

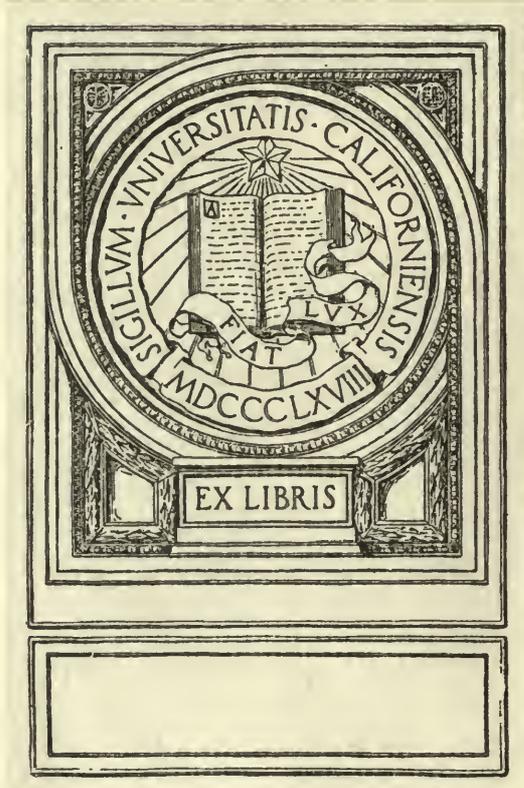
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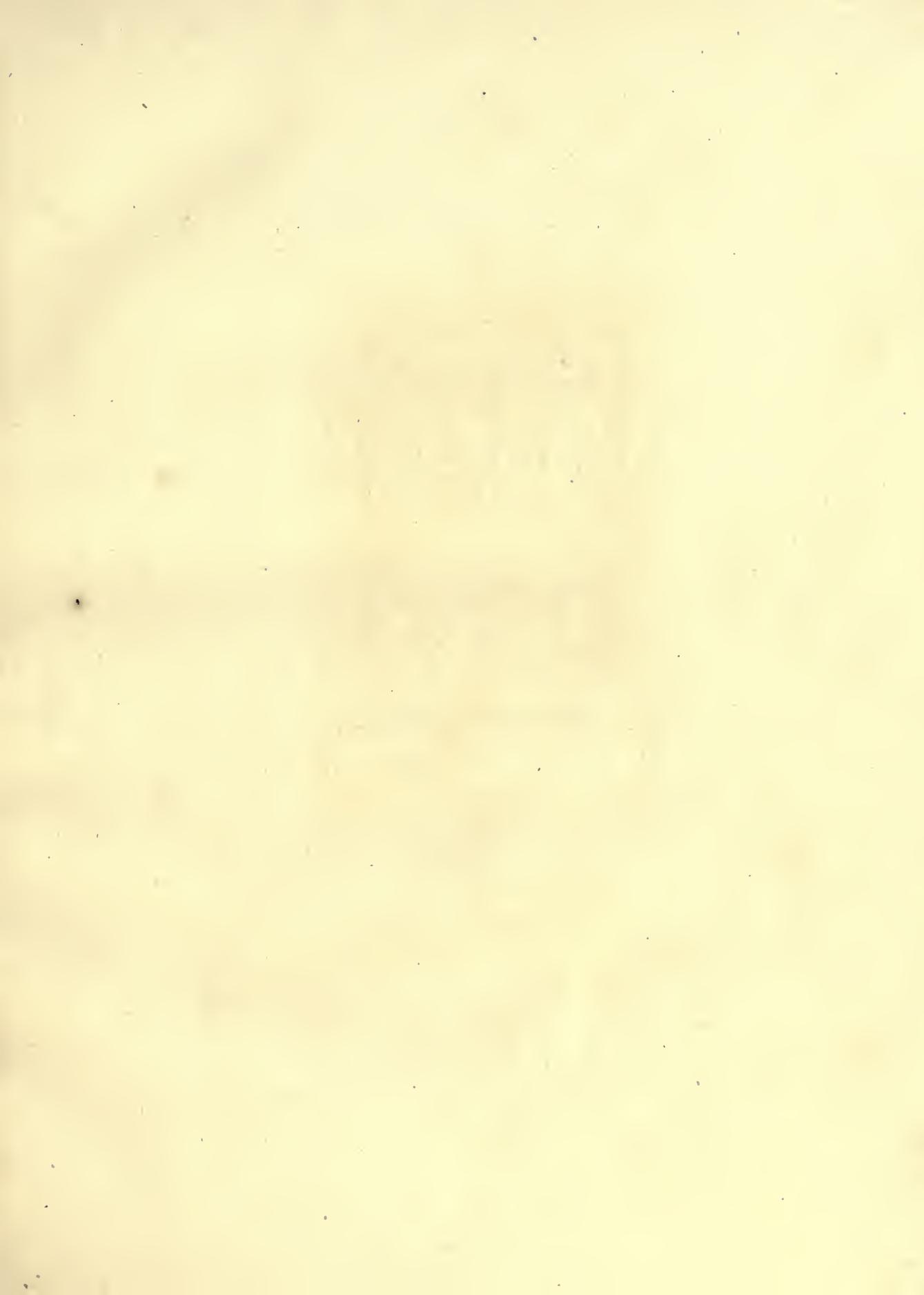
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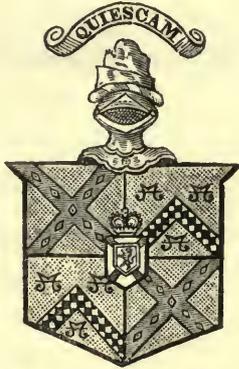


APOLOGY

FOR

SIR JAMES DALRYMPLE.

AN
A P O L O G Y
FOR
SIR JAMES DALRYMPLE
OF STAIR,
PRESIDENT OF THE SESSION,
BY HIMSELF.



Ja: Dalrymple.

EDINBURGH:
PRINTED BY J. BALLANTYNE AND CO.
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UNITED STATES

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D. C. 20535

REPORT OF

INVESTIGATION OF THE

ACTIVITIES OF



OF THE

UNITED STATES

DEPARTMENT OF JUSTICE

THE BANNATYNE CLUB,

MDCCCXXV.

SIR WALTER SCOTT, BART.

President.

THE RIGHT HONOURABLE WILLIAM ADAM, LORD CHIEF
COMMISSIONER OF THE JURY COURT,

SIR WILLIAM ARBUTHNOT, BART.

JAMES BALLANTYNE, ESQ.

SIR WILLIAM MACLEOD BANNATYNE,

ROBERT BELL, ESQ.

WILLIAM BLAIR, ESQ.

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JOHN ARCHIBALD MURRAY, ESQ.

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THE RIGHT HONOURABLE SIR SAMUEL SHEPHERD, LORD
CHIEF BARON OF SCOTLAND,

ANDREW SKENE, ESQ.

JAMES SKENE, ESQ.

GEORGE SMYTHE, ESQ.

THOMAS THOMSON, ESQ. VICE-PRESIDENT.

PATRICK FRASER TYTLER, ESQ.

MOST RESPECTFULLY INSCRIBED

TO

THE PRESIDENT

AND

MEMBERS

OF

THE BANNATYNE CLUB,

BY

WILLIAM BLAIR.

THE following Apology, now reprinted from a copy in the Advocates' Library, was written by Sir James Dalrymple, in 1690, to vindicate himself from certain charges published against him the preceding year. The attack was contained in an anonymous pamphlet, professing to be a Vindication of several Votes of a Majority of the Scottish Parliament, 1689, approving of five acts which had not obtained the Royal assent, and on which the members who supported them presented an address to the King. The real author of this paper is understood to have been the notorious Robert Ferguson, whom Bishop Burnet terms "a man who naturally loved to embroil matters," and whose whole life seems to have been such a series of intrigues and conspiracies, as well entitled him to the nickname of "The Plotter," bestowed on him by his contemporaries. On this occasion, Sir James Dalrymple, and his son, Sir John Dalrymple, (afterwards better known as the Master of Stair,) were the principal objects of Ferguson's virulence; and the subjoined passage is that which appears to have chiefly and justly raised the indignation of the former. One of the rejected acts had been intended to regulate "the nomination of the Ordinary Lords of Session, and the election of the President, to wit, that in a total vacation, they be tryed, and admitted, and rejected by Parliament; and in a particular vacation, they be tried, and admitted, and rejected by the other

Lords; and that the President be chosen by the Lords themselves, conform to our old practise and express statute." After highly lauding the vote on this subject, and endeavouring to show that it really was founded "on our old practise and express statute," and that Charles II. had acted against law in nominating Lord Stair President, "the Plotter" proceeds,—

"And as S—— assuming the office of President, upon the illegal choice of the aforementioned King, was both an affronting and betraying of the known laws of the kingdom; so, his whole behaviour in that station was of one piece and complexion with his entering upon it, being a continued series of oppression and treachery to his country. For, besides that all his verdicts between subject and subject were more ambiguous than the Delphick Oracles, and the occasion of the commencement of innumerable suits in place of the determining of any, he was the principal minister of all L——'s arbitrariness, and of King Charles's usurpations. Nor was there a rapine or murder committed in the kingdom, under the countenance of royal authority, but what he was either the author of, the assister in, or ready to justify. And from his having been a military commander, for asserting and vindicating the laws, rights, and liberties of the kingdom, against the little pretended invasions of Charles I., he came to overthrow and trample upon them all, in the quality of a civil officer, under Charles II. Nor is there a man in the whole kingdom of Scotland who hath been more accessory to the robberies and spoils, and who is more stained and died with the bloody measures of the time than this Lord S——, who his Majesty hath been imposed upon to constitute again President of the College of Justice. And as an aggravation of his crimes, he hath perpetrated them under the vail of religion, and by forms of law, which is the bringing the holy and righteous God to be an authorizer and approver of his villainies, and the making the shield of our protection to be

the sword of our ruin. But, there being some hopes that the world will be speedily furnished with the history of his life, I shall say no more of him, but shall leave him unto the expectation and dread of what the famous Mr Robert D—— foretold would befall them and him in his person and family;* and of which, having tasted the first fruits in so many astonishing instances, he may the more assuredly reckon upon the full harvest of it. And the method he hath lately begun to steer, is the most likely way imaginable to hasten upon him and his what that holy, and I might say prophetic man, denounced against them. For, whereas the nation would have been willing, upon his meer withdrawing from business, and not provoking their justice, by crowding into the place in which he had so heinously offended, to have left him to stand or fall at the great Tribunal, and to have indemnify'd him as to life, honour, and fortune here, upon the consideration of his having co-operated in the late Revolution, and of his having attended upon his Majesty in his coming over to rescue and deliver the kingdom from popery and slavery; he seems resolved to hasten his own fate, and through putting himself, by new crimes, out of the capacity of mercy, to force the Estates of the Kingdom to a punishing of him, both for them and for the old."†

The Apology is dated 1690, and must have been printed before the 20th of April, the date of the author's elevation to the Peerage, by the title

* Douglas was said to have prophesied, that Dalrymple should leave no family.

† Ferguson's pamphlet, for the use of which I am indebted to the kindness of T. Thomson, Esq. is a small 4to, of 63 pages, and contains both the Vindication of the Votes, and a copy of the Address "delivered to his Majesty at Hampton Court, the 15th day of October, 1689."—The title-page to the whole bears,—"The late Proceedings and Votes of the Parliament of Scotland, contained in an Address delivered to the King, signed by the Plurality of the Members thereof, Stated and Vindicated."—Glasgow, Printed by Andrew Hepburn, Anno Dom. 1689.

of Viscount of Stair. It is now an extremely rare tract; and although a MS. note on one of the two copies in the Advocates' Library may assert correctly, that there were two impressions of it in 1690, yet, at all events, it has not been reprinted since that period.

EDINBURGH, 1st July, 1825.

AN APOLOGY

FOR

SIR JAMES DALRYMPLE.

SELF-DEFENCE is one of the first, and most evident principles, by the light of nature. Revelation hath made it yet more evident, that we not only may, but must, defend our lives and fame against all invasions thereon; for these are not in our power, that we may take them away, or suffer them to be taken away, except in the way of justice, but they are intrusted to us, by God, to be defended in all lawful ways we can. Assassination against mens lives is a most cruel crime, striking at the very root of humane society and safety, being so suddent and unexpected as it cannot be prevented, and hardly evited: yet it is more difficile to prevent, or evite an assassination of fame; for an assassin of life can, much more easily, be found out and punished, than an assassin of fame, who, by anonymous and unfamous libels, may, much more securely, wound the reputation, than the body; and therefore, defamation, especially by infamous libels, is, by the law of the Romans, and all other civil nations, accounted and punished as a most atrocious crime. Infamous words cannot be, so easily, propagated and continued, as infamous libels, *litera scripta manet*.

I hope, no just person will blame me, for vindicating my fame and reputation, from the false and calumnious aspersions wherewith I am endeavoured to be branded, with the most vehement violence, in an anonymous pamphlet, entituled, “ The late Proceedings and Votes of the Parliament of Scotland, contained in an Address delivered to the King, signed by the plurality of the Members thereof, stated and vindicated.”

This pamphlet bears to be printed at Glasgow, which is false, for it was printed at London, as the tenor of it importeth, speaking of things done at London as done here; which could not be sense, applied to Glasgow, or to Scotland, but to London. It doth contain a rapsody of false and ignorant aspersions, and reproaches, against the King, and all he had then intrusted in his service; yet, malice or avarice had prevailed to have another impression at Edinburgh, (for all satyrs sell well,) if it had not been discovered, and hindered, by the Privy Council; whereupon the printer was imprisoned, and a committee of the Council appointed to consider the same, in order to a censure: but, the Parliament approaching, the vindication of the King, and the censure of the authors and spreaders of this infamous libel, will be most proper there,—the expectation whereof hath made several answers to it, ready for the press, to be forborn.

But, seing it is most venomous against me, though, at first, I did neglect and contemn it, *nam spreta vilescunt*, yet, finding, that it is industriously spread, and most aggravated against me, and commentars made upon the general aspersions in it, I judged it my duty, to apologize for myself, lest these that knew no better might think, I

was self-condemned, and could not answer, being conscious of the guilt I was charged with.

The sum of all that is charged against me is, That I have been a changeling—appearing, at first, against tyranny and arbitrary government, in the reign of King Charles I. ; and then, turning for the same things, in the reign of King Charles II. ; and all under the masque of religion : and having betrayed my country—in accepting to be President of the Session, upon the King's nomination, contrair to the act of parliament, by which, the President of the Session is to be chosen by the Lords—and that I was concurring in all the evil things were done, during the Duke of Lauderdale's ministry, against the suffering Presbyterians, for their conscience, as being either author of, assistant in, or ready to justify these actings—and so no man was more stained and dyed with blood and oppression than I—and that the Rev. Mr Robert Dowglass did threaten, or foretell judgment to me and my family—and that the Decisions of the Lords of Session, which I have published, are as obscure as the Oracles of Delphos.

I do not intend to make panegyricks in my own praise, but only plainly and ingenuously, to declare the matter of fact, as in the sight of God, who only is judge of the heart, and knoweth intirely who are hypocrites, acting under the masque of religion, and who are not ; yet this libeller is so bold as to conclude me an hypocrite, acting under the masque of religion, which he cannot know ; and yet he doth confess, that I did begin to act for liberty, and in a way that appeared to be religious ; and he can as little know what I was

the author of, when I was not the actor ; and far less, what I was ready to justify, unless he had shown, that I had justified that which was wicked, which his general aspersions of concurse can never do, unless he had been a witness himself, in which case, his malice would not have rested in generals, which are ever accounted calumnious, but would have been particular, at least in some eminent acts ; and yet, there is but one particular against me, in all his bitter libel, to wit, that I accepted to be President of the Session, on the King's nomination, which, upon his own assertion only, he pretends to be the betraying of the nation ; but, whether it be groundless or not, will appear by what follows.

This also is obvious, that all his malice hath not prevailed with him, to asperse me with anything that concerns my special trust, as a Senator of the Colledge of Justice, wherein I continued more than ten years ; or as President of it, wherein I continued above ten years more ; and, if he be not ignorant of Scottish affairs, cannot but know, that immediately after the Parliament 1681, wherein being a member, I was forward for the preservation of the Protestant religion, and for preventing the incóming of Popery in the view of a Popish successor ; and in the publick debate in Parliament, my reasons prevailed to exclude all, from public trust, who did not swear to maintain the Protestant religion, according to the Confession of Faith of the Church of Scotland, made at the time of Reformation, approved and recorded in Parliament, without leaving it to the indefinite name of the Protestant religion ; which the then Duke of York did, the very night that act passed, declare to the late Earl of Argile,

that I had ruined all honest men, (meaning Papists,) by bringing in that confession, as Argile's case, published by himself in print, beareth : whereupon, there was immediately a Commission to the Lords of Session, leaving me out, without the least pretence of reason, or any order of law, but against the known law of the kingdom, whereby the Lords of Session have their place *ad vitam aut culpam*, which is the great security of the people, that their judges are not under temptation, to be overruled by fear of being thrown out at pleasure. That quarrel, with my freedom to the then duke, at his first coming to Scotland, against attempting to weaken the Protestant interest, in a publick speech I had at his entry, made me to be the first person laid aside that ever was looked after. I was cited before the Criminal Judges, before the Council, before the Parliament, and hundreds of examinations, and re-examinations were taken against me, even of my most intimate domestick servants, and my sisters-in-law, not in the regular way for probation, but by way of inquisition to found a process, upon any special matter, which was never done, because nothing was found against law. Can any judge in Christendom show such a trial of integrity, who did, so long a time, serve in such an eminent station ? No man was found to witness the least malversation or baseness, by indirect interest in any cause, by taking any bribe or reward, by partiality or insolency, though nothing would have been more acceptable to the Court, than, by one blow against my fortune and fame, to have ruined me, upon malversation in my trust as a Judge. It is a further evidence of my integrity, that though I have been, forty years, in publick employ-

ment, yet I have not bought an hundred pound sterling of rent more than I have sold ; and when my sons came to the house, I did most strictly prohibite them to sollicite me in any case, which they did exactly observe, and may safely declare it upon their oaths ; and it is known to many others, that there might be no suspition of their taking anything on my account, but only what was proper for these of their station. Yet, it is highly aggraged in this pamphlet, that the King restored me to be President of the Session, in the same terms I was at first, my pension not being the half of what was given since I was removed, though my former pension bore to be during my natural life ; and though I had chearfully adventured, not only my life and fortune, but the ruine of my children, with the King in his expedition to Britain, in the winter season, in the seventieth year of my age, with all the chearfulness imaginable, which made his Majesty express so much kindness to me, and tenderness of me, as did presently breed me no small measure of envy.

To return then to my charge of being a changeling—I was ever fully perswaded (since I came to ripeness of age,) of the truth of the Protestant religion, and of the constitution and government of my mother church, and Prelacy reformed from Popery, though prudence allowed me not, at all times, to make noise ; whereof, yet, I never changed my opinion till this day, but did shew the same, both in my practice and profession, to these I might use freedom with, and never disowned it, or owned the contrar to any mortal. But, my judgment and inclination never led me to use, or approve severity, against these who suffered, for serving God in the way they were

perswaded, without idolatry, or overturning the principles of religion, necessar for holiness and happiness ; so far I was from being the author, or justifier of the severities used against these of my perswasion, of whom many are my witnesses, that I did what I durst to save them ; and I was alwayes so esteemed, and often publickly reproacht in council, for so doing. I did never medle in any Criminal Court, nor was I ever judge, pleader, juror, or witness therein ; and in the council, I did frequently declare my judgment, that though, in other courts, the judges were oblidge to follow the law, although rigorous ; yet, the council, to whom the policy and government of the nation is committed by the King, was not bound so to apply the severities of the law, but as they judged it as well prudent, as just. I did often, publickly, declare my judgment against a letter procured from King Charles II., making the capital and criminal punishments, in relation to ecclesiastick affairs, to extend only to arbitrary pains and penalties, that thereupon, persons accused might be holden as confest, seing I ever judged, that no man is obliged to confess that which is not otherwayes proven, against his life or fame ; I did also oppose the enervating of all our judicatories, upon pretence of an accumulative power, and the encroachment upon the priviledge of the royal burrows, in the Parliament 1681. Let then my unfriends be my judges, if it be a just assertion or inference, that none was more stained with blood and oppression than I ; my opposition to the course of the times doth appear, by the " Narrative of the Plot," approven in the Parliament 1685.

As to the matter of civil government—since I was capable to con-

sider the same, I have been ever perswaded, that it was both against the interest and duty of kings, to use arbitrary government ; that both king and subjects had their titles and rights, by law ; and that an equal ballance of prerogative and liberty was necessar for the happiness of a common-wealth. I have fully exprest my judgment therein, in a Treatise, (which, when published,) I hope, will not be unacceptable to so gracious and moderat a Prince as we now have, nor to the people : I never gave an other impression, to any of our Kings, whereof, I trust, our present King will bear me witness ; and though some have been suspicious, that I have given ill characters of them, or hindred them from such places or preferments as they aimed at, yet, he knows, that at home and abroad, I have given favourable characters of many, but evil characters of none ; not that I was afraid freely to tell him the truth, if he had required it, but he did not, for he had abundance of that stuff from other hands, and much more than was acceptable to him.

To shew how little I have been a changeling, or time-server—it is commonly known, and there are hundreds can witness, that I was excluded from the bar, for not taking the Usurper's tender, engaging to be faithful to the Common-wealth of England, without King or House of Lords, and never appeared again, till that tender was laid aside. And though, thereafter, I was made a Judge, supposing I would be as acceptable to the nation as any, yet, I did not imbrace it, without the approbation of the most eminent of our ministers that were then alive, who did wisely and justly distinguish, between the commissions granted by usurpers, which did relate only to the

people, and which were no less necessary than if they had prohibit baking or brewing, but by their warrant, and between these which relate to councils for establishing the usurped power, or burdening the people ; and therefore, though I was much invited, I never embraced a commission to any of their pretended Parliaments, or Councils of State. And I know, that the King allowed his friends to accept such commissions as were necessary for preserving his people ; and therefore, when he was restored, I was one of the Senators of the Colledge of Justice, in the first nomination. But, when the declaration was enacted by Parliament, required of all in publick trust, I did rather renounce my place than take it, and did retire unto the country, where I lived a year, privatly and quietly. But, without my desire or expectation, King Charles called me to London, and desired me to return to my station in the Session ; and when I told him, I could not sign the declaration, unless it were so explicat and restricted, that by the general terms expressed in it, I did declare against no more than what was opposite to his Majesties just right and prerogative, and that I should have these terms from his Majesty, in writing, which he granted, and I have yet to shew, which the act of sederunt at my restitution doth import. And in the third place, when the late Test was enacted in the Parliament 1681, though I was well pleased with the first part of it, which was the safest hedge against Papists that ever I saw, yet, I could not sign the latter part of it ; and though it was not required to be signed till January thereafter, yet, many were so zealous, as to subscribe it within a few days after the Parliament. I did therefore go up to the King,

to shew him, that I could not take that test, to desire liberty, with his favour, to retire ; but, before I came, the new Commission for the Session, wherein I was left out, was past, so that I had no further to say ; and therefore I neither did resign, nor was excluded by the Act of the Test, seing the day was not come, but by meer arbitrary power. Whereupon, I did retire to a private life, and with assurance not to be disquieted therein ; but, when I found, I was in continual suspicion, and that my tennents were thrown in prison, and forced to give bonds, on pretence of conventicles, for more than they were worth, and that my rents were arrested, I did ask the advice of the then King's Advocat, whether he thought, I might be safe, and free of imprisonment ; he told me faithfully and friendly, that he thought not, and owned to the King, that he had so advised me ; whereupon, I was necessitate to retire unto Holland, the place of the greatest common safety, and yet there were frequent addresses to the Prince and States, to remove me out of their Provinces ; and after I was gone, my eldest son was fined in 500 pound sterling, upon Claverhouse's pickish accusation, that as Baillie of the Regality of Glenluce, he had fined too low for conventicles ; and thereafter, he was taken summarily, without citation, and brought to the tolbooth of Edinburgh, as if he had been a malefactor, and detained three months, and then let go, upon bond of confinement, without shewing the least pretence of a cause, though he had never meddled in any publick matter, but had served, in good reputation and imployment, as an Advocat.

Let my enemies, then, show how many they can instance, in the

nation, that did thrice forsake their station, though both honourable and lucrative, rather than comply with the corruption of the time, or sign anything wherein they had not clearness of conscience, as I have done, who quite my station for the Usurper's tender, and for the declaration and test ; it is true, many were free of all these, but, few deserted such stations as I was in, for them all. If these be consistent with being a Proteus, or a changling, I leave it unto any just person of judgment or discretion, to judge.

As to the pretence of my subserviency to the Duke of Lauderdale, during his ministry, in the evil things then done—beside that it is general and calumnious, without an instance given, and that it may be charged against all that were in the Government, during the most part of the reign of King Charles II., it may be redargued by clear instances and evidences in the contrary. I shall not load the memory of the Duke of Lauderdale, who was most zealous for the honour of his countrey, but was overruled, by measures laid before he came to his greatness, and by the difficulties he came to be in, upon the account of his favouring these called phanaticks. He came to Scotland in the year 1677 ; and upon representations made by me and others, he concurred in making several Acts of Council, correctory of the abuses that then run ; as particularly, That persons were cited for church disorders, without special circumstances of time or place ; but generally, in one or other of the days of all the months, for several years ; and were put to their oaths upon the whole libel, whereby many had been holden as confest, and thereupon fined, imprisoned, and transported, like slaves, to forraign plan-

tations ; whereupon, the then Archbishop of St Andrews did represent to the Bishops in England, and to the Court, that he was overturning the settlement of this nation ; and he likewise said, that in one moneth after he came hither, he had put the King's interest further back than could be retrived in seven years. To make up which, he was instigated to bring in the Highland Host upon the West of Scotland, who treated them as enemies, not only by free quarter, but by all insolencies and oppressions ; and to obtain an order of council, to enjoyn a bond to be taken by all in publick trust, and others in that countrey, to delate, apprehend, and bring to judgment all the Presbyterian ministers that came ever in their power, that had kept any conventicles ; against both which, I did, with all freedom and faithfulness, dissuade him, and dissent ; and I do not remember of any one person in Council or Session, that could never be induced to subscribe that bond, or to approve that road, but my self. And when, in the year 1679, several complaints were made to King Charles, against Lauderdale and his brother, which were published in print, and whereupon King Charles gave a publick audience, though I was there present, there was not the least insinuation against me.

As to the pretended obscurity of the decisions of the Lords, published by me—it is like, the ignorance of law of this libeller made them so to him ; but I may say, without vanity, that no man did so much, to make the law of this kingdom known and constant, as I have done, that not only bred lawyers, but generally, the nobility and gentry of the nation might know their rights ; for, I did, care-

fully and faithfully, observe the debates and decisions of the Lords of Session, during all the time I was in it ; expressing mainly the reasons that the Lords laid hold on, in all important cases, which were not come to be incontroverted, as a beaten path, or were obvious to common capacities ; and I did seldom eat or drink, and scarce ever slept, before I perused the informations that past every sederunt day, and set down the decisions of the Lords, (though, sometimes, not in the same terms as they were marked by the clerks ; for, at that time, the interlocutors were all upon their trust, without being revised and signed by the President, as now they are,) while they were fresh in my memory ; which were published in two volumes, after my removal : but, not being present at the time they were printed, there are many escapes in printing, but seldom is there anything of the sense unclear : and I did write the Institutions of the Law of Scotland, and did derive it from that common law that rules the world, and compared it with the laws civil and canon, and with the custom of the neighbouring nations ; which hath been so acceptable, that few considerable families of the nation want the same, and I have seen them a-vending, both in England and Holland. I was, also, the first author, and prime promoter of that order of bringing in processes, for every person, without exception, as they were ready, that the greatest man of the nation could not have preference before the meanest, and that all might be free of uncertain attendance ; whereas before, all depended upon the arbitrary calling of the Lords, as they pleased ; so that every judge might call his own friends, in his own week.

I have been quarrelled for being the author of the banishing of the Advocats from Edinburgh, in the year 1674, in the harvest vaccance, which is taken notice of, in the grievances, as an incroachment upon them, done by the then Privy Council, whereof I was altogether free ; for it was done in the vacant time, when I was in the countrey, and the inspection of the sederunts of the council will demonstrat, that in that whole vaccance I was not present, yea, seldom was I present in any vacance, and oft-times absent in session time, especially when the affairs of the session required afternoon meetings. God knows, I had no pleasure in the affairs that were then most agitated in Council.

As to the pretended prediction of Mr Douglas—nothing can be more false and calumnious. It is known to many, that Mr Douglas did always express the greatest kindness and respect for me, to his dying day. And his relict (who is a vertuous and pious person, of a good family, and lived long with him), hath testified the contrair, and offered to declare the same, in the most solemn way could be required ; and that he never spoke any thing to the prejudice of me or my family.

Remains, now, the only special matter charged against me, to wit, the acceptance to be President of the Session, by the King's nomination, not being elected by the Lords of Session.—As to which, I shall give a plain and true account of the election of the President of the Session, from the institution of the Colledge of Justice, till this time. First, It is evident, by the institution of the Colledge of Justice, that the President of the Session was to be constant Presi-

dent, and not ambulatory or changeable, and was to be chosen by the King, which was suitable to his royal authority, to which the judicial and executive power is most proper, and so the nomination of all judges. It did so continue, without controversy, till the 1579, when there was a correctory law made, by the 93d Act of the 6th Parliament of King James VI., after the dimission of the Earl of Mortoun's Regency, and that the King had not past his pupillarity, being born in June 1566, bearing expresly, That the King elected young men, without gravity, knowledge, and experience, not having sufficient living of their own, upon the session ; and therefore, contrair qualifications were prescribed ; and it was enacted, That all intrants should be sufficiently tryed, and examined, by a number of the ordinary Lords, and in case that the person presented by the King were not found so qualified by them, it should be leisom to the Lords to refuse the person presented to them ; and it is declared, that the President shall be chosen by the whole Lords of the condition and qualifications above written, whether he be of the spiritual or temporal estate, dispensing with that part of the institution of the Colledge of Justice, bearing, that the President should be of the spiritual estate. At this time, Baillie of Proven was President of the Session, and continued so till the year 1593. By this Correctory Act, the presentation or nomination of the Lords belongeth to the King, and the Lords have power to admit, or refuse, as the person nominate were found qualified or unqualified.

After President Baillie's death, in the year 1593, the Lords listed the Lords Vrqhart and Menmoor, and of that list choosed Vr-

quhart to be President ; he continued till the year 1605, and then was made Chancellor, and Secretary Elphingstoun succeeded him ; he continued till the year 1609, and then President Prestoun was admitted ; and after his death, the Lord Binning (afterwards Earl of Haddingtoun,) was President, and so continued till the death of King James. When King Charles the First came to the crown, Haddingtoun was made Privy Seal, and Sir James Skeen was by the King presented to be President, who died in the year 1633. But the manner of election of these four Presidents doth not appear, not being extant in the books of Sederunt. Upon the 1st of November 1633, Sir Robert Spotswood was elected President upon King Charles's letter to the Lords, bearing, That, as his father and himself were wont to do, in the like cases, he did recommend the said Sir Robert to be President, so that, by this letter of King Charles's, it doth appear, that, whatever be the sence of that correctory law anent the way and manner of electing the President by the Lords, yet, that, thereafter, both King James and King Charles did recommend the person who was admitted President by them. President Spotswood continued President till the troubles, and then, in the rescinded Parliaments, there was an act, ordaining the Officers of State, Counsellors, and Lords of Session, to be named by the Parliament, but there was no mention of the election of the President ; yet, though the former acts anent the election of a constant President were not repealed, the Lords did name their President every session.

But at the Restauration of King Charles II., by the 2d act of his first Parliament, in Anno 1661, it is declared, " That it is an inhe-

rent privilege of the Crown, and an undoubted part of the royal prerogative of the Kings of this kingdom, to have the sole choice and appointment of the Officers of State, and Privy Counsellors, and the nomination of the Lords of Session," as in former times preceding the year 1637. And by the 11th Act of the same Parliament, the acknowledgment of the King's Majesty's prerogative, doth resume the former Act, in these terms, declaring, " That it is an inherent privilege of the Crown, and an undoubted part of the royal prerogative of the Kings of this kingdom, to have the sole choice and appointment of the Officers, Privy Counsellors, and Lords of Session," which explains, that by the nomination of the Lords of Session in the former Act, is not meant the presentation only, but the sole choice and appointment of them, who being qualified according to the laws, cannot be rejected, or refused to be admitted. According to that and other acts, the King, by his letter recorded in Parliament, gives thanks to the Estates for asserting his prerogative, and declares, that accordingly, he had named his Officers of State, Counsellors, and the Lords of Session. In which nomination, being of the same date with his Majesty's letter foresaid to the Parliament, and which letter was presented in the Parliament, February 27, 1661, being the same day that the act asserting and acknowledging his Majesty's prerogative did pass, Sir John Gilmour was appointed President, and without any formality of list, choosing, tryal, or admission, by the Lords, continued constant President, till, upon his indisposition, he resigned ; and, upon his resignation, King Charles named me to be constant President, and I was accordingly admit-

ted by the Lords, unanimously, by their Act of Sederunt January 13, 1671, (which confutes the impudence and falshood of the libeller's proposition, that I was the first that came to be constitute President by the King, and illegally obtruded upon the Lords of Session, without being either chosen or approven by them,) and so continued till September 1681, when, by a new commission to the Session, I was left out, and Sir George Gordon of Haddo, was therein nominat constant President, without any consent or choice of the Lords; and after he was made Chancellor, Sir David Falconer of Newton; and after his death, Sir George Lockhart of Carnwath, were, by the King's letters, named Presidents, and admitted in the same manner as I was; and from King Charles' return till this last Session of Parliament, there was never the least scruple, motion, or question of any further requisite for the legal establishment of the President of Session; albeit, in the year 1674, much dislike was vented, and parties stated against the Session. And it is strange that the eminentest lawyers that ever were of the nation, could have been so incircumspect, as not to have a legal establishment of their title. So that it is plain, that the Parliament 1661, was of the opinion of King Charles I., That it was the King's right, and that they had been in use to name, present, and recommend, as well the President as other Lords of Session. And to conclude this period, I cannot omit to take notice of the ignorance of the libeller, who asserts, that all the Presidents, since 1579, till the year 1661, were the Lord Proven, Vrquhart, Currihill, Sir R. Spotswood, and Lord Durie; though it be known to the least intelligent, that the Lord

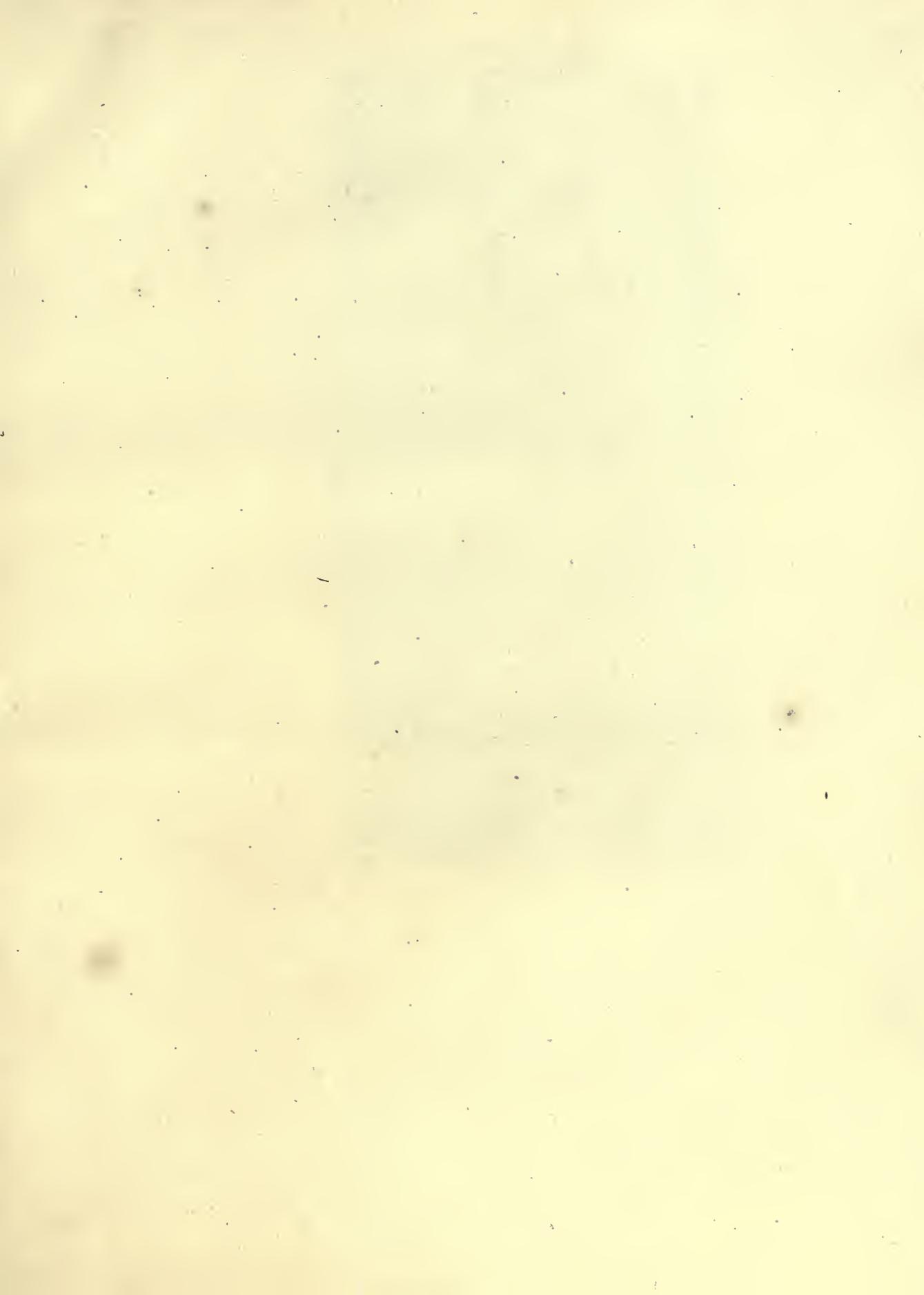
Balmerino, Secretary; Preston of Pennicook, Collector General; and the Lord Binning, Secretary, (afterwards Earl of Haddingtoun,) were successively Presidents of the Session, after the Lord Vreuhart, and before the Lord Curriehil; but it seems, he hath industriously omitted the mentioning of them, lest they, being great ministers of state and favourites, their admission by the Lords might have been suspected to have proceeded upon the King's recommendation, as well as mine: and the Lord Durie was never chosen nor admitted constant President; but sometimes Vice-President, in the absence of Curriehil; and Sir Robert Spotswood, and after the year 1641, was sometimes chosen for a session, as was the Lord Innerpeffer, Foderen, Balcomie, &c.

But suppose, it were as clear as the light, that the King had neither right to elect, nominate, nor present the President of Session, but had done it, in all these cases, without warrant; yet, no man that hath the least knowledge of law can refuse, that the disposition of him that hath no right, with consent of him that hath right, is a valid and sufficient right, as if the consenter had been disponent, seeing his consent communicates all right he had when he did consent; and therefore, the consent of the Lords to the King's election, by their express admission, leaves no pretence of quarrel; and though the vote of Parliament, declaring that the President of Session shall be elected by the Lords, had then past in an Act of Parliament, it could only revive the Act of Parliament 1579, and could but have effect *ad futura*, and doth not declare any thing *ad præterita*, and so could not touch my title, which had both the consent of the Lords,

in anno 1671, and renewed in anno 1689; as in the case of President Proven, who being admitted President by the Kings nomination, did not, by reason of the subsequent correctory law 1579, either cease to be President, or was of new elected, but, by vertue of his former admission, continued till he died. And now, after all this, I appeal to the conscience of all just and unbyassed persons, if this libeller hath any just pretence, that I have betrayed my countrey, by accepting to be President of the Session. I hope, these that have charity, that men may aim at the service of God and their country, more than their own interest, will not conclude, that my interest was the chief motive that made me resume so heavy a burden, in my present circumstances. And it is known to many of eminent quality, that while Sir George Lockhart lived, I would neither desire nor accept of this charge; nor had I any doubt, but that the King would have provided me as well as by it; nor did I ever hear, that any number of these who were for a change did propose a person which were fitted, and would be commonly acceptable, in my place.

EDINBURGH, PRINTED IN THE YEAR 1690.





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