, perles, stanes and goldfmythwark, for the secund poynt of Dittay: And vffis the hail rest of the lybell, nocht as ane feuerall³ cryme, bot only for explanatioun and qualificatioun thairof; and intendis nocht, at this tyme, to accuse the pannell of contrair⁴ Depositiones.

THE JUSTICE, with advyse of his Assesours, findis the lybell and Dittay relevant; nochtwithstanding of the hail exceptionis proponit be the pannell.

Quhairvpone my lord Aduocat askit instrumentis.

It is allegit, peremptourlie, be the pannell, that this Dittay can nocht be put to ane Assyse; becaus of the law, ane fervand of credeit haifing the custodie of his Maiesteis guidis, being willing to rander ane compt of his introniffioun, nevir haifing committit ony violent deid, can nocht be accuset of Thift; the introniffioun, fra the begyning, being lauchfull: Bot trew it is, that Margaret Hertfyde, as is confest in the lybell, bothe the yeiris lybellit and dyuerse yeiris of befoir, was, lyke as scho is presentlie, hir Maiesteis fervand, vndischarget, with credeit, and willing to gif compt of hir introniffioun, nevir haifing committit ony violent deid.—My lord Aduocat, of his awin motiue, nocht being inducet be my Lord Justice, bot at the pannellis desyre, producet the Depositiones, quhairpoun the Dittay is foundit; quhilk he vffis, at this tyme, for verifeing thairof; vnder Protestatioun, that this be na preparatiue in this Judgement,⁵ at ony tyme heir-ettir: And thairpoune askit instrumentis; and that this is the only Depositione that he vffis at this tyme. Quhairvpone the pannell also askit instrumentis.—My lord Aduocat allegit that the Depositione producet, man⁶ mak full

¹ Obliterated.

² Punished with death. L. B. *justificare*.

³ Separate or distinct.

⁴ Contradictory.

⁵ That this be no precedent in this Court.

⁶ Must.

fayth, and is valid, of the law, notwithstanding of the Reuocatioun maid and ingrossit yisterday in proces, be the defender; becaus na Depositioun is reuocable, of the Law, quhilkis ar maid voluntarlie, in presens of thame that hes power to examine the partie, without ony tortour or feir of tortour. And trew it is, that this Depositioune producet, was maid lauchfullie and voluntarlie, and thairfoir is nocht reuocable. Julius Clarus, L. quinto, § finali, questione 55, etq. 65, verfaculo, *sed quero*: And in respect thairof, desyres the reuocatioune producet to be reiectit, and the protestatioun refusit.

It is allegit, that the pannell can nocht be put to knowlege of ane Assyse for hir intromissioun and melling with the perles and jowellis lybellit; becaus it is fet down and confest in the Depositioun producet be my lord Aduocat, that the saidis jowellis and perles war geuin be the Quenis Maiestie to the defender, for the vse thairin contenit; quhilk vse was accomplishet and perfyttit to hir Maiesteis contentment; and as to the residu, the defender, supponing that hir Maiestie fould nevir re-demand the samyn, scho disponit thairupoun, quhilk can nawayis be comptit nor estemit ane cryme of Thift, of the Law: first, becaus the saidis jowellis and perles cam, fra the begynning, lauchfullie to the defenderis possessioun, and sua scho could nevir commit Thift, be disponing thairupoun. *Lege, qui vas, § qui voluntate*, ff. de furtis, &c. *Lege, qui re ff. de eod. titulo, qui re sibi commodata vel apud se deposita, vsus est non committit furtum, precipue si putauit dominum consensurum*; ut Cuiacius, ad Legem, *si furem*, ff. de pro emptore *non omnis rem alienans fur dici potest, sed initium possessionis respiciendum est, et si initium possessionis iustum fuit, furtum fieri non potest*. Nixt, the Confessioun, contenit in the Depositioun, can nocht be ane cryme; becaus *furtum non potest fieri sine affectu furandi*; and the pannell had nocht *affectum furandi*; becaus the Depositioun beris, scho supponit hir Maiestie fould nocht re-demand thame: And in this caice, that Thift can nocht be committit, of the Law it is provin; § *placuit de institutionibus*, &c.¹ And this aggreis verrie weill with the Depositioun, quhilk, in effect, meanis that hir Maiestie had forzet² the samyn, and had thame *pro derelictis*; sua that the said Depositioun preuis the Defenderis exceptioun and everie member thairof: Quhilk Depositioun my lord Aduocat can nawayis be hard to deuyd; feing, of the Law, *ubi actus est legitimus in se, nunquam presumitur delictum, nisi probetur*. And to excuse the committer, *sola negligentia sufficit credulitas, immo temeritas*. Gothophredus, § *placuit*. Alexander, vol. iv. Phelinus, cap. *sicut noxius. ac delicti extra de accusationibus*. Baldus, Conflio 98, vol. v, &c.— And gifand³ that qualitie anent hir credulitie war nocht insert in hir Deposi-

¹ Various other clauses are here shortly, but very obscurely and hastily cited,

² Forgotten.

³ Granting, allowing for the sake of argument.

tiounes, yit of the law, quhair the possessioun cumis lauchfullie to ony perfones handis, be the will of the maister, gif ony questioun arryfe anent the credulitie or opinioun of the partie, quhither he intervertit the possessioun *animo furandi*, of the law, the opinioun or credulitie is provin be the parteis ayth: This is decydit per Bartol. ad dictum 59 'recte,' quhair he disputis the said matter *ad longum*, on baith the fydis; and concludis, in end, that the parteis ayth fould be tane, cheiflie quhair the partie is abill to produce ony probable conjectouris or argumentis, to cleir hir mynd and intentioun; and quhair hir accuser is nocht able to produce ony probable conjectouris, to preve the contrair; and the coniectouris and presumptiounes quhilk may infer *malam fidem in furto*, is fet down in the Law, *in autentica, si vero de exhibendis reis*, Lege *si ffurtum*, ff. de Adulterijs; to wit, *si per vim, si clam, si aufugit, si persona male et suspecte fame*. Bot nane of thir conjectouris may be qualifeit aganis the pannell. Scho committit nather fraud nor violence: it was nocht committit be hir in the nycht; and the Depositioun beiris the perle was fauld to George Heriot, hir Maiesteis principall Joweller; and gif thair had bene ane intentioun of Thift, in the pannellis mynd, it can nocht be presumet that scho wald haif fauld the samyn to the Jowaller quhom scho knew wald schaw the samyn agane to hir Maieste: And it is constant,¹ that scho fled nocht away fra hir Maieste; bot, be the space of dyuerse yeiris thaireftir, remanit in hir Maiesteis seruice, in grit fauour and credeit: And quhat was hir estimatioun, quhither scho was repute ane pyker² or steiller or no, remittis to the conscience and notorietie of the Judges. And as thair is na suspitioun of Thift aganis hir; sa, on the vther pairt, thair is mony vehement presumptiounes to mak cleir the mynd and intentioun of the pannell, quhilk is nocht necessarlie to be writtin; bot referris the samyn to the Judges.

It is anfuert be my lord Aduocat, that nochtwithstanding the hail incompatible memberis of the exceptioun, the Summondis standis relevant and cleirlye verifeit be the Depositioun productet; ffirft, becaus the pannell had nevir lauchfull possessioun of the guidis lybellit, seing the possessioun of the serwand of the maisteris guidis, to the maisteris vse, is the maisteris possessioun; nixt, the vse pretendit be the defender, to wit, to imploy the jowallis delyuerit be hir Maieste to hir; to wit, to busk babeis,³ was nocht performet be hir, becaus that war nocht imployit to that vse; bot be the contrair, the babeis buskit and sent, and thir Jowallis lybellit, substractit in maner lybellit; quhairin the pannell had nevir hir Maiesteis allowance or consent; and, of the Law, converting of stuff to vther vllis nor⁴ is commandit, is Thift, Lege 88 eod. titulo et Lege 89, *ffullo et farcinator qui polienda et farcienda vestimenta accepit, si forte his vtatur co con-*

¹ Lat. constat.
(dolls) to the Princess.

² A committer of petty theft or *pickery*.
⁴ Than.

³ Deck, adorn, or dress babies

tractatione, eorum ffurtum feciffe videtur ; quia non ob eam causam ab eo videtur accepta. And quhair, the pannell wald excufe thame selfis *per animum et excusationem delinquentis*, that excufe is comnone for all offenderis, and relevant for nane ; nather can the defender pretend simplicitie or guid intentioniun, in respect of the fraud vsfet to caus hir Maieftie misknaw hir awin perle, be hinging it to ane dyamond, and prefumtionne to offer it to be fauld to hir Maiefteis self ; and the Confessiounne productet, beiring hir vnlachfull intromiffiounne with this perle, and converting of it to hir awin privat vsfe, man be ane necessar caus of convictionne, *quia confessio probat contra consistentem, pro eo autem non probat.* Glosfa in cap. finali in verb. *Confessio, verficulo, item, quod contra se ; et ibi post alios ; Abbas, numero 13, extra de confessis et confessio qualificata scindi potest et pro parte rejici : Bartolus, in Lege, eum qui ff. de jurejurando. Julius Clarus, 51, finali questione 55 verficulo, passet quoque reus ;* affirmeing, that ane Confessioun, contening the Dittay, and haifing adioinit any qualitie that may releve the Defender, aucht to be ressauit aganis the proponer ; and the qualitie adiectit can nevir be respectit, vnles it be provin. Prosper Pharinacius, questione 81, numero 127, *quando quis a principio negavit delictum, et postea, vel timore rationum, vel ex quacunq; alia causa, illud qualificate confessus est, tunc ratione doli qui presumitur ex precedenti mendatio et negatione, talis confessio scindi potest et pro parte acceptari, pro parte impugnari.* Et Boerius decisione 165 ; et Laurentius, in practica cautelarum, cap. 28, numero 7, *aiunt reum si qualitatem adiectam non probaverit, condemnari debere in penam ordinariam ;* quhilk is our direct caice ; seing the Depositioun productet beiris the Jowallis lybellit to haif bene hir Maiefteis, and fauld be the deponer, to hir awin privat vsfe, without hir Maiefteis knowlege or consent ; and the qualitie adiectit, of hir ressaueing of thame frome hir Maieftie to busk babeis, is nather relevant ; becaus scho convertit nocht thame to that vsfe, nor provin in ony way ; and thairfoir sould nocht be respectit ; speciallie, seing the deponaris Declaratioun, in hir awin faouris, can nocht prove forder : And thairfoir, the Summondis is relevant, and is cleirly provin be the Depositiounne.

It is answert (replied), that the possessioun naturall of the perles lybellit, war in possessioun of the pannell ; and the possessioun-ciuill, quhilk hir Maieftie had, scho tynt and amittit it, be directing thame to the perticuler vsfe ; quhilk perticuler vsfe contenit in the Confessiounne, was fulfillit to her Maiefteis contentment ; the intentioniun of the partie being provin by her aith, according to the Law, and assistit be probable conjectouris, is sufficient to cleir ony partie accuset, quhair the possessiounne cam lauchfullie to hir handis. The Confessioun and Depositioun maid be the pannell can nocht be devydet, bot be the contrair, the samyn previs hir exceptiounne cleirlye. The lawis quhilk my lord Aduocat alledges, quhair

Confessio qualificata potest scindi, is only trew, quhair *Confessio facti in se est crimen, ut in Homicidio*; quhilk is the exampill, in the place of Julius Clarus, citit be my lord Aduocat; *sed Confessio non potest scindi*, of the Law, quhair the Confessioun of the deid, without the qualitie of felonie, is nocht a cryme; bot is only trew in his tyme, *sunt utroque jure prohibita et natura sua delicta*, cap. *circa delectionibus*. 6 cap. *si vero aliquis de sententia Excommunicationis*. Bartolus ad legem, *genero*. ff. *que notantur Infamia*; et ad legem *si cui § eisdem*. ff. *de Accusationibus*; et ad legem *si ex lege*. ff. *de Adulterijs*. Baldus, Confilio 1424, vol. v. cap. *estote misericordes*, &c. § *recte* et Bartolus, *ibi*. The coniectouris aganis the pannell, in respect of the offer maid to the Queen, is contrair to hir Deposition, for it was nocht scho, bot George Heriot quha offerit the samyn, estir it (wes) fauld. The Lawis allegit be my lord Aduocat, *Lex fullo*, &c., it is anfuert that contene onlie *legem Communem*; and myne contenis *exceptionem*; and the perticuler caiffis of the Ciuill Law can nocht be obseruit with us, *quia variatur pena; nam in jure pena furti est dupli apud nos capitalis*.—My lord Aduocat repeats the practikes concerning the shiphird, my lord of Memmuris grevis, and the Laird of Bonyngtones steilling of his fatheris euidentis; and protestit that he may haif ane speccial and direct anfuert to euerie article that is proponit or writtin in the proces; specciallie anent Revocatioun, and the effect of the probatioun be this Depositione.

THE JUSTICE, with advyse of my Lordis Assessoris, ffindis, that in caice the pannell will nocht consent that the Revocatioun of her Depositione maid at Dunfermeling be deleit, that the samyn salbe Repellit; in respect of my lord Aduocatis anfuert maid thairto. And also, with advyse foirsaid, Repellis the foirsaidis peremptour exceptiones proponit for the pannell; and Ordanit the Summondis and Dittay to be put to the knowlege of ane Assyse, to be verifeit, as accoidis of the Law.—Quhairupoun the Aduocat askit instrumentis.

It is allegit be the pannell, that it is lauchful to hir to revoik quahatsumeuir Depositionis maid be (hir) to hir preiudice: becaus the samyn war maid be hir *metus causa*, viz. *carceris metu*,—*et amissionis bonorum*,—*et metu amissionis vite*,—*et reuerentia Principis*,—and want of hir husband; and the Confessioune bindis nocht the confessor, except he perseveir thairin; per legem primam, *de Questionibus*.—The Aduocat, for anfuert, repeats the Justice and Assessoris Interlocutour. [My Lord Chancellor declairis, that he fall mak his declaration to the Assyse, quhan he fall be inquiryt.¹]

¹ This is partially deleted. The uncommon nature of the Crime, and the interest of these pleadings, have induced the Editor to insert the entire arguments. The real cause of the Criminal prosecution of this servant of the Queen is understood to have originated in Mrs (afterwards *Lady*) Buchanan's being too deeply versed in certain Court intrigues; and it was deemed necessary to get rid of her, even in the face of the most strenuous remonstrances on the part of her Majesty.

ASSISA.

Sir Johnne Prestoun of Valafeild, Harie Guidlet of Vphall, Johnne Forbes of New,
 James Somervell of Garidwoid, Mr Moreis Drammond of Auch- Joⁿ Scott, bailzie of Muffilburgh,
 Johnne Hammiltoun of the termuthill, Thomas Eplene of Newbiging,
 Grange of Kilmarnok, Andro Boyde, brother to Kil- Joⁿ Broune, bailzie of Muffilburgh,
 Mathow Bailzie of Littilgill, marnok, Danid Dundas of Preiftinche,
 Johnne Corbet of Ardbo, Ro^t Logie, bailzie of Quenis-ferie, James Hammiltoun of Garene.¹

The Aduocat repetis the Depofitioun produceit, and my Lord Justice Interloquoutour, findand the haill Dittay relevant: And in respect thairof, and of hir becoming in will, in hir Depofitiones, protestis for Wilfull Errour.

VERDICT. THE said perfones of ASSYSE, be the mouth of the said Danid Dundas, chancellor, all in ane voce, stand, pronuncet and declairit the said Margaret Hertfyde to be ffylit, culpable and convict of the vnlawfull and vndewtfull substracting and detening frome our fowerane Lordis darrest spous, the Quenis Maieftie, furth of his hienes Palices of in England, at the leift furth of ane or vther of the saidis Palices, of ane perle, of the valour of ane hundreth and ten pund sterling; togidder with dyuerse vtheris perles, precious stanes, jowellis and goldfmyth wark, lykwayis perteneing to hir Maieftie, worth the fowme of thre hundreth pund sterling, or thairby; committit be the said Margaret, in the monethis of, the yeiris of God I^m.Vj^c. thre, fax hundreth foure, fax hundreth fyve, fax hundreth fax and I^m.Vj^c. and sewin yeiris, at the leift in ane or vther of the saidis monethis and yeiris: Lyk as, the saidis perfones of Assyse, be the mouth of the said Chancellor, for the maist pairt, stand, pronuncet and declairit the said Margaret Hartfyde to be Clanget of the steilling of the said perle, togidder with the remanent perles, precious stanes, jowallis and goldfmyth wark foisaid. In witnes quhairof, the chancellor of the said Assyse hes subfcriyuit the said delyuerance, with his hand.

(Sic subfcribitur) DAVID DUNDASS.

[*Apud Lynlythgow, Aug. 10, 1608. Mr Williame Hairt, Justice-Depute.*]

DOME contrair Margaret Hairtfyde.

Aug. 10.—The quhilk day, Margaret Heartfyde and Johnne Buchannane² hir spous, for his entreis allenerlie, being presentit vpon pannell, to heir his Maiefteis will and plefouir declairit aganis hir, as scho that was convict be ane Assyse, in ane Court of Justiciarie, haldin in the tolbuth of Lynlythgow, the first day of Junij lastbypast, &c. Compeirit Sir Thomas Hammiltoun of Bynnie, knycht, and producet his Maiefteis Precept and Warrant, quhilk the Justice caustit to be publictlied red; quhairof the tennour followis.

JAMES R.

JUSTICE GENERALL, Justice Clerk, Clark and 5our depntis, We greit 3ow weill. QUHAIR AS, Margaret Hairtfyde was, vpon hir awin Confessioun, convicted for þe vnlauchfull and vndewtiewfull abstracting and detening of certane jowellis belonging to our darrest bedfellow THE QUENE, and pairpouir remittit to priffone, till our further plefouir fould be declairit concerning hir: WE haif thoct guid, be theis presentis, to signifie our said plefouir to 3ow; quhich is, that 3e fall, with all convenient expeditioun, caufe affix and fens³ ane ordinaire Justice Court, at our burgh of Lynlythgow; and pair, (scho and hir hufband, for his entreis, being present,) it be declairit, that howfoeur the Assyse acquit

¹ 'Sir James Sandilandis of Slamanno' is deleted from the roll of Assise. ² 'John Buchanan and his wyffe, Margaret Hartesyde, that had layn longe in priffone heire, for the allegit stealling some of the Queins Jewells (bot the Courtiers talked, that it was for reuelling some of the Queins secretts to the King, wich a wyssse chalmbermaide wold not haue done,) was, by ane sentence, condemned to perpetuelle exyle, in the Iylandes of Orknay, and declared to be ane infamous persone, in Aguste this year' (1608).—*Sir J. Balfour's Annals*, II. 26. ³ Fence, hold.

hir of the cryme of Thift, 5it, in regard that, vpon hir awin Confessioun, scho was fund giltie, as is aforfaid; in that respect, We accompt hir fact alse infamous, as gif it had bene done be direct stelh: And that, seeing pair can be no difference betwene the vnlawfull meddling with any thing belonging to the Quene, our darrest bedfellow, hir persone, and our awin, and lykwayis that þe exampill is most pernicious, and allaterlie intollerable, that any face or callour sould be pute vpon þe coofening or abstracting frome aþer of ws any part of our jowellis or moveabillis, by such as ar in trust, or haif þe keeping of thame, We most conclude, that scho hes delt so dithonestlie heirin, as We account her als worthis to be repute and declaired INFAMOUS,¹ (lyk as, it is our plesour that 3e declair hir to be so) as gif scho had bene directlie convict of Thift: 3E fall lykwayis declair, that it is our plesour, that scho fall with all expeditioun repay, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our darrest bedfellow the Quene, of hir Lordschip of Dunfermeling, the liquidat valew of theafe jewallis, contenit in hir proces, to be convertit to siche vse as our said darrest bedfellow fall think convenient: And lastlie, 3e fall declair, that it is our plesour, that hir persone fall be, for hir said dithonest offence, confynit to þe YLES OF ORKNAY; thair to remane, and nocht exceed the boundis pair of, induring hir lyfytme; vnder all hiest pane and charge: QUHICH Dome being pronuncet, 3e fall cause hir be passie convoyit bak to our Castell of Blaknes, pair to remane in sure firmance, till scho find guid and sufficient caution, allweill for payment of the said sowe, contenit in hir proces, within fyftene dayis nixt eftir scho salbe charget for the same, as also for entrie of hir persone, in the place of hir confining, within fourtie dayis nixt eftir scho fall be fred out of our Castell of Blaknes: FOR Dome and performeing of everie of þe which premisses, theafe presentis fall be vnto 3ow ane sufficient Warrant. GEVIN at our Mannour of THEOBALDIS, þe tentic day of July, 1608.

Accoirding to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoun, dempfter of Court, Declairit the said Margaret Hairtyde to be INFAMOUS; And lykwayis declairit and decernit the said Margaret to repay, with all expeditioun, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our souerane lordis darrest bedfellow the Quene, of her lordschip of Dunfermeling, the sowe of foure hundreth pund Sterling money, extending, in Scottis money, to the sowe of foure thoufeand and aucht hundreth li., as the liquidat valew of thois Jowellis, contenit in hir proces, to be convertit to sic vse as hir Maiestie fall think convenient: And lastlie, decernit and ordanit that hir persone fall be, for hir said dithonest offence, confinet to the Iles of Orknay, thairin to remane and nocht exceed the boundis thair of, induring hir lyfytme; vnder all hiest pane and charge. Quhilk was pronuncet for Dome, &c.

Mr Johnne Dalzell, burges of Edinburgh, become caution and souertie for the saidis Margaret and hir spous, for his entreis; and they all, conjunctlie and feuerallie, Band and obleist thame to pay and delyuer to the said Henrie Wardlaw the said sowe; and that within fyftene dayis nixt eftir thay be charget to that effect. And sicklyk, the said Mr Johnne Dalzell become bundin and obleist, as cautioner and souertie for the said Margaret, that scho fall entir hir persone in the place foirfaid of hir confining, within fourtie dayis entir the dait of thir presentis, (the morne, viz. the ellevent day of August instant, being comptit for the first day,) vnder the pane of Ten thoufeand merkis Scottis money, &c.

¹ (On the margin.) 'Thir wordis of Infamie is ordanit to be deletit, conforme to his Maiesteis expres Warrant, insert in the Register of Adiorvall, þe xv of December, 1619.'

JAMES R.

JUSTICE GENERAL, Justice Clark and your deputtis, We greit 3ow weill. Quhair as, our trustie and loyall seruaitrix MARGARET HEARTSYDE, the spous of Sir Johnne Buchannane, kny^t; was, by the finiferous informatioun of certane hir vnfreindis for the tyme, perfewit criminallie befor 3ow; and being put to ane Aslyfe, was Acquit and assoilzedit of that special point of hir Indytement, which of the Law sustenit the samyn to be relevant to be tryit and cognosctet be thame, and onlie was fund giltye of certain admnicies insert in hir Dittay, for qualificatioun of hir alledged cryme. Vpoun the whilk convictioun, doome and sentence, accordiing to our Warrant and Declaratioun pairintill, in ane Justice Court, haldin be 3ow, within our tolbuthe of Lynlythgow, vpone the tent of August, 1608, was gevin out againt hir, Declairiing hir to be Infamous. Quhilk doome and sentence being maist humlie and with grit patience and modestie imbracet and vnderlyne be hir, and hir behaiour continuallie sensyne being verrie deutifull. THAIRFORE, and that the foirsaid Doome gevin out againt hir may nocht be a precedent, nor half force heirefter, It is our gracious Will and plesour, that the foirsaid Declaratioun of the said Margaret Heartsyde to be INFAMOUS, insert in hir proces, be haldin as deleit furth thairfo; and on nawayis to be extractit or gevin out to ony persone or persones, in tyme cumiing; bot that this our Warrant and Declaratioun be insert in our Registeris of Adiornall, for reponiing of hir to hir fame, aganist the samyn Sentence; Whilk We command 3ow to fie done. Sua, nothing doutiing of 3our cair and reddines heirintill, We bid 3ow hairthie fairweill. frrome our Courte, at Roystoun, the fyfteenth day of Nouember, 1619.

Slaughter.

Jun. 21.—MR ALEXANDER INNES, sumtyme Miniister at Birnay.

Dilaitit of airt and pairt of the Slauchter of vni^q^{le} Agnes Leslie, relict of vni^q^{le} . . . Douglas, proveit of Elgyn, and of vni^q^{le} Williame Hay, father-brother to Williame Hay of Mayne; committit vpone set purposis, prouisioun and foir-thocht felony.

James Hay 3ounger of Mayne, as neir kynfman to vni^q^{le} Williame Hay, his guidfchires brother, and Alexander Bischope of Murray, as sone to vni^q^{le} Agnes Leslie, producet our fouerane lordis Letteris, deulie execute and indorfat at thair instance aganis Andro Meldrum, callit of Dumbrek,¹ as cautioner and fouertie for the entrie of Mr Alexander Innes, &c. and offerit thame felfis reddie to perfew.

THE Justice ordanit the said Andro to be vnlawit in the pane of tua hundreth merkis, becaus the said Mr Alexander Innes was at the horne of befor, and fugitiue for the saidis crymes: And siclyk, ordanit the said Mr Alexander, for his nocht compeirance, to be denuncit rebell and put to the horne; and all his moveable guidis to be escheit, &c.

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

Treason, &c.

Jun. 22.—JOHNNE LORD MAXWALL.

Mr Williame Broun, ane of the clerkis in his Hienes Thesaurarie, producet our fouerane lordis Letteris, deulie execute and indorfate, vpone Johnne Lord

¹ Brother-germane to vni^q^{le} . . . Meldrum, sumtyme of Dumbrek.

Maxwell; be the quhilkis he hes past to the horne, for dyuerse treffonable crymes contenit thairin; and thairupoun askit instrumentis.¹

Slaughter.

Jun. 29.—SIR ROBERT GORDOUN of Lochinvar, knyecht.

Dilaitit of the Slauchter of vmq¹⁰ James Gordoun, his page.²

The Aduocat producet the Letteris raisit at his lordschipis instance, deulie execute and indorfate vpon the said Sir Robert, Johnne Gordoun of Airdis and Johnne Gordoun of Collindach, cautioneris, coniunctlie and feuerallie, for the entrie of the said Sir Robert, to vnderly the Law, for the crymes contenit in the Letteris.—Compeirit Mr Williame Oliphant, Mr Johnne Ruffell, and Mr Alexander King, Aduocattis, as procuratouris for Johnne Gordoun of gelftoun and Johnne Gordoun of Collindach, be thair Letteris of procuratorie Producet; and declairit na proces aganis thame, in respect of the Proclamatioune; and thairfoir, can nocht be vnlawit.—It is anfuertit be my lord Aduocat, that thair excude can nocht be reflaut, becaufe thai ar nocht charget for thair awin personall compeirance, bot to enter the Laird of Lochinvar; quhilck lauchfullie mycht be done, thay being absent. *Secundo*, the Raid has nocht as yit tane effect, and the cautioneris and principall pairtie ar yit in thir pairtis.—It is anfuertit be the procuratouris for the cautioneris, *excusatorio nomine*, that thai ar nocht obleift to attend at Edinburgh vpon the Leutenent, bot only at Ilay, conforme to the Proclamatioun, as place appointit vpon the viij day of July, to pas fordward to the Raid; and thairfoir the Justice, in respect of the Proclamatioun, can nocht vnlaw the cautioneris.

THE Justice continewis his Interlocutour, vpon the saidis allegeances, to Setterday nixt, the secund of July.

Jul. 2.—Compeirit Johnne Belfscheillis (Belches), aduocat, as procuratour for Sir Robert Gordoun of Lochinvar, knyecht, and his cautioneris, and producet ane Warrant of the Counfell, subferyuit be my lord Chancellor and my Lord of Dumbar, for deserting of this dyet: quhairof the tennour followis.

JUSTICE, Justice Clerk and your deputis, it is his Maiesteis Will and pleafour, that 3e desert þe dyet appointit for tryell of Sir Robert Gordoun of Lochinvar, knyecht, for þe Slauchter of his page: Ordinand alwayis the cautioneris, fand of befoir for his entrie, vpon xv dayis wairning, befoir 3ow, to vnderly the law for the said Slauchter, to stand. Quhairanent þir presentis fall be your Warrant. Subferyuit with our hand, AT EDINBURGH, the second day of July, 1608.

(Sic subscribitur) AL. CANCELL. DUMBAR.

The quhilck dyet the Justice desertit; and ordanit the cautioneris to remaine cautionn, as of befoir. Quhairupoun Johnne Belches askit instrumentis.

¹ See the Trials and proceedings against this remarkable person, and the Account of the singular escape of Lord Maxwell and Sir James Maconeill from the Castle of Edinburgh, &c. in a future Part of this Collection.

² Page.

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

Resisting the King's Guard — Treasonable Slaughter, &c.

Jul. 14.—NINIANE ELLOTE, sone to Williame Ellote of Fiddeltoun,
Williame Ellote, sone to vmqle Johnne Ellote of Burnegranes.¹

Dilaitit, accuset and perfewit in the proud and contemptuous Resisting of his
Maiesteis Guaird, and remanent crymes contenit in the Dittay following, viz.

FORSAMEKILL as, the saidis Niniane and Williame, being fugitiue fra dyuerse Justice Courtis, haldin be his hienes Commiissioneris, at Jedburgh and Dumfreis, for cowmone Thift, cowmone reffet of thift, outputing and inputting of thift, and for dyuerse perticular Thiftis, Murthouris, Slauchteris and Oppreffiounis; as the Dittayis and actis, gevin out thairupoun, at lenth beiris: ffor the quhillkis crymis, thay reiteirit thame self out of thair awin cuntrie, to the West cuntrie, to feruice, quhair thay remanit thir dyuerse yeiris bygane; quhill that laillie, the Lordis of his Maiesteis Counfall, vnderstanding quhair thair wer, directit Sir Robert Hepburne of Alderfoun, knycht, Lieutennent to his Maiesteis Gaird, to tak and apprehend thame: Quha, vpone the tuelf day of July instant, accompaneit with vmq^{le} Williame Bailzie and dyuerse vtheris of the Gaird, come to the oistler-hous² vpone the Laird of Watterheidis landis, quhair the saidis perfonis had reiteirit thame selfis vnto, for the tyme: And haifing, in peceable maner, rekyret thame to rander thame selfis to him and his companie, as haifing Commiiffioun of the Lordis of Counfall to that effect: Nochtwithstanding quhairof, the said Niniane and Williame Ellotes, the said day, maist prouddie and contemptioulle resistit the said Commiiffioun, and in grit contempt of our souerane lordis auctorite, schot furth of the said hous at the said Lieutennent and his companie, his hienes Commiissioneris in that pairt, and Gaird, to the number of tuentie schot of Hagbutis and Pistolettis; and thairwith schot and slew the said vmq^{le} Williame Bailzie, being ane of his Maiesteis Gaird; and naways wald rander thame selfis, nor cum furth of the said hous, quhill, according to the said Commiiffioun,³ flyre was raifit thairaboutis: Quhairthrow, to thair former wrangis and oppreffiounis, bes conioyned haynous and crewall Slauchter with hagbuttis, and proud contempt of his Maiesteis auctorite: And thay and ather of thame ar airt and pairt of the said crewall and presumptuous Slauchter, and of beiring, weiring, schuiting of pistolettis and hagbutis, and slaying the said vmq^{le} Williame Bailzie thairwith; committit in maner and at the time foirsaid; in hie and proud contempt of his Maiesteis auctorite and lawis.

ASSISA.

... Carutheris of Howmaynes, Robert Power, burges of Ed^r, James Cranfoun, indueller in Ed^r,
Geo. Hereis, sumtyme of Effie, Thomas Hill, ane of the Gaird, Thomas Smyth, burges of Ed^r,
Johnne Trumbill, ane of the Gaird, Johnne Leyis, burges of Ed^r, Johnne Masoun, burges thair,
Thomas Moffett, wryter, James Haitlie, ane of the Gaird, Robert Crystie, burges thair,
Tho^r Mow, b^r to the Laird of Mow, George Smyth, burges of Ed^r, R^t Stewart, bailzie of Lynlythgow.

The Aduocat protestis for Wilfull Errour, in cais thay Acquit. And askit instrumentis of the Leutenentis Declaratioune to the Assyse, concerning the Commiiffioun gevin be the Counfall; and of the forne and maner, how the pannell resistit him and his companie, in the executioun thairof.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Carutheris of Howmaynes, chancellor, sfand, pronuncet and declairit the said Niniane and

¹ They are, in another place, described thus,—'Niniane Ellote, sone to vmq^{le} Jok of Burgranes; Williame Ellote, sone to Will of Fiddeltoun.' ² Hostler-house. Old Fr. *hostellerie*. ³ A Commission, containing warrant of 'fire and sword.'

Williame Ellottis to be ffylet, culpabill and convict of airt and pairt of the Slauchter of the said vmq^{le} Williame Bailzie, and of beiring, weiring and schuiting of hagbutis and piftolettis, and of the contemptuous refisting of his Maiefteis Gaird, in maner fpecificit in the said Dittay.—SENTENCE. For the quhill caufe, the said Justice-depute, be the mouth of Johnne Cheillie, dempfter of Court, decernit and ordanit the saidis Niniane and Williame to be tane to the Caftell-hill of Edinburgh; and firft, thair richt handis to be ftrukin at thame, as culpable and convict of the beiring, weiring and fchuiting of hagbutis and piftolettis, contrair to the Actis of Parliament; and thaireftir, to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis to be efcheit and inbrocht to his Maiefteis vfe, as convict of the Slauchter and remanent crymes aboue writtin: Quhillk was pronuncet for dome.

[*Mr Williame Hairt of Prefloun and Mr Alexander Coluill, Justices-Deputes.*]

Treasonable Murder, &c.

Jul. 15.—JOHNE MURE elder (and James Mure Y^r) of Auchindrane.¹

Dilaitit of airt and pairt of the treflonabill Murthour and Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and Williame Caldwell (Dalrymple?)

PERSEWAR, Mr Robert Foulis, aduocat, fubstitute to our fouerane lordis Aduocat.

COMPEIRIT Gilbert Rofs, Proveift of the Colledge Kirk of Mayboill, feruitour to my Lord of Caffillis, and producet our fouerane Lordis Letteris, deulie execute and indorfate, the ane purchest be my Lord of Caffillis and his hienes Aduocat, for his Maiefteis entreis, aganis the Lairdis of Auchindrane elder and younger; and the vther Letter aganis the Lairdis of Bombie, Caldwell, and Young Langfchaw, as cautioneris for the said James Mure younger of Auchindrane, for his entrie this day and place.

The Aduocat producet the Counfalls Warrant, direct to the Justice, for continuatione of this dyet to the xxij day of November nixt; quhairfof the tenour followis.

MY LORDIS OF SECREIT COUNSALL, vnto your lordfchipis humlie meanis and fchawis I, JOHNE ERLE OF CASSILLIS, that quhair I haif raifit criminall Letteris aganis Johnne Mure of Auchindrane and James Mure his fone, for pair compeirance befoir þe Justice or his deputis, vpone the xv day of July instant, to vnderly the Law, for þe Slauchter of vmq^{le} þe Laird of Culzeane and Murthour of Williame Dalrympill, and hes caufit fummond ane Affyfe to pat effect; bot in this meane tyme, þis expeditioun for þe Illis hes interuenit, fua that naper may I compeir, to concur with his Maiefteis Aduocat in þis perfute, nor 3it may the perfones fummond vpone þe Affyfe compeir, bot ar vpone pair preparatione for þat feruice: And fua, feing þat þis delay proceidis nocht vpone ony occafion of myne, bot vpone neceffitie of his Maiefteis feruice, I maift humlie befeik your Lordfchipis to gif command to þe Justice, (Justice) Clark and pair deputis, to continew þe said dyet to sum certane dyet, eftir þis feruice in þe Yles. And becaus þe cryme laid to pair charge is treflonabill, that the said Jus-

¹ See Jun. 23, 1602, Nov. 23, 1608, Jul. 1611, &c.

Justice Clerk canſe commit þe ſaidis perſones to waird, in the Tolbuth of Edinburghe, þairin to remane, vpon þair awin expenſis, ay and quhill þe nixt dyet, to be appoyntit be 3our lordſchippis. And 3our lordſchippis anſuer humlie I beſeik.—[*Followis the Lordis deliquerance.*]—APUD EDINBURGHE, xiiij July, 1608. THE Lordis of Secreit Counfall, Ordanis and commandis þe Juſtice, Juſtice Clerk and þair Deputis to continew þis dyet within writtin, to þe xxij day of November nixtocum : And to returne Auld Auchindrane bak agane to his waird, within the Tolbuth of þis burch of Edinburghe : And to caus 3oung Auchindrane caus his former cautioneris conſent, of new, to enter him befor the Juſtice, þe foirſaid day, vnder the pane contenit in the former Act ; and failzieing þairof, that he find als ſufficient cautionn, to þe contentment of þe Counfell, for þe ſame effect ; and in þe meane tyme, quhill þis cautionn be fund, þat he caus 3oung Auchindrane be committit to waird, within þe Tolbuth of Edinburghe.

(Sic ſubſcribitur) AL. CANCELL.

Mr Johnne Ruffell, prelocutour for Auld Auchindrane, and Auchindrane him ſelf, Offeris him ſelf to the tryell of the Law, for the crymes contenit in the Letteris ; diſaſenting to all continuatioune : And as to the Warrand product, the ſamyn aucht nocht to be reſpectit, in reſpect it is purchest only be the pairtie. Compeirit Mr Johnne Ruffell, as prelocutour for the Lairdis of Bombie, Cauldwell and Young Langſchaw, and allegit that thai can nocht enter James Mure, younger of Auchindrane, in reſpect of the Proclamatioune.—It is anſuerit be the Aduocat, for Auld Auchindrane, that, in reſpect of the Proclamatioun, the dyet man continew, conforme to the Counfellis Warrand : And as concerning Young Auchindrane, the cautioneris aucht to preſent him, or vtherwayis incur the vnlaw.

THE JUSTICE Ordanis the Auld Laird of Auchindrane to be committit to waird, conforme to the Counfallis Warrand. Quhairupoun the Aduocat aſkit instrumentis. And as concerning Young Auchindrane and his cautioneris, continewis this dyet, in the ſame forme, force and effect as it is now, to the xxij day of November nixtocum : and ordanis the cautioneris that day, to exhibeit the Young Laird of Auchindrane, vnder the panes contenit in the former Act : And Ordanis Letteris, gif neid beis, to be grantit to the pairtie perſewar, for chargeing of the ſaidis cautioneris to enter him the ſaid day.

Quhairupoun the ſaid Gilbert Roſs aſkit instrumentis.

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

Cattle-ſtealing — Murder — Shooting of Pistolets, &c.

Aug. 12.—JAMES HAMMILTOUN of Spittleſcheill.

Dilaitit, accuſet and perſewit, be James Lord of Balmirrenoche, Prefident of the Colledge of Juſtice, and Sir Thomas Hammiltoun, knycht, for his hienes intereſ, of the crymes following, viz.

FOR airt and part of the thiftious ſteilling, concealing, reſetting and away-taking of thre oxin and ane kow furth of the landis of Mulroun, pertening to the ſaid James Lord of Balmirrenoche ; committit in the moneth of Auguſt, or thairby, the yeir of God I^m.Vj^c. and ſax yeiris. ITEM, for airt and part of the thiftious reſetting of fyve oxin, within his landis of Spittleſcheill, quhilk pertenin to Williame Flint in Breichmilne, and wer thiftioullie ſtollin furth of the landis of Breichmyll, in the moneth

of September lastbyfaft. ITEM, for airt and pairt of the thiftious Steilling, concealing, refetting and away-taking of tuell hydys furth of ane barkhoill,¹ fra Cordiner, beyde Lauchop, committit in the moneth of . . . I^m.Vj^e. . . . yeiris. ITEM, for airt and pairt of the crewall Murthour of vmq^{le} George Tuedie, within the said James Hammiltounis barnes, in Spittelfcheill: committit vpon Sanct Leonardis ewin lastwas. ITEM, for contravening of oure fouerane lordis Actis of Parliament, in beiring, weiring and schuitting of piftolettis; and speciallie, for schuitting ane piftolett att . . . Lokart of Ley, in the taking of yow; committit in the moneth of July lastbyfaft. ITEM, ffor commoun Thift, commoun Reflett of thift, inputting and outputting of thift, fra land to land, fra cuntry to cuntry.

ASSISA.

Mr Patrik Lyndfay, indueller in Ed^r, Mr Johanne Methven of Barnfeild, James Bailzie of Hillis, Johne Weir, seruand to my lord Angus, Sir Robert Scott of Thirlflane.²

VERDICT. The Assyse, be the mouth of the said Johne Weir, chancellor, ffand, pronunceit and declarit the said James Hammiltoun to be ffylit, culpabill and convict of the hail crymes and poyntis of Dittay.—SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair his heid to be strikin fra his body; and all his landis, heritageis, takis, &c. to be fforfaltit and inbrocht to our fove-rane lordis vfe, as convict of the saidis crymes. Quhilk wes gewin for dome.

[CURIA JUSTICIARIE, tenta in Pretorio burgi de Ed^r per Magistros Olivarium Coltjunioem et Davidem Prymrois, Aduocatos, Justiciarios Deputatos, per Commissionem Dominorum Secreti Consilij.]

Slaughter.

Sep. 29.—WILLIAME NISBET in Newtonleyis.

Dilaitit of airt and pairt of the Slaucher of vmq^{le} Gilbert Wauchope in Goddifcroft; committit be him and vmq^{le} Thomas Richiesoune in Cokburnespth-cweillis, in the moneth of Auguft lastbyfaft.

Compeirit Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fouerane lord, for his hienes entreis, and producet ane Commiffioun, grantit be the Lordis of Secretit Counfall; quhair of the tennour followis.

MY LORDIS of Secretit Counfall, vnto 3 our Lordschipis humlie menis² and schawis 3 our lordschipis pur oratrice, Marioun Heilop, the relict of vmq^{le} Gylbert Wauchop in Godifcroft, Williame Wauchope of Stoddineleuch, broper to pe said vmq^{le} Gylbert. That quhair, vpon pe . . . day of . . . , being ane Sunday, the said vmq^{le} Gylbert wes crewallie and schamefullie Murdreit, vnder fylence and cloud of nycht, haifing naper fword, quhingar nor na vper kynd of wapponis to defend him selff, be Williame Nisbett in Newtownleis and his compliceis, vpon deliberat purposis and foirthocht felonie: Lykeas, the said Williame being, be his Maieftis Gaird, tane and apprehendit, with reid-hand, within xxiiij houris eftir pe deceis of pe said vmq^{le} Gylbert, was, be 3 our lordschipis ordinance, putt to libertie; he finding caution that heould compeir pis day, befoir pe Justice, and vnderly pe law for pe said crewall Murthour: To pe quhilk he wes of befoir summond, and þat vnder pe payne of thre thowfand merkis, the ane haif pair of to his Maieftie and pe vper half to pe pairtie grewit; quha, conforme to 3 our lordschipis said ordinance, fand caution to þat effect: And We, being now maift willing to follow out the ordour of law aganis the said Williame, and to þat effect hes summond ane sufficient number of honest men for ane Assyse, the said Williame and his said cautioneris, taking occasioun of his Maieftis Justice abfence furth of pe realme, labouris, be all meanis possible, contrair to all law and

¹ Tan-pit.

² The remainder of the Assise, burgesses.

³ Complains; literally, *moans*.

reasoun, to elude the courfe and ordour of Justice, and to haif aper the said dyett defert, that he and his cautioneris may be fred of 3our lordschipis ordinance, and frustrat ws of all the effect of our just perfut; or the mater to be continewit, to wearie bayth the perfewaris and þe Affyfe, except 3our Lordschipis, quha sufferit him to be fred vpon caution, haifing committit fo haynous and recent Murthour, provyde remeid, be 3our lordschipis Act and ordinance, be establieffing, in abfence of þe Justice ordiner, farn vþer Judge, be Commiffioun, for miniftrating justice in þe said caus and perfute, or be vþer convenient ordour, as best pleiffis 3our lordschipis. HEIRFOIR We moft humblie befeik 3our honorable lordschipis, quha is the only mantenaris of justice and chaftezaris of sic haynous enormeteis within þis land, in his Maiefteis abfence, to constitute certane Judge or Judgeis, be Commiffioun, conunctlie and feuerallie, viz. Mr Olipher Colt, 3ounger, Mr James Sandielandis, Mr Daud Prymrose, to hauld Justice Court and miniftrat Justice in þe said perfute, that throw inlaik thairof the cours of law and justice may nocht be eludit and frustrat; and We that hes our blude spilt and tane, be nocht difappoint of þe ordiner cours of Law and justice, and 3our lordschipis ordinance of finding of Caution be nocht ineffectuall. According to Justice; and 3our lordschipis anfuer maifit humblie we befeik.

[*Sic deliberatur.*] APUD ED^B, xxix Septembris, 1608.—FIAT Commissio et petitur. And the Lordis Ordanis the Judgeis within writtin, to hauld Court this day, in þe mater within writtin.

(*Sic subscribitur*) AL. CANCELLARIUS. LOWTHIANE. ABIRCORNE. JO. PRESTOUNE.

[*Sic notatur infra.*] APUD ED^B, xxxi Septembris, 1608.—The quhilk day, in prefens of the lordis of Secreit Counfall, compeirit, perfonallie, Mr Olipher Colt, younger, and Mr Daud Prymrose, Aduocattis, and gaif thair aith for doing of Justice, faithfullie and vprychtlie, in the mater within writtin; as thay will anfuer to God.

J. PRYMROSE.¹

Philip Nifbet of that Ilk and George Lyell, ffiar of Stanypeth, vnlawit in the panes of tua thowfeand pundis, for nocht entrie of the said Williame, &c.

Williame Nifbet ordanit to be denuncet his hienes rebell, &c.

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

Slaughter.

Nov. 9.—ALEXANDER TULLOCHE, appearand of Tannacheis, &c.

Johnne Dumbar of Moynes, cautioner for repoirting of the Letteris, purchest at the instance of Normand Torrie and remanent bairnes² of vmq^{le} James Torrie, furtyme in Logiehauch, aganis *Alexander Tulloche, appearand of Tannacheis, James Tulloche*, his brother, *Williame Cuik*, in Forreß, *Rorie M^ccoilziechar-char*, alias *Rorie Buffuche*, in Mordant, and *Donald M^clauchlane* thair, that thai fould compeir befor the Justice or his depute this day and place, in the hour of caus, to haif vnderlyne the Law, for the Slaughter of the said vmq^{le} James Torrie and vmq^{le} Agnes Douglas, his spouse, &c.

Compeirit Mr Johnne Dempster, Aduocat, as procuratour for Johnne Dumbar, quha become cautioner for repoirting of the saidis Letteris; and allegit, that, nochtwithstanding of the nocht repoirting of the saidis Letteris, deulie execute and indorfat, this day and place, conforme to the Act, that the said Johnne Dumbar, as

¹ Clerk of the Privy Council.

² Alexander, Walter and Robert.

cautioner, fould nocht be vnlawit ; becaus it is of veritie, that the saidis Letteris, being delyuerit to James Dumbar, Messinger (at arms), to haif charget the defenderis thairin contenit, to haif fund cautioune to haif vnderlyne the Law for the crymes thairin contenit, the fyftene dayis being bypast, within the quhilk the Defenderis fould haif fund cautioun ; Alexander Tulloch, ane of the principall defenderis, being joynit in marriage with Isobell Dumbar, mother to Alexander Dumbar, scheref of Murray, and principall of the cuntrie quhair he duellis, conspyret maliciousslie, with the said Schereff, and instigat him to tak and apprehend the said Messinger, be force, put him in ward, and thairby to preuene that he had na power to denunce the said Alexander and his complices to the horne, for nocht finding of the said Cautioun, quhairby the saidis Letteris mycht haif bene formerlie repointit, deulie execute and indorfate to this day : Quhilk Scheref of Murray, vpon the fevint of October last, eftir the charge gevin to the saidis defenderis, be instigatioune foirsaid, barbarousslie maid eruptioun in Patrik Dumbaris hous, in Gowfurd, quhair the said Messinger was for the tyme ; entering within the said hous, accompaneit with the said Alexander Tulloche and certane vtheris, to the number of fevin perfonis, or thairby, with drawin fuordis, affail;eit the said Messinger : and eftir mony outragious woirdis, affirmeing to tak the saidis Letteris from him, and to bereif him of his lyfe ; first denudit him of his fuord, gantiletis, dager and vtheris wapponis, tuik and apprehendit him, perforce, led him captiue to the Castell of Forres, being the said Schereffis awin duelling hous, and sua *carcer privatus*, bot¹ ony lauchfull Warrant : In the quhilk priffon the said Messinger was detenit, maist wrangousslie ; luiking at all tymes to haif bene bereft of his lyfe, be the space of ten dayis ; and at last, be intercession of freindis, the said Scheref wald nawayis put the said Messinger to libertie, quhill² he had forcet and compellit him to ryve³ our said fouerane lordis Letteris, with the executiones vpon the bak thairof, with his awin handis. Lyk as, the said Messinger, for iustifeing the treuth of the said matter, hes raifit his hienes Letteris, be delyuerance of the Lordis of Secreit Counfall, for chargeing the said Scheref and Alexander Tulloche and remanent perfones, thair affociattis, to anfuere to the said complent. Quhilk allegiance, the said Johnne Dumbar, cautioner foirsaid, offeris him to verifie instantlie, be productioun of the saidis Letteris, revin ; be the said Messingeris awin Declaratioun, present at the bar, with his ayth of veritie vpon the ryveing thairof, and be the saidis Letteris raifit befor the Counfall, beiring the said complent. In respect quhairof, the said cautioner fould nawayis be vnlawit : At the leift, the Justice can nawayis vnlaw the cautioner, quhill the tryell of the premisses befor the Couinfall. And thairupoun, the said procuratour, in name of the said cautioner, askit instrumentis.

¹ Without.² Until.³ Tear in pieces.

THE Justice ordanit the said Johnne Dumbar to be vnlawit in the paues content in the Actis of Parliament.¹

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

Treasonable Murder under trust, &c.

Nov. 23.—JOHNNE MURE, elder of Auchindrane, and Johnne (James) Mure, younger of Auchindrane.

Dilaitit of airt and pairt of the crymes following, viz. the Auld Laird, for the Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and vmq^{le} Williame Dalrumpill: And the Young Laird, for airt and pairt of the Slauchter of the said vmq^{le} Williame Dalrumpill.

PERSEWARIS, Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our fouerane lord for his entreis, Johnne Erle of Cafilis, (Bessie Dalrumpill, as mother.)

PRELOCUTORIS for the pannell, the Laird of Caldwell, The Laird of Bombie, The Laird of Blair Younger, Mr Williame Oliphant, Mr Johnne Ruffell, Williame Mure of Randerfouane.

My lord Aduocat protestis that this dyet may continew, in respect of the grit disorder of this hous, this day;² vnto the tyme the Justice tak ordour thairwith.

THE Justice continewis this dyet to the last day of November instant; and Ordanis the Laird of Auchindrane elder to be of new committit to ward within the Tolbuith of Edinburgh, and Young Auchindrane to be committit to ward within the Castell of Edinburgh, thairin to remane quhill the said day.

Nov. 30, 1608.—THE Justice, be directioun of the Counfall, continewis this dyet to the thrid day of februaire nixtocum; and Ordanis the pannell to enter to thair wardis of new agane, &c.—Vnto the quhilk continuatioun the Lairdis of Auchindrane baith disassentit; and nochtwithstanding thairof, and in respect of thair innocencie of the allegit crymes aboue writtin, offerit thame felfis to the tryall of the Law for the famyn, and thairupon akit instrumentis.

Feb. 3, 1609.³—THE Justice, be command of the Counfall, (continewis) this dyet to the aucht day of februaire nixt.—(Feb. 8, 1609.) THE Justice continewis the dyet to the thrid day of May nixtocum.⁴

Slaughtter.

Dec. 21.—ALEXANDER TULLOCHE, appeirand of Tannacheis, and Williom Cuik in Forres.

¹ This at first sight appears to be a very arbitrary mode of proceeding; but his *recourse* against the party would be reserved entire.

² The influence of these atrocious malefactors was such, that by false representations, and the incessant complaints made by them and their friends to the public, of the oppression of the Lord Advocate, in cruelly delaying their case, though he knew them to be innocent, they succeeded in raising such a popular ferment, that the Court had to be dismissed on this and perhaps on other occasions.

³ Sir Williame Hairt officiated as Justice-depute on this and the following diet.

⁴ No farther notice of proceedings before the Court of Justiciary occurs until

Jul. 17, 1611.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Torrie in Logiehauche, and Agnes Douglas, his spous.—Continewit to the fyftene day of Junij nixt.¹

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

Forring — (Rape.)

Dec. 30.—JOHNE ERROLE, cownone poft.

Dilaitit of the filthie and deteftabill cryme of the abufeing and fforceing of Jonet Craig, ane young virgane of xj yeiris of age.

PERSEWAR, Mr Robert Foullis, Aduocat, fubftitute to our fouerane lordis Aduocat.

DITTAY againft the Pannell.

JOHNE ERROLE, cownoun poft, 5e ar indytitt and accufet, fforfamekill as 3e, haifing fchaiken af all feir of God, reuerance to our fouerane lordis lawis, or regard to ciuill honeftie, as a diffolute and vyld perfone, ouercum with the beiftlie rage of 3our awin filthie luft, about ane half 3eir fyne, or pairby, to get 3our filthie appetite quenchet, drew acquaintance with Jonet Craig, dochter to vmq^{le} Andro Craig, mercheand burges of Edinburgh, ane honeft manis bairne, and ane 3oung virgane, nocht paff the age of ellevin 3eiris; and haifing forgadderit with hir, vpon the Hie freit of this burgh, vnderftanding hir to be at the fcole, maift craftillie and vnhoneftlie feducet and tryffit hir to gang with 3ow to Hammitones clofe-fute, quhair 3e was myndit maift barbarullie to haif abufet hir; and þan gaif hir certane billis, with vther allureing wordis, to gang with 3ow: And becaus, at that tyme, 3e gat nocht 3our beiftlie defyre fatisfeit, perfauing the fimPLICITIE of the bairne, and how easilie fcho micht be circumvenit, 3e, a tuentie davis fyne, or thairby, eftir foure houris at evin, and ringing of the Prayer-Bell, awaitit the faid Jonet at the mercat croce of this burgh, and be geving to hir of apillis and vther frute, of new, agane maift craftillie feducet and intyfet hir to gang with 3ow; quha, vpon bairnlines and meir fimPLICITIE, haifing paff with 3ow to Bellis-wynd-heid, 3e tuik hir in to ane bak turnepyke, within the faid wynd, and behind the 3et paiof, maift filthielie forcet þe faid bairne, and did quhat in 3ow lay to haif carnall deilling with hir, and to haif bereft hir of hir virginite: At the quhilk tyme, fcho haifing cryit that 3e crewallie hurt hir, 3e maift barbarullie and crewallie, to haif 3our filthie appetite fatiat, pat 3our handis vpone hir mouth, that hir cryis fould nocht be hard, and pairby ftoppit hir braith and almoft fuffocat hir, and had nocht fail3eit to haif filthielie defloirit hir, gif 3e had nocht bene fkarrit be tua wemen at þat instant. Lyk as, 3e, peruefiring in 3our former beiftlie rage of luft, vpon the fevintene day of December instant, being Satterday, at fyve houris at evin, 3e awaitit, of new agane, the faid Jonet Craig at the mercate croce of this burgh, quhair fcho, with vther honeft manis bairnis war playing thame for þe tyme, and pair, with walnuttis, cheftennes and appillis than gevin be 3ow to hir, 3e maift craftillie feducet þe faid bairne to gang with 3ow; quha haifing refufiet to gang with 3ow, 3e maift forceable harrillit hir doun the freit with 3ow; and 3e, being demandit be dyuerfe perfones that met 3ow, quhair 3e was taking hir to, 3e maift difsimulatlie and falllie gaif thame anfuer, that fcho had bene frome hame all that day, and þat nane of the houfe knew quhair fcho was, and þat pairfoir 3e was taking hir hame; at the quhilk tyme, 3e tuik hir to þe faid bak turnebeck in Bellis-Wynd; quhair 3e, aganis þe bairnis will, tuik vp her claithes, and maift filthielie forcet 3our felf to haif ado with hir, and wald nocht pairt frome hir quhill 3e gat 3our beiftlie will fatisfeit, and was within hir body; and fcho, haifing in maift pitious maner cryit, that 3e hurt hir, 3e, as ofbefoir, pat 3our hand vpone hir mouth and held in hir braithe; quhill is nottourlie knawin. Lyk as, 3e and þe faid bairne being laitle examinat, in prefens of þe Miniftrie and Magiftrattis of this burgh, 3e and fcho haif confeffit þe treuth of þe premissis, be 3owr Depofitionis. Quhairin, 3e haif

¹ No farther notice of this case occurs on the Record. See the preceding case, Nov. 9, 1608.

committit the maift haynous, detestabill and odious cryme of Rapt, Raveifching and Violent forceing of the faid young bairne; the lyk quhairof aucht nocht to be namet within any Cristiane kingdom subiect to a Cristiane Prince, or amang Cristiane people reulit with guid lawis.

The Aduocat, for verifeing of the Dittay, producet the faidis Johnne Errole and Jonet Craigis Depofitionis, subferyuit be his hand, and be certane of the Minifteris and Magiftrattis of Edinburgh and Elderis of the Seffion of the Kirk; and in respect thairof, Proteftis for Wilful Errour, in caice the Affyfe Acquit.

VERDICT. The Affyfe, be the mouth of Williame Trumbill, mercheand in Edinburgh, chancellor, all in ane voce, ffland, pronuncet and declairit the faid Johnne Errole to be ffyltet, culpable and convict of the forceing and abufeing of the faid bairne, in maner, and at the perticular tymes and places aboue fpecifeit and fet down in the faid Dittay.—SENTENCE. For the quhillk caus, the faid Justice-depute, be the mouth of Johnne Lawfone, dempfter of Court, decernit and ordanit the faid Johnne Errole to be tane to the Caftell-hill of this burgh; and thair to be hangit vpone ane gibbet, quhill he be deid; and all his moveabill guidis, gif he ony hes, to be efcheit and inbrocht to our fouerane lordis vfe, as culpable and convict of the faidis crymes; quhillk wes pronuncet for dome.

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

Stouthreif—Hurting and Wounding.

Jan. 3, 1609.—JAMES HUNTER of Hagburne.

Dilaitit of airt and pairt of the Steilling of flourtie pundis furth of Robert Hogis purfe, potter in the Potter-Raw (of Edinburgh); committit in the moneth of October, I^m.V^o.lxxxviiij; and Hurting of the faid Robert in his heid, and leifing him for deid, at Theyuis corfe.¹

PERSEWER, Robert Hog, potter.

Continued to the air of 'Roxbur', tertio Itineris (vel super premonitione) xv dierum.²

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

Slaughter.

Jan. 31.—ANDRO AIRMESTRANG of the Langholme, Ebbie¹ Airmestrang of Kirktonehill, James Airmestrang of Cannabie, Thomas Airmestrang callit *the Mercheand*, and Johnne Murray, myller in the Cruikis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Somervell in Eirdhouffis; committit in the moneth of

PERSEWAR, Robert Somervell, fervand to the Laird of Waftraw, as neir kynfman.

PRELOCUTORIS for the pannell, Mr Laurence McGill, Adame Cunninghame, (Advocates.)

¹ Thieves' Cross. ² Perhaps a clerical error for *Ekkie* (Hector), a common name in the south at that time. *Habbie* was also a favourite name. It may, however, be a familiar abbreviation for Ebenezer, though the name was unusual among the Armstrongs, whereas *Ekkie* was very prevalent.

The perfewar declairis, that at the raifing of thir Letteris, informatioun was gevin to him that the perfonis aboue writtin, presentlie enterit vponne pannell, war culpable of the Slauchter aboue specifit; and now, fenfyne, he is certanelie informet, that thai, nor nane of thame, war present at the committing thairof: In respect quhairof, and that thai ar altogidder Innocent of the said cryme, he paffis *simpliciter* fra the perfute. Quhairvpoune the saidis perfonen on pannell and thair prelocoutouris askit instrumentis.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio de ST ANDROIS, decimo Marcij 1609, per Dominum Willielmum Hairt de Prefloun, Justiciarium deputatum principalem.*]

ASSESSOURIS.

The Erll of Dumbar, ¹	The Erll of Montroife, ²	The Erll of Lowtheane, ³
The Collectour, ⁴	The Clark of Register, ⁵	My Lord Previe Seill, ⁶
My Lord of Wrychtiflandis, ⁷	Sir Robert Meluile of Murdocarny, ⁸	

Treason—Corresponding with the Pope, in the King's name.

[THE history of (Sir James Elphinston) LORD BALMERINOCHE'S TREASON has been so fully related by *Spattiswood, Johnstone, Calderwood, Robertson, Laing*, &c. and by *Mr Wood*, in his edition of *Douglas's Peerage and History of the Parish of Cramond*, that it only seems necessary for the Editor to supply the real facts, so far as they appear on the face of the Criminal Records; and further, by way of Appendix, to give a few authentic Letters, and other documents, which have been preserved.

Whatever may have been the real or alleged participation of this eminent Lawyer and Statesman in this Treason, it seems clear, as *Laing* remarks, that 'if Balmerino deceived his master, it was neither with a criminal intention, nor to a treasonable extent. But his ruin was secretly projected by Spottiswood, Dunbar, and Cecil, his implacable enemies; and, according to his own Narrative, much address and many secret intrigues were employed to persuade him, by a more ample and explicit Declaration, to exculpate the King. His life and estate were secured by promises; his offices were to remain at the King's disposal; and, on these conditions, he acknowledged that the Letter was surreptitiously obtained, when James had refused to correspond with the Romish Sec.' Thus, in order that he might fully exonerate the King, this unfortunate Nobleman was led into the fatal snare, and confessed more than the truth; under the full expectation, doubtless, that not only would the Royal promise of sparing his life and fortune be observed, but that he would, after a short period of retirement from the Court, be reinstated in all his lucrative and honourable offices.

It may be proper to remark, briefly, that SIR JAMES ELPHINSTON was the third son of Robert third Lord Elphinston. He was successively a Lord of Session (Lord Innernochtie), one of the Commissioners of the Treasury, called 'THE OCTAVIANS,' Secretary of State, and, Feb. 20, 1604, was

¹ Sir George Home, Lord High Treasurer of Scotland, was created Baron Home of Berwick, Jul. 7, 1604, (English Peerage,) and Earl of Dunbar, in Scotland, 3 Jul. 1605. This celebrated person was also Chancellor of Exchequer, in England. The King employed him as the chief leader in the restoration of Episcopacy in Scotland, in the Parliament at Perth, Jul. 9, 1606; for which service, and for acting as High Commissioner to the General Assembly of the Church of Scotland, in a manner highly acceptable to the King, he was installed a Knight of the Garter, May 20, 1609.

² John fourth Earl of Montrose, afterwards President of the Council, married Margaret, eldest daughter of William first Earl of Gowrie. It was this nobleman who fought the remarkable combat with Sir James Sandilands, 19 Jan. 1695, at the salt-tron of Edinburgh, as recorded by Birrel. See Diary, p. 34.

³ Robert second Earl of Lothian, who, when Master of Newbottle, had been Master of Requests to King James VI. "Mr Johnne Prestouane of Pennycauke."

⁴ Sir John Skene of Curriehill. ⁵ Sir Richard Cockburn of Clerkington.

⁶ Sir Lewis Craig, one of the Ordinary Lords of Session. ⁷ Sir Robert M. 'of Brint lland' is named in *Reg. Mag. Sig.* They were both Extraordinary Lords of Session.

created Lord Balmerinoch. In the same year he was nominated one of the Commissioners to treat for an Union with England; and on March 6, 1605, was appointed Lord President of the Court of Session. Notwithstanding of his holding, at the same time, the 'incompatible offices' of Lord President of the Court of Session and Secretary of State, (which, however, were in like manner enjoyed by his successor, Sir Thomas Hamilton, afterwards Earl of Haddington, &c.) 'yet he stemmed the secret and corrupt influence of Dunbar, on the bench, with a spirit that probably accelerated his fall.'¹

The sentence of death, as is well known, was not carried into execution. His Lordship was allowed 'Free-ward' in Falkland, and within one mile around that place. Having endured this nominal restraint for a short time, he was permitted to retire to Balmerinoch, his own estate, where he lingered about three years, and at length died, of a broken heart, A.D. 1612.

His son, John Lord Balmerinoch, was formally restored in blood, and to the dignity of the Peerage, by writ, under the Great Seal.²

Mar. 10.—JAMES LORD OF BALMIRRIENOCH.

Dilaitit of the tressonabill, fraudulent, and surreptitious procureing of ane LETTER, past be his Maieftis hand, without his hienes knowledge, direct to Pope Clement the Aucht, in the 3eir of God 1598, tressonabillie adding (eftir the subscription of the said Letter) of the styles of 'SANCTITAS' and 'FILIUS' to the said Letter; and tressonabillie affixing his Maieftis Signet thairto; committit in the yeir of God 1598, or thairby: And tressonabill affixing Sir Eduard Drummond, in his tressonabill trafficking, for the advancement of Papist courfes, at the tyme forsaid.

DITTAY *against James Lord Balmerinoch.*

JAMES LORD BALMIRRIENOCH, ye ar indytit and accufet of the crymes of Leafmaiestie and Heich-Treffone following. Forfamekill as, 3e, being honouret and advancet be his Maieftie, nocht only to heich and eminent places in Session and Counfall, bot also trustit with the office of Principall Secretarie to his hienes, quhairby ye war in dewtie bund, abone all vthers, to haif bene most cairfull of his Maieftis honour and preferatioun; nochtwithstanding quhairof, ye, preferring your awin vnderwittfull and vnlawchfull privat respectis, to his Maieftis reputatioun and fastie, and being informet, in the yeir of God 1st. Vc. four-fcoir aughtene yeiris, by your neir kynfman, Sir Eduard Drummond,³ [quhome ye knew to be ane proffesit Papist, maist ferventlie affected to the furtherance of all Papifche courfes, and to haif bene ane Secretare to ane Cardinal at Rome, and thairfor the vnfitter to haif bene maid chose of and trustit by yow, for wryting or playing the clerkis office to his Maieftis Letteris directit that way,] that he come to this cuntrie, directit be the Bischope of Vaizon,⁴ to deall for procureing of his Maieftis Letteris of recommen-

¹ *Laing's Hist.* III. 57.

² See REHABILITATIO, *Reg. Mag. Sig. Lib.* XLVIII. No. 152, dated August 4, 1613.

³ Marjory, the second daughter of Alexander second Lord Elphinston, and paternal aunt of James, first Lord Balmerinoch, married Sir Robert Drummond of Carnock. Sir Edward was perhaps her son, and cousin german of Lord Balmerinoch.

⁴ *Robertson*, in *History of Scotland*, and *Wood*, in *Peerage of Scotland*, call him *Drummond*; but he was William *Chisholme*, 2d of the name and surname, Bishop of Vaizon, and paternal nephew of the 1st, who had, a short while after 1561, been, by Papal Brief, created Bishop of Dunblane; and on his finding it inexpedient to live in Scotland, he was appointed Bishop of Vaizon; which situation he resigned, in favour of his nephew, when he became a Carthusian Friar of Grenoble. Both of these distinguished Churchmen were younger sons of the Cromlix family, Perthshire. Sir James Chisholme of Dundurn and Cromlix, who was concerned in the Popish Plot, in 1593, seems (*Balfour's Annals*, II. 29) to have been brother of the younger of the Bishops of Vaizon. The Chisholmes of Cromlix had, above a century, been hereditary Baillies and Justiciaries of the Ecclesiastical Lordship of Dunblane, and had furnished three Bishops of Dunblane; James and William Chisholme, brothers, and their nephew William Chisholme, the elder of the Bishops of Vaizon above mentioned. William Chisholme *tertius*, was kinsman of Sir Edward Drummond and of Lord Balmerinoch, though in what degree is unknown.—The Editor is indebted to the industry and research of the Reverend Mr MacGregor-Stirling for the information contained in the preceding Note. That learned gentleman has collected much original matter relative to the See of Dunblane, which it is hoped he may, some time, be induced to lay before the public.

datioun to Pope Clement the Aucht, for making the said Bischope ane Cardinall; being in grit hoip that his Maiesteis recommendioun to the said place wald be ane grit furtherance to that his expected promotioun: Ye, nochththeles, noch only tressonabill assenting to the said motioun, bot most willinglie and readelie taking vpon you to be ane assifter to him in that employment, did dyuerse tymes preafe his Maiestie thairin, and did offer to his hienes the frame of suche ane Letter as ye wald haif had signed, by his Maiestie, to the Pope; whome yow fand, nochtl vnwilling to wyrite at all, bot absolutelie to condampne the motioun for correspondence with such ane persone; who, allweill in respect of the irreconceillabill contrarietie betuix his Maiestie (in respect of his professioun in Religiou) and the Pope; as also, for that the said Pope could nochtl bot expect those tyttillis and attributtis whiche his Maiestie, out of his confidence, could nochtl yeild him, for any cause quhatsoever: Ye, neuertheles, nocht desisting frome your vndewtiefull instance, replyt to his Maiestie, most craftillie, 'that quhateur schew of discontentment his Maiestie vtterit againt Puritanes, ye could persuaue nathing bot his Maiestie wald turne mair preceife nor any of thame!' Thairby, as it war, spurring his Maiestie to inclyne to such ane politique course, which none bot foolische or preceife fottis wald refus to imbrace: And nochtwitstanding of his Maiesteis oftin and flat denyallis, and refusallis to harken to your motioun, ye nochtl only desistit nochtl, (as ye aucht to haif done,) bot fill resoluat to profecute your tressonabill intent: WHEARVONE, ye conspyret with the said Eduard Drummond, vpon the meaynes how to diffuse and beguyle his Maiestie, in the procureing of suche ane Letter, and did devyse and cause to be drawin vp suche ane Letter, with the said Sir Eduardis Drummond hand, as frome his Maiestie to the Pope, expresting thairin thankis for the Pope's kyndnes and favour, in former tymes, [albeit ye knew in your confidence that his Maiestie nevir had any deilling with the Pope, nather had he eur expected, requyred, or reslauet ony kynd of fauour frome him,] subioyning thairto ane recommendioun of the Bischope of Vaizon to be ane Cardinall; thairby to be the moir able to further him in all his effairis; [nochtwitstanding that your self, best of all vtheris did vnderstand, by the most constant anferis gevin, at all tymes, by his Maiestie, to your frequent and importune persuaiones in that purpos, that his Maiestie wald neur consent to haif any dealing or correspondence with him,] and quhat forder wordis of compliment or specious promeissis vpon his Maiesteis behalf yow did insert in that Letter, [as well appeiris yow did] by these wordis of that pamphlet of Tortus,¹ (quibus preter cætera) your self best knawis. And for the better conveyance and passage of this Letter by his Maiesteis hand, yow did contryue this course; *ffirst*, that it should be schifit in amangst dyuerse vtheris Letteris to be signed; *secundlie*, that the same, with the rest, should be presented to his Maiestie, at sum tyme of his going out laistilie to the hunting, so as, being on the suddane surpyred, he should haif no lafoure to obserue and peruse the Letteris; and, *thridlie*, that such wordis of tyttill and style as ar vsuallie gevin to the Pope, should be forborne to be set down in it, lest perhappis his Maiesteis eye lichtung vpon ony of thame whilles he war signeing, he micht thairby tak occasioun to obserue that Lettre, and so discouer your fraud; and convenient spaces being left for thame, they should efterwardis be accomodatit and insert: ACCORDING to qulich course, ye, abusing the trust reposit in yow be his Maiestie, ane day, in the moirning, quhen his Maiestie was going to hunting, in haist, eftir that ye had excusit your self of cuning to trouble his Maiestie with the signeing of any Lettres, att so vnseasonabill ane hour, in respect, as ye informit his Majestie, Sir Edward Drummondis stay any langar in the countrey wald bot irritat the Ministeris, and breid occasioun of jealousie and fals and scandalous brutes;²

¹ This alludes to the reply by CARDINAL BELLARMINI, under the feigned signature of MATTHEUS TORTUS, to a book published by King James, anno 1607, under this Title, 'TRIPlici NoBis TRIPLEX CUNCIUS, OR AN Apology for the Oath of Allegiance against two Brieues of POPE PAUL V., and the late LETTER of Cardinal Bellarmine to Blackwall the Arch-priest.' In this reply, the King is accused of having abandoned his former sentiments, in favour of the Roman Catholic Religion; and the Letter to Pope Clement VIII. is quoted, in proof, by his antagonists, who assert, that Lord Balmerine fell a victim to the King's crooked policy, and that that able and distinguished Nobleman had been induced, through his devoted attachment to his royal master, to criminate himself, in a matter wherein he was really innocent, having merely acted by the King's express instructions.

² Reports. Fr. *bruit*.

and thairfore, that ye wer forceit, att that tyme, to present his Dispatch to be signet by his Maieftie, conteneing no thing, bot sum two or thrie Letteris, in Latine, to the Dukis of Florence, Savoy, and such vtheris, in the said Bischopes recommendioun¹: And thane, in place thairof, ye did present the said Letter to the Pope, and vther thrie, to sa mony Cardinalis in Rome; and procureit the famin to be signed, in place of thais vther Letteris, quhich only feruit for youre cloik, in the convoy of that buffines: Quibilk being done, Sir Edward Drummond, by your directioun, did efterwards add and insert the Popes tytillis and styles, boith in the beginning of the Letter and in the end thairof, betuix the Letter itt self and his Maiefties subfcription, as the word '*Sanctitas*,' and the word '*Filius*,' and fuch vtheris as ye thoct proper for the Letter to the Pope, (quhich verry twa wordis of '*Sanctitas*' and '*Filius*,' his Maieftie had oftin before forewairnit yow, that he wald rather loife his lyffe than wryte any of thame to the Pope): AND, be your directioun, the Letter being elofet by ane of your seruandis,² his Maiefties Signet (quhairof the keping wes committit to yow, be vertew of youre Office of Secretarie,) wes by yow, aganis the honour and dewtie of your place, trust, and credite reposit in ye be his Maieftie, most vndewitfullie, fallie and tresfonabill affixit to your said forgetit Letter.³ BE occasioun quhairof, quhen his Maieftie cam efterwards in questioun, in the lait Quene of England, of blissit memorie, hir tyme, by meanis of hir Ambassadoure, quho, in the 3^{er} of God I^m.VI^e. yeiris, expostulatit with his Maieftie concernng such ane Letter writtin by him to the Pope; ye than, being askit thairof be his Maieftie, did vterlie deny thair wes any such mater: Lyke as, for iustificatioun of your denyall, ye send Sir Edward Drummond, quho, att your desyre, being cum from beyond sea to this countrey, and being examinat thairof, did, att your perswasoun, deny that he careit any such Letter to the Pope: As alwa, quhen Sir Edward Drummond wes committit to waird for this caus, within the Castell of Edinburgh, ye becam ane cruelt faiter to his Maieftie for his libertie, and wes the meanis to obtene itt; quhairpoun the said Sir Edward being efterwards to returne to Rome, ye delt ernestlie and instantlie with him, to lawboure to recover agane the said Letter to his handis, and to distroy itt; quhich he promesit to do, gif be any meanis he could: And ye lykewyse gaif his Maieftie full and absolute assurance, that that repoint, quhairpoun the said lait Quene of so wordie⁴ memorie did expostulat with his Maieftie, wes vterlie fals: And that nather his Maieftie had ewir writtin any Letter to the Pope, nor yet that Sir Edward Drummond had ewir delyuert any, in his Maiefties name, to him: Quhilk strong denyall, to his Maieftie, of your and Sir Edward Drummondis giltynes in that mater, wes the occasioun that movit his Maieftie to grant to Sir Edward Drummond his libertie: And althocht that the constant sinceritie of his Maiefties professioun in Religioun wes so weil knawin to the world, by his daylie word, writt, and praktife, as nather that lait Quene of happie memorie, nor the religious people of the Estait of England did any langer dout of his Maiefties innocence in this caice, howsone thay had hard of his Maiefties denyall thairof, (as he mycht most iustlie haif done,) yit lay it nocht in your handis; bot, gif God had not movit thair heart to judge so honorabill and iustlie of his Maieftie in this caice, the jealousie and mistrust of his Maiefties sinceritie in Religioun, being thus spred, in both realmes, mycht haue reffluit such increas and growth, as mycht haif hafardit thairby, alswell the present securitie of his Maiefties person and estait, att that tyme; as also, his Maiefties happie attening to his iust clame and rycht, in England: THE ground of all this calumny and sklander, and quhatsumewir such lyk hafardis mycht haif followit heirpoun to his Maiefties person and estait, arryving and having the only fundatioun by this your occasioun and tresfonabill dealing, quhilk weil apperit by the consequent; sior how sone it pleast God to call that Quene, of renownit remembrance, to his mercie, and his Maief-

¹ Had such a warm debate and altercation, as that before recited, taken place, is it to be conceived as at all likely, that a person of James's jealous disposition, would have signed such Dispatches and Recommendatory Letters, without first carefully perusing and scanning every phrase contained in them? Unquestionably the King would either have postponed his hunting, or, at least, would have desired the papers to await his return, when he could at leisure consider the import of such important documents. On the other hand, it must be admitted, that the Confession of Lord B. is unqualified, and apparently sincere, and is conceived in the strongest terms which language could devise.

² Clerks to the Secretary of State.

³ Dated at Holyroodhouse, Sep. 24, 1599.

⁴ Worthy.

tie to the lauchfull poffeffioun of his rychteous inheritance, with moir perfyte ioy and vniuerfall applaufe of all his fubiectis, nor any vther Prince obtienit the poffeffioun of his prediceffouris Crown, his Maieftie, alfwell by his fincere proffeffioun as by his actiounis and lawes, publiciffing to the world his moft conftant zeale to mantene and propagat the trew Religioune, and to fuppres Papiſtrie, and all contrarie proffeffioun, the hoill Papiſtis within this Ile, and ſpeciallie, in his hienes Kingdome of Ingland, finding thairby thame ſelfis vterlie difapointit of thair former hoipes, foundit vpon thais Letteris, quhairby thay promeit to thame ſelfis all libertie and tolleratioun of thair ſuperſtitious, in his Maiefteis dominiounis; and eſteming, that his Maieftie, in nocht performing thairof, had delt wrongfullie and vniuſtie with thame, nocht only did Clark and Watfoun and thair complices, Preifts, and vtheris Papiſtis, in the fyrft yeir of his Maiefteis regime of Ingland, conſpyre aganis his lyffe, pofteritie and eſtair, bot also the incomparable CONSPIRACIE of the POWDER TRESSOUN (exceeding in malice and crewaltie all vther Treffounis, that euir wes attemptit, in any aige or cuntry) wes devyit and profequitit by ane damnit crew of merciles Papiſtis, to the extreame danger of his Maiefteis moft facred perſoun, his moft gracious Quene, thair Royall iſſew and hoill body of that Eſtair; for no thair quarrell, bot becaus thay thocht thame ſelfis wrongit by his Maieftie, for nocht accompliſching the hoipis gevin by thais Letteris to all Papiſtis in his dominiounis: Lyke as, ſenſyne, Cardinal Bellermine, or *Matheus Tortus*, his chaplain, and vtheris, moſt impudent and infamous Popiſch wryteris, haif, (ſa far as in thame lay,) preiffit by thair fals, calumnious and leing lybellis, groundit vpon your treffonabill Letteris foirſaidis, to ſteinzie (sully, *stain*) his Maiefteis moſt pure, perfyte and vnſpotted reputatioun. OFF the quhilkis treffonabill crymes aboue writtin, of furreptitious, fraudulent and fals ſteling his Maiefteis hand to the ſaid Letter, without his Maiefteis knowledge, and contrarie to his Maiefteis declarit will, and treffonabill affixing of his Maiefteis Signet to the ſaid fals Letter, and aſſiting knawin profeffit Papiſtis, in thair treffonable courſis, to the danger of ſabuerſioun of Religioune and overthrow of all trew proffeffouris thairof; and drawing his Maiefteis lyff, eſtair, Crown of this realm, with his rycht of ſuceffionit to the Crown of Ingland in moſt extreme perrell, and bringing moſt fals and ſcandalous imputatiounis to his Maieftie, both in poynt of honour and Religioune, ye ar airt and pairt: And the ſamin hes bene done and committit by yow, and vtheris in your name, of your cauſing, command, aſſiſtance and rathabitoun. For the quhilkis treffonabill crymes foirſaidis, ye aucht and ſould be pweineiffit, be ſforſaltrie of your lyffe, landis, and guidis to his Maieftie; according to the Lawis and practick of this realme.

THE ſaid James Lord Balmirrenoch, being inquyret be the Juſtice, gif he wald deſyre the aſſiſtance of any freindis or Aduocattis to be his preloquoutouris, according to the benefite of the law and ordour of the Court, quhilk ſould be obseruit to him? He anſuerit, that he had neuer ſa grit neid of preloquoutouris and (ſa) grit neceſſitie to ſpeik; the caus being ſic as concernis his lyffe, his eſtair, and all that he poſſeit; bot he ſaid, he had gritar neceſſitie to keip ſilence, his offence being ſik as could admitt na excuſe; and his greif and ſorrow, that he could haif ſa far abuſit the truſt his moſt gracious Souerane repoſit in him, being ſa grit, as he deſyrit na thing mair, than his cryme may be notifeit to all men: And ſeing, na freind wes acquent with his fact, he deſyrit nane to ſee the miſerie thairof: And ſaid, he could deſyre na Laweir to compeir and defend that fact, quhilk him ſelf had ſa oft and juſtlie condemnit; as no place wes left to him nor any vther, to vſe ony defence thairin: And thairfoir, his awin haert witneſſing moir aganis him nor ony vther could ſay, he deſyrit all men to knaw his cryme to be als haynous as it is; and did erniſtlic intreat all thais that wer preſent, and wiſſit that all the world mycht heir him, to declair two poyntis,

quhair of he wiffis his Maieftie to be cleirit : *ffyrft*, of all fufpicioun that his Maieftie was ony wayis acquent with the wryting of that vnhappie Letter, that fwa his hienes innocencie and finceritie mycht be knawin to the hail world ; ffor he declarit, as he wald wif God to be mercifull to his faull, in the grit day, that his Maieftie was moft falllie and vniuftlie chargeit with that Letter writtin to the Paip ; and that he could newir draw his Maieftie to lyk, or with patience to heir of that wickit motioun ; bot his Maieftie did vterlie and abfolutlie refuife, vpoun ony refpect or conditioun, to wryte to the Pope, as ane mater altogidder aganis his confcience to tak ony fic cruikit courfis, or to gif to the Paip thais ftyles and attributes quhilk the Paip affumit to him felf. Quhilk refusall could nocht fatisfie nor content him, bot in his politik worldlie reach, as ane naturall man, he went fordward, in his awin vayne confait, aganis his Maiefteis declarit will, to that quhilk he thocht fould (have) advancit his Maiefteis tytill, as hoping thairby to flay the censure of the Paippis Excommunicatioun, intentit aganis his hienes, quhilk he ferit mycht haif brocht him preiudice to his Maiefteis fuceffion, nor yit could he be stayit from his vnhappie courfis, by his Maiefteis moft religious refolutioun ; quha, att findrie tymes, proteftit and declarit to him, that his hienes wald nevir burdene his confcience with ony fic vnlauchfull and cruiket courfis, bot wald only leane and reft vpoun Godis Providence and his awin rycht, with fic vther lauchfull and rycht meanis as his Maieftie mycht juftlie vfe : Befeikand all gentilmen and vtheris prefent, to beir trew record of his Confeffioun of fa haynous ane offence, committit aganis fa gracious and bountyfull ane Souerane, quho, be his vnderfervit fauour, had raitit his bafe fortun fa bountifullie, that his landis, guidis and lyffe could be na reparatioun for fa grit ane offence.

The *fecund* poynt, quhair of he defyrit his Maieftie mycht be fred and cleirit, is ane opinioun, quhich ather fum in malice, or his freindis in the commiferatioun of his eftait, mycht confaue and think, that his Maieftie, in ane mater of this moment, (the fuffegftioun of ane Letter of Recondemntioun,) mycht ferue to proceed with grit regoure and crewaltie aganis his lyffe and eftait ; bot he wald haue thais and all vtheris to remember, that his Maieftie hes gevin mony testimoneis of his clemencie, in materis gritlie concerning him ; and thairfore, thay fould nocht judge of his Maiefteis difpofitioun to mercie, by his hienes proceeding, be justice, aganis him, bot wiffit thame rather to turne thair eis to his vnhappines, quha hes offendit his facred Maieftie, in fic ane poynt, as na fauour can be extendit to him, without the hurt and interes of his Maiefteis honour, quhilk being deirar to his hienes than his lyffe, he man think and confefs, that tuintie thowfand fic lyves as his is, ar nocht to be compairit with it, or ballanceit aganis it ; nor did he defyre that his lyffe fould be fpairit, att fa deir ane rait as the leift tuich (Fr. *tache*) of his Maiefteis honour.

Forder, he cravit pardoun to proteft thais tua thingis, for him selff. *Fyrst*, that he had na sic intentionne, as fum hes supposit, to draw in ony alteratioun of Religioun or tolleratioun, or quahat thay pleis to terme it; bot any meane worldlie courfe and devyfe, quhilk he confaitit mycht be for the behuif of his Maieftie, quhilk he proteffit to be of treuth. The *secund* thing is, he wald haif na man to think, that itt wes any gayne or priuat commoditie that drew him to that wicket cours; ffor he proteffit that he nevir reslait norexpected ony reward, from ony Prince leving, except from the Kingis Maieftie, his maister, allanerie.

And sa concludit, that he had spokin sa much of the treuth aganis him selff, that he wald defyre na man to speik for him; and wald gif als littill buffines to the Aduocat, Justice, Assessoris and Assyse, as he could; and was content that the Dittay fould pas to the knowlege of ane Assyse.

IN respect of the quhilkis, THE JUSTICE Ordanit the said Dittay to be putt to the knowlege of ane Assyse, of the personis following. Thay ar to say.

ASSISA.

DAVID ERL OF CRAUFURD, Lord Lyndesay, &c.	JOHNNE ERL OF TULLIBAR- DIN, Lord Murray,	SIR ROBERT GORDOUN of Lochinvar, knycht,
GEORGE ERL OF MARSCHELL, Lord Keith and Altrie, Grit Marshell of Scotland, &c.,	ALLANE LORD CATHCART, JOHNNE LORD SALTOUNE, DAUID LORD SCONE,	SIR WILLIAME LEVING- STOUN of Killyth, knycht,
JOHNNE ERL OF WIGTOUN, Lord Fleming, &c.,	ALEXANDER LORD GARLEIS, WILLIAME MAISTER OF TIL- LYBARDINE,	SIR JOHNNE HOUSTOUN of that Ilk, knycht,
PATRIK ERL OF KINGORNE, Lord Glammes, &c.,	SIR JAMES DOWGLAS of Drum- lanrig, knycht,	SIR PATRICK HOME of Pol- wart, knycht.

Quhilkis persounnes of Assyse being chosin, sworne and admittit, and Instru-
mentis tane thairvpoun, be our fouerane lordis Aduocat; the said James Lord
Balmirrenoch, being accusit be the said Dittay, oppinlie red in judgement to him,
in presens of the said Assyse; and for verificatioun thairof, the Aduocat, haifing
produceit the said James Lord Balmirrenochis Depositioun, subferyuit with his
hand; togidder with his Letter, writtin all with his hand and subferyuit be him,
contening his speich, vterit be him befoir the Lordis of his Maiefties honorabill
Previe Counfall of England, togidder with ane Letter send be his Maieftie to the
Aduocat, contening sum of the Lord Balmerinochis speichis to his Maieftie, att
fic tyme as he preiffit to haif perfwaidit his lienes to wryte to the Pope: And
the saidis three writtis, being oppinlie red in judgement, in his presens and in
presens of the saidis Assysouris; quhairof the tennour followis.

And fyrft, followis the tennour of HIS DEPOSITION.

ATT FALKLAND, the secund day of Februar, the yeir of God I^m.Vj^c. and nyne
yeiris. THE DECLARATIOUN and CONFESSIOUN of THE LORD BALMER-
RENOCHE, concerning ANE LETTER *fraudentlie and surreptitiouslie pro-*

curait to be writtin and sent from his Maieftie to POPE CLEMENT (VIII.) in the yeir 1598 ; maid in presens of my Lordis of his Maiefties Secreit Counfall of Scotland, eftir namet ; The Earles of Dumbar, Wigtoun and Lowtheane, the Lordis of Scone, the Justice Clark, the Collectour, Justice and Aduocat.

THE LORD BALMIRRENOCHE, being examinat, sworne and chargeit with þe offence of prakteking and surreptitious procureing of þe said Letter, (quhairby hath growne ane most fals and scandalous imputatioun to his Maieftie, both in poynt of honour and of Religiou,) eftir diuers meanis vfit by him, of denyall, conceilling, transferring and extenuatting the said offence, doeth att þe laist expresse acknowledge and confels: That, in þe 3^eir of our Lord 1598, att þe motioun of þe laist Archbifchop of Glasgou,¹ his Maiefties Ambassadour, than resident in France, the Bifchop of Vaizon,² and sum vtheris, and att þe folicitatioun of Sir Edward Drummond, directit from þame, for procureing of sum correspondence betuix his Maieftie and THE PAIP, be the said Lord Balmirrenoch, assenting to þe said motioun, did diuers tymes preiße his Maieftie þairin, and did offer to his Maieftie the fram of sic ane LETTER as he wald haif had signet by his Maieftie to þe Paip ; quhom, quhen he fand nocht onlie vn-willing to wryte att all, bot absolutlie to condemn the motioun, or any correspondence with a person that did expect thais tytillis and attributes, qulich his Maieftie, out of his conscience, could nocht 3eild him, for any caus quhatfumeuir ; he, the said Lord Balmirrenoch, conspyring with Sir Edward Drummond, on þe meanis how to disflaue and begyle his Maieftie, in þe procureing such a Letter, with þe said Sir Edward Drummondis hand, as from his Maieftie to þe Paip, expressing þairin (as he sayeth) only thankis for þe Paipis kyndnes and favour, in former tymes, with recommendatioun of þe Bifchop of Voyzin to be a Cardinall ; thairby to be moir abill to forder him in all thingis neidfull for his affairis. For the better voyncage and passage of þis Letter by his Maiefties hand, the said Lord Balmirrenoch confesseth this course to haif bene by him contruyvet ; *fyrrst*, that itt could be chesit³ in amangis diueris vperis Letteris to be signet ; *secundlie*, that the famin, with the rest, could be presentit to his Maieftie, att sum tyme of his going furth haistelic, on hunting, so as, being on the sudden surpryfit, he could haif nocht laifour to obserue and peruse the Letteris ; and *thryddlie*, that such wordis of tytill and style (as) ar vsuallie gevin to þe Paip, could be forborne to be sett down in itt ; leif perhappis his Maiefties eé lichtung vpon any of þame, quhillis he wer signeing, he mycht þairby tak occasioun to observe that Letter : and that convenient spesic being left for þame, thay could efterwardis be accomodattit and insertit : According to qulich course, he the said Lord Balmirrenoch confessing, that he, abusing the trust reposit in him be his Maieftie, one day, in þe moirning, quhen his Maieftie wes going on hunting in haif, amangis vperis Letteris, writtin in Latine, to þe Duikis of Florence and Savoy and sum Cardinallis, in favour of þe Bifchop of Veyzon, did also present to his Maieftie (haveing formerlie refusit to wryte to þe Pope, and na thing suspecting that any such could be offerit to his hand) the said Letter to þe Paip, and procureit itt to be signit ; qulich being done, he the said Lord Balmirrenoch confessit, that by his directioun, Sir Edward Drummond did efterwardis add and insert the Popes tytillis and styles, baith in þe beginning of þe Letter, and in þe end þairrof, betuix the Letter itt self and his Maiefties subscriptioun, as the word ‘ *Sanctitas* ’ and the word ‘ *ffilius* ’, and such vperis as he thoct proper for þe Letter to þe Paip : And that, by his directioun, the Letter wes seilit vp be ane of his seruandis, and the Signet also putt to itt. Concerning þe Letteris to the Cardinallis, he the said Lord Balmirrenoch sayeth, that thay wer cloife seailit vp ; bot left without superferiptioun, and so delynerit to Sir Edward Drummond, to be directit be þe aduise of the (Arch)bifchop of Glasgou : And that he did efterwardis vnderstand, that two of þe saidis Letteris wer gevin to þe Cardinallis Aldobrandino and

¹ James Beaton, (2d) Abbot of Aberbrothock, elected 1551, quitted the see in 1560, and was restored by Act of Parliament, in 1588. ² Williame Chisholme. See Note on Dittay, p. 569. ³ Shifted, shuffled.

Bellarmine, and þe thrid to Cardinall Caietane, Protectour of the Scottiſh Nation. ffordermore, the faid Lord Balmirrenoch Confeſſeth, that quhen his Maieſtie cam efterwardis in queſtioun, in þe lait Quenis tyme, (by meanis of hir Ambaſſadour, that expoſtulattit with his Maieſtie, concerning ſuch a Letter writtin from him to the Pope,) he the faid Lord Balmirrenoch, being aſkit pairof by his Maieſtie, did vterlie deny that thair was any ſuch mater: And lykwayis Confeſſeth, that he deſyred Sir Edward Drummond (being cum att þat tyme from beyond the Seas, and examinatt pairof, vpon þe Lord Balmirrenochis ſending for him,) to juſtifie his denyall; and that Sir Edward Drummond did, att his deſyre, accordinglie deny that he had careit any ſuch Letter to þe Pope; as alſo, that quhen Sir Edward Drummond wes committit to preafoun for þis caus, to the Caſtell of Edinburge, he the faid Lord Balmirrenoch becam ane erniſt ſutear¹ to his Maieſtie for his libertie, and wes the meanis to obtene it; quhairvpon Sir Edward Drummond, being efterwardis to returne to Rome, he the faid Lord Balmirrenoch Confeſſit, that he delt ernefflie and infantlie with Sir Edward Drummond, to labour to recover agane the faid Letter into his handis, and deſtroiy it; quhilik Sir Edward Drummond promiſt to do, gif by any meanis he could; and that the faid Lord Balmirrenoch pairvpon deſtroiyt the copie of þat Letter, quhilik before he had retentit with him ſelff.

J. BALMIRRENO².

DUMBAR, WIGTOUN, LOWTHEANE, D. L. SCONE, (R^d) COKBURNE,
S^r TO. HAMMILTOUNE, JO. PRESTOUNE, S^r W^m HAERT.

Followis the tennour of

THE LORD BALMIRRENOCHEs LETTER, *writtin and ſubſcryuit be him, containing his SPEICHES, vttered be him to the Lordis of his hienes Previe Couñſal, in England.*

MY VERRIE HONORABLE LORDIS,

I FIND trew this day, in experience, that which I haif oft red and hard, that no exceeding joy nor exceeding ſorrow can be carryd bot with ſilence. *Leues curæ loquuntur* (ſayeth the tragique) *ingentes ſuſpent.* From this it is that þe heavie greif and vnſpeikable ſorrow of my hart and ſoul, for my haynous offence aganis my moſt gracious Souerane, and his Maieſteis diſpleaſour that he hes moſt juſtlie conceaved aganiſt me, makis me that I haif no wordis whearwith I can expre þe fame: Quhen I luik vnto his Maieſteis innumerabill fauoris beſtowed vpon me, haifing raiſed my fortunes (moſt miſerable and vnworthie wretch!) far aboue my mereit and my ſoule abuſe of his Maieſteis truſt: which hes brocht this fals imputatioun vpon his Maieſteis vnſpotted innocencie: I think pair is nothing in me may amend the fame; and pairof I find no vther end of my ſorrow, bot, with the ſorlorne ſone,² to ſay to his moſt ſacred Maieſtie, *peccavi in celum et in terram!*—My offence is ſo greit that it can nocht be pardonet,—I am nocht worthie to be rekonet ony moir among his ſubiectis or createuris! I haif ſincerlie confeſſit the veritie of my fact, in all the circumſtances, nocht for obedience, or to liberat his Maieſtie, (as ſum wald fallie geve out,) bot for þe treuthes ſaik, and that his Maieſteis innocencie may be knawin to all the world: Bot allace! wlat vnhappie man was I, that my deviſiſh affection and erroneous courſe ſould haif led to any thing ſould haif offendit my moſt gracious Souerane! Micht nocht his Maieſteis rair pietie, ſinguler wiſdome, and vſpotted ſinceritie, in all his actiones, whearof I had ſo long experience, taucht me, that quhen his Maieſtie was vnwilling, and did reſuſ fache ane cruikit wordli³ courſe, the event of it could nocht prove bot vnhappie! Thairfoir, ſince his Maieſteis ſoule is frie of it, let no pairt of the ſtayne ly vpon his Maieſteis honour; bot, geue⁴ his Maieſtie can nocht vtherwayis be liberat of this imputatioun brocht vpon his Maieſtie by that deviſiſh Letter, let naper my lyfe, my eſtate nor credeit be ſpared; bot, as I haif all by his Maieſteis fauour, ſo, let all go, to the laſt drope of my bloode, beſoir any reproche for my moſt haynous offence ſould be broght vpon his innocent Maieſtie: Bot my miſerie, aboue all, is þe gritter, that it behoved me

¹ Suitor.

² The Prodigal Son in the Parable.

³ Worldly.

⁴ Gif; if.

offend evin in that point whairin his Maieftie hes ever bene moft tender, his confcience, which for ane thowfeand kingdomes he wald nocht hurt, and his reputatioun for fineir deilling, quhilk hes maid him famous throw all the world! In all theafe, his Maiefteis extraordinier deluynerances, miracoulouffe wrocht be God, for no caufe fo muche as for his Maiefteis incomparable finceritie of heart to God, and juft dealing to all the world. My Lordis, it fall nocht be needfarr to tranfmit my Confefsioun to Scotland, or to remit my judgement or tryell pair, fence for my offence, and his Maiefteis difpleafour confault pairpoun, I haif abfolutelie fubmitted my felf in his Maiefteis royall will. I rapert¹ my life and all war takin, befor I fould ly ony longer vnder this moft importable² burding of his Maiefteis heavie difpleafour. Thairfoir, my humbill fute to 3our lordfchip is, that 3e will, in commiferatioun of my miferable eftait, move his Maieftie to be plesed to luike vpon me my Confefsioun, accept my becoming in will, and but³ more delay, declair what oucht be done for reparatioun of his Maiefteis honour, which, to my greit greif, is tuiched be my moft haynous offence; which, in all reuerance and humilitie, evin with the laft drop of my bloode, I will obey and performe.

J. BALMERINO⁴.

Followis the tennour of the

LETTER *send be HIS MAIESTIE to my LORD ADUOCAT, anent THE CONFERENCE betuix his Maieftie and the Lord Balmerinoche, befor the purcheffing⁴ of his heignes fubfcriptionn to the LETTER to the POPE.*

TO OUR trustie and weilbelouit Counfalour, SIR THOMAS HAMMILTOUN of Bynnie, kny^t, our Aduocat, in that our Kingdome of Scotland,
JAMES R.

TRUSTIE and weilbelouit counfalour, Wee greit 3ow weil. Quhairis, We haif concludit to haif pe Lord Balmirrenoche tryed before certane our Justices, by Commiffioun, vpon that his moft treflonnabill and damnabill fact, committed by him, in the thifteous purcheffing and fleilling throwch of Letteris, vnder our hand, directed to THE POPE OF ROME; We nocht being of pe knowledge pair of; bot vtherways, vpon his moving of pat mater vnto ws, wer altogidder difaffenting pairfome: We haif thocht mete, (for 3our better informatioun and gritar licht in jis matter, and to pe effect that 3ow may pairvpoun ground 3our Dittay, and in his accufatioun vrge the fame as ane particular evidence of his giltines heirin,) to fett down, fo far as our memorie can ferue, the verie wordis of pe Conference past betuix ws att pat tyme, quhen he moved ws for pat Letter, quhich fo fallie and vndewtiefullie, without our knowlege, he thaireftir purcheft to be past our hand, about sum nyne or ten 3eiris ago. One day, he infist that We wald be plesed to wryte a Recommendationn to pe Pope, in favouris of pe Bifchop of Vaizon, with a request for promoving of him to pe hatt⁵: He than fchewit vnto ws, that by the vther⁶ his continewall flay att Rome, and by reafoun of the aduertefmentis he wald mak from tyme to tyme, he wald ferue for a spie to acquent ws with quhat courfes they had there; and that therewith, it wald be a greit credite to pe Natioun to haif thair countreyemen Cardinalis: At quhich tyme We fchewed vnto him, that We could nocht, in confcience, seild vnto pe Pope thais tytillia quhich he did affume vnto him felf; and that We wald nocht, for any warldlie refpect, do that, quhair-of We had no warrand in confcience: The wryting to pe Pope, in fuch foirt as he wald accept pair-of, being vnlauchfull for ony trew Cristiane: Vnto pe quhich, We do perfytelie remember, that he did then anfwer, that nochtwithftanding quhatfoevir fchew of difcontentment We vterit aganis Puritanis, he could perceave no thing but We wald turne more preceiffe than any of pame, quha for fuch a small mater as a naked Letter of Recommendationn fould be fo squeamifch and nice. He farther added, att pe fame tyme, that We fould nocht cair quhat wer done pairin; bot willit ws to leue to Sir Edward,

¹ I would rather that my life, &c.

² Unbearable, intolerable.

³ Without farther delay.

⁴ Procuring.

⁵ A Cardinal's hat.

⁶ Viz. By the uninterrupted residence of the Bishop of Vaizon at Rome, &c.

Drummond and him the filling vp of these styles ; and We being ignorant pairof, and done without our knowledge, itt could be no touch¹ nor greif to our conscience : Quhairvnto, We then anferuit, that as We evir difallowit of all double deilling, fo We loned nocht that slicht, bot wer resolved nevir to do nor consent to any thing, but quhat We wolde approve before þe hoill worlde : And nochtwithstanding of our reiterating of our dillyke pairof, zit wes þe famin most thifsioullie past our hand, without our knowlege. And thinking fitt to acquent 3ow with this particular circumstance, for 3our better informatioun, We bid 3ow farewell : FROM oure Court, att Quhytehall, the 9 Januarye, 1609.

Followis the tennour of,

HIS MAIESTEIS WARRAND *direct to the ASSESSOURIS.*

TO OURE rycht trustie and weil belouit Counsinges and Counsalouris, THE ERLES OF DUMBAR, MONTROISE, LOWTHEAN ; and our trustie and weil belouit Counsalouris, THE LORDIS PREVIE SEALE, THE CLARK OF REGISTER, THE COLLECTOURE, SIR LUEIS CRAIG.
JAMES R.

QUHAIRAS We haif directit our Aduocat to insift in persute of þe Lord Balmirreno¹ before our Justice, for his most haynous and detestabill cryme and offence committit aganis ws, our honour and reputatioun, We haif maid speciall choise of 3ow, in þe foirsaid Tryall, to be Assessoris to þe said Justice : And pairfore We ar to will 3ow to assift him, and to see justice dewlie ministrat þairin, as 3e wald do ws most acceptable seruice : And thir presentis salbe 3our Warrant sufficient. GEVIN att Quhytehall, the thryd day of March, 1609.

Followis the tennour of

HIS MAJESTEIS WARRAND *direct to my Lord Aduocat, to persew James Lord Balmirrenoche.*

TO OURE trustie and weilbelouit Counsalour, SIR THOMAS HAMMILTOUN of Bynnie kny^t, our Aduocat, in þat our kingdome of Scotland.
JAMES R.

TRUSTIE and weilbelouit counsalour, We greit 3ow well. This haynous offence committit by the Lord Balmirreno¹ aganis our honour and reputatioun, being fo lang conceillit and now laitle discoverit, movis ws, for the clerking of our innocencie, and freithing² owre selfis of this wrangous imputatiounis quiche We haif hithertill vnderlyne, to gene ordoure for prosecuting his Tryall, befor our Justice, with all regour : And becans the leif extenuating of þis offence can nocht bot breid in the evill disposit a distrust of his giltines : And We being füllelie auiset by thais of best judgement, heir, concerning the qualite of þat offence, to find þe famin, insofar as it is done aganis the securitie of þe Prince, a speciall poynt of hie Tresoun and Lesemaistie ; for heirby, nocht only wer We brocht in danger, both in person and estait, bot also our honour, credite, and reputatioun, moir dnto ws then our lyffe, hes bene by þe same brocht in questioun : And pairfore, We will 3ow to vrge the Judgement aganis him, as for a cryme of þe qualitie abone writtin, that fo all exceptioun that may be maid aganis proceeding, aper of collusion þairin, or in extenuating the offence, may be removed, that justice may be dewlie ministrat, and our innocencie, fo much þairby wrangit, may be heirefir clerit to þe hail world : And perswading our selfis of 3our cair, diligence and dexteritie heirin, as 3e wald do ws acceptable seruice, We bid 3ow fairwell. FROM oure Court, at Quhytehall, the nynt of January, 1609.

VERDICT. THE said James Lord Balmirrenoche Confessit the said Dittay, and hail contentis of the writtis foirsaidis ; and thaireftir, the saidis persounes of Assyse removed altogidder furth of Court to the Counsal hous of the said Tolbuith, quhair thay being convenit togidder, fyrst electit and chusit the said

¹ Fr. *Tache.*

² Freeing, absolving.

George Erl Marfchell Lord Keyth and Altrie, grit Marfchell of Scotland, Chancillar of the Affyfe; and thairefter, reafonit and votit vpoun the poyntis of the faid Dittay; and eftir long reafoning thairvpoune, and being throuchie refoluit thairwith, re-enterit agane in Court, in prefens of my Lord Justice and his Affeffouris, and the faid James Lord Balmirrenoch; quhair the faidis perfounes of Affyfe, all in ane voce, be the mouth of the faid Chancillar of the faid Affyfe, fhand, pronunceit and declairit the faid James Lord Balmirrenoch to be Giltie of the treflonabill, furreptitious, fraudulent and fals fteling of his Maieftis hand to the Letter fpecifeit in the Dittay, without his Maieftis knowledge, and contrair to his Maieftis declarit will; and of the treflonabill affixing of his Maieftis fignet to the faid fals Letter; and affifting knawin profeffit Papiftis in thair treflonabill courfes, to the danger of fubuerfioun of Religionne, and overthrow of all trew profeffouris thairof; and drawing his Maieftis lyffe, eftait, Croun of this realme, with his rycht of fuceffion to the Croun of England, in moft extreme perrell, and bringing moft fals and fcandalous imputationis to his Maieftie, both in poynt of honour and Religionne: And of airt and pairt of the hail treflonabill crymes aboue writtin, att lenth contenit in his Dittay aboue fpecifeit,

MARSHALL, *Cancellarius*.

Quhairvpoun Sir Thomas Hammiltoune, Aduocat to our fouerane lord, askit instrumentis.

THAIREFTIR, my lord Justice, consulting with his Affeffouris, Declarit to the faid James Lord Balmirrenoch, that thay war nocht to proceid ony forder in that buffines, for the present, till thay fould knaw his Maieftis forder pleafour: Bot, in the meanetyme, aduifet him to bethink himself (haifing fa horribill ane fentence pronunceit aganis him) quhat caice he fluid into, wiffing him to lay his compt with the world, and draw neir to his God.

And thaireftir, gaif commandment to the Capitan of his Maieftis Gaird to convoy his body to his Maieftis waired in Falkland; thairin to be kept in furetie, as he wald anfuere to his Maieftie, vpoun his dewtie and allegiance.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio burgi de Edr, primo die mensis Aprilis 1609, per D. Will. Heart de Prestoun, Jusliciarium, &c.*]

Apr. 1.—The quhilk day James Lord Balmirrenoch being presentit on pannell, to heir dome pronunceit aganis him, &c. the faid Justice produceit the Warrant vnderwrittin.

WARRANT from his Majesty, for pronouncing DOOM against Lord Balmerinoch.

JAMES R.

SIR WILLIAME HAERT of Prestoun our Justice, We greit 3ow weill. Forfamekill as James Lord of Balmirrenoch being convict by ane Affyfe, in ane Court of Justiciarie hauldin by 3ow, in our

tolbuith of Sanctandrois, the tent day of March infant, of þe trefsonabill crymes contenit in his Dittay and convictioun; wes þairpoun remittit till preiffoun, quhill our forder Will and plefour wer knawin þairin, concerning him: WE have thairfore thoct meit, be þir presentis, to signifie our said plefour vnto 3ow, quhilk is,—THAT 3ow with all convenient expeditioun cause fens ane Justice-Court, to be hauldin by 3ow in our tolbuith of Edinburgh, and thair Decerne and ordane the said James Lord Balmirreno¹ to be taken to þe place of Executioun, and pair to be demanit and execute as a Traitor; his heid to be strikin from his body; and all his landis, heretageis, lordschipis, baroneis, takis, stedingis, rowmis, possessiounis, officeis, beneficeis, coirnis, cattell, infycht pleneiffing, goodes and geir, to be forfaltit, efcheit, and inbrocht to our vse, as convict and guyltie of þe saidis trefsonabill crymes: Anent þe prouaunceing of þe quhich dome, thir presentis falbe 3our Warrant. GEWIN att our Court of Quhytehall, the xxiiij day of March, 1609.

My LORD OF BALMIRRIENOCHIS DOME.

Apr. 1. OUR said souerane lordis JUSTICE, be the mouth of Andro Quhyte, dempfter of Court, conforme to ane Warrant direct be his Maieftie to him, Decernit and Ordanit the said James of Balmirrienoch to be tane to the place of his executioun, and thair to be demanit and execute as ane Tratour; and his heid to be strukin frome his body,¹ &c.

DOCUMENTS ILLUSTRATIVE OF LORD BALMERINOC'S TRIAL.

I. *EXTRACT from an Anonymous History of Scotland, MS.²*

ANE litill befor this,³ SIR JAMES ELPHINSTOUN, President and Secretar, went wp to Ingland; quhair he was accusit, in presenfe of THE KING and *Counsell of Ingland*, for heiche Trefsoune aganis his Ma^{ty}, in counterfeiting the Kingis writt, and sending tha famin Letteris of Recommendationis to THE PEAP, by⁴ his Ma^{ties} knowledge. The quhilk being confessit be him, he was thair disgredditt⁵ of his honouris quhilk he had befor, as ane off the Connfell of Ingland: And thaireftir, was on the v day of December brocht to Leith; and on the sext day convoyit to Falkland, quhair he remaynit to the 10 day of March, 1609; and thane convoyit to Sanct Androife; quhair, being patt to ane tryall of ane Affyse, was convict: And thaireftir convoyit to Falkland agane; and on the last day of Marche was brocht to Edinbrughe; and on the first day of Apryll brocht to the tolbuyth, and thair, befor the Justice, condamnit as ane tratour, and his heid to be strukin off; bot neather the day nor pleace decernit: Quhairupone, the secund day of Apryll, he is convoyit bak to Falkland, in waird.

II. SIR JAMES BALFOUR'S *contemporary Account*.⁶

IN this fame mounthe of Nouember (1608), James Elphinstone Lord Balmerinoche, principall Secretary of Estait to his Maiefties, for the kingdome of Scotland, being this yeire challenged, in Ingland, anent some Letters wrettin be him, in his Maiefties name, to POPE CLEMENT VIII. befor the King did attein the Croune of England; bot he confest, (simulaty, as was thought by these that wnderstood the Courte, and hou matters then went,) to liberat the King of fuche grossnes, being examined by some Priuey Counsellers of bothe kingdomes; that, in anno 1598, he had wrettin to the Pope, in his Maiefties name, for a Cardinals hate, to be bestoned one *Chifolme*, a Scotts man, then *Bishoppe of Weafone* in France, brother to the Laird of Crouneriggis,⁷ in Perthshire; in which Letter

¹ The terms of the 'Warrant' are repeated here. ² Advocates' Library, A. 4. 35. Folio. ³ This is preceded by the following notice: 'On the acht day of Nouember, thair wes sik ane earthe quaik, throw mony pairtis of Scotland, as the lyk wes not sein this mony day.' ⁴ Without, past, contrary to. ⁵ Degraded, stripped. ⁶ See his ANNALES, vol. ii. p. 29. ⁷ A mistake; *Cromlix* is the proper name.

(he hauing gotten the Kinges hand to it) he styles the Pope '*Beatiffime Pater,*' with wther fuche phraſes; which almoſt wronged the Kings honor and reputatione, with all the Proteſtant Princes and States in Europe.

His trayell and puniſhment (he being a Scotts Nobleman) was remitted to the Juſtice of Scotland; and he ſent home thither, wnder a guard, from thyre to thyre; of all wiche the King adwertifes his Priney Counſaill of Scotland, the 21 of the mounthe of Nouember, by Spotwood, Archbiſhchope of Glaſgow.

After his arrivell in Scotland, he was firſt impriffond in Edinburge Caſtle, and from thence removed to the Touer of Falkland; and arraigned at St Andrewes, in the ſubſequent yeire; and ſentenced to loſſe his head: Bot, by the Kings ſecrett commands to the Earll of Dunbar, he was againe remitted to the cuſtodye of the Lord Scone, as a cloſſe priſſoner, to be kept at Falkland: And from thence was enlarged, and conſyned to his anen houſſes in Angus thyre, and Balmerinoche in Fyffe thyre; quher he deyed of a feuer, and weaknes in his ſtomache, ſome few mounthes after the death of his arch-enimy and competitor, Ceicill Erle of Saliburrey¹ (after quhome) if aney tyme he had furwined, (as was talked by them that beſt knew the Kings mynd) he had beine in grater crydith with his maſter then euer.

III. *EXTRACTS from the Records of the Privy Council of Scotland.*

Mar. 4, 1609. THE Privy Council, 'conſidering that his ſacred Ma^{tie} hes ſend down his faithfull and worthy counſellour *the Erll of Dunbar* to be aſſittant to this Tryall, the ſaidis Lordis findis it verie meete, neceſſar and expedient, for the grittair auctoritie and regard to that actioun, that the ſaid Erll of Dunbar be accompaneid with a ſufficient number of the Nobilitie and Counſaile; for whiche purpois, the ſaidis Lordis hes nominat and appointit David Erll of Craufurd,² &c. to be preſent with the ſaid Erll of Dunbar at the ſaid tryall, commanding thame, in his Majeſteis name, to aſſitt the ſame tryall, by thair preſence, counſaile and adviſe; and ſo to do and perſorme that whiche becometh faithfull, worthy and trew counſellouris to do, in a mater ſo heichlie importing his Majeſtie, in his honnoure, fame and credite.'

Mar. 17, 1609. WARRANT commanding the Director of Chancery 'to omitt the ſaid Lord of Balmerinochis name, furth of all ſuche Inſeſtments, Letteris, writtis and grantis to be paſt and expd the Chancellarie, heirefter, wherein his name formarlie hes bene accuſtumat to be inſert.'

IV. *EXTRACT from the Earl of Haddington's MS. Collections.*⁴

Mar. 28, 1609. LETTER³ from his Ma^{tie} to the Chancellor, commanding him to ſeaſe the Lord Balmerinochis landis, try the rentis thairof, the maner of his purchaſe, and wrongis done be him; to be tryed by indifferent⁵ Connſallouris, that the King nicht tak ordour, for ſatiſfaction of thoſe quho war wronged.

V. *LETTER from WILLIAM CREICHTOUN, Jeſuite, [to SIR ANDREW MORAY of Balvaird.]*⁷

RIGHT WORSHIPFULL S^r,

MY humble and heartie dewtie rememberit. I haif hard with extreame dolour, the extremeties to

¹ He died at Marlborough, on Sunday, May 24, 1612, of a complication of dropsy and scurvy. *Sir E. Brydges'* Memoirs of the Peers of England, p. 481.—His other 'arch-enimey' Dunbar predeceased him. ² Upon Monnday, fourth of Februar, advertisement came that the Erle of Dunbar was dead, vpon Wednesday, threttie of Januar, 1611. *Haddington's MS. Collections*, Adv. Library. ³ Here follow the other names before mentioned, already marked as Assessors and Assise, together with Walter Lord Buccleuch, Walter Lord Blantyre, James Lord of Bewlie (Sir James Hay) comptroller, and Sir John Cockburn of Ormiston, Justice Clerk, who had probably absented themselves. ⁴ Preserved in the Advocates' Library, Edinburgh. ⁵ After a careful examination of the Warrants of the Privy Council, no traces of the original Letter are to be found. ⁶ Disinterested, impartial. ⁷ The envelop of this Letter has unfortunately not been preserved; but, from internal evidence, Sir Andrew Moray of Balvaird seems to have been the person to whom it was addressed.—The original is among the *Dennyhe* MSS. Advocates' Library, A. 2, 40.

the whilkis S^r JAMES ELPHINSTOUN President of the Sessiou of Scotland is reduced, for the Letter sent to THE POPE and Cardinalis by Mr Eduard Drummond; and speciallye, becaus the President is so neir to you by alliance. As twiching the Presidentis Confeffioun to haif sent that dispatche to POPE and CARDINALIS, without his Ma^{ties} consent or commandement, I will not melle me with that; nor any thing what it may merit; bot, becaus I assisted Mr Eduard Drummond in all that negociatioun, thinking it to be to the Kingis weill and service, and communicatioun of all the Lettres¹ that was broght for that effairis, I thought it expedient to informe you of the veritie of all. There was no thing wrought in that negociatioun, which was not thocht to be for the Kingis Maiefties service; which was, to procure the Bischope of Wesone advancement to the degrie of Cardinall; to the end, that his Ma^{ties} fuld haif in the Colledge of Cardinalis, one of his trew and faithfull subiectis, to advance his Ma^{ties} service, and dasche and stop that which might be to his prejudice; and specially, that thay fuld not excommunicat his Ma^{ties}, or absolve his subiectis from his obedience, as there was some at that same time bisse to procure it: And therfor, was alledgit, that siche rigorous proceedingis in other Popes dayes did not advance, bot hinder the Catholick cause: And therfore, Pope Gregorius XIII. was constrained to grant to the Catholick, to acknowledge and obey the last Q. of England, in all thingis; which was expresse against the Catholick faith.² It was not gevin to vnderstand to the Pope, that the Kingis Maieftie was in any dispositioun ather to come or favour the Catholick Religioun; for the contrair was conteyned expresse in the Letteris,³ saying, that albeit he remaned constant in that Religioun in the which he was nourished, frome his cradle, yit he wald not be enyme and persecutour of the Catholikes, so long as thay fuld remaine faithfull and obedient subiectis to him; as indeede his Maieftie had evir done, vntil the horrible and barbarous Conspiracie of the Goone-powder: ffor in Scotland, to thame of our ordour,⁴ who ar holden the most odious, and persecuted to the deathe be the Ministeris, he did nevir vse more rigour nor to banishe thame out of the cuntry, and confraine there parentis⁵ to obles thame, vnder paines, to cause thame depart. The calumneis of sum passioned writteris, and speciallie of him who anferis the Apologie or traite, intituled 'TRINO NODO TRIPLEX CUNES;' who improperatis to the Kingis Maieftie to wald haif deceaved the Pope, to whome he gave hoip to favour or imbrace the Catholick Religioun, is onlie to disgrace, in what he may, the Kingis Maiefties self, and some Catholicks whome thay hait without iust caus, without veritie or charitie; which fuld not be imputed to all Catholickes, nor to the CARDINALL BALARMIN, who is not authour of that booke. Amongst the Catholickes ar many honest men, affectioned to his Majestie service, in all things thay may with goode conscience, and faittie of the Catholick Religioun; amongst whome I wald not be the hindmest, as I haif ever bene and falbe to my lyveys end. And heir I leif to trouble your worship, with my humble and heartly recommendatiounis redoublet to your goode affectionis, as to my L. Vicount of Fentoun⁶ your Vncle.⁷ FROM AUIGNON, the 27 of Januarye, 1609.

Your worship most humble and affectioned coueinge and fervant,

(No address)

WILLIAME CREIGHTOUN.

VI. LETTER from SIR THOMAS HAMMILTOUN to KING JAMES VI.⁸

PLEASE YOUR MOST SACRED MAIESTIE,

HAVEING reffused from the Earle of Dumbar, the LORD BALMERINOES Confeffioun of his most heynous offensis, committed aganis your Maieftie, togidder with your Maiefties two Letters, contean-

¹ The words 'and instructions,' added on the margin, in another hand, and deleted. ² Inserted on the margin, in the same hand, 'and sick service, who evir had done it, ather with or without Commission, apperis to meritt rather thanks and revalid nor hard treatment.' ³ On the margin, in another hand, afterwards deleted, 'and instructions.' ⁴ Jesuites and Seminary Priests. ⁵ Blood relations. ⁶ The celebrated Sir Thomas Esckine of Gogar, who killed Alexander Ruthven, at Perth, Aug. 5, 1600. He was created Earl of Kellie, Mar. 12, 1619. ⁷ This seems to prove the Letter to be addressed to Sir Andrew Moray of Balvaire. See his ingenious Letter to the King, Jul. 13, 1608, No. XIX, (14.) of the Collections relative to Gowrie's Conspiracy, vol. ii. p. 323. ⁸ From the Original, preserved in the *Dennyhne MS. Collections*, Adv. Lib. A. 2. 40.

ing sum materiell poyntis of his cairage, in the practeing of that mischeivous pourpose, not conteaned in his Confessioun; I have, according to the juste and wyfe direction of your priuie Letters, formed his Dittay, heirwith to be presented to your Maiestie, to the effect that these treasonabill crymes, which offered so dangerous woundis to your immaculat fame and royall honour, being considered be your most excellent judgement; that which is imperfyte, in my frame of this Dittay, may be amended by your Maiesties most judicious censure.¹ I have also ressaued from my Lord of Dumbar the resolutions of the grane and learned Ciuilians presented to your Maiestie, concerning this same fact, whairin they have expressed their sufficiency in their proffession and faithfull affection to your Maiesties seruice; bot, being vnaquainted with the grounds and course of oure Criminall Justice heir, have leaned to sum warrands, whairvpon I dar not weill relye: Becaus, I foresie that I am to perfew ane man, more skilfull to pleade his lyfe nor any that wes broght to the bar in this your Maiesties kingdome thir hundredh yeiris bygane; and who may expecte suche assistance of the best of oure lawyers, as many vthers offendours, most guiltie of hiest crymes, hes fund heirtofore: And albeit I think that the sentence gevin agais him be his owne conscience, and vndeniabill treuth of the cryme, confirmed be his owne Confession, sould tak from him all desyre of contradiction, and hope of any gude by his defence; yet, knowing it to be my dewtie to be reddie for the worst which he or his assistants can abill to intend, I fall be cairfull so to prepare all thinges necessar for that perfwte, as your Maiestie, with Goddis grace, fall have full satisfaction, by the performance of your royall commandement, in the verie forme and substance whilk your Maiestie hes preserveyed. Gif the Judges do that dewtie, whilk in reason and justice thay owe, and I dowt not will faithfullie performe to your Maiestie, speciallie, feing my Lord of Dumbar² is to be ane ey-witnes of thair proceedingis, whois caire hes bene suche in directing the first pairt of the proces, whilk lyes to my chairage, and exacting accompt of my diligence thairin; that, vsing the lyke with the rest of the Memberis of this Judgement, as I am assured he will, thay will neither get leisour nor leive to neglect or ouersee thair dewtie. In my chairage, his instance fall be bot spurris to ane fast running hors; yet can I not deny that his judgement hes availed to remark and reforme dyuers thinges to the better. So wissing to your Maiestie, in this and all vther your Royall difenis,³ most honorabill and happie succes; and to myself, your Maiesties gracious acceptance of the weak indeuours of ane most faithfull hairt and affection in your Maiesties seruice, I commit your most excellent Maiestie to Goddis blissed protection. ED^r, this 9. Feb. 1609.

Your most sacred Maiesties most faithfull and most bundin servant,

S. TH. HAMILTON.

VII. *NARRATIVE drawn up by LORD BALMERINOCHE, containing an Historical Account of the various Proceedings adopted against him, in England and Scotland.*

[SINCE the preceding sheets were sent to press, the Editor, being anxious to investigate the truth or falsehood of Lord Balmerino's Treason, has pursued as extensive an enquiry as his present limited opportunities permit. It must be satisfactory to all who take an interest in such investigations to learn, that the indefatigable Wodrow has preserved a Transcript of a Memoir, bearing every mark of authenticity, and which is said by Calderwood, in his MS. Church History, to have been prepared by this unfortunate Nobleman, during his exile. Although somewhat prolix and verbose, which is common to

¹ This amended draught has been preserved by Sir James Balfour, and contains very minute and laboured corrections. The King was very partial to such employment, and the crafty Hamilton ministers here to the King's vanity, in no measured terms. ² The reader has already seen how 'earnestly' this Nobleman 'travelled' with the Judges, &c. in the matter of Logan of Restalrig's forfeiture; and the corrupt modes which he scrupled not to adopt, to gain his ends. See this Coll., vol. ii, p. 292, for another extraordinary Letter of Sir Thomas Hamilton to the King; and also Robertson's Hist. ii. 223. *Hales' Memorials of James I.* p. 16, &c. ³ It seems doubtful whether this is a lapsus for 'busines'; or whether the word 'designs' is meant.

all similar compositions at that period, it must for ever set this point of History at rest; and not being written for the purpose of publication, but professedly for the information of his personal friends, and of the private perusal and instruction of his son, and for his warning, in the event of his entering into public life, it is so much the more impressive, and carries with it an air of candour and truth, 'nought extenuating,' nor 'setting down aught in malice.'—During the search which it was necessary to make among contemporary MSS. the following remarkable passage, which occurs in Anderson's History of Scotland, seemed to be worthy of preservation. 'His freindis and intereit servantis maid the word goe abroad, that the said Prefident not only had a Commission for wrytting of the said Letteris to THE PAIP and CARDINALLIS, bot also that he had a Remission for the famyn, if ever thei should be querrelled; as in sum misfir appeared; for he was no wayis frayed for the said Sentence, be reason, efter his returning to ward, his imprifonment was enlarged fill mair and mair, till in . . . ' he tuik feiknes and died. Bot for feir of bakcalling and renewing the saidis proces, he was quyetlie buried, no man knawing quhar, except a few only of his awin freindis. And within 3 or 4 yeiris efter, his haill landis and honours was restoirod bak again to his son and children.'²]

THIS LETTER³ and Instructions, written be Sir Edward Drummond, with the rest of that Dispatche, I presented unto his Ma. shewing it was Drummonds dispatche for the Bishope of Vizone. So all the Letters were signed, without asking to whom they were directed, closted and sent to the Archbishop of Glasgow,⁴ to be directed at his discretione. So Sir Edward received them not in Scotland, but they were sent in Monsieur Bethun's packet, least otherwise they might be intercepted. It may be easlie considered how necessar this service was for his Ma. as matters then went, there being small hope of Englands favour; Essex being then in his triumphe, and Valentine Thomas his proceffe at the very tyme in deducing, in his Ma^s prejudice, to disabill him in his claime to the Crowne; and what respect could I have had then, other then my faithfull duty. For it proving, as it did, verie profitable for his Ma. in such fort, as by directione from Rome, all the Catholicks in England prepared themselves in armes and horfes, for maintenance of his Ma^s title; and, at Rome, the Spanishe courfes were crossed. It was reputed by them that truelie loved his Ma. the best service that euer was done hime in that kind; Likeas Sir James Lindfay's employment followed after it, and speciall dealing with diverse Catholicks of England, wherewith the greatest guiders of England being terrified, and Essex taken out of the way, the Earle of Salisburie, then Sir Robert Cecil, by Lord Harie Howard, now Earle of South-Hampoune, fought means to his Ma., by Catholicks. They fought means to his Ma., and they were then the surest fort his (Ma.) had there: Likeas HIS MA., in his first Speeche in the Parliament-hous, extant in print, and a printed Proclamatione under his Ma^s hand, did not difemble how farre, as a Prince, he was bound to POPE CLEMENT, what great loyaltie and affectione he had found in Catholicks, and ever, whill⁵ that detestable Powder Treafone (abominable in God's fight, and detestable and damnable to be remembered and recorded, by all memorie,) his Ma. continued not farre from that same minde, whill the policie of some curious heads, fearing lest his Ma. should have looked more narrowlie in his owne estate and their actions, and knowing his inclinatione to be tickle in these points of Religione, fett him on work to that *Triplici nodo triplex cuneus*, which procured that answer of TORRUS, Bellarmin's Chaplaine, unknowne, as I am credible informed, to Bellarmine, and not unknowne to some states-men ther, to exasperate his Ma. not onlie against the Court of Rome, and his owne subjects in England, but to vouchsafe his charitie upon me, against whom their malice, although not deserved for any particular of my owne, is well enewgh knowne. Their malicious intention, thus founded, was well fecundeed by the malice of my enemies at home, the insolencie of some of the Bishops, and ambition of one, of whome I had deserved better. The Plott is secretlie contrived, that I shall be brought to a Confessione of it—his Ma. to disallow it—and, consequentie, my undoeing.

¹ He is said, by *Caldewood*, to have died in the end of May, 1612. See No. VIII. of this Appendix. ² *Anderson's MS. Hist. of Scot.*, Adv. Library, Fol. 652. ³ A copy of the Letter to the Pope precedes this Memorial.

⁴ James Beaton, second Archbishop. ⁵ Until.

There came never anie thing of this to my knowledge, before I came to S^t Albans, in the beginning of October 1608, the verie night before I come to Roifoun to his Ma. The advertiment that I had, was, that I had procured Letters, unknown to his Ma., under his hand, to THE POPE, whereby he had promised, that how soone he should come to the Crowne of England, he should either declare him self Catholick, or at least he should grant a toleratione to all Catholicks within his dominions; and had procured to make the Bylhope of Vaizon a Cardinall. The last part, because it was true, I thought it not to be denied; but the first, which was alluterlie false, I refused.¹ At my coming to Roytounne, Sir Alexander Hay, (in whom I reposed as great trust as in my self,) having formerlie perswaded me, most traterouslie, that his course of accepting to be seconnd Secretarie,² which at first I disliked, was a plott of my enemies, to his prejudice and mine both; and so, had perswaded my most assured and worthie friend Mr Thomas Murrey of his h(ighness) affection to me, which I did over credulouslie beleave. Coming to me, I complained that I was wronged, in so much that I had not gotten more tynous warning of their calumneis and his Ma^s discontentment against me;—excused himself, that he had sent me a packet, but that (I) had mislaid it be the way;—that it was a mater that I needed not to care fore, seing his Ma. desired no more, but to know the truth; and would not be discontent, if, in the point of his Religione, he were not ingadged. So, I confessed the simple truth. He, in the meane while, had his dailling, unknowne to me, with the Bishop of Glasgow, who incensed his Ma. that, so long as I was officer,³ their state could not be raised:⁴ And having assayed manie other means to disgrace me, could effectuat nothing. Having the authoritie of the greatest there to concurre to my overthrow, they did so dispose his Ma. as, without anie shew of discontentment, he askes of me Sir Edward Drummond's Dispatche, and specialie, of that Letter to THE POPE. I could not denie that which was well knowne to his Ma.; and that which was contained in Tortus book, was not farre different from the truth; for the words are, (speakeing of his Ma.) *Literas humanitatis et officii plenas scripsit ad PONTIFICEM MAXIMUM, quibus præter cætera rogavit, ut ex suis subditis aliquis Cardinalis S. R. E. crearetur.* But his Ma^s promisses of conformitie or to alteratione of Religione are not ascribed to my Letter, but to the promisses of some of the Ministers. Nixt, his Ma. asked, 'if ever he had consented to call THE POPE his *Father*?' I granted that he still refused—and in that, I had presumed, for the good of his Ma. service, after his Ma. had subscribed the Letter, to cause Sir Edward adde the Pope's ordinarie stiles; wherin, if his Ma. conceived anie offence, I was to crave his Ma. pardone to be disfavoured in that, and to cleare his Ma. so farre as anie would tuiche him therewith.

This past in Roytoun, on Sunday, in the morning, before Sermon, betuixt his Ma. and me, privatlie, in his withdrawing chamber. Sir Alexander Hay, who had still his practises with the Bishop of Glasgow, having learned of his Ma. how farre I confessed, advised his Ma. that my Confessione should be retreated,⁵ in the hearing of some others: And, to the end that I should not suspect their intentione, at my

¹ Denied. ² It is difficult to get at the truth of State intrigues, and to detect the real causes of such a change as that referred to by Lord Balmerinoch in his interesting Narrative, even at the time of their occurrence. His Lordship is, no doubt, very particular in his details, which are likely to be correct; for his Narrative was evidently intended for the perusal of those who must have had the best opportunities of knowing the facts. In a valuable Collection of State Papers, preserved in the General Register-House, Edinburgh, transcribed by Sir Thomas Hamilton (Earl of Haddington,) there occurs a transcript of the original Warrant of Sir Alexander Hay's appointment to the Office of Joint-Secretaryship, in the following terms.

³ HAVING choising MR ALEXA HAY to be on of our Privie Counsell of that our Kingdome; and thinking it no way fit that he should still attend vs heir at Court, for Scottis dispatches, as deput to any ither, We have thairfor joynd him in office with the *Lord of Balmerinoch*, our Principall Secreatar, (quo being enforced, be his greitt imployments in our service, to continue thair, for the moist part,) We intend to have said Mr Alex^a an attendant and residentiare heir at Court, for the better dispatche of the affaires of that Kingdome. And our pleour is, that you caus tak his oath, as Secretarie wnto vs. Quhairanent their presents sabs your Warrant. [JAMES R.]

To our rycht trustie and weithelovet cusine and counsallour, the Erl of Dumfermling, our Chancellar of that our Kingdome of Scotland.

⁴ Secretary of State. ⁵ Episcopacy could not be restored. Balmerinoch had obtained large grants of Church Lands, &c., and it was, therefore, his interest to preserve matters in their present state, for fear of a resumption of these livings taking place, which would thus strip him of a large portion of his income. ⁶ Rehearsed, reiterated; not *retracted*, which at first sight it would seem to import.

fecound Examinatione was present but Sir Alexander Hay, whom yett (as God judge me, I trusted as my self.) There I confessed, before his Ma., as befor, that his Ma. ever disaffented to yeild the Pope any files; and, at the subcribing of the Pope's Letter, I acquainted him no farther, but (in) general, that it was to Sir Edward Drummond's Dispatch, anent the Bishop of Vaizon. That I caused Sir Edward add the files; and for that, upon my knees, most humble I craved his Ma. pardone. Then, be his Ma. countenance, and some rounding¹ that past betuixt his Ma. and Sir Alexander Hay, I beganne to be in some suspicione. The King commanded me that I should repair to Londone,—reimaine there while I knew his pleasure—and in no case to repair to the Queen's Court. Immediatlie, Sir Alexander Hay, the Bishops of Glasgow and Galloway conferred with the King, anent my Confessione; and were discontent that I had not presentlie sett it down, under my hand; yett, fearing least I should have suspected their policie, they would not then urge me anie farther.

The next Mounday I raid to London. Sir Alexander Hay and the said Bishops raid before me; and Sir Alexander went to my Lord Salisburie, (and) acquainted him with all was past. Then begane I to suspect the course, and to repent me I had gone so farre. I sent to the Earle of Salisburie, desired I might have an assignatioun to come to him; who did returne answer, that he was advertised from his Ma. that I was commanded to keep my house; and so it was not fitt I should come to him. Thus did I mistake his Ma's command; for in that (I) was forbidden to repair to the Queen, then lying at Hamptoun Court, I thought all other places, within Londone, were free to me. Likeas, I went to Lambeth, to the Archbishop of Canterburie,² and to Whitthall, to the Earle of Dumbar; the said Sir Alexander allwise in companie with me, never giving me notice of his Ma's pleasure to the contrarie, whill³ I had it of the Earl of Salisburie; of purpose, as I have since found it, to exasperat his Ma., as a contempt not ordinarie there, where his Ma's commands are verie ceremonioullie observed. But, as God shall judge me, I never heard anie other command from (his) Ma. but to attend his pleasure at Londone, and not to reparaire to her Ma's Court.

Wednesdai thereafter, Sir Alexander Hay, having repaired to his Ma. comes with a Note, under his Ma. hand, commanding me that I should sett doune in writte the passing of that Letter to the Pope, and the circumstances, so far as I could remember. Beginning then to apprehend the buffinesse, and having gotten warning of his Ma's displeasure, and the advantage my enemies presumed they had gotten, I become more spairing; and by my Letters to his Ma. desired that I might be excused that I could not sett down the particulars of that, under my hand, after so long a tyme; except that either I were in Scotland, where my papers might bring me to remembrance, or that I had mett with Sir Edward Drummond; begging his Ma's patience, whill³ I might send for him; which I offered to doe with convenient speed, who should bring with him the just copy of that Negotiatione, and should give his Ma. and all the world satisfacione of the truthe. But that was not intended; but contrarie to the truth, to big upon me an unjust imputatione; wherof the production of the Letter would have made me cleare.

THE COPIE of the LETTER sent to HIS MA. the 12 of October (1608.)

Please your most sacred Ma.

In these particulare points your Ma. did demand of me, so farre as I can remember, I answer for your Ma's satisfacione; That your Ma. (of my knowledge) did never command or direct any Letter to be writtin to THE POPE, neither was I present when Sir Edward Drummond moved your Ma. for any such Letter. That your Ma. did never stile your self 'FILIIUS' in any Letter, but to your Mother-in-law, the Queene of Denmark. That your Ma. did never writt 'FATHER' or 'HOLINESSE' to any. As to the Letter written be your Ma. to POPE CLEMENT, although I doe remember that there was some such Letter, containing nothing but a Recommendatione of the Bishop of Vaizone, I humble crave your Ma's pardone, if I can make no declaratione how it was past, whill Sir Edward Drummond, who was the author, bearer and procurer thereof, be first examined; whom I am about pre-

¹ Private communings; whispering.

² Archbishop Bancroft, formerly Bishop of London.

³ Until.

fentlie, with your Ma. permiffione, to fend for, by whom the whole circumftances of that mater fhall be clearlie detected. For I proteft before God, for the prefent, I cannot perfettlie remember how that mater was paft; moft humblye cravinge your moft facred Ma. (fince I am moft willing, for your Ma^s obedience, to clear your Ma. of that before all the world) that in remembrance of my loving and affectionate humble fervice, yee will be pleafed to accord me the tyme and meanes, wherby the veritie of my part in all that mater may be manifested; which as I doe expect, out of your Ma. princely accuftomed clemencie, fo fhall I ever pray, &c.

COPIE of the LETTER to HIS MA. the 15 of October 1608.

I DOE remember that I moved his Ma. divers times to have written to THE POPE, both to have taken notice of his kindneffe, and to have recommended the Bifhop of Vaizon; and that his Ma. did refufe, onlie for that he could not, with fafe confcience, yeild him thefe titles of 'Father' and 'Holineffe,' which he¹ did allow: But if otherwife the Pope would have accepted his Ma. Letters, with the Titles of other Temporall Princes, he would have written him. As to the circumftances of paffing of that Letter, I proteft before God I cannot call them to my memorie; but by conference with Sir Edward Drummond, and with fuch as ferved me at that tyme, and with fuch other adminicles as I will find in my own papers, I hope I fhall give his Ma. fatisfactione.

HIS Ma. not content to admit my delays, remembering the circumftance of that negociatione better then I, he fettedh down a number of interrogations, under his hand, with a Letter to the Counfell of England, commanding them to examine me. Being brought before them, I at firft declined their Judgement, till they declared that they would not take upon them to judge me; but, following his Ma. commandement, to examine me and remit me to my ordinarie Judge. In end, to all the particulars, I answered, in fuch fort, that they could not mend themfelves, nor bring me in compaffe of any Law. The Earle of Dumbar, the Lord Skoone and Sir Alexander Hay prefent.—Thereafter his Ma., being difcontented of my unwillingneffe to cleare him, and to burthene my felf with the fault, yea to tak upon me fome points (which his Ma. affirmed he remembered,) which, in truth, I could not call to my memorie, the Earle of Dumbar directed the Lord Burlie² to me, a verie favourable and faft Nobleman, and who had, immediatlie before the Earle of Dumbar's parting out of Scotland, renewed a friendfhip between him and me, which was the greateft caufe of my repair to Court, that it might be confirmed there, before the Queen's Ma.; and his Ma. fatisfied, by the Earles meanes, of whatfoever hard opinion he had conceived either againft the Chanceler or me, by fuggeltione of the Bifhops. His credit from the Earle of Dumbar was to advife me, for my own good, fince it was confefed by me that fuch a Letter was purchafed, and that his Ma. had denied it, that rather, ere the imputatione fhould lye upon his Ma., I fhould take it upon me. When I obtended the perrell of my eftate, his Ma^s difcontentment and their malice, the Lord Burlie gave in this affurance, that my life, eftate, nor Ropar's Reverfione fhould be in no dangere. As to my Offices, to leave them to his Ma^s difpofitione; whether he would take them from me or not. I finding manie enemies there, and being ftraittie kepted, I enter, be the Lord Burleyes meanes, who from the beginning has ever kepted an honeft part to me, in a more particular freindfhip with the Earle of Dumbar. And, becaufe the Lord Skoon and Sir William Hart had diverfe tymes travelled with me to have married one of the Earle of Dumbar's fiftler-daughters, I was content to give him my eldeft fone to be difpofed upon in marriage at his pleafure, to give the Palace and Park of Hallyroodhoufe; and if he defired Reftalrige, he fhould have it for the price I bought it. Thefe conditions, as the Lord Burlie told me, pleafed him, and fo he would take upon him my protectione, if I would follow his advice, which I was content to do, knowing what power he had, and how eafie it was to him to calme all stormes; allwife defiring him to carie his affectione to me fo fecretlie, as the Bifhops, Sir Alexander Hay, the Earle of Wigtoun and others my fmall friends,

¹ Viz. the Pope.

² Sir Michael Balfour, created Lord Balfour of Burleigh, in Kinross-shire, Aug. 7, 1606.

should know nothing of it. He was so diligentlie allwife attended be some of these, that after he had appointed me diverse meetings, he could never meete with me; allwife, he assured me what ever the Lord Burlie should say, in his name, I might trust it, and he would performe the same. And hereupon I desire my friends to enquire the Lord Burlie, if this assurance was not given be the Earle of Dumbar, that my life, my estate, and Ropar's Reverencie should be sure; as for my Offices, they should rest in his Ma. dispositione; and it might be I would not want them.

The Earle of Dumbar thus entered in conditions with me; and the Lord Burlie putt in trust, for hime and me both, for all conditions on both parts. The first directione was, that I should write a Letter to him, desiring he should conveye the Earles of Salisburie, Northampton and Suffolk, befor whom I should grant all the King's Articles; and thereafter write a Letter to his Ma. to the same effect. He willed me to use these three Noblemen to strengthen his credit, that they being engaged to be my friends, he might the more easilie worke that he had undertaken; and all the said Noblemen promised upon their honours that they should be my friends, and would joyne with the Earle of Dumbar to satisfie his Ma. All which I performed. Then was I delivered in the Earle of Dumbar's keeping, who promised that I should allwife be his prisoner; and at my returning to Scotland I should be wairded in the Castle of St Andrewes. By this advise, I wrote a becomming in his Ma. will, which the Lord Burlie gave him. He returned me an answer with him, that his Ma. was well pleased with it, and all would go well; onlie, I was desired to adde this, that I would renew the same iudiciallie, when I should be required; which I did.

THE COPIE of the LETTER to HIS MA. 24 of October 1608.

Most gracious and dread soverane,

It is over great presumptione to offer to your most princelie eyes these lynes, from the hands which have so highlie offended your most sacred Ma.; but, because it was continuance in my offence to labour to obscure the cleare soule of your Ma^s unpotted integritie, and that the imputatione of my misdemeanour, which I justlie deserve, may lye upon my self, and your Ma^s innocencie cleared to all the world, I have truelie sett down here, how that Letter to POPE CLEMENT, wherewith your Ma. is fallie taxed, was, without your knowledge, past your hand, amongst other Letters which I did present to your Ma., by the abuse of your Ma^s trust, whereof I was not wortie. In the year of God 1598, at the earnest sute of the late Archbishops of Glasgow,¹ your Ma^s Ambassader then resident in France, the Bishop of Vaizon and divers others your Ma^s weil affectioned friends and servants, both in Italie and France, who were verie earnest to have had some correspondents betwixt your Ma. and the Pope. Sir Edward Drummond being directed by them in Scotland, to follow that buffinesse, I presumed divers tymes to move your Ma. therein; and did offer to your Ma. the frame of such a Letter as I would have signed be your Ma. to the Pope; whereunto I never found your Ma. so unwilling as your Ma. did altogether refuse to write; denying ever to write anie Letter, with these titles which the Pope did assume to himself. But I being in my too great zeale, and assured hops were given me by greater statemen then my self, of the benefite would come to the strengthening your Ma^s title;² by the Pope's friendship, overcome with weaknesse, and presuming that the successe of my true intentione should efface the memorie of my offence, I caused draw up a Letter, with the said Sir Edward's hand, as from your Ma. to the Pope; but verie sparinglie, onlie containing thanks for his kindnesse and bygain favour, with Recommendatione of the Bishops of Vaizone, your Ma^s native borne subject, to be made a Cardinall. To the which Letter, among others of that kind, written to the Duke of Florence, Sawoy and some Cardinalls, in favours of the said Bishop, (all presented be me unto your Ma. one day in the morning, when your Ma. was going a hunting, in haste,) your Ma. did sett your hand: For your Ma., finding the Letters all in Latine, and the Bishop of Vaizon's Recommendatione the subject, and having formerlie refused to write to the

¹ James Beaton, the second archbishop of that name.

² To the Throne of England.

Pope, did nothing suspect that anie such thing should have been offered to your hand. And after your Ma. had signed it, Sir Edward Drummond did adde the Pope's files, both in the beginning, and above your Ma's subscriptione in the end of it. Some Letters, two or three as I remember, signed be your Ma. to some Cardinals, containing nothing but thanks and recommendatione of the said Bishoppe, were given to the said Sir Edward cloffe, catchetted, to be directed, by the Bishop of Glasgow's advice, to such of them as were, in his judgement, best affected to your Ma.: And I did hear, after, two of them were given to Aldobrandine and Bellarmine, and the thrid to Cajetan, who was Protector of the Scottish Natione. Here was my first fault of preposterous zeale, weaknesse, and presumptione. My next was fear of your Ma's displeasur; because the late Queen's Ambassader having expostulated for your Ma's dealing with the Pope, and I being asked therof, be your Ma., I did pertinacioussly denie that there was anie such mater; and for your Ma's better satisfacione, I moved Sir Edward Drummond to returne into Scotland; who, being examined, did at my desire justifie my deniall, and that he had caried no Letter for the Pope. I pressed him, verie instantlie, at his returning, to labour to reter the said Letter, and to destroy it, fearing least the knowledge of it hereafter might breed your Ma's discontentment, as it hes done at this tyme, to my exceeding great sorrow. And because my attestacione in this kind, which I protest, before God and his angels, is true, and yett will not be a sufficient liberacione of your princelie honour, which is dearer to me then my life, I am not hearily to beg anie pardone, but that your Ma. in your most rare and princelie wisdome, will take such course, but¹ any respect unto me, whereby your Ma's innocencie and my offence may be made knowne to the world. And so, in all humilitie, attending to suffer what your Ma. will impose, and to obey whatsoever your Ma. will be pleased to command, I pray God grant your sacred Ma., according to the sinceritie of your heart, a true and just constructione of all your actions befor all the world, and, after a long and most prosperous raigne, eternall felicity.

COPIE of my becomming in Will, 3 November, 1608.

Pleafe your most gracious and sacred Ma.,

As at the verie first I did ingeniously Confesse my offence, and have particularly sett down under my hand the whole circumstances of it, and likewise answering to the severall interrogatours whereupon I was examined, I have in everie point declared the veritie; so, still continuing most desirous that your Ma's honour should be free of any such imputatione, and my offence without anie longer delay knowne to the world, doe, by these presents, in all humilitie, freele and absolutlie submitt my self, and become in your Ma's Will; that since onlie against your Ma. my offence is committed, so your Ma. will irrogat unto me such punishment as in your true justice and princelie clemencie I have deserved. And this my becomming in Will, I will renew, or reiterat in Judgment, or without, so oft as I shall be required.

AFTER this, the Earle of Salisburie causes be drawn up, upon his Ma's Interrogatours and my Answeres, a forme of a Depositione, making everie particular deid to be Treafone—that I had trateroussly conspired with Sir Edward Drummond to deceave the King, and steall his hand to a Letter to the Pope—that I had trateroussly caused put the catchett to it—and that I had commanded Sir Edward, above the King's subscriptione, to write '*Sanctitatis v. obsequitissimus filius*,' so like the King's hand as could be—and so, I had made him falltie to counterfoote the King's hand. This Depositione being offered to me to subscribe, I refused (at) the first; because it made that to be Treafone and treasonable which was not; since the Letter contained nothing but meere complements, and a recommendatione of a Scottishman to be a Cardinall; and that ane Officers trust was greater then to procure a common recommendatione; and the putting of the Catchett to it was lesse treasonable; seeing by that Letter his Ma's honour, nor state, nor Religione, was not harmed, nor no damages nor inconvenience had followed upon it. The last part was directly *crimen falsi*; and as I had not deponed it, so it was not true. At this meeting were present the Chancellor of England, Salisburie, Northampton, Suffolke,² my lord Duke

¹ Without.

² Thomas Howard, Earl of Suffolke. He was Lord Chamberlain at the time of the Gun-

of Lennox, the Earle of Dumbar, Sir Thomas Smith Clerk of the Counsell, and Sir Alexander Hay.— My answer to the laft, the Chancellor granted to be true, and that it was but a mistaking; and so it was mended, and that article deleted, in so farre as it concerned the counterfooting of the King's hand. As to the first, my Lord of Salisburie answered me, that what they had sett down was onlie to give his Ma. satisfactiō; and it was nothing to me, since his Ma. had accepted me in Will, was to deale gratiouſlie with me, and not to proceede iudiciallie with me any more. Whatever might please his Ma., and in his Ma's opinion give the world satisfactiō, and clear his honour, since it was not to harme me, it was unfit that I should refuse his Ma. to give his Ma. what should please him, seeing it was not to prejudice me. And upon this assurance, and the Earle of Dumbar's former Declaratione, that the King had weill accepted of my becoming in Will, and that my not subscribing of this Depositione hindered the progresse of the King's answer to TORTUS booke, wherof this Depositione behaved to be a part, I sett my hand to it, in presence of the Noblemen and others above written, who, I am sure, upon their honour, will not denie it. And hearupon I desire my friends to inquire the Duke of Lennox, the Earle of Dumbar, and Sir Alexander Hay.

LAST, the King's Ma. having concluded to returne me in Scotland, because all this matter was carried with a great show (as was said to his Ma.) to cleare his honour, but in effect to disgrace me, and make me odious, I was brought before the Counsell. (Not only) all the Noblemen, both English and Scottish, (and) all the Judges were brought, but all the Court, so many as the Counsell-Chamber could containe. The Chancellor declared the cause of that solemne meetinge, made my Depositione to be read, and with a long harrange and many reasons did aggravat my offence, to his Ma's great praise; and in the end, remitted the matter to Scotland, to be judged there. Nixt, the Earle of Salisburie had as long a discourse, all to disgrace me, to flatter the King, and to shew his eloquence. Thridlie, the Earle of Northampton, to testifie his zeale as a witness, how alien his Ma. was from anie dealing with the Pope, these 18 years he had kept correspondence with his Ma., damned all my proceedings. I had warning the night before that I was to be so used, as the Lord Burleie,¹ who had bene mediator betwixt the Earle of Dumbar and me, being departed to Scotland, I was forced to fend for James Bailzie, a verie trustie young man, to whom I am infinitie bound, and who (nixt my Lord Burleie) was verie privy betwixt the Earle of Dumbar and me; whom I desired to shew his lordship, that I understood that I was to be brought before the Counsell the next day, and that they were to rail upon me. That he should not think it evill if I should say, for my owne defence, that which I would make good; that there was no point which they were to lay against me, which I would not answer. He returned James Bailzie to me, with this answer, earnestlie praying me, since that was the last that in that earand was to be done, not for my prejudice, but for his Ma's honour and satisfactiō, that I would answer nothing; but in all humilitie acknowledge my offence, cleare and liberate his Ma., renew my becoming in Will, and desire my Lords of Counsell to become intercessors, that his Ma. would end the processe, be his Declaratione. This would be most acceptable to his Ma., who would be behind a peece of tapetrie,² and if I played my owne part right, his Ma. would be best pleased. Which I also obeyed.

The Chancellor, in Counsell, produced his Ma's Warrant, declaring his Ma's Will, that I should be no more one of that bodie. Which Declaratione of his Ma's Will, having no Convictione nor Warrant, but my becoming in Will was ane acceptatione of it; so, having declared a part of his Will, by no law, thereafter, he might have proceeded iudiciallie with me. Immediatlie after the Counsell, the Earle of Dumbar sent James Bailzie to me, to give me thanks; and to shew how weill his Ma. was pleased;

powder Plot, and was, with Lord Mounteagle, the chief means of detecting that remarkable Conspiracy. See *Carte*, III. 757.—*Winwood's Memorials*, II. 171. Suffolk was turned out of his office, in 1618, for embezzlement, &c.

¹ Sir Michael Balfour, Lord Balfour of Burleigh. ² This was by no means an uncommon practice of 'his most sacred Majesty,' and conveys no favourable idea of the course of his proceedings, in this remarkable transaction. It reduces the whole matter to a mere stage trick, and a solemne mockery of the highest Tribunal and personages of the Country.

and that his Ma. would have that in writt, which I spake. Which also I fett donne. And because there was some words his Ma. (as he affirmed) desired to be added, which he affirmed I spake,¹ the words written with his hand, and brought to me be the said James Bailzie, I infert with my hand and subscribed; and fend them to him, with the said James. And hearupon I desire, if need, that my friends may inquire the said James.

THE summe of the Counsell of England's proceedings, on Sunday, the 13 of November, 1608.

THE said day, in the after noone, the whole Counsell being convened in the Counsell-chamber, the whole Judges, and all the Noblemen, both Scottish and English, that were at Court, THE LORD CHANCELLER² beganne a verie grave speech, wherein he did earnestlie require audience and attentione, in respect of the great consequence of the mater he was to speake of. It was so much the greater, that it was a noveltie wherof he had never heard, nor (to his knowledge) in all his books read of any the like president, of before. It was of great consideratione, because it did triche the Kings most sacred Ma. and royale persone, both in his honour and his safetie, wherein did consist the safetie of the whole estate. The mater was also weightie, in respect of the persone whom it did concerne; a Nobleman of Scotland, raised to that estate by his Ma^s favour, and a Member of that board. As to the mater, because he might perhaps faile in the relating of it (which he was very unwilling to doe, in a mater of that kinde and weight,) therefore he desired the Instrumēt, containing the Lord Balmerinoch his Confessione, and signed with his hand, should be read. The same being read, and acknowledged be the Lord Balmerinoch to be his owne Confessione, then he said to the Lords of the Counsell, that he did perceave, by their countenances, that they all did looke on that mater as if it were a mater wherein they were to give their sentence and judgement. But he prayed them not to thinke fo; and that he would releave them of that burthen; because neither were they convened to that end, neither was the said Lord Balmerinoch brought down to make any answer; because that mater was transcendent, and of a greater weight than that board, or any Counsell board, could judge of it; but, because it was a fact committed in Scotland, by a Scottishman, before his Ma^s happie coming to the Crown of England, they would not doe that prejudice to Scotland, that was as ancient and free a kingdome; as they are so weill governed, with so many grave and ancient Noblemen; whose Nobilitie is continued and reserved with a farre greater respect and antiquitie nor their owne; so wise a Counsell of Estate, so learned and grave Judges, as in all these perfectionis they were nothing inferiour to them. Onlie, for the present, he would point out and offer to their considerations, that were present, some heads of that Confessione, which had been the consequents of that fact; and so remit it to the own Judgement,³ and the Lord Balmerinoch to his own answer before his owne Judge. First, he desired they should attend the tyme when his Letter was written; to witt, when his Ma. was, in possessione, King of Scotland; in his title and undoubted royall descent, apparent of England. How this fact might have perrelled him both the one and the other, if it had been knowne that his Ma. had had any dealing with the Pope; for, in Scotland, the most of all the Nobilitie, gentry, and whole bodie of the kingdome, being of the Religione they presentlie professe, would not have failed to have made insurrectione, if they had knowne that his Ma. had any dealing with the Pope. In England, the late Queene, of happie memorie, being a Prince verie jealous and narrow looking in all his Ma^s actions, if she had knowne that his Ma. had had anie course with the Pope, she would have quicklie objected unto his Ma., that since he was taking a forane course to strengthen him, speciallie with these who had fo often futed⁴ her life, she would likewise take another course, for her owne preservatione; and so might have endangered his Ma^s just clame. Like as, in effect, the same dealing coming to her knowledge, she did incontinent fend her Ambassader, and did most bitterlie expofulat with his Ma.; and the dealing, at that time, was denied; and so smoo-

¹ Balmerino was thus led forward by one piece of artifice after another, until, at length, he was so completely in Dunbar's toils, that retreat was impossible. ² Sir Thomas Egertoun, Lord Ellesmere, afterwards (1616) created Viscount Brackley. ³ To the natural and proper Court or Jurisdiction, in Scotland; where he would be tried by an Assise of his peers. ⁴ Pursued.

thered over. Nixt, he did mightilie aggredge¹ the great inconveniences that had fallen out, all (as he did affirme,) upon the dealing mentioned in that Confessione; first, that it had given occasione of an infinite number of scandalous books and pamphlets to be written, wherein his Ma. was verie bitterlie taxed; and speciallie, he did there produce *Bellarmines* late book, under the inscriptione, which he did read, of one whose name being TORTUS, he did allude therunto that he was alwise *tortus*.² The parcell³ he read, was the fault found with Pope Clement's Breave; whereby he did command the body and estates of this kingdome of England not to admitt or receive a King, in case of the Queen's decease, but a Catholicke; and so did exclude his Ma. from his just title. To the which clause, contained in the book of *Triplici nodo triplex cuneus*, Bellarmine made this answer, that by that Breave, the Pope did not meane to exclude the King, because the name '*Jacobus*' was not mentioned in it; and withall, the Chancellor did observe, in the words he read, that *Bellarmino* did give the author of the book a lye, in the word '*mentitur*'; nather could it be meant of his Ma., because his servants and Minister had given great hopes to the Pope, that '*non erat valde alienus a fide Catholica*'; and thereafter, '*quia etiam Rex ipse scripsit ad Pontificem ipsum, Literas humanitatis plenas, quibus, præter cetera, rogavit ut aliquis a Natione sua Cardinalis S. R. E. crearetur, per quem facilius cum Pontifice res suas tractare posset*:' Which words being conforme to the Lord Balmerinoch's Depositione, the same had given occasione of the writing of that booke; in manie parts wherof his Ma. was bitterlie touched. Nixt, upon the occasione, contained in that Depositione, did grow all the Conspiracies that, since his Ma^s commeing to England, had fallin furthe; for by this dealing with the Pope, unknowne to his Ma. great hopes were given to the Catholicks, that when his Ma. should come to the Crowne of England, his Ma. should either declare himself a Catholicke, or, at the least, the Catholicks should have a toleratione of Religione, within his dominion; wherof, finding themselves disappointed, they did move their Conspiracies. For fearcelie was his Ma. warmelie sett down in this kingdom of England, when Watfone the Priest and a number of his adherents did attempt against his Ma^s royall persone; for the which a number of them were apprehended and punished. Nixt, upon it came the devilish intentione and practise of the Powder Treafone, wherein was intended the taking away of the King, Queene and their posteritie, the Counsell, Bishops, Nobles, Judges, Gentry, and whole bodie of the realmes; for the which a number were punished, and a great many, in his Ma^s clemencie, spared. Thereafter, that none should mistake their proceedings, in the tryell and examination of the Lord Balmerinoch, he declared all the points therof, adding, that although it was a case might receive judgement in England, in respect it did concerne his Ma^s persone, which hath so many priviledges that it draweth all Judgments⁴ after it; and that the Lord Balmerinoch that was to be judged was present, and so might receive his judgement there, yett such was his Ma^s respect to his ancient native kingdome of Scotland, and they were so farre from encroaching upon the liberties therof, and knowing the tender regarde that the Nobilitie and Estate would have to a mater that did so highlie concerne his Ma.; after a long reiterated discourse, in the praise and honour of that kingdome, Counsell, Nobilitie and government of it, declared, that they would remitt the mater to receive judgement there.

NIXT, THE LORD TREASURER⁵ begane a verie grave speech. After the dew commendatione of the Lord Chancellor, that had spoken before; that he was verie forie to have occasione to speack of a mater of that kind; but since it did concerne, so highlie, the life and honour of his most sacred Ma. (whose life was dearer to him nor his owne) he should be thought verie undutifull, being so manie wife bound, if he were silent in it. There, having given his Ma. his owne dew praise, at great length,⁶ he did next adde that he was forie to speake of it, in respect of the persone whom it did concerne,—a Nobleman, by his Ma^s favour, a Counsellor of State, yea more, a Secretarie of State, and one against whom, his deutie reserved in this, he would be loath to have spoken. The fume of his speech grew

¹ Aggravate.² Crooked, perverse.³ Portion, passage.⁴ Jurisdictions, Tribunals.⁵ Sir

Robert Cecil, Earl of Salisbury, Principal Secretary of State. He succeeded to the office on the death of Sackville, Earl of Dorset, in 1608.

⁶ Well knowing his Majesty to be behind the tapestry!

to that same end of my Lord Chancellor's former Speech, that his Ma^e dealing with the Pope might have breed him, in his owne kingdome, difobedience, and done him prejudice in his title to England; that if his Ma. had bene of the counsell of writing of that Letter to the Pope, he would affirme that he had bowed his knee to Baal; being desireous to establish, for his affaires, ane Advocat at Rome. Nixt, by the words of Bellarmin's booke, then produced, he shew, that the Pope took upon him to declare the Crown of England elective; because, by the words of the Pope's Breeve, the estate and bodie of England were commanded, first, '*non admittere*;' next, '*non instituire, nisi Regem orthodoxum et Catholicum*'—fo the heretabe descent of the Crown of England was taken away, and behoved to be holden in almous¹ of the Bishop of Rome; that he would not be content to be Bishop of Rome, but would have all Europe at his dispositione. And, in another place of the booke, he shew ane conclusion more offensive to his Ma.—'*ergo REX JACOBUS neque est Catholicus, neque est Christianus*.' That, for himself, he did never say so much of any Catholick; and that he did verilie beleave that a true Catholick was *Christianus*. Nixt, he fell out upon the office of a Secretarie, the great credit and trust thereof; that in a Secretarie's breast is laid in store, the treasure of all the secrets of the kingdome; that *fides* and trust is of that nature, that *fides quæ semel accedit nunquam revertitur*;—that he feared, in tyme to come, his Ma. behoved ather to have no such officer, or ells divide the trust of maters of no importance to one, and common affairs to another;—that of a King's hand-writte, if it may be caried by² the knowledge of the Prince, is more dangerous nor ane army of tuentie thousand men; because the one may be fore-seene, the other not. Nixt, in the nature of the fact, he compared the King's Seall with his hand-writt; that the Great Seall was but the King's image, but his hand-writte was his minde; but if any thing should be added above the Great Seall, for himself, he would think it verie near Treafone, leaving them to consider what it was to adde any thing above his Ma^e hand-writt. He desired to be excused if he were a little kindled, and did remember the manie favours he had of his Ma., that he possessed manie places that were fitter for others, yett none should goe before him in trust nor affectione.³ To testify his Ma^e unwillingnesse to have dealing with the POPE, he did remember how his Ma. refused to receive anie Ambassader from him; and how he commanded the Ambassader Lieger in France, to shew the Pope's Nuncio in Parise, that if anie of his Ministeris in his name had promised more then they had warrant, the Pope should not expect anie performance therof from him. Last, he made (as he called it) a punctuall discourse of all the proceedings in the Lord Balmerinoch's Examinatione, and how his Ma^e memorie was a great deall better in that mater then his; and by his particular interrogations, had brought him to a Confessione: And, after ane example and verie large commendatione of the Kingdome of Scotland, and wise and grave government of it, did remit the judgement of that mater to them, not doubting but they would proceed in it, as his Ma^e interesse and the weight of the mater did require.

After him, THE LORD PRIVIE SEALE⁴ had a Speech, wherof this was the preface. If he had had libertie of speech, as he had not, he would have chosen these two noble lords who had so gravelie and learnedlie spoken to have gone before him; for they had taken up the crope of all was to be collected of the present mater, so cleanlie, as they had left nothing behind to him to glean; but he did remember to have read of the nature of the bee, that at first coming upon the floure, she did gather the honie, and after the honey being collected, she did gather the waxe. So would he, since there was no

¹ In alms; as an elemosynary gift.

² Without, contrary to.

³ The whole of these Speeches and gratuitous affirmations were in reality addressed to the King '*behind the arras*,' and they were all so constructed, by these Court scyophants, as to be most palatable to the royal taste. The knowledge of this circumstance must sink the speakers in the estimation of all who read such abominable rodomontade, and convert all their fulsome adulation into solemn mockery or absolute farce.

⁴ The celebrated Henry Howard, Earl of Northampton, who was styled by the French Ambassador, Monsieur de Beaumont, '*one of the greatest flatterers and calumniators that ever lived*.' He was deeply involved in the murder of Sir Thomas Overbury; but died before that atrocious affair was publicly investigated. The private and intriguing Correspondence between King James and Cecil, previous to his accession to the throne of England, was carried on through the medium of this individual. See *Lord Hailes' Letters*, &c.

honey left, gather up some waxe to seale up the mater with. And first, after a large commendatione of his Ma^s fo manie rare and princelie qualities, whom that mater did fo highlie concerne, (which he protested he did not as a fycophant or flatterer,¹ but as a true and faithful Counfeller,) he did fay some thing of his affectione and dutie to the Lord Balmerinoch, with great sorrow for his error in that kind, that he should have thought it a fave way for his Ma. to have left his assured true friend, which was the Queene and Eftate of England, to follow after a stranger, speciallie since of his own knowledge (for the space of 19 years) it had pleased his Ma. to keepe intelligence with him. He perfidie knew that his Ma. was most unwilling to anie such course. First, how in the 88 (1588) the Bishop of Dumblane cam in Scotland with so many great offers; and if his Ma. would have given him anie, never fo little hope, the Pope would have stayed that great Armado. Nixt, come Sir James Chisholme, who dealt in the same course, and because he did not prevaill, he did break his heart, and fo died. Watfone the Preist having come in Scotland and dealt with his Ma., did confesse to his lordship, that he could never have more of his Ma.—but if ever he came to the Crowne of England, that he would not come to break the law, but to keepe it: And that the said Watfone, being in prison, some few dayes before his executione, his lo. went, by his Ma^s commandement, to examine him in that point; who declared to him, that he could never gett anie farther grant of his Ma. nor is before said: not-the-lesse, to the end he might keepe the Catholicks in better dispositione towards his Ma. he did give them better hopes. That Sir James Lindfay did bring his Ma. a Letter from the Pope, which he refused, and would not fo much as suffer the same to be unfolded. Last, since his Ma^s coming in England, there come one from the Duke of Lorane to his Ma., who being well received, as the Duke of Lorane's fervant, having thereafter secretly shewed unto his Ma. that he was the Pope's gentleman, and had some directions from him to his Ma., he would heare no more of him; and his Ma. did mightilie complaine that the Duk of Lorane did use him in that kind. And hereupon did he condemne the Lord Balmerinoch his course, in respect of his Ma^s unwillingnesse to have anie dealing with the Pope. He said farther, that if at that tyme when the Queen's Ambassader did expoſtulat, the course had been revealed, the fault had been the lesse. That it was God's singular caire over his Ma., that by the coming furthe of such a book, at such a tyme, when the Lord Balmerinoch was present to reveale the truth, his Ma^s innocencie in it was fo cleared. And because that some doe justifie the course, because of the good intentione of it, that he had read, that in good intentions three things were requisit, 1st, that they should be in things indifferent; nixt, that they should not be *contra preceptum*; last, that they should not be *in prejudicium tertie persone*. Nather of which was observed in this; because it was not a thing indifferent to the King to keepe correspondence with the Pope, being a mater prejudiciall to his estate; next, that it was *contra preceptum*, because he was not of his Religione; last, it was *prejudicium tertij*, because the Queene of England was thereby interested; fo as the intentione of it could not procure it anie allowance. In end, after a large commendatione of the countrie of Scotland, and his best wilhes that the Kingdome of England would looke carefullie in their honour, and not admitt everie one fo indifferentlie to it, following the example of Scotland, he did likewise remitt the mater to be tried and judged there; not doubting but it would be carefullie done, according to the weight of the mater and his Ma^s expectatione.

Thereafter, MY LORD CHANCELLER declared, that since that Board was his Ma^s bodie representative, and all the members of it were at his Ma^s dispositione, and alterable with the breath of his mouth; that it was his Ma^s pleasure, that the Lord Balmerinoch should no more be one of that boord. Whereupon he did produce a Warrant, signed be his Ma.; which being read by the Clerk of the Council, the Chancellor desired that all the Lords of the Council should take notice of it.

¹ 'Hem!' His Majesty must have been a 'glutton' indeed, and his appetite for flattery altogether insatiable, if these Speeches did not give him a *complete surfeit*! It is evident that this intriguing politician well knew what would best please the royal palate. Strange as these things may now appear, such was the King's taste,—and *de gustibus non disputandum!*

[*This, or near this, I would have answered, for my own justification; if that, by three several commandements from the Erle of Dumbar, I had not been desired to the contrarie. James Bailzie was the carrier of the message.*]

To the first Speeche, it might have been answered, that if the reverence and majestie of the person, (whom the mater was affirmed to touch in honour and safetie) the gravitie and eloquence of the speaker, and the hatefull dispositione which was against the persone which was to be censured, had not extraordinaryly concurred, although the deed wanted a precedent, yett manie offences of greater importance and more perrellous precedents were smothered up, with silence: And wher,¹ it was now first said, that the Letter might have procured his Ma. the tinfell² of the Crown of Scotland, which he had in possessione; ther was no such appearance, because ther was no Scottish man, of whatsoever qualitie, so little sensible of his Soveran's wrong, but would rather have wished his Ma. to have had correspondence politick much more with the Pope, before he had been prejudged of his undoubted title to England, speciallie since that Letter (nor no constructione can be made upon it) does carie any prejudice to Religione, or other conditione hurtfull ather to his Ma's honour or estate. Next, where it was said, that the said Letter might have lessed him the Crown of England, to the which he had undoubted right apparent, because the Queen might have taken exceptione att it, and so inclined some other way; first, it might have bene answered, that his Ma's title was not at her dispositione, and if she had been discontent, there was no reason; for since she did ever refuse to yeild him anie assurance of his successione after her, (and Spaine avowedlie, and France under hand, besides others, as competitors, daylie talked of,) although he had laboured for the friendship of all the Christian Princes in Europe, upon just and honourable conditions, and without breach of dutie to her, she had no just cause of offence: Beside that, some did not spair to talke of some unseemly plots contrived in England, about that same time, to his Ma's prejudice. *Secoundlie*, where it was with great vehemencie and rare eloquence amplified, that that Letter had given subject and occasion to the writing of many pamphlets, wherin his Ma. was bitterlie touched, it might have been answered, that by the contrarie, it had stayed the writing of many and doing of many worse turnes, had procured his Ma's good at the Court of Rome, the favour of all the Catholicks of Europe, but speciallie in England; and if his Ma. had been offended by anie books, they have had other grounds than that idle Letter; wherin *Bellarmino* alledgeth not, that ther was anie more, but a Letter full of courtesie, and a requisit for a Cardinall; and if it had contained any other thing whereby his Ma. had been ingadged to the Pope's advantage, it had not been forgotten. Look therefore if the writing of the former books, or some other conditions then that Letter, hath not given occasion of this offence. *Thridlie*, where it was said that all the Popish Conspiracies did flow from that Letter, because the Catholicks, finding themselves disappointed of their hopes, did attempt all those devilish Treasones, it might have been answered, that if that Letter giveth anie such hope ather of the Kings Ma. being a Catholick, or toleratione, then is the argument good; but if not, then it holdeth not; and these hopes most be found out another way, and the authors of them charged with that imputatione.

The *secound* Speech, in so farre as it was carried out with the first, the same answers might have been repeated; but, where it was said, that if his Ma. had been of the knowledge of that Letter, he would have bowed the knee to Baal, appointing ane Advocat at Rome;—that conclusion holds no more nor³ if it should be said, that the Queen, for writing manie Letters to the Turk, and appointing ane agent there, should have become a Mahmetan. Neither is there any that can doubt, but that great Statfman, who had the speech, does know verie weill, that Princes of different Religiones have their Leagues and Amities, their intercourses of Negotiatione and civill affairs, without bowing their knees to strange Gods. As to the invectives against the Pope, they were all just, and verie pertinentlie and eloquentlie delivered; yett they did not aggravat that fact, neither was there any thing in that Letter that did allow of them. As to the objections of violating the trust of a Secretarie, that

¹ Whereas.² Loss; from *tyne*, to lose.³ Than.

could not be denied; and so the partie doth grant his offence, pretending onlie, that as an expert Phisician, in a disperat disease, or a perfitte Pilot, in an extraordinarie tempest, is not alwaie tyed to the precise rules of his art, so some things are permitted to Statfmen in their places; and he, perhaps, feing his Ma^s great danger; and that, for writing a stile to a Pope, he would give his enemies so great advantage, and perrell a Kingdome, he did temerarioullie adventure his credit: And for that was talked of the nature that *fides quæ ubi semel recessit nunquam revertitur*, that politick maxime giveth an answer, *si violandi regni causa*, and the more is he excusable, that it was to his master and not to himself; and as he durst and should have adventured his life to have foughten for it, so did he perrell his trust to conferve it. To that, that a King's hand-writt, if it might be caried by his knowledge, was more dangerous than 20,000 men, that is an argument *ab incommodo*, which since the deid is past long since, and no harme followed upon it, neither to his Ma. nor his dominions, it followeth no more. To that of the comparifon of the broad-seales to the King's hand, and what is the danger to write above any of them, belongs to the Judges and Lawyers, to determine; but in the law of reafone and civill justice, where there is no fraud meant, no harme done, nor no inconvenience can ensue, the fault is the lesse.

In the last Speech, most gravelie and eloquentlie delivered, because it was for the most part a narration of particulars, testifeing his Ma^s unwillingnesse to writt or have any dealing with the Pope, it is like enough to be true; for if his Ma. had been willing, or wittinglie had sett his hand to the Letter, then there had been no fault committed, so that causeth the Confessione of him who abused his Ma^s trust. And where as, his good intentione to his Ma^s service, did furnishe him some excuse, that was most learnedlie taken away by three *caveats*, which the Divines doe require to make intentions justifiable; first, that they be in things indifferent; nixt, that they be not *contra preceptum*; thridlie, that they be not *in prejudicium tertii*: To all which it might have been answered, first, generallie, that the politicke courtes, so weill knowne to so great a wise man in state maters, are not to be ruled according to the strick rules of Divinitie; and particularlie, to everie *caveat* there can be nothing more indifferent, nor¹ a free Prince to write a kind Letter to his neighbour, and to make to him a reasonable and just sute, hurtfull to no man; as for the second, there is none of the commands that did forbid the King to writte to the Pope, for so *preceptum* in that mater is to be understood; thridlie, by that Letter there is no prejudice done to anie persone; and since his Ma. was by no League nor Bond bound to the Queen in the contrarie, no man will think that his Ma. should be answerable to anie imaginary prejudice, there being nothing contained in the said Letter that in any sort could hurt her, or any other persone. In all the Speeches, as they were most gravelie and eloquentlie delivered, so did they yeild, everie one of them, a rare and extraordinarie commendatione to the countrie of Scotland, the grave and ancient Nobilitie, the wise Counsell of Estate, the learned Judges, and the most tender regard, in all their actions, to his Ma.; wherof, as everie man did consider the end, so they ought² no small obligatione to them, for their exceeding kindnesse.

COPIE of the SPEECH which I spak, indeid, to THE COUNSELL, after the three Haranques before written.

My verie honourable Lords, I find true this day in experience that which I had oft read and heard, that no exceeding joy,³ &c.

The Bishope of Glasgowe,⁴ I think, with the counsell of the Erle of Wigtonne,⁵ despaired, before my coming to Court, that the Letter to the Pope should doe me anie harme; thinking, either that I should be denied it, or that it was of so small consequence as it could import no cryme. They had

¹ Than. ² Owed. ³ See Vol. II. p. 578. Opposite the words 'but alace!' &c. (line 10 from bottom of the page.) there is written on the margin, 'These words added at the E. of Dumbar's desire, to please HIS MA.' ⁴ John Spotsiswood, afterwards Lord Chancellor (1634). He was translated to St Andrews, 1615. ⁵ John, sixth Lord Fleming, was created Earl of Wigton, Mar. 19, 1606. He married, 1st, Lillias, only daughter of John, 3d Earl of Montrose; 2dly, Sarah, eldest daughter of John, Lord Herries, and relict of Sir James Johnston of that ilk.

invented againſt me ſome interrogatours, whereupon the King ſhould have examined me, anent the Powder Treafone, which were kept cloſſe from me, till immediatly before my coming away: Then they were brought to me by my truſty friend Sir Alexander Hay, never letting me know of them, albeit they had been in his hands three moneths before. The juſt copie I have incloſed hear-with, and my anſwers. They are as frivolous as they are falſe; alwiſe I will my friends may ſee what hee bene the malicious curioſitic of my enemies to my diſgrace. I ſuſpect the Biſhop of Glaſgow, the Earle of Wigtoun and Sir Alexander Hay; and whatſoever the Earle of Wigtoun knew, was not kept from Killſyth.¹

In a Proclamatione, made at Weſtmiſter, the 22 of Febrnary, 1603, which is imprinted, there is contained theſe words, in ſpeaking of Foreign Princes: ' Among which forraan powers, although We acknowledge ourſelves perſonallie ſo much beholden to the new BISHOPE OF ROME, for his kind offices and privat temporall cariage towards us in manie things, as We ſhall be ever readie to requyte the fame toward him, as Biſhops of Rome, in ſtate and conditione as a ſecular Prince:' Yet conſerr this Proclamatione with his Ma^s firſt Speeche in the Parliament Houſe, which is alſo printed, wherein he acknowledgeth his particular obligation to POPE CLEMENT, whereby it may be preſumed, as matters then were, what great diſcontentment it could have bene to his Ma. to write a Letter to him. Like as, many other Negotiations which his Ma. had with him are more nor notoriouſlie known.

The ſumme of the DECLARATIONE, ſubſcribed 18 November, 1608.

THAT at my firſt Examinatione I did denie, extenuatt and transferre the knowledge of that Letter; therefore, I did Confeſſe, that, at the ſollicitatione of the Biſhops of Glaſgow, who was his Ma^s Ambaſſader, and the (Biſhops) of Vaizon, I laboured to have a correſpondence betwixt HIS MA. and THE POPE, I moved his Ma. in it, and found him unwilling. Thereafter, I conſpired with Sir Edward Drummond to gett a Letter under his Ma^s hand to the Pope. Sir Edward drew up the Letter. I ſaw the draught of it, and corrected it. That one day, in the morning, when his Ma. paſt to hunting, I brought him a number of Letters to be ſigned, in favours of the Biſhop of Vaizone, to the Dukes of Sauoy, Florence, and ſome Cardinals; among the which Letters I ſhifted in that Letter to the Pope, having no ſuperſcriptione in the beginning, nor above his Ma^s name; and ſo gott his Ma^s name to it without his knowledge. That the Letter contained nothing but thanks to the Pope for his bygone kindeſſe, and deſire of continuance; that he would be pleaſed to advance the Biſhops of Vaizone to be a Cardinal, that his Ma. might have more intelligence of his affairs at that Court. That the Letters to the Pope were written in Roman Letters. I directed Sir Edward to write the Popes files in the beginning; and in the end, '*Sanctitas*' and '*Filius*.' That the ſaid Letter was caſſetted at my command, be one of my ſervants who kept the caſhett.² That in the late Queen's tyme, ſome expoſtulation being made by her Ambaſſader anent the ſaid Letter, I did denie it, and cauſed Sir Edward, being come home, juſtifie my denyall, and that he had caried no ſuch Letter; being examined therupon be ſome of the Counſell. That he, being committed in ward, I laboured for him and procured his releefe. That I dealt earneſtly with him to returne the principall Letter, who promiſed to doe ſoe.³

[The Narrative is here interrupted by Calderwood's own work. It is afterwards reſum'd, being introduced by Calderwood in the following paſſage: ' About the beginning of December, the Secre-

¹ Sir William Livingſton, Lord Kilsyth, one of the ordinary Lords of Seſſion. ² A ſtamp contrived to imitate the King's ſignature, to ſave him the manual labour of ſigning certain official documents. It is ſtill in uſe, and is applied to particular writs not requiring the royal '*Sign-manual*.' ³ CALDERWOOD remarks here. 'The Preſident was ſent back to Scotland as a priſoner, with a Guard attending upon him, to be further tryed. When he came to Newcaſtle, he ſent the Laird of Pitloure to informe Mr James Melvill how he was dealt with, for ſtanding for the freedome of our cuntry, and croſſing of the Biſhops and their proceedings; and deſired Mr James to write to the good brethren at home, as he thought meet himſelf. When he came out of Newcaſtle, it was marked that he ſhed tears, which was a verie baſe thing in him. At Berwick he was heard to utter theſe words, " I wiſh I had bene made a ſheep-keeper when I was made a ſcholler."'

tare Sir James Elphantoune, President of the Colledge of Justice, came to Berwick, accompanied by the English Guard and some of the Earle of Dumbar's servants. He was received by the Captain of the Scottish Guard, Sir David Murrey Lord Skoone, latelie Comptroller, accompanied with the Scottish Guard and some of his friends; and was convoyed to ward to Falkland. The manner of his parting from London to this countrie he has sett down himself, as hear followeth, continuing his former relatione.']

ORDER hereafter being taken about my returning, my Lord Dumbar sent James Bailie to shew me, that there was some of the Guard, onlie for a shew, appointed to attend me; desiring I would not take it in evill part. They would ride with their coats till they were past Royfoun, where his Ma. was; and from that, as other privat servants. He sent me word divers times that he would meet with me; but whill¹ the Earle of Wigtonne and the Bishops were gone, he could not, for suspicione.² So the verie day they parted, in the morning at ten hours, his lo. came to my house, although I had offered to make the travell; but, because I was under commandement, it could not be. All this tyme I was attended to be two of his Gentlemen, who used me verie kindlie. The one was Alexander Auchinowtie, brother to John Auchinowtie; the other, James Carmichael, sone to Watt Carmichael of the Park; to whome I wishe my friends or to anie of theirs to be thankfull. At our meeting, I renewed to him what had past betwixt my Lord Burlie and me, my particular offers, for assurance of his Lordship's friendship, what I did expect mutuallie of him, as the Lord Burlie had promised in his name. All which he was well pleased with, and how soone my trouble was ended, which should be upon his coming in the countrie, he would enter in the due performance of every particular, and would establish such an allvance with me as should not be discovered. I complained that my ward³ was altered, because he had promised that I should remaine in the Castle of St Andrewes: He excused the estate of the house, and that he had as great credit in Falkland as in St Andrewes. Nixt, that the Lord Skoones Warrant was so strait: His answer was, that that was onlie done for the fashione; that the Bishops and Sir Alexander Hay procured it; but he would desire the Lord Skoon, by James Bailie, to use me well. He desired me to keepe all secret; and, as he was a Christian, every thing should (be) performed with no less care than I were his own brother, or his two daughters. He willed me not to be suspicious of any his actions, because it behoved him to follow the King's honour, please the Bishops and others that were my unfriends, in outward shewes, that he might the more easilie worke my turne to my contentment. I think that he entered in a speciall friendship with my Lady Drummond, and gave her that assurance of my life, estate, (and) Ropars office that he gave to the Lord Burlie.

Being come to Falkland to my ward, and more hardlie used nor I did expect, I directed to Court my cousin Pitlowre to put the Earl of Dumbar in memorie. My worthie friend the Lord Burlie tooke the pains likewise to go there, to make all former conditions sure; and, as I was informed, his Ma. directed no further, but that, in a Justice Court to be holden at St Andrewes, (for I desired it should not be in Edinburgh,) I should become in Will, and his Ma. to declare his Will, at his pleasure. But when my Lord of Dumbar came to Edinburgh, and found that Sir William Hart (who had gotten a promise of my place in Session) to putt me to ane Assise, and my Lord Collector⁴ to be Assessor, and a number of Assise that would convicte me upon my own Confessione, which is more than to gett me in Will. The Earle of Dumbar having advised with the Bishops, durst leave nothing undone of extremite against me; and the Collector, being more circumspect nor the rest of his fellows, and most desirous to have me sure, resolved the Earll, that none of my Depositiones made in England would serve against me, except I ratified them here. Whereupon, the coming of the Counsell to Falkland was appointed; and although I had been verie carelesse of the mater, because I was certified that there was no more ado but to take me, judiciallie, in Will; yett, knowing of their coming to Falkland, I

¹ Until.² Viz. in case the Earl and Bishop should suspect collusion between the Chancellor and Balmerino.³ Place of confinement.⁴ Mr John Prestoun of Pennycaik.

imagined at first the cause of it, and was resolv'd to have past from everie point of these Depositions, except onlie the naked veritie of the deid, wherupone no crime could follow; for most lawfullie I could have come against my Depositione, because it was made extrajudicialle. And, in case they would make the Counsell of England a judicator, first, it was subscribed, not before the Counsell, but in the Earle of Salisburie's cabinet, before so many of the Counsell as are before mentioned; *nixt*, the Counsell of England could be no Judges competent to me, likeas I had lawfullie declin'd them of before; *farther*, it was made upon the conditione above mentioned, which I would have referred absolute to the Earle of Dumbar's oath; *last*, it was revocable, as made for fear of my life, or perpetuall imprisonment in the Towre. If they would have made my Dittay Treafone, because it is so called in my Depositiones, the calling of a deed Treafone, *non mutat naturam facti*; as if I would confesse I had tratorouslie conspired to kill one of the King's bucks, would not convict me of Treafone; or that I had treasonable broken waerd, being committed for fourtie pound of civill debt; so, the procuring of a common Letter of Recommendatione, containing no Treafone, prejudice to the King, nor Estate, could never be Treafone. And whear as, it was affirmed to tuiche the Princes honour, the King did never refuse to acknowledge the Pope as a Catholick Prince, to whom he acknowledged himself bound; and so it was no dishonour to him to write to him, seing the greatest Princes in Europe doe it ordinarlie, both of the Reformed Religione and others. That that Letter was prejudiciall to his Ma., his Religione, countrie and Estate, it could never be verified; for, except my own Depositione, (revoked, as I have said,) there could be no other verifications, either by writte or witnesse; so no honest Judge or Assessor that had either conscience or honour could have sustained such a Dittay. And if they would have made it *Crimen Falsi*, out of the Lawes of the Majestie, (*Reg. Maj.*) I would have denied that my life could have been judged be the Majestie; more then an hundred kyne may be satisfacione for the King's Murther, which the Majestie calles killing. I remember, Mr Thomas Craige answered to *generaliter verum, generaliter falsum*, in a civill mater, *quibus casibus tenetur hæres præstare factum paternum*, which is lesse nor my life. Lastlie, that word, *Charta domini Regis*, is not to be understood of a privat Missive, wherby the King or a partie is not prejudged; but a Charter, or evidence, wherby either the King or subject may losse his right. If they would have made it out of the Decretals, cap. 5, *de Judiciis*, albeit it say, *non esse immunem a Crimine Falsi*, yett, according to all the Doctors, it most be understood to be *scriptura damnosa et fraudulenta*, for *omne Crimen Falsi* is not capitall, *ubi neque est damnum, neque esse potuit*, but onlie to be punishable *arbitrio Judicis, pro ratione rei et personarum*. And this is the cleare resolutione of Julius Clarns and all the Doctors; so that albeit I had never consulted anie Advocat, nor had never any bookes to studie the mater, yett the light of reason was so cleare, as no Judge but Sir William Hart, whom I might have lawfullie declin'd, would have sustained such a lybell.

The Earle of Dumbar, fearing I should alter, upon this new alteratione sent the Lord Burle unto me; who, as he dealt ever honourable with me, so I was plaine with him, that I would not stand to my Depositiones made in England, and that I would challenge the Earle, upon his oath, of the conditione made unto me at the subscribing therof. There was great intercessione made that I would have a regarde to the Earle of Dumbar's credit, and the advantage both my publick enemies and his secreit ill-willers would make, if that turne were not done to his Ma's contentment; and that, however I might resist his Ma. at this time, wherof the event, in respect of the honest dispositione of the Judge and principall Assessor was uncertaine, yett I would be kepted in continuall prisone; and, seing the Earle of Dumbar was willing to secure all things promised before, a sentence of Conviction was no more hurtfull to me nor either a coming in Will, nor in entering in a contestatione with the King, having so great enemies both at Court and at home. In end, upone promises renewed, and my desire of quietnesse, and that my enemies should acquire no more credit be my troubles, and conditiones past betuixt the Earle of Dumbar and me to stand sure, I was content to abide at my former Depositiones.

So the Earle of Dumbar, in prefence of the Lords of Skoone and Burlie, both after particular affirance and folemne oathe to my felf, renewed what he had promifed before, anent my life and eftate, and that he knew perfectlie it was never his Ma^s minde to (take) my life.

Nixt followed my Conviction at St Andrewes, wherin I was the onlie actor my felf, to give his Ma^s fatisfactione; following, in every point, the Lord of Dunbar's directione, brought to me either by the Lord Burlie or the Lord Skoone.

A COPIE of the SPEECH I had at St Andrewes, at the time of my Convictione.

THERE is none of your Lordfchips but underftand fufficientlie that if I would ftand contentioufflie to my Defences, no Depofitione, made by me in England, could prejudice me in any Tryall Criminall I was to fuftaine; nevertheleffe, as in all this actione, from the beginning, I have preferred the truth of his Ma^s innocencie to the prefervatione of my life and eftate,¹ fo I am fo farre from retreating what I have faid there, before that noble and moft grave Counfell; that if, in more cleare termes, I could aggravat the juft desert of my own haynous offence, and make his Ma^s undefiled finceritie and innocencie knowne to all the world, I would moft willinglie doe the fame. I were not wortie life, if my life, that hes had no happineffe but under the glances of his benignitie, I fhould labour to be preferved, with the fmalleft imputationne that might ftaine his Ma^s honour. No man knoweth better his Ma^s natrall clemencie, and how unwillinglie his Ma. is forced with this ferventie to profecute the truth of this callunnious imputatione; which, by my abufe of his truft, is drawn upon his moft innocent Ma. Therfor, I ratifie whatfoever I have formerly depouned; and, if no otherwife his Ma^s honour may be fufficiently exonered, I willinglie offer my blood and poore eftate to expiat my offence; and to teach others, by my exampill, to goe no farther in their mafter's fervice then they have fufficient Warrant.

BUT immediatlie after the Ratificationne of my Depofitione, in Falkland, the Earle of Dumbar fent my Lord Burlie to Court, to fhew his Ma. what fatisfactione I had given, to procure me all the favour he could, and to hold my friends there buffie. Likeas, the Earle concluded, that immediatlie after my Convictione, my brothers fone fhould goe poft to Court, for my Remiffionne; and that the Lord Burlie fhould ftay his coming, and concurre with him to that effect. And albeit it was promifed to me, by my Lord Burlie, in the Earle of Dumbar's name, that Ropar's Reverfionne fhould be fafe to me, yett he faid Earle, fearing Sir Robert Ker's credit,² made me to yield to paffe that to him, which was the beft hope I had of relief of my great debt, and help of my children. So as I have in all this, from the beginning, allutterlie repofed upon the Earle of Dumbar; and, by his onlie meanes, am brought in this mifery, out of the which, if, according to his manie promiffes, he releave me, I and all mine are the

¹ It may be proper here to notice, that Lord Balmerinoch, besides his numerous Offices, was poffeffed of very extenfive landed eftates, fuch as the baronies of *Balmerinoch, Barnton, Barrie, Ballunby, Innerpeffer, Dingwall, Balgrieg and Restarig*, &c. By his firft wife, Sarah, daughter of Sir John Menteith of Kerse, he had (1.) *John*, afterwards *second Lord Balmerinoch*. And by his fecond wife, Marjory, daughter of Hugh Maxwell of Tealing, he had (2.) *James*, who was created *Lord Couper*. (3.) *Anne*, married to Andrew, firft Lord Frazer; and (4.) *Mary*, married to John Hamilton of Blair.—See *Wood's Peerage*, &c. ² The corrupt favourite, *Sir Robert Kerr* or *Carr*, who attended King James to England, and was invested with the Order of the Bath at his Coronation, for a long period had unlimited fway at Court, and had the absolute difpofal of all the Royal favours. He was fucceffively created Gentleman of the Bedchamber, Lord High Treafurer of Scotland, 1611; Viscount Rochester, Mar. 25, 1612; Knight of the Garter, May, 1612; Earl of Somerser and Baron of Brancepeth, Nov. 3, 1613; Chamberlain of the Houfehold; and sworn a Privy Councillor, the fame year. The character of this infamous perfon, his shameless marriage to the divorced Countess of Essex, the murder of Sir Thomas Overbury, for which he and his Countess were convicted, May 24, 1616, (see *Hovell's State Trials*, II. pp. 951 to 1022); their fubfequent release from the Tower, Jan. 1621-2; and their pardon by the King, under the Great Seal, Oct. 7, 1624, in the face of his Majesty's folemn and awful imprecation, in reference to the murderers of Overbury, that 'I F I SPEAKE ANY THAT ARE GUILTY, GOD'S CURSE LIGHT ON ME AND MY POSTERITY FOR EVER!' All the circumftances of his life are fo well known, that it is only neceffary to recall thefe few leading points to the reader's memory. He died in London, and was buried in the Church of St. Paul's, Covent-Garden, Jul. 17, 1645. It may be interefting to refer to the numerous Memoirs and Hiftories relating to this remarkable period, in illuftration of the above remarks. In particular, reference may be made to *Lord Bacon's Works*, I. 87, alfo to his *Correfpondence*, and to *Weldon's Court of K. James*, p. 99, &c., for the moft incredible difsimulation praftifed by James on his parting with Somerser at Royston, when his fate was for ever fealed, and when he had determined that 'he fhould fee his face no more for ever.'

more bound to him; otherwife, there is a God in Heaven will have regard to his dealling; and, either here or hence, he will suffer for it! The vile and detestable ingratitude of Sir Alexander Hay, I am sure, the Lord will not suffer unpunished! As for others of our Natiōne, who have little regarde wherefore I suffer at Englishmen's hands, God forgive them! The day will come, that they and theirs will weepe for it! I pray God bleffe his Ma.; and that his undeferved rigour against me (who, I am sure, is perswaded, in his heart, I never thought ane undutifull thought against him, his Crown, countrie, nor estate,) be not layed to his charge, in that great day, when his crown and scepter will be layed at his feet, and he must yeild a reckning of his stewardship! And, so may I be judged, if I had anie other course, in all that or anie other service that ever I was putt in trust of be his Ma., but his Ma's weale and honour, and the libertie and good of my countrie, which is miserable, comming in a vile servitude; the foresight wherof is all my wracke!

This the naiked truth of all this mater, written in such haste, and at such occasiōnes as I could, in respect of my strait keeping; and whatever, for his Ma's satisfactiōne, I have written or said upon the false promisses and traterous intyements of those whom I trusted, differrent from this my cleare and true Depositione, as God is my witness, it is false! FALKLAND, the 10 of May, 1609.

BALMERINOCH.

VIII. CALDERWOOD'S ACCOUNT¹ of Lord Balmerinoch's conduct, from the period of his Conviction to his Death.

WHEN he was brought from Falkland to Leith, after his Convictione at St Andrewes, and was received be the toun of Edinburgh, in their armour; when he came to Leith-Winde foote, or the Nether-bow-Port, he was commanded to light off his horse, for they receive no ryding prisoners. He excused himself with the infirmite of the goute in his feete; and willed them to shew him that much courtesie, as to suffer him to ride forward. One of the toun, standing hard beside, answered *Pamfara, tantara*!² my Lord! Now, when some directed from the Counsell of Edinburgh, long before his fall, requested him not to mainteane one of his dependers against them, in ane actione they had against him, for they could be more stedible³ to him then that man, he answered *Pamfara, tantara!* This taunt is now repeated to him with a taunt, and he was forced to light off his horse. Thirdlie, Its to be observed, that the Doome being delayed, after his convictione at St Andrewes, till his Ma's farther pleasure were knowne, in the tolbooth of Edinburgh upon the first of March, in presence of the Justice and the Lords of Counsell, after reading of his Convictione, that he should be beheaded, quartered, and demeaned like a tratour, and his members to be sett upon the Ports, and cheif touns, yett he appeared to have some good hope of releef. He would have spoken something, but could not utter his minde: The Earle of Dumhar commanded to remove him incontinent! After dinner, he was conveyed to Leith-Winde-foote, and delivered to the Shireff of the shire; but manie wondred wherefore he was suffered, when he went out of Edinburgh, to carie his sword about him. It was thought strange that such a thing should be suffered in a condemned tratour. Some thought, therefore, there was no danger; others thought he was caried to Falkland, that he might suffer there, where the fault was committed, and died after in displeasure, fearing ever the worst. Fourthlie, it is to be observed,

¹ See *Call. Church Hist.* MS. Adv. Library, VII. 283.

² An exclamation in some measure equivalent to 'Nonsense!' 'Humbug!' &c. expressive of contemptuous incredulity and derision; and applied by those who have a bombastic or high-sounding parade of empty words addressed to them, which, like the idle flourish of a trumpet, seem calculated to convey no meaning. Perhaps this contemptuous expression took its rise from the remarkably alliterative and playful line of *Old Ennius*, a rough soldier, who sacrificed rather liberally to Bacchus, and who wrote his heroics best when under the influence of the rosy God. Many of his verses smell strongly of the goblet!

³ *TUM TUBA TERRIBILEI SONITU TANTANTARA DIXIT!*

The words *tantafara, tantafarata*, are still used in Italy to signify *nonsense*, &c.; and the French also familiarly use *terare!* and *tarare-pon-pon!* pour marquer qu'on se moque de ce qu'on entend dire—on qu'on ne le croit pas, &c. *Dict. de l'Acad. Fran.* 1813. This reproachful retort, and the taunt of the Edinburgh citizen, must have stung the fallen courtier to the quick. ³ Be of more service to him; stand him in better stead.

that about the same time, the King's reply to *Mathæus Tortus*, with a monitory preface to the Emperor and all Christian Princes come forth in print, no mention was made in that booke of Sir James Elphinstoun's Confession or Depositions; which might have served to great use, to have purged him of *Tortus* his imputations. Yea, when he was in England, and had come in the King's will, the King could not be content till he subscribed his Depositions, as Dumbar assured him; because the not subscribing hindered the progress of the Kings Answer to *Tortus* booke, quhair of his Depositione behaved to be a part. He therefore sett too his hand, in presence of some Noblemen and others, as yee may see in his own Relatione. Because the Depositiones were omitted in the Answer to *Mathæus Tortus*, and upon other considerations, manie doubted of the sinceritie of this proceeding against him; and suspected, that he had taken upon him the crime to currie the Kings favour, he keeping his credit. Mr Andrewes, indeed, in a Letter written the 23 of March to his Nephew Mr James, setteth down his opinioun in these words. *De judicio quid ego sentiam uno verbo accipe; in glorie fuit, est et erit, ut ego presentio, contra nos vero seria omnia et serio—nescit regnare qui nescit dissimulare.*¹ Since heart is free,² &c. Fithlie, it is to be observed that Bilhops, notwithstanding of his paines and diligence taken at Linlithgow, and the manie Proclamations penned be him, spytfull enewgh against the Ministers, they prove now at this tyme his great enemies, and none so busie to seeke his overthrow! It may be, the small countenance he kythed, in Counsell, in favour of Mr John Murrey, or the like occasions, have given them occasione to seeke his removell out of the way; that another Statfman, more foreward for their course, may be placed in his roome. But then we may see the deep malice and hatred of aspiring Prelats, that seek the overthrow of all that stand in their way!

About the beginning of October (1609), there came a Warrant from the King to give libertie to the President to have free ward in Falkland and a myle about; he finding cautione not to escape, under the paine of Fourtie Thousand pounds.

Mr James Elphinstone, Lord of Balmerinoch, and latly Secretary, ended his dayes, about the end of May (1612).

IX. LETTER from THE KING to THE PRIVY COUNCIL OF SCOTLAND, informing them of the Examination and Confession of the Lord Balmerinoch.³

RIGHT trustie and weilbeloveit cosines and counsallouris, We greatt 3ow weell. TYME, the moder of trewth, havinge now discovered and brocht to lycht that long obscureid and moist heynous offence and crime committed be the Lord of Balmerinoch aganes our honour, credeit, and reputatioun, and which now by his cleir Confessioun is manifest to all the world, and We thairby purgeit of thoisie moist wriust and wrangous imputatiounes, quhilkis We did wnderly, by his foull abuse of that trust we had in him; quhair of both We and all our subiectis have no small caus to thank God; since the careage of the actioun, in the discoverie of it, may justlie be said to have bene done by Godis awin finger! And as We have hithertillis spaired to acquent 3ow particularlie, with the hole circumstances of his Confessioun and Examinatioun, vntill such tyme as the same wes here finished; so, by the rycht reverent Fader in God and our rycht trustie counsallour the Archbishope of Glasgow, (quho wes ane eie witnes and heir of the same, and now is returning thither,) 3ow may be at lenth informed of the same. Bot, because the Devill wants his awin suppoisit reddie to mak falsc subgestiounes, in preassing, by misconstruing of things, to harme the trewth reveilled; and that thair man be perhappis

¹ So in the original, but very obscure, and evidently a wrong reading.

² Perhaps referring to the old saw,

' Since word is thrall and thought is free,
Keep well thy tongue, I counsel thee.'

³ This and the two following Letters are taken from a valuable Collection of State Papers transcribed by Thomas Earl of Hadington, (Sir Tho. Hamilton,) preserved in the General Register House, Edinburgh; which did not come to the Editor's knowledge till nearly the whole of the preceding Appendix was printed.

sum false rumours and bruttis thair spred, in extenuating the qualitie of the offence one his pairt, and deryeing in sum fort a pairt of the blame of that mater on ws; as it is a proud malapairt baldnes and presumptioun for the best of our subiectis to medill in ony thing that may concerne our credeit and honour, without a varie good warrant; and that all pretences of mistaking our trusting to wncertane reportis ar so far to be misregairdit, as thay rather justlie deserue the greater seueritie to be vsed aganes fuche as will excuse tham selfis thairby; so, to repress fuch insolent wantonnes, in any of our subiectis pair, who either out of malice doe forge thame, or out of thair vaine, foolishhe, and idill breanes do frame thame, We will and command so w to tak particular tryall of all fuche as hes bene or heir-efter salbe spreddaris of ony rumours or bruttis in this mater, wtherways nor salbe by the said Archbishop reportit wnto so w; and that so w caus the rigoure and extremitie of our lawis to be execut aganes thame! that thairin We may have a speciall prooff quhat dew accept so w mak of our reputatioun and credit, which wnto ws (is) moir deirar nor our varie lyffe! And referring all farther to the Archbishopis relatione, whome We will so w to trust, We bid so w fairweill. FROM our Court, at Roytoun, the 21 of November, 1608. [JAMES R.]

To our rycht trustie and weilbelouit cofinges and counfallouris, the Erll of Dumfermeling, our Chancellor, and remanent Lordis and wtheris of our PRIVIE COUNSALL of that our Kingdome of SCOTLAND.

X. LETTER from THE PRIVY COUNCIL OF SCOTLAND to THE KING.

Moist gracious Souerane,

WE ressaived your Ma. Letter of the 21 of November; and hes hard, at greitt lenth, the relatione made by the reverend Fader in God so ur trustie Counfallour the Archbishop of Glasgow, anent the Confessioun and hole circumstances of that lang obscure and moist heynous and inexcusable offence committit be the Lord Balmerinoch aganes so ur credeit, honour, and reputatioun; quhairin, as fencible and feeling memberis of so glorious and gracious a head, finding our awin interessis, greiff and sorrow that so ur Ma^s most famous and vnspotted name, honoure, and credeit, which so ur heynes hes to this houre so religiousely conservit in all puritie, sould have bene so wworthellie, and in fo seich a point, brocht in questioun be ony of our number, quho hes that honour to be selectit be so ur Ma. to the cheiff credeit of so ur service heir; so, with moist joyfull, humbill, and thankfull hartis to God, we acqnauleg that greit blissing and benefeit which it hes pleast his Devyne Ma^{tie} to schew wnto so ur bienes by the detecting and discoverie of that purpose, and vindicating the sinceritie and innocence of so ur royall hart frome all suspitioun of the wrangoufe and wniust imputatiounes which so ur heynes underlay thairin; manifesting thairby his Devyne caire and Providence which he hes evir had over so ur sacreid persone, honour, and estat, and in quhat detestatione he holdeth all practizes and purposeis prejudiciall thairvnto. And quhairas, in the censuring of this fact befor so ur Ma^s honourable Privie Counfall of that kingdome, thay, be so ur Ma. directioun, (we doubt not) have remittit the full tryall pair of to the lawis and formes of this country, with many demonstratiounes and oppin Speaches, concerning the good opinioun thay have of the equitie of our lawis, and cinferitie of our effectioun in so ur Ma. service, we have not onely infinite occasioun, with all humilitie, first to thank so ur sacred Ma., and nixt thame, for so respective a reservatioun to ws of that whiche so ur Ma. knowis to be proper and dew to the privilege and freedome of this so ur auintient and nobill Croune. Bot we hop, God willing, to give wnto so ur Ma. a prooff, with all fidelitie, caire, and sinceritie, we fall prosequete and follow out quatevir it fall pleis so ur sacreid Ma. in so ur princely wisdom to command, als weil in this as in any wther thing els, tuiching so ur bienes, in honour and estate. And, in the meantyme, if any of so ur Ma. subiectis hes bene or salbe so wndewtifull, foolishe, and wnworthie, as to give oute any false bruttis and rumours aganes the wndouttit trewth and varitie of this mater, or to the extenuating pair of in any poynt, we fall not fail so exactlie to examen, try, and punishe the samen, as wtheris salbe terrisiet to fall in the lyk error heirefter. And sua, praying God still to vp-

hold your sacreid Ma. with all your royall progenie wnder his Dewyne protectioun and fauffgaird, we rest for ever

5our Ma. most humbill and obedient subjectis and seruitouris,
 A. CANCELL^r. SANTAND^r. MAR. PERTH. LOTHEANE. BUGCLEUCHE. TORPHICHEN.
 HALIRUDHOUSE. BEULIE. GAIRLEIS. ROISS. J. COKBURNE. R. COKBURNE.
 S. T. HAMILTOUN. JO. PRESTOUN. S^r ROBERT MELUILL. P. ROLLOK.
 Ed^r, 6 December, 1608.

XI. LETTER *from THE KING to THE PRIVY COUNCIL OF SCOTLAND, with
 WARRANT for the enlargement of Lord Balmerinoch.*

RIGHT trustie and weilbeloveit cousines and Counfallouris, We grette you weel. WNDERSTANDING of the evill constitioun in helth, and feiknes in body, of the leat Lord of Balmerinoch, by refoune of his detentioun and cloise keeping within our Palise of Falkland, and in the foire Toure¹ pairof; and humill sute, for this caus, being mead wnto ws, for his enlargement, in sum foirt; We haif bene pleiffit to grant our Licence, for his libertie and friedome, within our said Palise and a myle in circuite round about the same; upoun condition always, that he doe not transcend the boundis prefixit; and that he find sufficient responfuall landit gentill men actit in your bulkis, as cautioneris and fouerteis for his performance of the said conditione, vnder the pane of xl^m li.² vsual Scottis money. For whiche caus, We haue thocht meet to will you to direct to the said Court of Falkland, quhair his present place and residence of abode is, your Clerk of Counsell, with the Licence heirwith sent, commanding your said Clerk to ressaue the foirsaid act of caution of sufficient landit men, boundin vnder the foume aboue specifit, for performing the conditione aboue writtin, of his containing him self and not exceeding the boundis of his confynning; and heirvpoun the said Clerk to delyver vnto him the foirsaid Licence, to be his warrand of this his enlairement. And fo We bid you fairweele. ROYSTOUNE, first of October, 1609.

[JAMES R.]

Slaughter.

Mar. 14, 1609.—JOHN GLENDONING of Drumrasche.

Dilaitit of airt and pairt of the slauchter of vniq^{le} George Stewart, brother germane to vniq^{le} Mathow Stewart of Dunduf.

PERSEWAR, Williame Stewart of Dunduf, brother-son.

THE JUSTICE, of consent of ather pairtie, Continewis this dyet to the thrid day of the Air,³ (' Kirkculdbricht?') or soner vpone xv dayis wairning.

¹ Fore or front tower. ² L.40,000. ³ What took place at the Justice-air has not fallen under the Editor's observation. It is likely the case was compromised by payment of a pecuniary fine to the private prosecutor; on which 'Letters of Staines' would follow, as a warrant for the King's Remission. In cases of Slaughter or unpremeditated Homicide, in a skirmish, it was a common manner of withdrawing the instance, for both parties to concur in a continuation of the diet to the Justice-air. Another mode was to use influence with the 'Baron of the Regality,' &c. within whose jurisdiction the parties resided, to *repledge* them to his Court, and where the matter was easily hushed up. The King's Remission, in case of accidents, was also afterwards procured, lest future feud should occasion a renewal of the prosecution, and perhaps terminate fatally to the homicide.

