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ABBREVIATIONS

<i>APS</i>	<i>The Acts of the Parliaments of Scotland</i> , eds. C. Innes & T. Thomson
<i>Arb. Lib.</i>	<i>Liber S Thome de Aberbrothoc</i> (Bannatyne Club, 1848-56)
AV	Authorized version
BL	British Library
<i>Books of Assumption</i>	<i>The Books of Assumption of the Thirds of Benefices</i> , ed. J. Kirk (British Academy, 1995)
Bower (Watt)	<i>Bower's Scotichronicon</i> , ed. D.E.R. Watt <i>et al</i> (1987-1998)
<i>C.A. Chrs</i>	<i>Charters of the Abbey of Coupar Angus</i> (SHS, 1947)
CDS	J. Bain, (ed.), <i>Calendar of Documents Relating to Scotland</i> (1881-8)
<i>Cold. Cart.</i>	<i>Cartulary of the Cistercian Priory of Coldstream</i> (Grampian Club, 1879)
CPL	W.H. Bliss <i>et al.</i> (eds.), <i>Calendar of Entries in the Papal Registers relating to Great Britain and Ireland</i> (1893-)
<i>Crail. Reg.</i>	<i>Register of the Collegiate Church of Crail</i> (Grampian Club, 1877)

- CSP Scots* Calendar of the State Papers relating to Scotland and Mary Queen of Scots, 1547-1603, 13 vols., eds. J. Bain et al., (Edinburgh, 1898-1969), x, 522.
- CSSR*, v J. Kirk *et al.* (eds.), *Calendar of Scottish Supplications to Rome 1447-1471* (1997)
- Dryb. Lib.* *Liber S Marie de Dryburgh* (Bannatyne Club, 1847)
- Dunf. Reg.* *Registrum de Dunfermelyn* (Bannatyne Club, 1842)
- ER* *The Exchequer Rolls of Scotland*
- Glas. Reg. *Registrum Episcopatus Glasguensis* (Bannatyne and Maitland Clubs, 1843)
- GUL Glasgow University Library
- Handbook of British Chronology E.B. Fryde *et al.*, (eds.), *Handbook of British Chronology*, 3rd ed. (1986)
- HMC *Reports of the Royal Commission on Historical Manuscripts* (London, 1870-)
- HMC, Buccleuch and Queensberry *Report on the MSS of the Duke of Buccleuch and Queensberry*, eds. Sir W. Fraser & W. Scott, 2 vols. (London, 1897-1903)
- HMC, Mar & Kellie Historical Manuscripts Commission, *Report on the Manuscripts of the Earl of Mar and Kellie*, 2 vols., ed. H. Paton (London, 1904-30).

- Inchaff Chrs* *Charters, Bulls and other Documents relating to the Abbey of Inchaffray* (SHS, 1908)
- Kel. Lib.* *Registrum cartarum Abbacie Tironensis de Kelso, 1113-1567*, ed. C., Innes, 2 vols. (Bannatyne Club, 1846)
- Lind Cart* *Chartulary of the Abbey of Lindores* (SHS, 1903)
- Mel Lib* *Liber Sancte Marie de Melros* (Bannatyne Club, 1837)
- Moray Reg* *Registrum Episcopatus Moraviensis* (Bannatyne Club, 1837)
- MRHS I.B. Cowan & D.E. Easson (eds.), *Medieval Religious Houses Scotland* (1976)
- NAS National Archives of Scotland
- Newb. Reg.* *Registrum S. Marie de Neubotle* (Bannatyne Club, 1849)
- NLS National Library of Scotland
- OS Ordnance Survey
- Pais. Reg.* *Registrum Monasterii de Passelet* (Maitland Club, 1832)
- Raine, North Durham* J. Raine, *The History and Antiquities of North Durham* (1852)

- RCRB* *Records of the Convention of the Royal Burghs of Scotland*, ed. J.D. Marwick (Edinburgh, 1890)
- RMS* *Registrum Magni Sigilli Regum Scotorum*
- Rot. Scot.* *Rotuli Scotiae in Turri Londiniensi et in Domo Capitulari Westmonasteriensi Asservati* edd D Macpherson *et al* (1814-1819)
- RPC* *Register of the Privy Council of Scotland*
- RRS* G.W.S. Barrow *et al.* (eds.), *Regesta Regum Scotorum* (1970-)
- Scone Liber* *Liber Ecclesie de Scon* (Bannatyne and Maitland Clubs, 1843)
- Scots Peerage* J. Balfour Paul (ed.), *The Scots Peerage*, 9 vols. (Edinburgh, 1909-1914).
- SHR* Scottish Historical Review
- SHS* Scottish History Society
- Soutra Chrs* Charters of the Hospital of Soutra in *Charters of the Hospital of Soltre, the Trinity College Edinburgh and other Collegiate Churches of Midlothian* (Bannatyne Club, 1861)
- SRS* Scottish Record Society
- StA. Lib.* *Liber Cartarum Prioratus Sancti Andree in Scotia* (Bannatyne Club, 1841)

- Stevenson, *Documents* J. Stevenson, ed., *Documents Illustrative of the History of Scotland* (1870)
- Stones, *Documents* E.L.G. Stones, ed., *Anglo-Scottish Relations: Some Selected Documents* (1965)
- TRHS *Transactions of the Royal Historical Society*
- Yester Writs *Calendar of Writs preserved at Yester House 1166-1503*, eds. C.C.H. Harvey & J. Macleod (SRS, 1931)

EIGHT THIRTEENTH CENTURY TEXTS

edited by W.W. Scott

INTRODUCTION

The title of this collection uses the word 'texts' deliberately. Four of the documents are charters, but the others, as they survive, are memoranda, two of them very short. 'Text' is a useful portmanteau to hold them all. Items 1-7 come from the collections of the National Library of Scotland and are reproduced here with the kind permission of the Trustees and the Librarian. Nos 1-2 came to the Library by purchase; no 7 was discovered in the deposited Lockhart of Lee and Carnwath collection. Nos 3-6 come from the earliest *registrum* of the bishopric of Glasgow, now NLS Acc 10301 no 1. The credit for their discovery belongs to Dr John Durkan, who detected four unfamiliar texts while examining an eighteenth century transcript of the Glasgow registers.¹ A search of the two earliest manuscript registers soon showed that they were there too. Why they were not printed in 1843 in the *Registrum Episcopatus Glasguensis* is an unsolved mystery, but it might be noted that three other documents were nearly omitted in that edition.² Item 8 comes from a collection of transcripts and notes of Dryburgh Abbey documents in the Scott of Harden deposit in the National Archives of Scotland, and is reproduced here by kind permission of the Rt Hon the Lord Polwarth.

Each text says something of interest about Scotland in the thirteenth century. When they, or parts of them, can be related to others, that is done. More detailed comment might have been offered here and there. But Scotland is not well provided with thirteenth century material and it seemed right to use an opportunity to enlarge the corpus of printed documents and present them now to a wider

¹ Glasgow University Library, MS Gen 1245.

² *Registrum Episcopatus Glasguensis* (Bannatyne & Maitland Clubs, 1843), i, ci-cii.

public for further use, rather than wait for an even more elaborate presentation.

Text 1

In the first text Richard of Beaumont grants to David, son of Hugh White of Haddington, the lands of 'Caplawin' (Caiplie, to the west of Crail, Fife) and three bovates in the field of 'Ratheruch'. The marches are set out in detail. The grant is in feu and heritage to David and his heirs, or to him and his assignees. It is exempted from a range of secular duties, including suit of court. The annual rent is twelve pence, to be paid on Whitsunday at Crail. The granter warrants the land to David, his heirs or assignees.

An inquest at Perth on 31 May 1305 delivered that Alexander II had given to Richard of Beaumont the barony of Crail with its pertinents. Richard had then pledged the property to Walter the Steward of Scotland, who advanced money for Richard's journey to the Holy Land and enjoyed the cain (in this case, fishing rents) of the property as long as he held it. After the deaths of Richard and Walter the barony escheated to Alexander III and was recovered from him by Walter's executors until the end of the lease.¹ The statements of this inquest do not all fit very well with what the charter says, but taking them together enables a possible course of events to be deduced.

During her lifetime Ermengarde of Beaumont, the queen of king William the Lion, had held Crail. After her death on 11 February 1233 the estate, being part of the royal lands, would normally have come into the king's hands again. The Richard of Beaumont to whom it was then said to have been granted can be taken to be a nephew or great-nephew of the late queen. The charter itself, showing that Richard was able to dispose of the land, confirms that, even some seventy years after the event, the inquest of 1305 was correct when it recorded that Crail had been granted to him.

Why the grant was made is not known; it was unusual for royal lands to be alienated in this way. So far as one can tell, the queen was a forceful lady (in the late fifteenth century there were lingering beliefs of her alleged influence over Alexander II) and she may have left a bequest.² That is speculation, but it is clear that, however

¹ J. Bain (ed.), *Calendar of Documents Relating to Scotland* (1881-8), ii, no. 1670.

² J. Kirk et al. (eds), *Calendar of Scottish Supplications to Rome 1447-1471* (Edinburgh, 1977), no 869; *Bower's Scotichronicon*, ed. D.E.R. Watt et al., 9 vols. (Aberdeen-Edinburgh, 1987-1999), iv, 467-469, 633.

Richard had acquired the lands, their alienation by him had been considered at the very highest level. A grant of royal lands was usually confirmed by royal charter. There is not known to be one in this instance but the ten witnesses of Richard's charter all appear, some very often, as witnesses of the *acta* of Alexander II. Such a gathering shows that the case was considered and decided at court.

But when? Certainly after the queen's death early in 1233. The witness list shows Roger de Quincy as earl of Winchester, a title he held from February 1235, and so the deed is later than that. An unrelated royal act dated 26 December 1235 gives some further help.¹ It was issued at St Andrews. A disposition of land at Crail could be readily discussed and decided before the king when he was nearby, and there are four important witnesses in common between Beaumont's grant and the king's charter. A date of c. December 1235 for Beaumont's charter appears to be acceptable.

The grantee, David son of Hugh White of Haddington, is probably the David of Haddington who witnessed three Coldingham documents in the late 1240s, witnessed a charter of Alexander III at Crail on 9 March 1251, and resigned rights of patronage in the church of Melville (Midlothian) which he had been gifted by Gregory of Melville, who then regranted the rights to Dunfermline abbey on 5 July 1251.² He has not been found much later than this, and so he may have died in or soon after 1251. His name suggests that he was a burgher. There are good reasons for believing that all these sources refer to the same man. They all fall within a period of some twenty years, that is, within one person's possible adult lifetime. They are confined to a small area of south-east Scotland: east Berwickshire, the Lothians and east Fife. But the outstanding reason is that almost all the transactions have the common thread of money. Two of the three Coldingham ones certainly do, and the third involves a transfer of land between brothers and so may have been a buy-out. David's possession of the rights of patronage at Melville suggests the possibility of shady dealings, because the patronage had been given in the twelfth century to Dunfermline abbey. Gregory of Melville might have (wrongly) gifted the patronage to David, who could then have used his position

¹ *Registrum Episcopatus Moraviensis* (Bannatyne Club, 1837); *Cartae Originales*, IV.

² J. Raine, *The History and Antiquities of North Durham* (1852), Appendix, nos 220, 222, 364; *Liber Cartarum Prioratus Sancti Andree in Scotia* (Bannatyne Club, 1841), 334-335; *Registrum de Dunfermelyn* (Bannatyne Club, 1842), nos 159-160. He also witnesses *StA. Lib.*, 284 (1250 x 1254).

to extract money from the church. In other words, Melville gave David a pledge in return for a loan. This is not at all in the spirit of canon law, but it is not unique; the income of another Scottish church is known to have been mortgaged.¹

Where Beaumont's charter and the record of the inquest are most at odds is over the place of the Steward in the transaction. He witnesses the charter, but this does not necessarily show that he was part of the deal. The narrative of the inquest says that he was very much a party. What may have happened is that the Steward used his influence at court to enable David of Haddington to provide the ready money which Beaumont wanted and made a long-term leasing/sharing arrangement with the former to make sure that they both had a continuing interest in Caiplie and its fishing rents. (Using one's position thus was not unheard of: a year or two earlier the chancellor, William de Bondington, had obtained from the prior of Coldingham the rights of wardship over the Ridel family of Flemington in Berwickshire, thereby gaining control of the lands and any profits to be made from them).² When the Steward died in 1241 his interest in the land would then revert to David, the survivor. This suggestion still does not tally exactly with the inquest's narrative, because it tacitly assumes that Beaumont took the money and ran, and that his death had nothing to do with the later escheat. But if the members of the inquest were relying on local memory and not a written record eg a sheriff's roll, some confusion might be expected or pardoned after a lapse of over fifty years.

The inquest is probably correct, however, in saying that the lands at Crail had been recovered by Alexander III, since David of Haddington was still alive in the early part of that reign, and he probably kept his interest in the lands until his death. This in turn implies that the inferred leasing/sharing arrangement with the Steward was for a long term, perhaps twenty years. That is not unlikely; similar long-term transactions are known.³ A further deduction from the deliverance of the inquest is that the fishing rents were valuable and that since the right to them attached to the lands (they were *cain*) they were probably also enjoyed by the queen during her lifetime. They were still a prized possession at the end of the thirteenth century.⁴

¹ I.B. Cowan (ed.), *The Parishes of Medieval Scotland* (Scottish Record Society, 1967), 146; *StA. Lib.*, 361 (x 1268)

² Raine, *North Durham*, Appendix, no 345.

³ *The Scottish Historical Review*, lviii (1979), 113 n.1.

⁴ CDS, ii, no 880.

Taken together, the charter and the inquest clearly show that dealing in lands and rents for money was happening in Scotland in the 1230s, confirming the trend of other early evidence, for example, the purchases of land by Alexander II and his mother to found Balmerino abbey, and the exploitation of saltpans in the Forth valley by Newbattle abbey.¹ In the charter the word 'assignees', that is, persons other than family heirs to whom lands or rents can be transferred, makes a very early appearance in this sense in Scotland. It is common enough by the middle of the thirteenth century and although its early use has still to be fully elucidated it can be said now with some confidence that this grant may have blazed a trail. It seems to be the earliest known original Scottish document in which the word 'assignees' appears.

The word may be a novelty, but the charter is very matter of fact. There is no apparent doubt about the expressions to be used in it, because the text is concise and to the point. It unhesitatingly provides for the use of assignees in a transfer of land when, as we know from the later evidence, money was involved, and it uses textual formulae which become standard: the grant is to heirs or assignees, as is warrandice. It looks as though the effects of its provisions had been well thought through, so much so that one might safely conclude that a deal between the grantee and the Steward had been agreed in principle before the charter was written and that it had been drafted to meet the case.

The marches of the lands are given in detail. By no means all of the points can be identified but the general outline is usually clear; they begin on the north-western boundary at Pitcorthy, come south and east to the sea, go eastwards along the shore, turn inland to the west side of Craill itself, go north to beyond Troustrie and then west to the starting point. They are therefore described in an anti-clockwise direction.

Text 2

In the second document Mary, prioress of Coldstream, and the convent confirm to Roger son of Martin the weaver the property in Crossgate (in Berwick) between the property of Peter of Haddington and the property which belonged to Ralph of Moray, to be held in feu-

¹ *Scottish Historical Review*, lviii (1979), 131 n2; *Registrum S. Marie de Neubotle* (Bannatyne Club, 1849) nos 160, 168, 169, 171; p. 7, nn. 1 & 3 below.

ferm for a yearly rent of one merk, paid half at Easter and half at Michaelmas. Should Roger or his heirs wish to sell or pledge the property the priory will have first claim to buy it or accept the pledge.

The document is not dated. Thanks to this text, which seems to be the earliest surviving original grant made by a prioress of Coldstream, Mary is now the first known by name. There is no series of thirteenth century prioresses into which she, and the date of the act, can be fitted. But three witnesses turn up elsewhere: Adam son of Philip, Constantine Marshall and Matthew of Greenlaw. They all appear in *Yester Writs*, number 17, and *Soutra Charters*, number 37.¹ Both these acts are witnessed by John Gray, the mayor of Berwick. He is known to have held this office in 1253 and 1254; a predecessor is known in 1251 and a successor in 1255.² The widest possible date for both acts is therefore 1251 x 1255. If Nicholas the clerk of Newcastle in the prioress's grant is the Nicholas the clerk who appears in *Yester Writs* no 17 we can say that four of the witnesses in the prioress's charter were flourishing in the early 1250s. That may be the correct date for the act and no further discussion would be required, but for one thing.

The priory has long been known to have had property interests in Crossgate. In one charter Roger Nureys, a burgess who had bought the land, granted the priory a rood there between the properties of Osbert Dute and Margaret Bernham. In another, Robert Bernham, rector of the church of Tynninghame, granted to the priory a merk of annual rent to be uplifted from land in Crossgate which Roger son of Martin the weaver held in feu-ferm from him.³ So, in how many properties in Crossgate did the priory, or the weaver, have an interest?

One possible explanation is that the rood granted by the prioress to the weaver is the rood gifted by Nureys. If so, the neighbours must have changed between the times of the grants. Another tempting thought is that the plot held by Margaret Bernham (next door to the rood given by Nureys) had come into the hands of Robert Bernham (his exact relationship with Margaret is unknown, but the Bernhams were a large burgess family with several interests in Berwick over at least two generations from the 1230s onwards) and had then been let to the weaver, so giving him two roods next door to each other. But

¹ *Calendar of Writs preserved at Yester House 1166-1503*, eds, C.C.H. Harvey & J. Macleod (Scottish Record Society, 1931); *Soutra Chrs.*

² Raine, *North Durham*, Appendix, nos 214, 238; *Liber Sancte Marie de Melros* (Bannatyne Club, 1837), i, no 314; CDS, i, no 2011.

³ *Cartulary of the Cistercian Priory of Coldstream* (Grampian Club, 1879), nos 49-50.

that possibility seems to be eliminated by the named neighbours in the prioress's grant, which do not agree with those in Bernham's grant.

However, there is no need for the grants in Crossgate to be exactly contemporary. Robert Bernham's grant is witnessed by Matthew of Greenlaw as mayor of Berwick. It is clear that he could not have been mayor before 1255, but there is then a gap until the next known mayor, William Goldsmith (Aurifaber) in 1264.¹ Bernham's grant could therefore fall between 1255 and 1264. The grant made by Nureys is difficult to date more closely than the 1250s. The best explanation may be that the weaver eventually held two properties in Crossgate in feu-ferm, one from the priory and, later, one from Bernham, not necessarily next door to each other but conveniently close.

The prioress's charter, then, is probably best dated to the early/mid 1250s. It adds a little to our knowledge of properties held in Berwick by religious houses and by weavers. Other features of it are worth some comment. First, the rent is to be paid by the weaver, or his heirs, or assignees. It was therefore open to him to sub-let to somebody outside his family. Second, it is envisaged that Roger may wish to sell or mortgage the land. This is stated in a matter of fact way. Sales of land can be found in Berwick from c1226 onwards and Roger Nureys, as we have seen, had bought the land which he had then given to the priory. There is no evidence for mortgages in Berwick, but there is no apparent reason to doubt that they were a possibility. So far, in short, the charter is probably reflecting current practices in the land market in Berwick.²

A third feature is, however, more striking. In the event of a sale or mortgage the priory is to have first claim to buy the land or accept the pledge. It is to rank as 'propinquier', that is, as next of kin. This is an unusual word in Scottish charters; it is also an unusual way of seeking to ensure that the land is not alienated from the priory. It is more normal to find that the head of a religious house, when making a grant, also prohibits a sale or mortgage without permission, as the abbot of Kelso did in the 1220s and the abbots of Paisley and Arbroath in the 1270s and 1280s.³ On the face of it, the priory would

¹ *Newb. Reg.*, no 188.

² W. Stevenson, 'The Monastic Presence; Berwick in the Twelfth and Thirteenth Centuries', in *The Scottish Medieval Town*, ed. M. Lynch et al. (Edinburgh, 1988), 104-105.

³ 'Propinquier' is used in an early thirteenth century Coldingham charter (Raine, *North Durham*, Appendix, no. 355), *Liber S. Marie de Calchou; Registrum*

have to pay to recover land which was its own to begin with. Not, apparently, a good bargain for the priory. But suppose that the weaver had already paid a grassum as a consideration for the property. In that event the priory had already received money and, arguably, was simply expecting to return the money later, perhaps at no net cost. If this is not the reality behind the transaction, it is hard to see why the condition is drafted as it is.¹

Texts 3-6

These four texts are related. The first shows that on Monday 6 June, 1261, in the presence of the king (Alexander III) and queen (Margaret) of Scots at Jedburgh castle, William Comyn, lord of Kilbride, resigned to the bishop of Glasgow (John of Cheam) the lands of 'Steindaf' (in the forest of Dalquhairn, Dumfriesshire) then in his possession. On the following Saturday master Robert of Edinburgh, attorney for the bishop, granted the lands in ferm to Patrick McWhirter for twenty merks yearly. Text 4 shows that on 30 June, 1261, David Marshall, who had gone to Lilliesleaf, where the bishop then was, then had to follow him to Ancrum, where he surrendered the lands of Kirkcudbright (now a farm name south-west of Moniaive, Dumfriesshire); Robert of Edinburgh accepted peaceful sasine within fifteen days on behalf of the bishop and granted out the lands in ferm to Patrick McWhirter for five years for twelve merks yearly. Text 5 is McWhirter's formal acknowledgement that he has received 'Steindaf' for a term of five years commencing on the eve of Whitsunday 1261 and text 6 is a short note (probably much abbreviated from a text similar to 5) about his ferm of Kirkcudbright.

These events look like the happy ending of a story. But what had gone before? It is not entirely clear, but a narrative can be proposed. At some point before 14 September, 1250, Isabella de Valognes, the lady of Kilbride, granted to the bishop of Glasgow in memory of her parents and her late husband, David Comyn, fifteen pounds worth (*librati*) of land in the feu of Kirkpatrick. This was specified as the whole of her forest of Dalquhairn ('Dalkarn') and if the value was

cartarum Abbatie Tironensis de Kelso, 1113-1567, ed. C., Innes, 2 vols. (Bannatyne Club, 1846), nos 242; 456-7; *Registrum Monasterii de Passelet* (Maitland Club, 1832), 51-55; 65-66; *Liber S. Thome de Aberbrothoc* (Bannatyne Club, 1848-56), i, no. 270.

¹ In an earlier case, land passed from Dryburgh abbey to a layman and money payments were involved. The land was later returned to the abbey and the money repaid: *Liber S. Marie de Dryburgh* (Bannatyne Club, 1847), no 223 (1204).

found to be less than fifteen pounds the balance was to be made up from her nearest other land. This act was witnessed by her brother William de Valognes and several clerics from the diocese of Glasgow. The text does not say, as similar acts sometimes do, that the gift was made with the consent of her son (William Comyn). On 14 September 1250 the act was 'inspected' by John Balliol and the gift was further confirmed by King Alexander III on 12 November 1254. Whether the bishop got peaceful sasine is not clear. The early 1250s were the first troubled years of the minority of Alexander III and on 30 April 1251 he had issued a general protection to the bishop for his lands.¹

But at least it looks as though an extent of Dalquhairn had been made (as Isabella's grant had specified) and since it may have produced a value of less than fifteen pounds (McWhirter's rent of twenty merks = thirteen pounds, six shillings and eight pence for 'Steindaf', points in this direction) the nearby lands of Kirkcudbright were added in. The sequence of events may be that the grant was made, an extent followed, the bishop's men took possession but were then ejected by Comyn and Marshall and the protection of 1251 was issued. This was probably ineffectual and so the confirmation of the intended grant was made in 1254, again apparently to no effect since Comyn was still in possession in 1261. His motives can be readily supposed. He had succeeded to the lordship of Kilbride, did not accept the validity of Isabella's grant because he had not formally agreed to it when it was made, and so sought to frustrate it by occupying Dalquhairn at a time when there was little chance of anybody stopping him.

How Marshall came into the picture is a mystery. He is not known as a Comyn supporter; indeed, the family appears clearly in the other camp.² If he did not force his way in, he probably made a deal with Comyn, but his power for negotiating this is unknown.

There is much less mystery about the proceedings of 1261. In the presence of the king and queen at Jedburgh castle, Comyn formally resigned the lands to the bishop who, five days later, let them at feuferm to Patrick McWhirter. In advising Comyn to yield, did his friends and counsellors (mentioned in the text) recognise that he had a hopeless case, or that he should bow to political pressure? The original grant and the royal confirmation of 1254 suggest the former, and it may also be significant that the earl of Mar and Aymer of Maxwell,

¹ *Glas. Reg.*, i, nos 199-202.

² *CDS*, i, nos 2671-2.

who were with the king in 1261, had also witnessed the confirmation. The presence of the earl of Dunbar in 1261 might suggest political pressure, since he and his father had been leaders of the anti-Comyn group in the 1240s. But Alexander Uviet is seen as a Comyn supporter in the 1240s¹ and his presence and that of another Comyn in 1261 shows that those with the king were a diverse group and that Comyn's resignation simply recognised the bishop's claims to the lands. The resignation came a few weeks after a major Comyn family surrender in the case of the disputed earldom of Menteith.² That decision may well have influenced the outcome at Jedburgh, but whatever the personal or political motives behind the formal note of the proceedings, the effect is clear: William Comyn had been obliged to honour his mother's gift. His humiliation may have been softened slightly: note that sasine was symbolically transferred via a glove belonging to Alexander Uviet and arguably therefore through a third party, rather than directly from Comyn to the bishop. Nevertheless, the king had been able to do justice. It is another striking example of how much the balances of power in Scotland had changed since the early 1250s.

Comyn having surrendered, Marshall doubtless had no option but to do so too. The bishop seems to have twisted his tail a little, by deferring the resignation to a time and place of his (the bishop's) choice.

Some details deserve comment. Comyn's resignation was made 'in the larger tower of the castle towards the west in the same castle'. Jedburgh had a castle at least as early as 1165 x 1170 and in 1174 it was named in the convention of Falaise as one of five Scottish castles to be handed over to Henry II of England.³ It would stand on the high ground at the head of the town, a normal pattern for a twelfth century burgh. Nothing has been known before about its size and layout, but it can be deduced that it had two towers (of stone, probably) a larger one to the west and another in some other direction. It must have been imposing, placed on the highest piece of land for some way around.

A second detail is the phrase 'ante lectum ... regis'. This is very unusual, if not unique, in a Scottish document. 'Lectus/lectum' has

¹ Ibid., i, no. 2672.

² D.E.R. Watt, 'The Minority of Alexander III of Scotland', *Transactions of the Royal Historical Society*, ser. 5, vol. 21 (1971), 22-23.

³ G.W.S. Barrow *et al.* (eds), *Regesta Regum Scottorum* (Edinburgh, 1970-), ii, no. 62; E.L.G. Stones (ed.), *Anglo-Scottish Relations: Some Selected Documents* (Edinburgh, 1965), 3.

several possible medieval meanings, such as a reliquary, or coffin, or tomb, all inappropriate in this context. A good classical meaning is 'couch'. In 1251 Henry III of England ordered a 'precious couch' as a Christmas gift for Alexander III. Margaret, Henry's daughter, was also to get one. The couple were married at York on 26 December 1251, so the couches were probably also intended as wedding gifts.¹ They may be the very same pieces of furniture on which the king and queen were seated in 1261.

But a couch was more than a piece of furniture. It was both literally and metaphorically a seat of majesty, as the well known portrait of David I and his grandson Malcolm shows.² The clerk who wrote the record must have been impressed by what he saw; he could as easily have used on their own such contemporary phrases as 'in presencia domini Alexandri regis' or 'in camera regis apud castrum de . . .'³ but he chose to add a phrase with clear and more solemn attributes of the royal authority, showing that this was indeed an important occasion. The presents of 1251 were not only expensive gifts to a boy of ten and his bride of eleven but also a very real expression of Henry III's support for Alexander. The boy and his wife were king and queen and the gifts, a formal reflection of their status, emphasised this.

Nothing more is known about Patrick McWhirter than these documents show. From his name, he is a harper, but it is not known if he actually played. Nevertheless, it is attractive to think of him, in this skill, as a forerunner of another harper from south-west Scotland, Gib Harper in the following of Edward Bruce, earl of Carrick.⁴

Text 7

From Dumfriesshire to Lanarkshire where, in text 7, Sir Alexander Baird, lord of 'Edlemyston' (in Strathaven) grants a carrucate of land at Kirkwood to his son Nicholas Baird and his heirs, failing whom the land is to pass to a younger brother. The yearly rent is six pence and

¹ CDS, i, nos 1826, 1835.

² Illustrations by the contemporary English chronicler Matthew Paris (died 1259) may also indicate how the king and queen appeared. R Vaughan, *Matthew Paris* (Cambridge, 1979), frontispiece of a Virgin and Child seated on a carved (or painted) couch with a cushion; Plate XI showing four seated kings of England has a more formal and classical manner.

³ *Kel. Lib.*, i, no 190; W. Fraser, *The Lennox* (1874), ii, no 9; *Glas. Reg.*, i, no 325.

⁴ G.F. Black, *The Surnames of Scotland* (New York, 1946), 468, *sub nom.* Macchruiter; 571, *sub nom.* McWhirter; John Barbour, 'The Brus', ed. A. A. M. Duncan (Edinburgh, 1997), 22-24.

Nicholas is to have his own court of 'wrang and unlaw'. Some of the boundaries in the text cannot now be traced in detail but the general layout is clear. Starting on the Lochar Water where there is a ford and a bridge (probably near where the B743 road now crosses the Water) the line runs north and then east, eventually along part of a Roman road (via regia); it then turns south to the summit of Martinside, the highest hill locally, then west and roughly north along the Lochar Water to the starting point. The marches have been defined in a clockwise direction.

Nicholas Baird may well have been glad to be set up on his own, but one has to wonder how wealthy his estate was. Now, on some of the hillsides, there are recent forestry plantations and earlier shelter belts. Before their arrival there was little but bog and rough grazing. Pont's draft map of Lanarkshire shows the area as largely empty, as do the earliest OS maps.¹ There is nowadays cattle and sheep farming along part of the northern lands in the charter. Little, if indeed any, of the land is less than 500 feet above sea level and most of it is above 650 feet. Martinside rises to over 1200 feet. It was probably always a marginal area and this may be reflected in the small annual rent.

But it was Nicholas's own, and the grant makes clear that it would stay in his family if he had heirs. There was to be no question but that such heirs were to inherit 'as soon as they are born', with no hindrance from the senior line of the family. If Nicholas had no direct heirs, the estate was to pass to the line of the next youngest brother, and so on. In other words, the grant deliberately set up a separate holding for a junior branch of the family and provided for it to remain there.

This is unusual, but not unique, in thirteenth century Scotland. In the 1270s John of Leitholm (Berwickshire), son of the lord of Leitholm, set up his son Ketell in an estate made up of various pieces of land. Ketell was evidently not the expected lawful heir; possibly he was illegitimate. He was given various privileges, but no court of his own. His father also provided that the estate was to pass to younger brothers if Ketell had no issue. A major difference between the cases is that Ketell's estate included some conquest land, while Nicholas Baird seems to have had a share of the heritage. But both cases clearly show that it was possible for families of middling rank to set up

¹ J.C. Stone, *The Pont Manuscript Maps of Scotland* (Tring, 1989), 178. It is better, however, to see the digitised map enlarged on a visual display unit, as available in the NLS Map Library; this clearly brings out the empty spaces, as well as one of Pont's conventional signs for a church/chapel, probably the chapel mentioned in the text.

younger (or possibly illegitimate) sons on their own without looking for an advantageous marriage. In both cases the provisions for succession by specified branches of a family foreshadow future tailzies. How the line of succession of the Bairds of Kirkwood actually worked out is obscure, but there was certainly a Baird there in 1399.¹

The new Baird estate was not entirely independent. It owed attendance at the court of the senior Bairds and twelve pence for any 'forfeiture' (forisfactura).² But Nicholas was also to have his own 'free court' of 'Wrang et Unlawe'. The earliest use of this term seems to be in a royal statute of 1230, referring to pleas of 'wrang et unreason'.³ A slightly earlier reference to 'unlaw' occurs in an unprinted charter in which Alwin son of Duncan of Foffarty grants land in Angus to Malbrid Marrenah, specifying that 'Malbrid will have merchet and blodwit and unlaw freely as much as pertains to the land'.⁴ 'Merchet' need not concern us further for this discussion; 'blodwit' appears again soon. The statute of 1230 deals with procedural abuses; it does not define the pleas or indicate their status. But if procedural abuses had occurred the pleas must have been a part of judicial arrangements for some years before 1230, and this inference is supported by the earlier evidence for a grant of 'unlaw'. A grant of 'wrang and unlaw' to Nicholas Baird is thus no innovation. Although the Baird charter may now be the second earliest known use of the full term, it unfortunately does not define it. That in itself suggests that by the mid-thirteenth century it had a commonly recognised content of jurisdiction. The charter makes clear that Nicholas could take forfeitures and escheats, that is, to exact penalties, probably of money or livestock or both, no doubt for minor offences. The grant makes no reference to sac and soc, or to pit and gallows, which sir Alexander Baird presumably had himself, but he was giving, it seems, the jurisdiction appropriate to a court below the level of his own.

This interpretation is echoed by an almost contemporary (c1272) grant by the abbot of Paisley of the lands of Fulton (Refrewshire) to

¹ HMC, Home, no. 291; *Miscellany V* (Scottish History Society, 1933), 45-46.

² *Charters of the Abbey of Coupar Angus* (Scottish History Society, 1947), 18-19; *Charters, Bulls and other Documents relating to the Abbey of Inchaffray* (Scottish History Society, 1908), nos 43-44; *Glas. Reg.*, nos 85-87 are other early 13th century examples defining the responsibilities of courts.

³ *APS*, i, 402 red.

⁴ British Library, Add. Ch. 76748. Professors Barrow and MacQueen have been very helpful in drawing this to my attention and in providing a text and photocopy. It is datable to the early 1200s.

Thomas of Fulton and his wife Matilda.¹ Among other things they are to have pleas 'de wot, de wrange et unlaue cum eorum escaetis' and the abbot reserves to his court pleas of life and limb and 'blodewite' and their escheats. The two examples together show clearly that pleas of 'wrange and unlaue' were a subordinate form of jurisdiction which could be granted to lesser lords.

Five miles to the east of Kirkwood is Lesmahagow, where the priory was a daughter house of the abbey of Kelso. Abbot Arnold of Kelso granted Draffan, near Lesmahagow, to Lambin Asa in 1147 x 1160 and with the grant went a court 'de blodewite et de byrinsake et de aliis talibus parvis querelis'. This grant was the model for at least two more in the locality by no later than 1203.² This evidence is not quite on all fours with the later grants of 'wrange and unlaue' at Kirkwood and Fulton because it is not clear that Nicholas Baird's court could deal with 'blodewite' and the abbot of Paisley had certainly reserved such things to himself. It is clearly implied, however, that 'blodewit' could be granted or not at the lord's discretion. Malbrid Marrenah and Lambin Asa were given it, Nicholas Baird (apparently) and Thomas of Fulton (clearly) were not. But in referring to '*aliis talibus parvis querelis*' (other such minor pleas) the grants made by the abbot of Kelso suggest that the reality of what happened in all these courts was much the same; they were a normal and recognised place for the local resolution of disputes and for keeping the peace.

With this in mind, a further inference can be drawn from the statute of 1230. In considering the procedures for pleas of wrange and unlaue the king and his advisers were showing a concern for the efficiency of courts which were well below the courts of the king himself, or of his justiciars, sheriffs and greater lords. There was, in other words, a concern for doing justice properly at what might be the lowest levels of society, so that the pleas of humble people should be decided without delay. The statute, if fully applied, may well have been more far reaching than appears at first sight.

When was sir Alexander's grant made? The charter has no date, but it is witnessed by some known persons. The first is William Douglas. There are two men of that name. One flourished between 1255 and 1269 and was dead by October 1274. The other is William, lord of Douglas from 1289 to 1298. The second major witness is David Lindsay, probably the third of that name and lord of Crawford,

¹ *Pais. Reg.*, 51-52.

² *Kel. Lib.*, nos 102, 104, 109.

whose floruit runs from the late 1240s until his death in Egypt in 1268. The third is Hugh Barclay. He is known to have been justiciar of Lothian in 1258 and again c1261 x 1279 and was probably dead before 1280. The known dates for Lindsay and Barclay eliminate the later William Douglas and the potential span for the act thus becomes c1255 x 1268. But an important transaction like this would probably have required Barclay's approval, or at least knowledge, as justiciar. The date then becomes c1258 or more likely c1261 x 1268 because the 1250s in Scotland were unsettled.

The other witnesses are less well known but some, like Lindsay and Douglas, have Lanarkshire connections. So has Simon Locard. The witness William Locard, perhaps the latter's son, may be identified with the man of the same name who witnesses a Paisley document of c1272. The little known about the two is consistent with a charter date in the 1260s. Alan of the Lee has not been traced elsewhere. He was probably the then lord of The Lee near Lanark while that lordship was still independent of the Lockharts. The Lanarkshire links of Fergus of Ardrossan are not clear and his family tree is also exiguous but a floruit for him in the mid/late thirteenth century is reasonable. Let us decide for a date of c1261 x 1268. The charter does not say where it was granted but a session of the justiciar's court at Lanark may be inferred.

The granter, Sir Alexander Baird, has not been found elsewhere. The known Baird pedigree is sketchy. Two Richard Bairs, father and son, can be deduced from documents of 1228 and x1241, but there is then a dearth of Bairs until early in the fourteenth century, with two significant exceptions. The first is a Nicholas of the county of Lanark who did homage at Berwick in 1296. The Nicholas Baird who was granted Kirkwood would have been of sufficient standing to be liable to this general procedure, and so the two men may well be identical. No other Nicholas Baird has been discovered, and this helps to make an identification more secure. The second exception is a John Baird who appears alongside Nicholas in 1296 and is probably the sir John Baird summoned for military service in 1297 and the sir John Baird lord of 'Elemston' in the barony of Strathaven who was dead in 1305.¹ Sir Alexander Baird fits comfortably into the gap between the later Richard and sir John, and so the main line of the Bairs in the thirteenth century can now be proposed as Richard, Richard,

¹ *Kel. Lib.*, nos 186 (1228), 181 (confirmed by Alexander II in 1241), 182; CDS, ii, nos 810 (p. 210), 1343; J. Stevenson (ed.), *Documents Illustrative of the History of Scotland* (1870), ii, 169.

Alexander and John. It is not certain if the last two were the sons of their predecessors but if they were then John and Nicholas were brothers.

Text 8

Finally, from Lanarkshire to Berwickshire and the little known nunnery of the Blessed Mary and St Leonard outside Berwick. Endowed, if not founded, by David I, this house was in a bad way by the 1330s. In 1390 its lands were formally transferred to the abbey of Dryburgh by King Robert III.¹ When the abbey's original but defective register was published, efforts were made to supplement it with relevant documents from other collections. One addition referred briefly to a grant of land to the nunnery by Alex Spure, a burges of Berwick. The note of this grant came ultimately from papers in the hands of Lady Cardross early in the eighteenth century. Item 8, which is a full text of the grant, reproduces a transcript which was taken from Cardross papers and in all probability was copied from the original charter. The new text shows that the granter was really William Spurr, a burges of Berwick fleetingly known from other sources, and confirms the gist of the note that he had bought land at Bondington to give to the nunnery. The printed note states that the act was reckoned by George Crawford, the antiquary, to be about 1284 and then adds 'but it is considerably earlier'. The full witness list now enables it to be dated firmly to the 1270s.²

Spurr had bought the land from a William son of Moses. He seems to be the forerunner of two other 'Moyses', Adam and his son Nicholas, also connected with Bondington and known in the early fourteenth century. Nicholas Moyses had also granted land in Bondington in 1307 to Kelso abbey, which already had some other land there and had granted it in 1266 on a twenty year lease to Thomas called Batail (Boatman, Ferryman), known elsewhere as a Berwick man. Bondington, close to Berwick, was clearly in the thirteenth century attractive to burgesses wishing to invest money, but after 1300 the Moyes family seem rather to be divesting. Kelso abbey was drawing income from Bondington in the early 1290s but thereafter its

¹ *RMS*, i, no. 832.

² I.B. Cowan & D.E. Easson (eds), *Medieval Religious Houses Scotland* (London, 1976), 145; *Dryb. Reg.*, xv.

records say nothing about that.¹ Whatever may have happened to the nunnery, the appearance of Spurr's charter in a collection of transcripts and notes of Dryburgh charters demonstrates that at least one item from its archive survived to be passed to the abbey, which never forgot its claims on the lands. After Berwick returned to Scottish control in the 1460s it took the initiative.

Another note in the same collection shows that the abbey obtained from King James III at Edinburgh on 29 October 1464 a charter confirming a charter of James I of 30 May 1424, which in turn confirmed Robert III's transfer of the nunnery's possessions to Dryburgh. A second note shows that the abbey's procurator appeared before the chancellor on 12 December 1465 and pleaded for the return of 'certain aikers of land lying in the territory of Berwick'. The procurator was Sir John Hayg, styled as 'prior of the Priory of South Berwick'. His family name suggests very close links with Dryburgh abbey.² These two hitherto unknown or undated steps were no doubt a trigger for the long known opposing supplication to the Pope from a clerk Alexander Lumsden, for the remnants of the nunnery's possessions to be transferred to *him*; this was granted on 23 July 1466.³ Thereafter, all is obscure again; it is not known if the abbey or Lumsden were able to make good their claims.

Conclusion

This collection of texts came together at random. Even so, they have a common feature: a silver thread of money. Land in Fife is used to raise cash to enable a lord to go on a crusade. Land is bought near Berwick so that it can be conveyed to a nunnery. The prioress of another nunnery has an interest in property within Berwick itself and

¹ Black, *Surnames*, 616, *sub nom.* Moyses; *RMS*, i, no. 9; *Kel. Lib.*, i, nos 42, 48; ii 467; *Cold. Cart.*, no. 48. Because of the rarity of his name, the date of his appearance, and the general area in which he makes it, the 'Moysie son of Richard' who witnesses the document in Raine, *North Durham*, Appendix, no. 179 (early 13th century), may be the father of William.

² NAS, GD 157/368/2-4. James III's charter is the fragmentary *RMS*, ii, no. 820. The person who copied or took abstracts of the Cardross papers must have seen an original or a very full abstract of this act, because he has noted a list of witnesses as well as day, year and place dates, all missing in *RMS*; *Dryb. Lib.*, 419, index at Haig. James I's charter is not in *RMS* but survives in Raine, *North Durham*, Appendix, no. 194.

³ W. H. Bliss *et al.*, *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland* (1893-), xii, 256 = Kirk, *Calendar of Scottish Supplications*, no. 1138.

her charter refers, as if it were a matter of course, to the possibility that her land there may be sold, or mortgaged or assigned. In upland Lanarkshire and Dumfriesshire money rents are a condition of grants. Behind the earliest transaction there is the figure of David of Haddington, who was in all likelihood a money lender over some twenty years. Taken together, these texts reinforce the impression from other sources that Scotland had a good circulation of money in the thirteenth century. Land was still subject to obligations which might be described as 'feudal' but it is also clear that it was being treated more and more as a commodity which could be bought, sold and mortgaged with increasing freedom and flexibility.

Editorial Method

In the surviving original charters, capitals and punctuation have been preserved, and standard scribal abbreviations have been extended. In the other texts abbreviations have been extended where the intention of the scribe is clear. // shows the end of a line as a medieval scribe wrote it.

Dates for which no specific reference is given come from standard works such as *The Scots Peerage*, *The Handbook of British Chronology* and Watt, *Fasti*.¹ Standard abbreviations have been used for references to source materials; a list is given at the start of this volume.

I am grateful to Professor A.A.M. Duncan, who suggested items 3-6 for this edition, to Professors G.W.S. Barrow and H.L. MacQueen for assistance and advice in other ways, and to Dr J. Goodare, who vetted the drafts. Staff at the National Library of Scotland and the National Archives of Scotland have been, as always, helpful. Errors of fact and interpretation are my responsibility.

W.W.S.

¹ J. Balfour Paul, *The Scots Peerage* (Edinburgh, 1909-1914); E.B. Fryde *et al.*, eds, *Handbook of British Chronology*, 3rd edition, (Cambridge, 1986); D.E.R. Watt (ed.), *Fasti Ecclesie Scotticanae Medii Aevi ad Annum 1638*, (Scottish Record Society, 2003).

Text 1

Richard of Beaumont grants to David, son of Hugh White of Haddington, for his homage and service, the entire land of Caplawin (Caiplie, east of Crail) and three bovates called 'Ratheruch' (unidentified), by marches defined in detail, to be held by David and his heirs or his assignees in feu and hereditary, with free ish and entry, with the common easements of Crail and with warren. To be held free of all secular burdens and of all suit of court, paying yearly twelve pence on Whitsunday at Crail. Richard warrants the land to David, his heirs and assignees.

No date but probably issued at St Andrews or Crail in December 1235

Sciant omnes presentes et futuri quod ego Ricardus de Bellomonte dedi. concessisse. et hac presenti carta mea confirmavi. David filio Hugonis Albi de Haddington. pro homa //gio et servicio suo totam terram de Caplawin. et preterea tres bovatas terre in campo qui vocatur Ratheruch. cum omnibus suis pertinentiis. et per has divisas. scilicet de Albo // fonte inter communem pasturam de Karel. et terram de Petcorthin. ex parte occidentali tenendo versus austrum usque ad pettariam. et per medium illius petarie. usque in rivulum // Arimaldorth. et inde usque in sicketum de Muncrethin. et inde usque ad Lycresting : et inde usque ad divisas de Ratheruch. et inde usque in profundum maris. Et sic per costam maris // versus orientem usque ad album skeri ultra le Colepot. et sic ex transverso versus aquilonem usque in sicketum de Alde Caplawin. et per illud sicketum versus orientem usque ad // Balcam de Chestris. et inde ascendendo versus aquilonem usque ad limites illius Chestris. et inde versus orientem usque ad^a Caplawynis Burne ascendendo versus aquilonem // usque ad fines de Ysakislawe. et sic per rectas divisas inter Caplawin et occidentales granges de Karel usque in Lemerisburne. et ultra Lemerisburne versus orientem // usque Oxefriht. et usque ad fontem inter les^b Estreleyes. et terram monialium de Haddington. et sic versus occidentem usque in sicketum de Trostory. et sic ascendendo // inter duas Trostoryis usque ad album lapidem in eodem sicketo. et inde usque ad fontem de Trostory. et de illo fonte ascendendo versus aquilonem usque ad veterem viam // plaustorum ultra Trostory. et per illam viam versus occidentem usque ad Album lapidem ex australi parte de Joneslawe. et inde usque ad rivulum de Todholes. et inde // usque in rivulum Albi fontis. et sic per illum rivulum. usque in Album fontem. Tenenda et habenda dicto DaviD. et heredibus suis. vel eidem DaviD. et eis assignatis. in feudo et // hereditate de me et heredibus

meis. In pratis. in pascuis. in moris et marresiis. in stagnis. et molendinis. In viis et semitis et in omnibus aliis libertatibus . per quas prefato David // dictas terras dare potui. liberius. melius. et honorificencius. Cum libero introitu et exitu cum omnibus communibus aisiamentis de Karel. Preterea cum omnibus aisiamentis per totas // moras meas indefenso positas ad feodum de Karel pertinentes. et cum warene. libere. quiete. plenarie et honorifice. ab omni servicio et auxilio . exercitu et equitatione. // Que quidem ego et heredes mei predicto. David et^c heredibus suis. vel pro ipso . et eis assignatis et eorum heredibus sumus facturi Ab omni etiam consuetudine. exactione et demanda // seculari . et ab omnimodis custodiis et maritagiiis. et ab omnibus sequelis placitorum curie mee et heredum meorum. Reddendo inde annuatim pro omnibus . duodecim dena//rios ad Pentecosten. apud Karel. Ego vero et heredes mei dictas terras cum pertinentiis per dictas divisas cum predictis libertatibus et aisiamentis. dicto David et heredibus suis // vel eidem David et eis assignatis et eorum heredibus contra omnes homines in omnibus per solum predictum annum redditum warrantizabimus. adquietabimus. et defendemus // inperpetuu. Testibus. Willelmo Episcopo Glasgwen. et Cancellario Domini Regis. Rogero de Quinci . Comite Winton' . Patricio Comite de Dunbar . Waltero Cumin . Waltero fil . Alani Sene//scallo . Waltero Olif' . David de Bernham . Rogero de Mubraj . Rogero Avenel . Bernardo Fraser et aliis.

^a	Editorial
^b	l is editorial; hole in parchment
^c	Editorial; hole in parchment
Endorsements	Carta de C/a/plathwin: probably thirteenth century.
Description.	Parchment. Top 29.1 cms; foot 28.9 cms; left side 20.2 cms; right side 18.8 cms. Double fold at foot 1 cm approx. Seal on short and narrow (.9 cm) tag through slit in fold slightly to right of centre. Large, heavy seal approximately 7 cm diameter and 2 cm thick. Green wax. Mounted knight with closed helmet and raised sword riding from left to right; two horse cloths decorated with chevrons. Small counter seal applied on reverse; triangular shield within a decorated (leaf or frond) pattern. Legend on front ' . . LUM'; other scattered and indecipherable

	remains of letters. No visible letters on reverse.
Hand	Beautiful, clear book hand, with contrasting lines of firm upright strokes on f, s, l and h and angled slopes on d.
Source	NLS, Acc. 8487.

Notes on Text

Richard de Bellomonte	Richard of Beaumont, nephew or great-nephew of Ermengarde of Beaumont (d 11 February 1233), wife of William the Lion, king of Scots.
David, son of Hugh White	See the introduction, p. 3.

Per has divisas ('by these marches'). The marches are set out by reference to place names of great linguistic richness, but many have so far defied precise identification. But a general outline can be proposed.

'From the White Spring between the common pasture of Crail and the lands of Pitcorthie'. Modern East and West Pitcorthie are nearly two miles north and slightly west of Caiplie, and so the starting point is likely to be in the north-west quarter of the lands. Pitcorthie was probably still then royal land, although some had been alienated before 1174.¹

The anonymous peat mosses, 'Arimaldorth', 'Muncrethin', 'Lycresting' and 'Ratheruch' have not been identified. But the next phrase 'to the sea' shows that the march was coming south and slightly east from the starting point, perhaps on or near a boundary with Kilrenny to the west.

'*Usque in profundum maris*' ('as far as the depth of the sea'). This argues at least that the foreshore down to the low water mark was in the lands; fishing rights in the sea itself may also be implied.

'By the shore eastwards to the white skerry beyond the Colepot and to the north'. The skerry has not been identified. Crail itself is not mentioned and so the march, having come along the shore, probably turned inland near the western side of the burgh. A Colepot croft occurs in the early sixteenth century, but this seems to be on the east side of the burgh and so may not be the Colepot mentioned here.²

¹ RRS, ii, nos 89, 99.

² *Register of the Collegiate Church of Crail* (Grampian Club 1877), no 26; M.F. Conolly, *Fifiana or Memorials of the East of Fife* (Glasgow, 1869), 133.

'To the north as far as the syke of the Caiplie Burn and by that syke to the east as far as the balk of Chestris'. The syke has not been identified, nor has the balk of 'Chestris' (although that name might send a frisson through students of Roman Scotland): 'Ysakeslawe', 'Lemerisburne' (possibly an existing boundary) and 'Oxefriht' have not been found either. But the direction 'to the north' in the text gives an idea of the march moving inland from the sea and Crail.

'The spring between the Estreleyes and the land of the nuns of Haddington'. The spring and the Easter Leys have not been identified, but note an early sixteenth century reference to 'Little Broadleys in the constabulary of Crail'¹ and the modern Leys Farm alongside the A92 road. The Cistercian nunnery at Haddington held land at Pitcorthie and at Troustrie² but it is the latter which is relevant here, from the next references to 'the syke of Trostory' and from there to 'the spring of Trostory'. Full texts of the grants to the nuns have not apparently survived and so there is no help from them in finding a boundary. The modern Troustrie is about a mile west of Crail and well inland from modern Caiplie itself.

At Troustrie the march goes north to the *'veterem viam plaustorum'*, the old cart road, beyond Troustrie and then goes to the west 'to the White Stone on the southern side of Joneslawe'. Later evidence argues that the march lies on the north of the modern property of Thirdpart, since this was originally within Caiplie itself³; the name suggests a long-forgotten division to deal with a widow's rights. If this is correct the White Stone may be the standing stone shown on the 1" OS map at 573072 and near the two Pitcorthies on ground rising gently to the north (?Joneslawe).

The next point, the Todholes Burn, has not been identified; from there the march goes to the White Spring Burn (not identified) and so to the starting point, the White Spring itself.

The detail of the march line is anything but clear, especially on the eastern and north-eastern sides, but the very general outline which emerges shows that the marches were set out in an anti-clockwise direction.

'Predicto David ... assignatis'. The grant is to 'the aforesaid David and his heirs or to him and his assignees ...' The effect is that the grantee could bequeath the property to his heirs (if any) or sell it, or

¹ Conolly, *Fifiana*, 129.

² RMS, ii, no. 610; *The Books of Assumption of the Thirds of Benefices*, ed. J Kirk (British Academy, 1995), 162.

³ *Crail Reg.*, nos 106, 116.

mortgage it, or let it, to anybody else. Assigns/assignees appear in English documents from c1200 onwards,¹ a state of affairs readily confirmed by English charter collections, but this is a very early use of the concept in Scotland.²

Witnesses

William de Bondington	Chancellor 1231-1247; bishop of Glasgow 1233-1258.
Roger de Quincy	Son of Saher de Quincy; lord of Leuchars; earl of Winchester 1235-1264.
Patrick (II) earl	Earl of Dunbar 1232-1248.
Walter Comyn	A younger son of William Comyn, earl of Buchan (d 1233); earl of Menteith 1234-1258.
Walter Steward	Walter son of Alan, third Steward of Scotland 1204-1241; Justiciar of Scotia 1231-1241.
Walter Olifard	Lord of Bothwell; Justiciar of Lothian; d.1242.
David de Bernham	A clerk of bishop Malvoisin of St Andrews; chamberlain of Scotland 1235-1239; bishop of St Andrews 1239-1253.
Roger Mowbray	Lord of Barnbougle; witnesses at least five charters of Alexander II in the late 1220s and 1230s; later, sheriff of Haddington, Edinburgh and Linlithgow; dead by 1268.
Roger Avenel	Lord of Eskdale; witnesses at least ten royal acta between October 1231 and April 1236; d c1244.
Bernard Fraser	Sheriff of Stirling in 1228; witnesses at least fourteen royal acta in the late 1220s and 1230s.

¹ F. Pollock & F.W. Maitland, *History of English Law* (Cambridge, 1898), ii, 14.

² See introduction, p. 5.

Text 2

Mary, prioress of Coldstream, grants to Roger son of Martin the weaver, and to his heirs or his assignees the land in Crossgate (in Berwick) between the land of Peter of Haddington and the land formerly of Ralph of Moray, to be held by him, his heirs or assignees in feuferm for a yearly payment of one merk, half at Easter and half at Michaelmas. And if it happens that Roger or his heirs wish to sell or mortgage the land the prioress and her successors will have first claim to buy it or accept a pledge. The prioress warrants the land to Roger and his heirs.

Undated, but probably issued at Berwick in the 1250s.

Omnibus Christiani fidelibus presens scriptum visuris vel audituris Maria priorissa de Kaldestrem et eiusdem loci conventus // eternam in domino salutem. Noverit universitas vestra nos dedisse concessisse et hac presenti carta nostra confirmasse Ro//gero filio Martini textoris et heredibus suis vel suis assignatis terram illam in Crosagate que iacet inter terram Petri // de Hadingtun et terram que quondam fuit Radulfi de Moravia. tenendam et habendam de nobis et successoribus nostris // sibi et heredibus suis vel suis assignatis in feodofirmam. ita libere quiete plenarie et pacifice sicut aliqua alia terra in // villa de Berwic liberius quietius et plenius in feodofirmam tenetur vel possidetur. Reddendo inde nobis et succes//soribus nostris de se et heredibus suis vel suis assignatis. unam marcam argenti ad duos terminos anni videlicet medie//tatem ad Pascha et aliam medietatem ad festum sancti Michaelis et si contingat dictum Rogerum vel heredes suos dictam // terram vendere vel impignorare . . Nos et successores nostri propinquiores erimus ad emendam illam vel pinguori // accipiendam quam aliqui alii Nos vero et successores nostri predictam terram sepe dicto Rogero et heredibus suis contra // omnes homines et feminas warantizabimus et defendemus. In cuius rei testimonium presenti scripto sigillum apponi fecimus. Teste // capitulo nostro cum^a hiis testibus Ada filio Philippi. Constantino marscallo. Henrico de Strivelin. Willelmo de Selebi. Mattheo de // Grenlau. Thoma de Moravia Petro de Hadingtun. Nicholao de Novo Castro clerico et multis aliis.

^a Editorial; hole in parchment.

Endorsements No contemporary endorsements. 'Bervik' mid-fifteenth century? 'Berwick' in pencil; sixteenth century? An indecipherable note.

Description	Parchment. Top 20.3 cm; foot 18.8 cm; left side 12.9 cm; right side 13.0 cm. Fold at foot, 2 cm approx, is partly stuck together, perhaps accidentally, by some substance which has also stained rear of fold and, less badly, the foot of the text. Sealed on tag through slit in fold very slightly to left of centre. Oval seal 4.5 cm approx long and 3.25 cm wide when entire; part of right side is lost. Emblem: a fish. This, and other details, are not very clear but nevertheless resemble the seal facsimile in Cold Cart xxxiv.
Legend	'SIGILL . . ALDESTREM'. Green wax.
Hand	Small, clear hand; exaggerated ascenders on b, d, f and s. Probably unruled.
Source	NLS, Acc. 9528.

Notes on text

Mary, prioress of Coldstream	Not recorded elsewhere.
Roger, son of Martin	This weaver is already known from <i>Cold. Cart.</i> , no. 50; see discussion in introduction, p. 6.
' <i>heredibus suis vel suis assignatis</i> '	'to his heirs or to his assignees' i.e. the grantee could bequeath the property to his heirs or sell it, or pledge it, as in a mortgage/wadset, to anybody else. The phrase makes an early Scottish appearance in text 1 above and becomes more frequent from the mid 1240s.
Crossgate	Stevenson discusses monastic properties, including Coldstream's, in Berwick and has a useful sketch map which shows Crossgate. ¹
Peter of Haddington	Not found elsewhere; no known connection with David of Haddington in text 1.

¹ Stevenson, 'Monastic Presence', *passim*.

- Ralph de Moravia Not found elsewhere and possibly dead by the time of this document. May be connected (father or brother?) with the Thomas de Moravia who witnesses.
- 1 merk, half at Easter and half at Michaelmas It was unusual in Scotland for rents to be paid at these terms, but other examples of rent due on one or other day, or both, as known elsewhere.¹
- '*vendere vel impignorare*' 'to sell or mortgage/wadset'. Sales of land in thirteenth century Berwick are well attested.² There seems to be no explicit evidence of land being wadset or pledged before the middle of the thirteenth century in Scotland. The possibility is envisaged in *Kel. Lib.*, nos 456-7, material of apparently x1226 preserved in a later register. The prioress's charter may show the earliest explicit use of the word '*impignorare*' in a surviving original Scottish document. Barrow³ shows that land in Fife had been wadset in the 1260s and *StA. Lib.*, 361 shows that the income of the church of Keig had been mortgaged before 1268.
- '*si contingat ... accipiendam*' See the discussion in the introduction, pp. 7-8.

Witnesses

- Adam son of Philip Witnesses *Yester Writs*, no. 17 (1252 x 1255); *Cold. Cart.*, nos 49 (1250s) & 50 (c1255 x 1263); Raine, *North Durham*, no 238 (1253); *Soutra Chrs*, no 37 (1252 x 1255).

¹ E.g. *RRS*, ii, nos 360, 415, 514; *Liber Ecclesie de Scon* (Bannatyne & Maitland Clubs, 1843), nos 40, 45; Raine, *North Durham*, nos 173-4.

² Stevenson, 'Monastic Presence', 104.

³ G.W.S. Barrow, 'Some East Fife Documents', in *Ibid.* (ed.), *The Scottish Tradition* (Edinburgh, 1976), no 7 (comment).

- Constantine Marshall Witnesses *Soutra Chrs*, no 37 (1252 x 1255).
- Henry of Stirling Recorded in 1292¹ as having held land on the Ness at Berwick; dead by the time of *Kel. Lib.* nos 31; 34 (?c1280)
- William of Selby Not found elsewhere; no apparent connection with the David of Selby who witnesses *StA. Lib.*, 306 (1240 x 1242) or the Henry of Selby who was terrar of Coldingham priory 1234x.²
- Matthew of Greenlaw Witnesses *Yester Writs*, no. 17, & *Soutra Chrs*, no. 37 (both 1252 x 1255). Mayor of Berwick, possibly in period 1255 x 1263.³ Perhaps the same man who witnesses *Kel. Lib.*, nos 197 (as burgess of Kelso) and no. 305.
- Thomas de Moravia Witnesses *Yester Writs*, no 17 (1252 x 1255). See also Ralph de Moravia above.
- Peter of Haddington See above.
- Nicholas of Newcastle, clerk Not found elsewhere under this name, but he may be the same as Nicholas the clerk who witnesses *Soutra Chrs*, no 37 and was dead by the time of *Kel. Lib.*, nos 31, 34 (?c1280).

¹ CDS, ii, no 1313.

² Raine, *North Durham*, nos 189, 297, 362, 371.

³ *Cold. Cart.* nos 48, 50.

Text 3

A note that on Monday 6 June 1261 in the larger tower of the castle of Jedburgh in the presence of the king (Alexander III) and queen (Margaret) of Scots and several lords, William Comyn, lord of Kilbride, at the instance of friends and counsellors resigned the lands of 'Steindaf' (in Dalquhairn, Dumfriesshire) to John, bishop of Glasgow; on the following Saturday (11 June) Master Robert of Edinburgh, attorney for the bishop, granted the lands in ferm to Patrick McWhirter for twenty merks yearly, ten to be paid within a week of the Assumption of the Blessed Virgin (15 August) and ten within a week of St Andrew's Day (30 November)

Resignatio Willelmi Comyn de terra de Steindaf^a

Memorandum quod die lune in ebdomado Pent' anno gracie m^o.cc^olx^o primo Illustre // Rege Scotorum dominaque regina . nec non et alii ipsius regni magnatibus // apud Jedd' existentibus . Willelmus Cumyn dominus de Gillebrid in ipsius regis presentia // constitutus in majori turri castri eiusdem ville versus occidentem in eodem castro ante // lectum predicti Regis presentibus dominis . comite de Mar . Patricio comite de Dumbar . // Johanne Cumyn Aimero de Makeswell Alexandro Ouiet et aliis Dominus Willelmus Cumyn // ad instantiam amicorum et consiliariorum suorum sponte et ex mera voluntate sua // resignavit . reddidit . dimisit et concessit domino J dei gratia episcopo Glasg' terram^b // de Steindaf cum suis pertinentiis . et eiusdem terre seisina per cirotecam dicti domini // Alex' Ouiet liberavit idem W predicto domino episcopo . Die vero sabbatis proximo sequente magister // Robertus de Edenburg canonicus Glasg' attornatus domini episcopi specialiter ad hoc habens mandatum // vice dicti domini episcopi seisinam pacificam eiusdem terre cum suis pertinentiis accepit // et eam vice domini episcopi tradidit ad firmam patricio Machuidr pro xx marcas // annuis ad dictas terras solvendas decem scilicet marcas infra octavas Assumptionis // beate Virginis et aliam decem marcas infra octavas sancte Andree apostoli secundum quod littera // cuius tenor inferius continet'.

^a In margin at head of text

^b Editorial: the word is squeezed at the end of a line.

Source NLS Acc 10301 no.1 f.61 verso ll.1-16

Hand Small mid/late thirteenth century business script; the same clerk also wrote texts 4-6.

Notes on text

William Comyn	Lord of Kilbride (Lanarkshire) 1247-1283.
Castle of Jedburgh	See introduction, pp. 8-10.
' <i>ante lectum . . . regis</i> '	See the discussion in the introduction, pp. 11-12.
Earl of Mar	William, earl of Mar 1244-c1281; chamberlain 1252-1255 and 1262-1266.
Patrick, earl of Dunbar	Patrick (III) earl c1248-1289.
John Comyn	Lord of Badenoch; d1277; justiciar of Galloway 1258 and 1266-1272.
Aymer Maxwell	Lord of Caerlaverock and Mearns; d1266; chamberlain 1259-1260; sheriff of Peebles 1262.
Alexander Ouet	Alexander Eviot, floruit 1220s x 1260s; sheriff of Lanark 1263.
J bishop of Glasgow	John of Cheam, bishop 1259-1268.
Lands of 'Steindaf'	No modern equivalent has been identified, but the entire context of Comyn's surrender (see introduction, pp. 8-9) and text 5 show that it was in the forest of Dalquhairn, Dumfriesshire.
Robert of Edinburgh	Canon of Glasgow c.1258-1261 and possibly earlier. ¹ He seems to have been a man of business for the bishop.
Patrick McWhirter	Not known except from this collection of texts. See introduction, pp. 8-9, 11.
Terms for payment	It is very unusual to find the Assumption of the Virgin (15 August) as a term day; the Annunciation (25 March) is more usual. But this text and text 5 below are clear and consistent on the point.

¹ D.E.R. Watt (ed.), *A Biographical Dictionary of Scottish Graduates to 1410* (Oxford, 1977), 175.

Text 4

A note that on 30 June (1261) David Marshall came to Lilliesleaf, where the bishop of Glasgow then was, and followed the bishop to Anrcum, and there surrendered the lands of Kirkcudbright (near Moniaive, Dumfriesshire); Master Robert of Edinburgh accepted peaceful sasine of the lands within fifteen days and the bishop then granted the lands in ferm for five years to Patrick McWhirter for twelve merks yearly at the terms noted above (i.e. in text 3).

Probably dated early/mid July 1261.

Resignatio Daud Marescall de terra de Kircudbrd^a

Item memorandum quod in crastino apostolorum Petri et Pauli venit apud Lillescl' Daud // Marescall domino episcopo Glasg' tunc ibidem existente. Et sequabatur idem Daud dominum // episcopum predictum usque Alnecr' . et ibidem liberavit dictus Daud domino episcopo terram de Kir // cudbrigh cum suis pertinentis et ab illo die in . xv dies magister . R de // Edenburg accepit seisinam pacificam eiusdem terre nomine et vice eiusdem domini episcopi // Tradiditque dominus episcopus dictam terram ad firmam Patricio Machurdr ad quinque // annos singulis annis pro xii marcas termis superius annotatis.

^a	In margin at head of text
Hand	as in text 3.
Source	NLS Acc 10301 nol f61 verso ll.17-23.

Notes on text

David Marshall	An elusive person, but probably the same known from the 1240s and in 1261. ¹
Lilliesleaf; Ancrum	Both parishes were allocated to the bishop of Glasgow's ' <i>mensa</i> ' and not to the cathedral canons, and were therefore for his personal use. ² The bishop probably had residences there.
Robert of Edinburgh	See note to text 3 on page 29.
Patrick McWhirter	See introduction, pages 8-9, 11.
Kirkcudbright	Not the burgh, but now a farm of the same name south-west of Moniaive, Dumfriesshire.

¹ CDS, i, nos 2276, 2672.

² Cowan, *Parishes*, 6, 132.

Text 5

A bond by Patrick McWhirter acknowledging that he has received in ferm from the bishop of Glasgow the lands of 'Steindaf' in the forest of Dalquhairn for five years beginning on the eve of Whitsunday (Saturday 11 June) 1261, for which he will pay at Dumfries yearly twenty merks sterling, ten within a week of the Assumption of the Blessed Virgin and ten within a week of St Andrews Day without any cavil, and he has sworn on the gospels and has sufficient pledges to keep the agreement. And he promises to return the land to the bishop or his assignees at the end of five years and to nobody else without the bishop's special order.

Undated, but probably 11 June 1261 at Dalquhairn or Dumfries.

Littera obligatoria patricii machuddr' de terras de Steindaf et Kircudbrid^a Omnibus Christiani fidelibus presentes litteras visuris vel auditoris . Patricius Machudir // salutem in domino . Noverit universitas vestra me recepisse a venerabili patre meo in // Christiano . domino J . dei gratia episcopo Glasg' ad firmam terram suam que dicitur Steindaf // in foresta de Dalcharn . cum omnibus pertinentibus et eisiamentis iuribus et consu//etudinibus ad dictam terram spectantibus usque ad terminum quinque annorum com//pletorum Incipiente primo termino in vigilia Pentecostis . anno domini m^o.cc^o.sexagesimo p^o // usque ad terminum quinque annorum continue sequente completorum . pro quam quidem terram dabo et // persolvo apud Dunfr' singulis annis dicto domino episcopo vel eius ad hoc assignato // viginti marcas sterlingorum . ad duos anni terminos . Decem videlicet marcas // infra octavas assumptionis beati virginis et alias decem marcas infra octavas sancti Andr' // apostoli sine^b qualibet contradictione et dilatione ulteriori^b. Et ad hec omnia fideliter et plene // observanda praestiti ad sancta dei evangelia iuramen' corporaliter . et sufficientes super hoc constituo fi//dejussores qui se fide praestita corporali ad predictorum omnium observationem si me deficere contingat // firmiter et fideliter obligaverunt prout in ballio^c suo super hoc confecto plenius continetur . Ad haec etiam iuro // et fideliter promitto quod dictam terram predicto domino episcopo vel suis assignatis finito termino quinque annorum // antedicto libere quiete plene et sine quolibet impedimento restituere . Ac si de voluntate eiusdem domini // episcopi vel suorum assignatorum procedat quod dictam terram mihi tradatur ad terminum ulteriorem^c et nulli alii dictam // terram restituam vel de forma ipsius pro toto vel parte

respondebo quam predicto domino episcopo // aut suis assignatis sine mandato suo speciali. In cuius rei test' Hiis test' etc.

a	In margin at head of text
b	MS 'sine qualibet dilatione et contradictione et dilatione ulteriori'. The fifteenth century transcript, the 'Red Book', NLS, Acc. 10301 no.2 has silently corrected to the text used here.
c	MS is obscure
Hand	As in text 3 above.
Source	NLS, Acc. 10301 no.1 f.61 verso ll.24-33; f.62 recto ll. 1-9

Note on text

Forest of Dalquhairn Gilbert shows Dalquhairn as a baronial forest, which it undoubtedly was, but one effect of Comyn's surrender in 1261 was to make it, at least in part, a bishop's forest too.¹

Text 6

A similar bond by Patrick McWhirter for the lands of Kirkcudbright, paying yearly for five years twelve merks at the same terms.

Undated, but probably early July 1261 at Kirkcudbright or Dumfries.

Consimilis littera et obligatio facta est de terra de Kircudbridt quam habet penes se dominus // episcopus de dicto Patricio Machugdr quam terram habet similiter ad firmam dictus P ad terminum // quinque annorum pro xij marcas singulis annis terminis superius annotatis.

Source NLS, Acc. 10301 no.1 f.62 recto ll.10-12.

Note on text

This text is in the same hand as nos 3-5 above. It follows immediately after text 5. It was probably once a full text similar to text 5 but has been savagely abbreviated.

¹ J.M. Gilbert, *Hunting and Hunting Reserves in Medieval Scotland* (Edinburgh, 1979), 360-362.

Text 7

Sir Alexander Baird, lord of 'Edlemyston' (in Strathaven, Lanarkshire) grants to his son Nicholas Baird and his heirs the carrucate of land of Kirkwood, by defined marches, to be held hereditarily in feu-ferm, paying yearly six pence on Whitsunday for all dues. If Nicholas dies without heirs, sir Alexander grants that a younger brother shall have the land; if he has heirs they, whether masculine or feminine, shall inherit the land without impediment from sir Alexander or his heirs. If any of Nicholas's tenants are impleaded in sir Alexander's court, their forfeitures will remain with Nicholas, and if Nicholas and his heirs are impleaded they will pay twelve pence for each forfeiture. Sir Alexander grants Nicholas and his heirs a court of 'Wrang and Unlaw' with forfeits and escheats, and they may use sir Alexander's mill free of multure if they have no mill of their own. Sir Alexander and his heirs warrant the land to Nicholas and his heirs.

Undated but probably issued c1261 x 1268, perhaps at Lanark.

Omnibus Christi fidelibus presens scriptum visuris vel auditoris . Alexander de Bard' miles dominus de Edlemyston salutem in domino . Noverit universitas vestra me dedisse . concessisse et // hac presenti carta mea confirmasse . Nicholao de Bard filio meo et heredibus suis totam carrucatam terre de Kirkewode sine aliquo retinimento per istas divisas . Incipiendo // ad vadium de Locher' et superiori parte pontis versus meridiem . et sic de illo vado ascendendo per quemdam siketum usque ad partem borealem de le mus . et sic per eidem siketum descendendo usque ad rubeum vadium et occidentali parte terre ecclesie de Kype . et sic per divisas dicte terre ecclesie de Kype usque ad aliud vadium iuxta capellam ex orientali parte et inde ad viam re//giam et sic per dictam viam usque ad unum siketum descendentem de albo lapide et^a ascendendo usque ad alium album lapidem que est sub Monerlethislawe et inde directe transiens usque // Suietheuchetheuid' et inde directe transiens usque ad Martinessete et inde descendendo usque ad aquam de Kyp . et sic ascendendo usque ad^a capud aque de Kyp et sic per cundosium versus // occidentem usque ad capud de Locher et sic per aquam de Locher descendendo usque ad vadium prius nominatum et superiori parte veteris pontis versus meridiem . Tenendam et habendam dicte Nicholao // et heredibus suis ad feodofirmam de me et heredibus meis . libere . quiete . pacifice . plenarie . honorifice . bene . in pace et integre sine

aliquo retinemento . in bosco et plano . in moris . maris//cis et mossis . in pratis et pascuis . in viis et semitis . in aquis molendinis et stagnis firmandis super Locher de^b terra sua usque ad terram oppositam ultra aquam de Locher . in multuris et^b // in terris cultis et non cultis et ad culturam voluntate sua redigendis et in omnibus aliis libertatibus et aisiamentis que infra predicta terre divisas et limites continentur vel aliquo tempore // contineri poterint . Reddendo inde annuatim dictus Nichol' et heredes sui michi et heredibus meis. sex denarios argenti ad pentecostem . pro omnimodo servicio forinseco et consuetudine // exactione et demanda . pro secta curie et auxilio regis vel alio . pro omnimodo eschaetis . ad me et heredes meos spectantibus et pro warda et relevio . Et si contingat quod absit quod dictus // Nichola^b sine herede corporis sui in fata^b decedat . volo et pro me et heredibus meis concedo ejusdem juniores fratres sunt in gradu propinquiori sibi et heredes sui terram prenominatam hereditarie // habeant et integre possiderint sine aliquo retinemento cum omnibus libertatibus et singlis superioris notatis . Si vero heredem apparentem de corpore suo habeat . volo et per me et heredibus meis // concedo ut puer sive sit masculine^b sive femina duplicat firma sua domino de Edlemiston qui pro tempore fuerit et sic /?^b dicte terre . et sic omnes heredes dicte terre quam cito nati fuerint // fuerit dominus ejusdem terre pro predicti feodofirma . sine impedimento et contradictione mei et heredorum meorum . Concedo et dicto Nicholao et heredibus suis quod si aliqui homines sui vel femine in curia // mea vel heredum meorum implacitentur et in^b forisfacturas ceciderint quod eorum forisfacture . dicto Nicholao et heredibus libere remaneant. Et si dictus Nicholaus vel heredes sui in curia mea // vel heredum meorum in forisfacturis ceciderint dabunt pro qualibet forisfactam duodecim denarios . Insuper volo et pro me et heredibus meis concedo ut dictus Nichol' et heredes sui habeant et possideant // libere curiam suam de Wrang /et/^b un^law /cum/^b forisfacturis et eschaetis suis ad eos pertinentibus in predicta terra . Et volo et pro me et heredibus meis concedo quod dictas Nicol' et heredes sui /molerint/^b bladum suum in molendinis meis et heredorum^c meorum libere et absque multura danda . si molendium proprium non habeant post primum bladum inventum in tremodio excepto /dominico/^b meo . Ego /dictus/^b Alex' et // heredes mei totam dictam carucatam terre de^{ac} Kirkwod integre et sine aliquo retinemento dicto Nichol' et heredibus suis cum omnibus libertatibus suis contra omnes homines et feminas // inperpetuum Warentizabimus acquietabimus et^c defendemus . Et ut hac mea donacio . concessio et carta presentis confirmatio . rata et stabilis inperpetuum permaneat carte presenti sigillum // meum apposui . Testibus dominis Willelmo de /du/^cfglas . Daid de lindesey . Hugone de berkeley . simoni

loccard . Willelmo de sancto claro . ffergus de ardrossan . Willelmo loccard . Alano de la ley // militibus et aliis.

^a	Editorial addition.
^b	Editorial: document rubbed.
^c	Editorial: document torn.
Endorsements	No visible contemporary endorsements. (I) in hand of ?sixteenth century.
Description	Parchment. Top 27.8 cms (measured on chord of a slight curve); foot 26.8 cms; left side 19.1 cms; right side 18 cms. Fold at foot 2.6 cms; central slit 2 cms holding seal tag 1.5 cms wide. Small part of seal impression on green wax, a triangular shield within a circle; legend '... DRI DE .'. .
Hand	Small, neat book script, usually clear except where document has been rubbed or damaged, but with many contractions.
Source	NLS, Acc. 4332, Lockhart of Lee and Carnwath; from an uncatalogued bundle of mainly royal charters. (Box 22).

Notes on Text

Sir Alexander Baird	Not found elsewhere. See introduction, p. 15, for discussion of the Baird family tree in the thirteenth century.
Edlemyston	No modern equivalent has been traced, but from the context it is evidently in or near Strathaven, Lanarkshire.
Nicholas Baird	See introduction, p. 12.

'*Per istas divisas*' ('by these marches'). Not all the points can be identified precisely but a reasonable outline emerges.

'*Starting at the ford of Locher and the upper part of the bridge*'. This is probably near where the modern B734 road crosses the Lochar Water.

'*From the ford by a certain syke to the north part of the moss and then by the same syke to the red ford and the western part of the church lands of Kype and by the marches of these lands as far as another ford next the chapel on the eastern side*'. This is not entirely clear, but although the Lochar Water is a tributary of the river Avon,

the latter is not mentioned. The march must therefore lie to the south of the Avon. Timothy Pont's draft map of Lanarkshire shows one of his signs for an ecclesiastical site slightly north and east of 'Haslibank' (now Hazliebank), shown as north and east of Kirkwood on the same map. There is no other church building marked and so this is likely to be the chapel of the text. The marches have moved north and east from their starting point.

'Thence to the via regia and by that road to a syke descending from a white stone'. Via regia denotes an important route and is without doubt the former Roman road running roughly east/west, still shown on OS maps as such, and now covered in places by a modern unclassified road. The white stone has not been found but the syke is probably (see below) the burn which flows towards the Avon near the present farm of Burnbrae. The march therefore runs eastwards along the line of the road.

'Going up by another white stone which is under Monerlethislawe and then directly to Suiheuclochetheuid and then directly to Martinside'. The other white stone has not been identified, nor has Monerlethislawe, but the last element in the name shows that it was a hill. The ground rises to the south of the Roman road, and so the march is now moving to the south over rising ground. Suiheuclochetheuid does not seem to exist as such now, but the central element of the name is likely to be in Chucket Knowe, shown on the 1861 6" OS map, a height of over 1100 feet just to the north of the present Middle Rig and also to the north of Martinside, the highest hill in the area. A march from Chucket Knowe to Martinside runs more or less north/south and defines an eastern edge of the estate. A back bearing to the north along that line suggests the identity of the syke near Burnbrae.

'Descending thence to the Kype Water and then up to the head of the Kype Water and across the slope towards the west as far as the head of the Lochar Water and so by the Lochar Water downstream as far as the first named ford'. These directions take the march from the summit of Martinside to the south-west, then west, and then roughly north back to the starting point.

'Wrang et unlaw' See the discussion in the introduction, pp. 12-14.

Witnesses

William of Douglas Lord of Douglas c1239 x October 1274.

David Lindsay	Lord of Crawford; floruit 1240s x 1268; chamberlain 1255 x c1257.
Hugh Barclay	Justiciar of Lothian 1258 and c1261 x 1279.
Simon Locard	Lord of Symington, in Kyle, Ayrshire and Symington, Lanarkshire. Alive in 1240s ¹ ; makes payments from Kyle in 1264-66 ² ; resigned rights in church of Symington, Lanarkshire to Kelso abbey in 1273. ³
William Sinclair	Possibly the knight who was sheriff in the Lothians 1264-66 ⁴ and witnesses <i>acta</i> of Alexander III. ⁵
Fergus of Ardrossan	Lord of Ardrossan. ⁶ The very slender family tree in Fraser ⁷ , which gives Fergus a reasonable floruit of 1260x, can now be marginally supplemented by this act and by the witness lists of four acts of the 1220s now fully published. ⁸
William Locard	Perhaps the one who appears c October 1272 ⁹ and likely to be a son of Simon Locard above.
Alan de la Ley	Not found elsewhere. Probably lord of The Lee, Lanarkshire, before that estate came into the hands of the Lockharts.

¹ CDS, i, no. 2672.

² *ER*, i, 28.

³ Cowan, *Parishes*, 194; *Kel. Lib.*, ii, no. 334.

⁴ *ER*, i, 32-33.

⁵ E.g. in 1261, *Chartulary of the Abbey of Lindores* (Scottish History Society, 1903), no. 117; and in 1263, *Soutra Chrs*, no. 52.

⁶ Cunningham, Ayrshire.

⁷ W. Fraser, *Memorials of the Montgomeries, Earls of Eglinton*, 2 vols. (1859), i, 18.

⁸ A. Grant & K.J. Stringer (eds), *Medieval Scotland: Crown, Lordship and Community: Essays Presented to G.W.S. Barrow* (Edinburgh, 1993), 108-12.

⁹ *Pais. Reg.*, 233.

Text 8

William Spurr, burgess of Berwick, grants to the nunnery of the Blessed Mary and St Leonard of Berwick a bovate of arable land in Bondington, bought by him from William son of Moses, with defined boundaries, to be held by the nunnery for an annual rent to William son of Moses and his heirs of one pound of cumin or two pence on Whitsunday. William and his heirs warrant the land to the nunnery and he confirms the charter by his seal.

Undated, but probably issued at Berwick in the early/mid 1270s

Ane old Chartor

Omnibus sancte matris Ecclesie filiis hoc presens scriptum visuris vel audituris Willielmus Spurr burgensis de Berwick Salutem in Domino Eternam Noverit universitas vestra me pro salute animarum Regum Willielmi et Alexandri et antecessorum et successorum suorum et pro salute anime mea et anime uxoris mei et animarum antecessorum et successorum meorum et suorum Dedissee Concessisse et hanc presenta carta mea Confirmasse Deo et Beati Marie et Sancti Leonardo de South Berwick et monialibus ibidem deo servientibus et in perpetuum servituris in perpetuam Elymosinam unam bovatom terrae arabili in territorio de Bondington quam quidam terram emi a Willielmo filio Moysi Jacentem inter terram Willielmi filii Moysi ex parte Borientale et Rivulum que dicitur Grethenbridge ex parte australe et ab intrantem^a supra terram dictarum monialium que dicitur ffrereflat ex parte occidentale et super inferiorem viam ex orientali parte Rivuli que dicitur Waterdich Tenendam et habendam dictis monialibus libere quiete plenarie pacifice et honorifice sicut aliqua Elimosyna in Regno Scotie liberius quietius plenius et honorificentius tenetur vel possidetur Reddendo inde annuatim Willielmo filio Moysi et heredibus suis unam libram cumini vel duos denarios ad festum pentecostes pro omni seculari servitio exactione consuetudine et demanda Ego autem dictus Willielmus et heredes mei dictam donationem meam dictis monialibus contra omnes homines et feminas in perpetuum warrantizabimus defendemus et adquietabimus In cuius rei testimonium hoc proprij scriptum sigilli me munimine roboravi His testibus Domino Hugone de Berkeley tunc justiciario Laodonie Waltero de Lindesay Willelmo de Baddeby tunc constabulario de Berewick Dominus Roberto magistri hospitalis Sancte Marie Magdalenie Domino Johanne de Golyn presbytero Domino Roberti de Renigtona^b presbytero Petro de Morthyngtona Henrico de Prendergest

Willielmo filio Moysi Waltero dicto Maydenn Bernardo dicto de Castro Waltero Clerico et multis aliis.

This is wryten of a f... and^c full of contractions.

- ^a MS 'ittantem'.
^b MS 'Rer . gin'. This is taken to be Renton in Berwickshire.¹
^c Sic in MS; there is a hole in the paper. Read '? fine hand', but 'fair' or 'foul' would also fit the gap. The phrase 'full of contractions' shows that an original was being copied; it is unusual for individual copies or a notarial transcript to reproduce the contracted forms of an original.

Source NAS, GD 157/368/13-14. This is a late seventeenth/early eighteenth century transcript of Dryburgh abbey texts, taken from documents then in the hands of the Cardross family. The wrapper around the transcripts has been torn but still shows 'Lord Car ...' as the source.

Notes on text

- William Spurr Known from late thirteenth and early fourteenth century evidence as formerly a burgess of Berwick with property there on the Ness.²
- Nunnery of the Blessed Mary and St Leonard Bondington Little is known about this house, at least endowed if not founded by David I.³ See next note.
- William son of Moses Not otherwise known. But the family name is known in Bondington, near Berwick upon Tweed, from a resignation c1318 by Nicholas 'called Moyses' son and heir of former Adam 'called Moyses'.⁴ Nicholas resigned other land in Bondington to Kelso abbey in 1307.⁵

¹ Thirteenth century forms of the name are in Raine, *North Durham*, nos 375-6, 378, 385-6.

² *Newb. Reg.*, nos 189, 191.

³ Cowan & Easson, *Medieval Religious Houses*, 145; G.W.S. Barrow: *The Charters of David I* (1999), no. 253.

⁴ *RMS*, i, no. 9.

⁵ *Kel. Lib.*, no. 42.

William looks like an earlier generation, one or two before Adam.¹

Grethenbridge;
Ffrereflat; Waterdich

The nunnery had held 'Ffrereflat' and other lands in Bondington since before the early 1250s.²

Witnesses

Hugh Barclay

Justiciar of Lothian 1258; c1261 x c1279.

Walter Lindsay

May be the Walter Lindsay who held land in Bridgegate in Berwick in the 1260s³ and the man of the same name who joins Peter of Mordington (below) as a witness.⁴

William of Baddeby

Constable of Berwick 1258 x 1272⁵; steward of Coldingham priory in 1279.⁶

Robert, master of the
hospital of St Mary
Magdalene

Not found elsewhere. This seems to be the earliest evidence yet known for the existence of the hospital and its master.⁷

John of Gullane, priest

Not found elsewhere, unless he was the clerk of the same name in the familia of William Malvoisin, bishop of St Andrews, in the 1230s.⁸

Robert of Renton, priest

Not found elsewhere.

Peter of Mordington

Floruit as lord of Mordington, Berwickshire 1272 x 1280.⁹

Henry of Prendergust

Floruit as lord of Prendergust, Berwickshire, 1258 x 1281.¹⁰ Appears with the previous witness in acta dated 1275 and 1276.¹¹

¹ See also Black, Surnames, *sub nom.* Moyses; *Rotuli Scotiae in Turri Londiniensi et in Domo Capitulari Westmonasteriensi Asservati*, eds, D. Macpherson et al. (1814-1819), i, 268b, 269a.

² Raine, *North Durham*, no. 351.

³ *StA. Lib.*, 391-2.

⁴ Raine, *North Durham*, nos 294, 386.

⁵ *Ibid.*, no. 215 x 240.

⁶ *Ibid.*, no. 229.

⁷ Cowan & Easson, *Medieval Religious Houses*, 172.

⁸ *StA. Lib.*, 157, 160.

⁹ Raine, *North Durham*, no. 409 x *Ibid.*, no 273.

¹⁰ *Ibid.*, no. 215 x *Ibid.*, no. 212.

¹¹ *Ibid.*, nos 196, 212.

William son of Moses	See above.
Walter Maydenn	Not found elsewhere.
Bernard 'of the Castle'	Not found elsewhere. Presumably a servitor of the constable.
Walter the clerk	Not identified, but he may be the justiciar's clerk. ¹

¹ G.W.S. Barrow, *The Kingdom of the Scots* (London, 1973), 130, has other thirteenth century examples.

DUNFERMLINE GILD COURT BOOK, 1433-1597
MISSING FOLIOS

edited by E. Patricia Dennison

INTRODUCTION

Eight folios, in the possession of The National Archives of Scotland (then The Scottish Record Office) in 1996, were thought to form part of the 'Gild Court Book of Dunfermline, 1433-1597'. An analysis of these folios was undertaken in early 1997. Some were, indeed, originally part of the manuscript volume; others related very closely to gild business, but probably never formed part of the volume. The National Archives of Scotland has since inserted the relevant folios into the Gild Court Book, at the appropriate places suggested below, so that the volume may be as complete as possible.

This early manuscript volume, the 'Gild Court Book of Dunfermline', had come to light in 1976 amongst the papers of the Incorporation of the Guildry of Dunfermline. It was in a poor state of preservation; but excellent restorative and conservation treatments at The Scottish Record Office between 1978 and 1981 ensured that the volume could be and may still now be handled with care. It remains the property of the Incorporation of the Guildry of Dunfermline, which has a virtually continuous run of records from this date until the present day. The manuscript volume was also transcribed and edited by the present writer and published by the Scottish Record Society.¹

The rationale behind the editing, transcription and publishing of these further eight folios is precisely that which lay behind the original publication of the Gild Court Book. First, Dunfermline's records had been thought to have been extant from only 1488, prior to the rediscovery of this volume; and, therefore, this now added a significant corpus of earlier manuscript material, giving insight into the fifteenth- and

¹ *The Gild Court Book of Dunfermline, 1433-1597*, ed. E.P.D. Torrie (Scottish Record Society, 1986).

sixteenth-century town and its gild. Secondly, the medieval gild records of Scottish burghs have survived only sparsely. There is reference to a meeting of the Edinburgh gild court in 1403; but this is probably a misdating and should, in fact, be 1453. Thereafter, there are mentions of isolated entries to the Edinburgh gild in the records of the burgh,¹ but no gild court book, as such, survives until 1550.² There is reference to the *curia gilde* of Aberdeen in 1437; and from 1441 the gild dealings are well documented for this burgh.³ For Ayr, a few folios detail the proceedings of the gild court of the town from 1428 to 1432;⁴ the Perth 'Guildrie Book' dates from 1452;⁵ and a parchment roll minutes the gild court of Stirling from 1460 to 1475.⁶ Dunfermline's gild court book is, in consequence, the earliest extant in Scotland

These eight further folios add insights into the urban values of a town that was not, by this period, particularly large or wealthy and was, in consequence, probably more typical of Scottish towns than the larger dominant burghs; but also they offer glimpses into the workings of the gild merchant at a time of transition in the fifteenth and sixteenth centuries.

The dating of the folios and decisions on where they should be included in the manuscript volume is, at times, relatively straightforward; but, on some occasions, only knowledge of the persons named can pinpoint even a decade and unfortunately water-marks on the paper were not present to assist this process. Each folio is, therefore, dated as far as possible, given a suggested location within the Gild Court Book and discussed individually.

Folio A

The recto and part of the verso sides of this folio are of an early date, 23 December 1433. The first entry of the Gild Court Book, in the same handwriting, is 7 November 1433; and the second, 20 February 1433/34.

¹ Edinburgh City Archives, MS Council Records.

² ECA, MS Gild Court Book.

³ Aberdeen City Archives, MS Aberdeen Gild Records, v, ii, council records, 1441/65.

⁴ NAS, PA5/2, MS 'The Ayr Manuscript', fos 8-10 & 85v. See also T. Dickson, 'Proceedings of the Gild Court of Ayr, from the Ayr Manuscript', *Archaeological and Historical Collections Relating to the Counties of Ayr and Wigton* (1878), i, 223-30.

⁵ Perth Museum and Art Gallery, MS The Guildrie Book, Archive 1/1. This volume has been transcribed, edited and published: *The Perth Guildrie Book, 1452-1601*, ed. M. Stavert (Scottish Record Society, 1993).

⁶ Stirling Council Archives, MS Stirling Gild Records, 1460-75, PD6/1/1.

Folio A, however, deals largely with gild finances; and in the volume, in its restored state, the accounts that are recorded from 1435 to 1479 are drawn together as folios 99-108. This folio might, therefore, be placed after folio 98 (which is blank), where it would be in the main corpus of gild accounts; and, indeed, be the first entry in this section of the book.

The main body of the folio lists sums of money being given to the gild. Some gild members are paying for their entry to the fraternity, which is an indication that they were not the sons of gild brethren nor married to the widow of a member. Although the decision had only recently been made to purchase paper and commence writing the gild book, as is seen in the accounts for 1435 (f. 99r.), folio A recto makes it clear that the gild was accounting for its money before this time, probably on a parchment roll now lost. This may have been the practice since the gild was first established between 1365 and 1399, or even earlier.¹

An incomplete entry, in the same hand, refers to the gild court being held in the tolbooth by the alderman and dean. This is a reminder of the close intermingling and overlap of functions of officials who were specifically 'of the town', such as the alderman, as head of the burgh, and 'of the guild', as the dean, as head of the guild.²

The final paragraph of A verso is highly illuminating. Not dated, the handwriting, however, immediately indicates that, although on fifteenth-century paper (since the bulk of the handwriting is identical to that on water-marked and dateable paper in the body of the volume), this entry is of sixteenth-century date. This is confirmed by the members named in this entry—Walter Baxter, John Smith, Master George Hackett and John Cowan. More precisely, mention is made of Master George Hackett functioning as Robin Hood. This was specified to be his role in April 1551 (f. 49r.); and, later in the same month, John Cowan and John Smith were admitted to the gild (fos 49r. and 49v.). Walter Baxter was a member of the gild from 1548 until at least 1563. As reference is made to Walter Baxter and John Smith adopting roles previously held by the other two, this may, in all probability, be dated to 1552/3. This entry is clearly an insertion of information in a blank space of the Gild Court Book, as happens elsewhere; but, although a small, misplaced recording, it is very telling.

¹ A grant during the abbacy of John, possibly of Stathmiglo, (1365-99), by the abbot and monks of Dunfermline to the burgesses of Dunfermline that they might have a gild merchant, may have been confirmatory, as reference is made to the gild property held 'of old': *Registrum de Dunfermlyn* (Bannatyne Club, 1842), no. 595* (Appendix iii).

² Torrie, *Gild Court Book*, p. xx.

Walter Baxter and John Smith are to function as Robin Hood and Little John, as had, previously, Master George Halkett and John Cowan. It has been traditionally thought that Robin Hood led the townspeople in a period of jollity, when the normal hierarchical urban society was turned upside down and the common people held sway. The cult of Robin Hood was well known in Scotland from at least the early fifteenth century and traces of Robin Hood can be found in the May games of several towns.¹ Traditionally, the 'Abbot of Unreason' presided at the May revels, when the conventional order and rule of burgh society was upturned. There was, for example, an 'Abbot or Prior of Bonacord' in Aberdeen; an 'Abbot of Unrest' in Peebles; and an 'Abbot of Narent' and 'Lord of Inobedience' in Edinburgh.² The Robin Hood cult appears to have intermingled with that of the Abbot of Unreason. Analyses of this practice in other towns suggest, however, that, far from being an occasion of popular dominance, this was a time of close social control by the ruling oligarchy in the town.³ In both Aberdeen and Haddington, for example, the abbot was employed and paid by the town authorities; and the Edinburgh gild merchant gave financial backing to their Robin Hood from 1492.⁴ The choice of men to function as abbots, Robin Hood, and Little John is also telling. From 1445, the Aberdeen authorities enacted that the Abbot of Bonacord should be the alderman or a worthy bailie. In Ayr, it became the practice for the burgh treasurers to adopt the roles of Robin Hood and Little John. Clearly, the revelries were closely monitored by the ruling group; and social disorder was contained.⁵ The appointment of Walter Baxter, known from the Gild Court Book to have functioned in 1588-89 as a bailie (fos. 43r. and 43v.) and as substitute for the dean of gild during the latter's absence in 1562 and 1563 (fos 65r. and 67r.), was very much in line with this system of monopoly of the position of Robin Hood by a worthy member of society. Even more so was this true of Sir George Halkett, who was one of the family of Halkett of Pitfirrane, the members of which regularly held positions of importance

¹ In Haddington, Peebles, Dumfries, Edinburgh and Dundee, to give only a few examples.

² A. J. Mill, *Mediaeval Plays in Scotland* (Edinburgh, 1927), 21.

³ E. P. Dennison, 'Power to the people? the myth of the medieval burgh community', in S. Foster et al., eds, *Scottish Power Centres from the Early Middle Ages to the Twentieth Century* (Glasgow, 1998), 114-5.

⁴ Mill, *Mediaeval Plays*, 29.

⁵ E. Bain, *Merchant and Craft Guilds: A History of the Aberdeen Incorporated Trades* (Aberdeen, 1887), 51; Mill, *Mediaeval Plays*, 29. For a discussion of later attempts to curtail popular expression during Robin Hood and Abbot of Unreason celebrations see Dennison, 'Power to the people', 115.

within the town.¹

Folio A gives a deeper insight into the workings of the gild and the town. It is known from the Gild Court Book that Robin Hood received remuneration. In 1551, when Sir George Halkett was appointed Robin Hood, the gild determined that he should receive 'all the prewelegis and unlawis that fallis in his tyme witht the ... gild siluir that entres in the said tyme' (f. 49r.). Folio A now reveals the extent of that profit. During the time of Halkett's and Cowan's role of Robin Hood and Little John, they received £60. This was a considerable sum; and reveals a further reason why those in power wished to monopolise these roles for themselves. This sum of money needs to be put into the context, for example, of the recommended stipend for a parish minister, in 1561, which was between 100 and 300 merks (£66 13s 4d and £200), that for an exhorter was 100 merks and a reader's was 40 merks (£26 13s 4d); and these have been considered, for the time, to be of 'a very generous scale'.² The wage rates of Scottish urban day-labourers are notoriously difficult to calculate, given that food and/or drink might also be supplied and the number of days' employment per individual per year is usually unknown. It is estimated that the maximum summer rate, with no supplement for food and drink, in Edinburgh, in 1540 was 0.8 pence; in 1552/3 —1.3 pence; and in 1560—1.9 pence. In Aberdeen, between 1565 and 1570, the rate was 1.4 pence.³ Robin Hood's and Little John's fees were quite staggering.

Folio B

The recto of this folio is undated; but the names of those paying to enter the gild give clear indication that this side of the folio was written some time after March 1549 and probably before January 1550. Folio 45 of the Gild Court Book commences with itemised money matters, followed by an entry relating to the gild court held in January 1549 [1550]. Folio B is, therefore, in all possibility a missing folio between fos 44 and 45. The verso side is, however, dated 'Yull 1550', which is a later date than f. 45. This side would seem more naturally to precede f. 48, which commences

¹ E.P. Dennison Torrie, 'The Gild of Dunfermline in the Fifteenth Century' (Unpublished PhD thesis, University of Edinburgh, 1984), 65-6.

² *Accounts of the Thirds of Benefices, 1561-1572*, ed. G. Donaldson (Scottish History Society, 1949), p. xxi; G. Donaldson, *The Scottish Reformation* (Cambridge, 1960), 99.

³ A. Gibson, 'Prices and wages', in P.G.B. McNeill & H.L. MacQueen (eds.), *Atlas of Scottish History to 1707* (Edinburgh, 1996), 328.

with a gild court of January 1550 (1551); but the entry fees of new brethren listed on the recto side of folio B would not tally with this later positioning. The folio is, therefore, best placed between fos 44 and 45; the verso may have been left blank and added to a year later; and, indeed, this seems even more likely when it is noted that the last entry on folio B verso refers to the year 1574.

The recto side indicates that the full entry fee to enter the gild was still 40s; and that those who were liable to pay only 'spice and wine', because of rights of entry through inheritance, paid merely 6s 8d.¹ It is interesting that two brethren only were forgiven their entry fees—Thomas Stewart and Patrick Halkett. Both became gild brothers in October 1548 (f. 42v.). Thomas Stewart had no claim by inheritance to enter the gild. Patrick Halkett was, however, the son of John Halkett of Pitfirrane. The latter had been provost on many occasions from 1511 (f. 28v.) to 1530.² The excuse from payment of entry fees, an exceptional privilege, is explained when it is noted that, by December 1549, Thomas Stewart was dean of gild (f. 44) and Patrick Halkett was provost by January 1550;³ both were possibly already in power by the time their fees were waived.

The verso side of the folio deals with routine financial matters: the dean of gild and the kirkmaster both present their accounts for 1550. The next entry was recorded at a later date—1573/4; and is not only a fairly common use of empty paper, with insertions on a partially blank folio, but is also typical of the workings of the gild in Dunfermline. There was a close interweaving of the functions of burgh and gild, with the same men holding office in both capacities. Often the same scribe recorded both the burgh court matters and the gild dealings; and, at times, specifically burghal affairs were inserted, probably erroneously, in the gild book and *vice versa*.⁴ This entry is such an example; and is confirmation that by this date elections to burghal offices were free and open.⁵

Folio C

The recto side of the folio is dated January 1591 [1592]. It appears to be

¹ E. P. Torrie, 'The guild in fifteenth-century Dunfermline', in M. Lynch *et al.*, (eds) *The Scottish Medieval Town* (Edinburgh, 1988), 247.

² *The Burgh Records of Dunfermline*, ed. E. Beveridge (Edinburgh, 1912), 223.

³ *Ibid.*, 224.

⁴ Torrie, *Gild Court Book of Dunfermline*, p. xx.

⁵ Torrie, 'Thesis', 58; A. Shearer (ed.), *Extracts from the Burgh Records of Dunfermline in the Sixteenth and Seventeenth Centuries* (Dunfermline, 1951), 3.

one of a few missing folios dating from between 1591 and 1594. It would originally have sat in the gild court book immediately after folio 87, the last entry of which is dated November 1591.

The recto side of the folio lists members who had paid contributions towards a mortcloth and a royal tax. The gild owned its own mortcloth, which it hired out to members. Presumably costs had arisen for its repair or replacement. Interestingly, there were, by this time, at least three women in the gild. Of those gild members named as contributing, 8 per cent were women, a significant minority in an association that was once a male preserve.

The verso side continues with financial matters; and instances two charitable donations. The money for shoes is for a person not in the gild, according to the records; clearly, charitable acts were not confined to the members, their widows and orphans. James Kingorne receives £3. As one of the notaries public he received fees for assistance in writing. In spite of the gild members being the elite of the town many could not sign their own names. In 1594, for example, of 22 members required to sign their names, 10 required the notary public to guide their hands [f. 88r.].

Folio D

This supplication to the dean of gild may have been copied into the Gild Court Book: the folio is of similar paper and size to the rest of the volume. Being undated and the names contained being of non-gild members, it is difficult to date. The handwriting suggests the later sixteenth century. If it is to be included in the volume, it would sit most easily after blank folios 89v. to 94v. and before f. 95, which commences what was possibly the original last section of the book—the copying of the Gild Laws of Berwick, written in an early fifteenth-century hand. The outcome of this petition is not known; but the terms of the supplication would suggest that the Dunfermline gild protected its mercantile rights tenaciously against unfreemen.

Folio E

Folio E is a small slip of paper, which, while recording gild business, was probably never part of the Gild Court Book. The recto side deals with financial matters; and, from the names mentioned, would appear to date from 1594. The identity of the person collecting and disbursing funds is not revealed, although one transaction took place in the house of James Kynghorne, the notary public [f. 88r.].

The verso was used for noting the votes of those electing the dean of gild. James Reid was successful; and, as he was dean of gild in 1595 [f. 88v.], and possibly earlier, this may be the jottings recorded as votes were counted at the relevant Michaelmas court (perhaps that of 1595). They were, however, either never formally entered into the gild court book, or the relevant folio is now missing.

Folio F

Folio F probably never formed part of the Gild Court Book. It is a small slip which records the replacement of windows, probably for the Gild House. James Reid retains some funds in his hands, so this may be dated to c 1594/95. The verso side has the beginning of a jotting, in a different hand, by a plumber, but is not completed.

Folio G

This is a small slip that probably never formed part of the Gild Court Book. It pertains to gild business, however. The recto side may be dated to the 1590s and appears to be a listing of part loads for export. Interestingly, the mother of one member is participating in this venture. The verso side notes accounts or dues and jottings may be reckonings at a voting procedure.

Folio H

This folio does not form part of the Gild Book. It is an account rendered by Will Walker to the gild for expenses. It is difficult to date. His use of Arabic, rather than Roman, numerals might suggest that this is dated to the 1590s. A Will Walker was received as a gild brother in 1517 [f. 30v.] and one Will Walker was active in the gild in the 1550s [fos 55v. and 59r.]. Whether these entries refer to the same man is not clear; and whether any of these three folio entries are dealing with the same Will Walker who, on this slip, is rendering his account to the gild is equally uncertain. What is obvious from the handwriting and flamboyant signature is that this Will Walker placing his account was an educated man. This would be one reason for the gild choosing him to represent them before 'the burrowis' in Edinburgh (probably the Convention of Royal Burghs). Although a burgh dependent on Dunfermline Abbey before the Reformation, Dunfermline was represented at the Convention of Royal Burghs.

The folio makes it clear that there was an element of tension between the crafts and the gild over election of burghal officers and this in turn suggests that this folio dates from the later part of the century. Crafts and gild co-existed relatively comfortably together in Dunfermline, according to the available evidence. In 1573, for example, the gild and crafts protested together that no bailie nor burghal officer should be appointed without the 'commoun consent of the consale gyldis craftis and communitie'.¹ By 1594, however, ill-feeling was beginning to rear its head [f. 88]; and this is confirmed in the *Records of the Convention of Royal Burghs of Scotland*.²

E.P.D.

¹ Shearer (ed.), *Burgh Records of Dunfermline*, 3.

² *The Records of Royal Burghs of Scotland*, ed. J.D. Marwick, 2 vols. (Edinburgh, 1866-1918), i, 448-50.

FOLIO A

recto

...¹ consilii [?]

j^m cccc xxxij quinto die mensis decembris Lawrens Boys gaff his entre
of the gild and his was in the fyrst

...² fut of schir Alexander entre xi^s ix^d

...³ Bra[?] iiij lib xiv^s v^d

...⁴ Store xx^s

...⁵ f Lokton viij^s iiij^d of the malt befor his tym Item in his tym iij^s iiij^d
Michalsoun [~~deleted~~ vi^s iiij^d] befor his tym Item xvij^s in to his tym
iiij^s v^d

Grangiar befor his tym v^s Item xij^d in to his tym

...⁶ Twrnbulle sen he was dene xij^s iiij^d

Alex(ander) of Kynglassy xxij^s of his entre

Jhon Wilyamsoun xix^s ij^d

...⁷ ll of Walwode xx^s for Gybert Gudy

...⁸ ll Jonsoun iiij^s

...⁹ ll Cristysoun xxij^s of entre

Jhon[?] Chapman xxv^s

...¹⁰ Cordnar xxxij^s iiij^d

...¹¹ Cristysoun xxv^s

...¹² of Bra xxv^s

...¹³ of Bra xl^s

...¹⁴ n Lech xl^s

¹ Folio in poor condition and text illegible.

² Folio torn.

³ Folio torn.

⁴ Folio torn.

⁵ Folio torn.

⁶ Folio worn.

⁷ Folio worn.

⁸ Folio worn.

⁹ Folio worn.

¹⁰ Folio torn and worn.

¹¹ Folio torn and worn.

¹² Folio torn and worn.

¹³ Folio torn and worn.

¹⁴ Folio torn and worn.

...¹ Boys xxx^s

...² n Dow x^d

...³ ss Dawson ix^s

...⁴ Lochgwor xxvij^s xj^d

...⁵ of Dalgless vi^s viij^d

...⁶ chon Mason xx^s

...⁷ mon x^s

...⁸ Stoby xl^s

...⁹ ll the Ramsay xl^s

...¹⁰ xl^s

...¹¹ Logan xl^s

be the balyes the qwilk thai borwyt vj^s vj^d

Summa xxxvij lib ij^s v^d

Be the said Lawrens Boys in primis fra Jh Lokton viij^s iiij^d

Jh Mychalsen iiiij^s vi^d

Wyll of Barr xx^s

Jh Granger iiiij^s

Wyll Logan v^s

Summa receptiones xlj^s x^d

¹ Folio torn and worn.

² Folio torn and worn.

³ Folio torn and worn.

⁴ Folio torn and worn.

⁵ Folio torn and worn.

⁶ Folio torn and worn.

⁷ Folio torn and worn.

⁸ Folio torn and worn.

⁹ Folio torn and worn.

¹⁰ Folio torn and worn.

¹¹ Folio torn and worn.

verso

expens maid of the gyld [silvir in the tym?] of Lawrens Boys

In primis to schir Machell x^s

Item for borwmayll vij^d

Item for a galon of ayl vj^d

Summa expensarum xj^s j^d

Sic remanent in suis manibus xxx^s ix^d

Remanant in bursa xxxvj lib xj^s iij^d

The gyld court haldyn in the tolbutth of Dunfermlyn be the alderman and ~~the~~¹ den the xvij day of the moneth of Dessemer the yher of our lord jm cccc

The quhilk day Walter Baxtar compeir in presens of the dene of the gyld bayleis and gyld brethir the quhilk gyld brethir condesendis and sayis that the said Walter Baxtar and Johne Smyt sowld haif als meikle profet as M George Haikcat and John Cowene gat quhene thai war ~~De~~¹ Robart Hud and Lettel John the quhilk of profet came to ~~lx~~² lx libs

¹ Deleted in MS.

² Deleted in MS.

FOLIO B

recto

Thyre are the gild brethir that [enterit?¹] to the fredome

Item in the fyrst James Hutone ls²

Item David Dewar for his entres³

X⁴ Item Robert Fergesone xls payit of⁵

Item Robert Gray awand x furlots of malt⁶

+⁷ Item William Cowper vj^s viij^d for the ffour⁸

+ Item Wylyam Wilsone vj^s viij^d

Item Johne Pattoun xls find be the⁹

+ Item Wilyam Fergesone vj^s viij^d

Item Lawrens Dawgles xls pay¹⁰

Item Johne Keyr xls payit to the dene

+ Item Johne Cryste vj^s viij^d payit

Item James Schortus v merks payit twa cronis

+ Item Willem Wilson younger iiij merkis pait fourti s and the [laif?]

Item Patryk Hakat vj^s viij^d quit be the gild b¹¹

Item Thomas Stewart lx^s quyt be the brethir

+ Item Jhone Wisone vj^s viij^d

Item Willyam Hum v [?] payit iij cronis of the foir in part of p¹²

Item Patryk Loch v lib payit ij cronis of the¹³

Item James Loch v lib Adam Stewart sourete

[*entry deleted*] Item James [?] v lib

Item James Hum v lib payit xl^s in part¹⁴

¹ Folio worn.

² Folio torn.

³ Folio torn.

⁴ Beside this entry appears the letter X.

⁵ Folio torn.

⁶ Folio torn.

⁷ Beside this entry, and other entries as indicated throughout the text, appears the symbol '+'.
⁸ Folio torn.

⁹ Folio torn.

¹⁰ Folio torn and worn.

¹¹ Folio torn.

¹² Folio torn.

¹³ Folio torn and worn.

¹⁴ Folio torn.

Item Andro Sandis v lib his geyre restand in D Dewaris

Item Willyam Nycoll xiiij^s iiiij^d payit

Item Adam Blakwod gifin his wnlaw gifin¹ quyt be the bre[thir ?...²

~~Item Lawrens Dawgles for ...³ Hutoun ...⁴ xiiij^d iiiij^d ...⁵~~

Item Willyam Andirsone vj^s viij^d payit

Item the secrestane vj^s viij^d payit

Item Morys Pacok iij^s iiiij^d

Item Jhone Smetoun vj^s

Item George Werkmane iiiij^s

¹ Text deleted in MS.

² Folio worn.

³ + beside entry; entry deleted in MS.

⁴ Text illegible.

⁵ Text illegible.

verso

Zull eodem anno j^m v^c 1 zeir

The charg of the gild siluir rasauit be Thomas Stewart dene of the gild [and ?] the the [sic] and the annual of the 1 yeyr extendis to the sume of xix lib xij^s ij^d and swa restis of the gild siluir our tane up be the said dene of gild the sowme of xix libx vj^s ij^d

Sua the dene of gild hes maid his compt of the xix lib xij^s ij^d and restis awand to the brethir v lib x^s vj^d Sua restis awand to the gild brethir declaro the sume xxv lib vij^s and this sume to be payit betwex this and Candillmes at the ferrest be thaim that is awand it

The xxv day of December the yeyr of god j^m v^c 1 yeyris Jhone Kyr kyrkmaister hes maid hos compt of the kyrk lycht ...¹ all expensis alowit to him maid on the kyrk ...² walkis and all vthir oncostis in the kyrk restis awand to the said Johne xij^s declaro

the lyte of the balze to be chossing for the zeir anno 1574

Wilyeme Meikiljhone
James Schortus
Sandes Nicoll

Wilyeme Wallat
Robart Wilsonne
Hendry Reid
Jhone Mowtray
Jhone Boswall

¹ Folio worn.

² Folio worn.

FOLIO C

recto

xxiiij January 1591

Robert Patton -----

Thomas Cupar -----

The namis of the gildbrethir that hes payit ilkane x^s to the mortclayt and contributioun to the taxt of the kingis wynis 1589

Wm Pratus 1
 Wm Phillane 2
 Robert Turnbull 3
 Robert Nicholl 4
 James Cudbert 5
~~George Peirsoune~~ 6¹
 David Eldar 7
 Robert Wilsoune 8
~~Waltir Crystie~~ 9¹
 Laurence Huttoun 10
~~Wm Meikilsoun~~ 11¹
~~Symon Hair~~ 12¹
~~David Broune~~ 13¹
 John Walcar cowpar 14
 Wm Walwod 15
 John Law 16
 Wm Mowtray 17
 Harie Mudy 18
 Patrik ~~Mudy~~¹ Murray 19
 Henrie Turnbull 20
 Edward Thamsoune 21
 Alexdr Steivin 22
 James Reid 23
 Gilbert Kennedy 24¹
 John Andirsoun in the raw 25
 Patrik Crystie 26
 Jonet Cayrnis 27

¹ Text deleted in MS.

Maus Dagleische 28
 Patrik Murray 29
 Laurence Alasosun [sic] 30
 Robert Fraser 31
 Alisoun Wryght 32

David Stewart¹
 John Walcar merchand 33
 Richie Walcar 34
 Thomas Coupar 35
 Johne Beynett

James Cudbert-----
 Thomas Cupar -----

restis yit restand
 + Symon Hair liij^s iiij^d
 + John Andirsoune xl^s
 John Law xx^s
 + Patrik Murray x^s
 + Wm Wrycht x^s
 + Wm Pratus x^s
 + Robert Pattoun x^s
 + John Andirsoune at the cros x^s
 John Burn at the brig x^s
 Mausie Dagleische x^s
 ...²

¹ The text following descends in a column on the right of the folio from the top right hand corner of the MS.

² There follow two lines which are illegible.

verso

Mad my reseat sen the last compt

Item fra Robert Pattoune iiiij^s vj^dItem fra John Dobbie viij^sItem fra George Peirsoun x^s x^dItem fra James Reid vij^s vij^dItem resavit fra Hary Mudy vj lib xiiij^s iiiij^d

Off this soum forsaid debursit be me to James Kingorne iij lib

Item to Thome Creiche and pair schone x^sItem to Bessie Sanderis for reschis xij^dabsentis¹

Thomas Cupar

~~Wm Walwed²~~

Patrik Murray

Spyce and Vyne

Dauid Broune³

Johnne Andersoune

Edward Thomsoune

David Eldeir

Williame Phillaine

James Reid

Laurence Huttoune

Symond Hair

Harye Mude

Laurye Alesoune

xv lib payit to John Coupir for the mortclaytht

Be Harie Mvdie vj lib xiiij^s iiiij^dItem mair be the said Harie xx^sItem be Symon Hair liij^s iiiij^d

¹ The following text descends in the MS from the top right hand corner.

² Text deleted in MS.

³ Following this name in the MS there is what appears to be a symbol.

Item be James Reid and James Reid¹ Cudbert [for?] vnlawis iij lib

Item be James Reid for spyce and wyne xl^s

Anno 1593

The lytes of Nouember

Patrik Stewart-----

Wm Praythows-----

James Cudbert-----

George Persoun-----

Robert Patton-----

¹ Text deleted in MS.

FOLIO D

recto¹

...² my lord dean of gild of the burcht of Dunfermlin and the brethir
The supplicatione of Thomas Reid in Saline humblie sheweth

That ther[?] by the order that was laitlie seased and confiscat within your libertie and barrell of sop pertaining to me ane unfrieman being staplewair I did acknowledge I wes in the wrong to prejudice your lord libertie bot in truth i wes altogidder ignorant thairof. It is weill knowen to sum of the brithren that I am bot a verrie purman and hes the charge of a famelie a wyff and four bairms and my wyff at child and I declair that this 11 yeiris I sold nocht a pund of sop bot a firrikin I got fra John Kent and now I had got credit and trust of this barrell of sop and if taken from me I will be ruined and bygered.

May it thairfoir pleis your lord to tak my pur conditione to your consideratioune and grant me such favor as your honor pleasis and your answer.

Thomas Reid

verso³

¹ Scoring marks appear at the foot of this page which probably represent votes counted.

² Folio torn.

³ This page is blank in the MS.

FOLIO E

recto

Item Jhon Walcar debursyt in James Kyngorns hous xiiij^s 9^d

Item Jhon Walcar debursyt at the buryse [?] gilde to Wm Wallat vij lib

Item I hav ressayd my self fra John Walcar xi lib 14^squhilk [acepdit?] to xxi lib vij^s 9^dItem rassawyde fra Lowry Walcar liij^s iiiij^dItem off this sowm gewyn out to Robert Patton xiiij lib 6^s 8^dItem to mak wpp Robert Wilson's clais [sic] I gaw out xiiij^s iiiij^d

verso

Mr Thomas ...¹aw -----...² Walkar-----

Jamies Reide -----

Lyttis for the deane of gilde

James Reid-----

Jhone Walkar-----

Eduard Dowglas-----

...³ -----...⁴

...

Robert Fillan⁵

David Crystye

Lowrens Hutton

Mr Thomas Wardla -----⁶

Robert Turnbill-----

Jamis ~~Turnbill~~⁷ Reide

Mr Thomas Wardla -----

¹ Folio torn.² Folio torn.³ Folio worn.⁴ Folio worn. There appear to be entries over two lines here.⁵ These three lines in the MS are one the side of the page, at a right angle to the main text.⁶ This final portion of text in the MS is written upside down at the bottom of the page.⁷ Text deleted in MS.

Robert Turnbill-----

Jamis Turnbill¹ Reide

FOLIO F

recto

The cowmtis of the merchanis wondo

Item of new glaiss xix fitis prysis of the fit x^d soma iij lib vj^sItem of awd gllais xix fitis pris of the fit xx^d soma xxxiij^s

Soma of the haill iij lib xv is

and to James Reid xxx^s Restis to me of this cowunt iij lib vj^s

verso

Be me James Cuiper pllumbert to his maister in Dumfermling of the said
ilk of the tyme of my

¹ Text deleted in MS.

FOLIO G

recto¹

~~James Reid jm lamb 3 hundred quhye ledder 3 hundred cunnenis
 Henry Trumbbill 3 hundred lamb halff thairof fur seillis
 William Mowray
 Laurence Huttoun vij hundred lamb
 Robert Trumblie jm lamb j hundred fur seillis halff a steik plaidein
 Johne Walker halff j hundred lamb
 George Peirsoune vj hundred lamb j hundred seil halff a steik plaidein
 my mother viij hundred lamb skinnis~~

verso²

James Reid in his daylie custom ix^s 6^d
~~Henry [...]byll ij^s
 Lowry³ Hutton iii^s 6^d
 Robert [?] vij^s 6^d
 Jhon Walker⁵ iij^d
 George⁶ Person v^s
 David Bull⁷ iiij^s
 Summa totalis xxx^s 3^d~~

¹ This entire entry has been crossed out in the MS.

² At the bottom of this slip, upside down, are jottings and doodling which may possibly represent votes counted.

³ Text deleted in MS.

⁴ Text deleted in MS.

⁵ Text deleted in MS.

⁶ Text deleted in MS.

⁷ Text deleted in MS.

FOLIO H

recto

Compt of my expensis when sent over to Edinburgh by the gildrie to
 obtaine ane citatioun from the burrowis for the craftismens appearance
 befor the said burrowis at the instance of the said gildrie anen the matir
 in question betwix the gildrie and thaim in the mater of the election of the
 magistrats of this burcht.

In the first for my horse horse [sic] hither and thither 02: 04: 00

Item for my expensis ordinar and extraordinar being

two dayes absent

04: 00: 00

06: 04: 00

Will Walker

verso¹

¹ This page is blank in the MS.

A MEMORANDUM ON THE CUSTOMS, 1597

edited by Athol L. Murray

INTRODUCTION

The document printed here is preserved among miscellaneous papers relating to the customs in the Scottish exchequer records (E75/10).¹ Although no author is named, it can be ascribed with confidence to Sir John Skene who had held the office of lord clerk register since September 1594. One of his first tasks in that office had been to compile an inventory of exchequer records, apparently completed by April 1595. These records, in particular the exchequer rolls, provided Skene with information for drawing up a detailed list of alienated crown property and rights which could be resumed to increase the royal revenues.² Though his main interest was in the crown lands, his brief allusion to the customs is in markedly similar terms to the 1597 memorandum.

Thair is na rent of his hienes propirtie quhairin his hienes is sa far preiugit as in the abuis of his hienes gret custumes. First his hienes is defraudit in sa far as the just quantitie is not gevin up that aucht to pay customes, viz. gif thair be perchance in ane pynnok of skynniss or ane cordat viii^{xx} or ix^{xx} skynniss they ar nevir tauld, bot as the custumar and merchant aggreis amangis thame selfis will set and esteme thame to i^c skynniss. Gif thair be xiii, xiiii or xv elnis in ane wob of claith, the elnis ar nevir tauld bot the custumar will esteme and set thame to ane dosane. Item quhair it is statut be ane act of parliament that every pundis worth of salmond and wollin claith carrit furth of this realme sall pay ii s. for the custume thairof, his maiestie is preiugit thairintill yeirlic x^m li, and that

¹ All manuscript sources cited are in the National Archives of Scotland.

² A.L. Murray 'Sir John Skene and the exchequer, 1594-1612', *Miscellany One* (Stair Society 1971), 125-155.

because the dosane of wollin claythe is coft now for vi li at the best chaip, quhair of his maiestie aucht to have xii s and gettis bot xii d. And siclyke quhair his graice aucht to haif ii s vi d for everie pundis worthe of Inglis guidis brocht within this realme, his maiestie gettis not viii d.¹

Abuses fell under two main heads: first under-reporting of quantities of goods and second failure to levy the correct rate of duty. The second arose partly from replacement of ad valorem duties by pro rata ones. These were simpler to administer: as the customs books for each port showed quantities of each type of goods exported, multiplication of the total exported by the rate of duty payable gave the sum for which the customar was accountable.² However in sixteenth-century Scotland inflation combined with currency debasement to reduce the real value of the crown's revenue from the customs. In 1539-40 the comptroller's receipts from the customs amounted to £4,448, equivalent to £1,112 sterling. By 1579-80 this had fallen to £3,860, then no more than £483 sterling.³

In an attempt to remedy matters parliament passed an act in October 1581 'Anent the dew payment of the kingis maiesties custumes', declaring them to be part of the patrimony of the crown and ratifying previous acts against those taking goods out of the kingdom uncustomed. Customars were to be given a table setting out the rates of duty and the act also specified that the sack of wool was to contain only 24 stones, the 'hundred' of skins six score and the 'dozen' of cloth twelve ells.⁴ Skene's comment in 1595 shows it to have been ineffective. This is confirmed by the comptroller's receipts from Edinburgh, by far the largest port. In 1579-80 these had amounted to £2,555; in 1581-2 they were even lower at £2,167.⁵

In 1575 the Regent Morton had hounded the royal burghs over non-payment of the bullion duty exactable from merchants exporting goods. They had had to increase their initial offer of 10,000 merks by

¹ Murray, 'Sir John Skene', 145.

² See A. Murray 'The procedure of the Scottish exchequer in the early sixteenth century', *Scottish Historical Review*, xl (1961), 106-7, and 'The customs accounts of Kirkeudbright, Wigtown and Dumfries, 1434-1560', *Dumfriesshire and Galloway Natural History and Antiquarian Society Transactions*, 3rd series xl (1963), 141-5.

³ *ER*, xvii, 271, xxi, 122. Figures are rounded to the nearest pound.

⁴ 1581 c 12, *APS*, iii, 216.

⁵ *ER*, xxi, 122, 159.

50 per cent to £10,000, the final cost being £11,000, including expenses of collection.¹ Though Morton was no longer around, they might have feared similar treatment from James VI. Addressing him in December 1582 they denied the 'senister report' made about them 'anent the defraude of the commoditie of youre Hienes customes', but offered to take the 'hail customes' in tack. On 18 January the privy council agreed that customars should take up the customs 'as hes bene accustomat thir lait yeiris bigane', notwithstanding the 1581 act. A contract agreed by the king, privy council and exchequer on 14 March 1583 provided for an annual payment of £4,000 for the customs, plus thirty tuns of Bordeaux wine replacing the comptroller's right of prise.² As the burghs' collectors proved no more successful than the crown's customars, more than once the convention had to make up a shortfall by taxing its members. In 1589 the customs reverted to direct management and the following year additional revenue was raised by a new duty on wine imports.³ By 1594 the comptroller was receiving £10,378 from the wine impost but only £5,552 from the customs, falling to £5,063 the following year.⁴

In January 1596 James appointed a reforming exchequer commission with Skene as a member. The commissioners, known as the Octavians, looked at various ways of increasing revenue. On 24 May 1596 the customs were declared an inalienable part of the king's property and customars were ordered to levy them as appointed by law.⁵ For the moment, however, the burghs were able to avoid agreeing to any changes, pleading that they were 'the meynest of the Estaitts' and that any decision should be taken by parliament.⁶ This put off the matter until the following year. On 4 March 1597 a convention of estates appointed commissioners to meet with representatives of the principal burghs to agree on a new system of duties on imports and exports.⁷ As Skene was one of the commissioners, it may be reasonable to assume that this was the context in which the memorandum was produced.

¹ *Records of the Convention of the Royal Burghs of Scotland [RCRB]*, i, 37, 42-3, 91-5.

² *RCRB*, i, 147-8, 152-61; *Register of the privy council of Scotland [RPC]*, iii, 546.

³ J. Goodare, *State and Society in Early Modern Scotland* (Oxford 1999), 114. Prior to 1590 only wine re-exported paid duty.

⁴ *ER*, xxii, 383, xxiii, 41.

⁵ *APS*, iv, 98.

⁶ *RCRB*, i, 497.

⁷ *APS*, iv, 113-4.

The memorandum elaborates Skene's 1595 note with examples drawn from exchequer rolls of the period 1368-1542. The first date is that of the imposition of statutory duties on wool and other commodities, the second that of James V's last exchequer, before the crown's financial administration started to break down during Mary's long minority. These examples illustrate the correct duty payable on each type of export and how it was calculated. The underlying assumption seems to be that the old system could be made to work if operated honestly and efficiently. In fact a radical change was in prospect. Barely two months later, on 13 May 1597, another convention at Dundee imposed new duties on imports. The exchequer was empowered to set down an 'ABC' (list in alphabetical order) of duties in consultation with the council and members of the nobility.¹ This was promulgated very soon afterwards on 22 May 1597.² Though the royal burghs viewed the act as 'verray hurtfull and preiudicial' to them, they could only hope that once the nobility and lieges had 'felt the bitternes thairof', they might be 'easily movet to gif thair concurrance for repaying of the samyn'.³ This expectation was thwarted. When parliament ratified the act in December 1597 a new clause allowed landowners to import wine and other items for personal use and export their own goods duty-free.⁴

The ABC for imports listed assessed values on which duty was to be levied at the rate of one shilling in the pound. That for exports ran to over eighty items, including re-exports.⁵ In most cases the pro rata duty was unchanged. Thus sheepskins continued to pay 13s 4d per (long) hundred, with lower rates for inferior types, and hides 53s 4d per last (200). Two exceptions were cloth and wool where the new duty was based on realistic values. The exchequer had ruled that Scottish cloth and plaiding were to be 'exactlie comptit' at twelve ells to the 'dozen', with the ell valued at 10 shillings, but proposed duty was altered from 2s in the pound to the equivalent 1s per ell. Duty on a barrel of salmon (valued by the exchequer at £15) was raised from

¹ APS, iv, 118-9

² E4/3. An idiosyncratic selection of items is printed in *Ledger of Andrew Halyburton*, ed. C. Innes (1867), cxii-cxvi.

³ RCRB, ii, 14, 19.

⁴ 1597 c 22, APS, iv, 135-6; Goodare, *State and Society*, 115.

⁵ The only surviving text of the 'ABC' of exports is an extract authenticated by Skene as clerk register (E76/1/1); there is a similar but incomplete copy of the imports 'ABC' (E76/1/2).

4s to 37s 6d, with foreigners paying 2s 6d in the pound on value.¹ Wool was a special case, as export had been prohibited since 1581, though allowed under licence. Here the duty on the sack was raised from 26s 8d to £6.² English goods imported continued to be classified with exports, paying the old rate of 2s 6d in the pound.³ An annex to the table listed values for different types of English cloth and hats, which were to pay 12d in the pound, as the additional duty imposed on forbidden English wares.⁴

Though the new tariff for imports largely preserved existing duties, there was now an apparent determination to make the system work properly. On 5 June 1597 the auditors of exchequer passed three acts regulating the issuing of cockets (certificates of payment of customs).⁵ On 21 July they ordered the customar of Aberdeen to levy the custom of woollen cloth, salmon and other customable goods according to the tenor of the ABC of the customs (*alphabeti customarum*) and acts of parliament.⁶ Stricter assessment of quantities may be reflected in the Edinburgh customs account for 1598 where cloth exports were stated in ells instead of 'dozens' and wool in stones instead of sacks.⁷ Overall the measures introduced in 1597 helped to produce a spectacular increase in customs revenue. In 1596-7 the comptroller had received a mere £4,317.⁸ From March 1598 the customs of Montrose, Aberdeen and north-east were farmed by Thomas Menzies for £1,800 per annum and in December 1598 a Leith merchant, Bernard Lindsay, took the other ports for £24,000.⁹ Lindsay's syndicate received a substantial rebate the following year, but the upward trend of revenue continued. By 1609 the customs were being farmed for 115,000 merks (£76,666 13s 4d scots, £6,388 17s 9d sterling) yearly.¹⁰

¹ *Ledger of Andrew Halyburton*, cxiv; original and altered duties on salmon and wool appear in E76/1/1.

² 1581 c.18, *APS*, iii, 220-1, 379; *RPC*, v, 477; E76/1/1.

³ The table of imports includes English beer and English woolskins, *Ledger of Andrew Halyburton*, cxii-cxiv.

⁴ *APS*, iv, 137.

⁵ *ER*, xxiii, 510, re-enacted by parliament 19 Dec. 1597, *APS*, iv, 137; similar acts dated July 1597 appear in E4/3 fo. 14.

⁶ *ER*, xxiii, 189; re-enacted by parliament 19 Dec. 1597, *APS*, iv, 137.

⁷ *ER*, xxiii, 238

⁸ *Ibid.*, 193.

⁹ *ER*, xxiii, 270, 358-9; *RPC*, v, 508.

¹⁰ *RPC*, vi, 230, viii, 810-3.

The 1597 settlement can be seen as a compromise, balancing the introduction of general duties on imports, by leaving the old export duties in place, albeit more rigorously enforced. By 1610 James VI had decided it was time for a change that would produce more revenue. Although it was his undoubted prerogative to set duties, he had 'preferrit the mercheant estate to oure awne benefeit'. Thus the tariff for exports 'for mony yeiris past memorie of man hath for the most parte not bene alterit', notwithstanding the great rise in commodity prices. On 12 November 1610 he ordered the compilation of a new book of rates, setting duties at such a rate 'as the mercheant sall haif no caus to find himself justlie grevit thairby'.¹ In the new book of rates values were set on exported as well as imported commodities, both paying duty at 1s in the pound. Following approval by the king, on 29 April 1611, the new book was to come into force on 1 November 1611, but with provision for it to be amended. It was found to require so much amendment that it was speedily replaced in the followed year by a new book that remained in force until 1669.²

Rates of duty

The memorandum cites entries from some twenty-six exchequer rolls, but almost certainly involved scrutiny of a larger number. These show the rate of duty and the unit on which it was levied, particular attention being paid to fractions of that unit, for instance the number of stones in a sack of wool.

Wool: The duty of 26s 8d (2 merks) per sack of wool, imposed by parliament in 1368 to help pay David II's ransom, remained in force until 1597. The sacks, each containing 24 stones, were weighed by the tronar who received a fee of one penny per sack.³ Ten sacks made up a last. The 1597 tariff imposed an increased duty of 5s per stone or £6 per sack.

Skins: The 1368 Act provided that the custom on sheepskins should be proportional to that on wool, the actual rate being 13s 4d

¹ *RPC*, ix, 584-5

² *RPC*, ix, lxx-lxxv; see also Goodare, *State and Society*, 115. There is a contemporary printed copy of the 1611 book of rates in the exchequer records, E76/2; the 1612 book, signed by James VI (E76/3) is printed in *Ledger of Andrew Halyburton*, 279-341; the 1669 book was amended in 1670 (E76/6-8).

³ *APS*, i, 504; *ER*, ii, lxxxvi, xvi, 228.

per long hundred (120).¹ The office of *numerator pellium* (teller of skins) is first found at Dundee in 1381 where two men were deputed by the chamberlain to see the examining and customing of skins and hides, but similar officials did not appear elsewhere until 1396 and only in the following year was such provision made at all ports.² Fees for numbering skins continued to be paid at a number of ports until 1446-1447, but thereafter tellers of skins are found only at Linlithgow (until 1455), Edinburgh (until 1469) and Haddington (until 1478).³ In 1462 the customars of Stirling received 14s 1d as their fees from skins and hides.⁴ Although there are no further references to customars receiving such fees, it seems probable that the duties formerly carried out by tellers had devolved to them. In 1541 the auditors of exchequer instructed the customar of Dundee to allow the inhabitants to pack their skins and cloth in the same way as in Edinburgh and other burghs. If the owner of the goods disagreed with the customar's estimate, the latter was 'to cut the cordis and tell the saidis skynniss and eln the claith'. If his estimate was correct, he was to escheat the goods; if not he was to repack them at his own expense.⁵ The assertion that *numeratores pellium* were still receiving fees in 1597 cannot be substantiated from the printed *Exchequer Rolls*. However the privy seal register does provide evidence for a similar sinecure office. On 16 February 1543 John Bannatyne and his son were appointed 'seers' of customizable skins 'als weile cordit as packit' at Edinburgh, which must be the same office as searcher of 'skynniss customizable' to which James Bannatyne, justice clerk depute, was reappointed in 1567.⁶ From 1435 certain inferior types of skins paid lower rates, namely shearlings (6s 8d per hundred), scaldings and

¹ *APS*, i, 504; The editors of *Exchequer Rolls* translate *pelles lanutarum* as 'woolfells' (*ER*, ix, lxx), an English term not used by Scottish customs officials. In the surviving customs books they are always called 'skins' or 'woolskins' (e.g. *NAS*, E71/16/1). For the long hundred see J. Goodare, 'The long hundred in medieval and early modern Scotland', *Proceedings of the Society of Antiquaries of Scotland*, cxxiii (1993), 395-418.

² *ER*, iii, 66, 174, 381, 385, 387, 389, 405-17.

³ *ER*, v, 229-31, 259-60, 264, 270, vi, 12, vii, 664, viii, 541.

⁴ *ER*, vii, 139.

⁵ R.K. Hannay, ed., *Acts of the Lords of Council in Public Affairs* (Edinburgh 1932), 507.

⁶ *Registrum Secreti Sigilli*, iii, no. 95, vi, no. 28.

footfells (3s 4d) and lentrenware (1s).¹ An act of 1424 imposed duties on skins of wild animals, e.g. marten, polecat, otter, fox, deer and rabbit. These appear infrequently in the records until the late sixteenth century.² None of the duties on skins was changed in 1597.

Hides: Though the 1368 act also made the duty on hides proportional to that on wool, they were counted in a different manner. The duty was four merks (53s 4d) for each last, made up of 20 daces each containing 10 hides.³ This was unchanged in 1597.

Cloth: Woollen cloth was first made customable in 1425, with an *ad valorem* duty of 2s in the pound.⁴ This required the customar to assess both quantity and value, each based on the 'dozen', a length of cloth containing twelve ells (approximately 12 metres). At Stirling in 1462 Matthew Forester refused to accept the customar's estimate and sent his pack to the ship uncustomed.⁵ In practice, as the memorandum shows, a uniform rate was applied to cloth of 'various prices'. Haddington's customs book for 1504 shows total cloth exports of 127 dozen valued at 24s, paying £15 4s 9d or approximately 2s 5d per dozen.⁶ The memorandum refers to the account for Stirling in 1512 where the value is given as only 20d per ell (£1 per dozen) and duty paid on 65 dozen as £5 8s 4d, or 1s 8d per dozen.⁷ In fact, the old system had already started to break down. In 1502 the customars of Ayr and Cupar had to be ordered to levy according to the true value as required by the act, but in the following year the customars of Edinburgh accounted for only £211 5s for the custom of 4,225 dozen, or 1s per dozen.⁸ In 1516 the auditors of exchequer ordered customars to levy a new rate of 2s 6d on each dozen of broad cloth whether dyed or undyed.⁹ This was only partially effective. By 1542 Aberdeen, Dundee, Linlithgow, and some smaller ports were paying 2s 6d. But while Stirling collected £30 for 240 dozen (2s 6d), Irvine collected only £26 3s for 523, more than double

¹ *ER*, iv, cxxix, 604. Shorlings were skins of shorn sheep, scaldings skins of small value, footfells and lentrenware skins of lambs that had died soon after birth (*Oxford English Dictionary*).

² 1424 c 23; *APS*, ii, 6; *ER*, iv, cxxvi; E71/30/28. They are listed under skins in E76/1/1.

³ *APS*, i, 504; *ER*, ix, p. lxx.

⁴ 1424/5 c 19, *APS*, ii, 8.

⁵ *ER*, vii, 219.

⁶ E71/16/1. The total in the book is 'cvii', i.e. one long hundred and seven (127).

⁷ cf *ER*, xiii, 479.

⁸ *ER*, xii, 79, 84, 162 (long hundreds converted to normal hundreds).

⁹ *ER*, xiv 564; for date see CS5/28, fo.25, 25 Aug. 1516.

the quantity, and Ayr enjoyed the same favourable rate of 1s per dozen. Edinburgh, which exported more than four times as much as the other ports combined also paid only 1s per dozen.¹ In 1597 this was replaced by a more realistic figure of 1s per ell, with the ell valued at 10s.

Salmon: The duty of 2s 6d in the pound on salmon 'bocht be strangers' imposed in March 1425 was extended to all exports in the following year.² By 1466 the actual rates in force were 3s per barrel for salmon and 1s 6d for grilse. A proclamation in February 1481 raised the duty from 3s to 4s at which figure it remained thereafter.³ The barrels, twelve of which made a last, were of Hamburg measure, use of which was made obligatory by an act of 1478.⁴ The 1597 tariff reimposed the duty of 2s 6d in the pound for foreigners, while Scots were to pay 37s 6d per barrel (£22 per last).

Fish: The memorandum makes a brief reference to keeling (cod) as paying duty at 2s in the pound in 1429, but in 1469 the customar of Berwick was ordered to collect 2s per long hundred.⁵ It omits herrings where the duties imposed in 1424 had ceased to apply by 1482 when a proclamation raised the duty on a barrel of herring from 6d to 1s. The 1597 tariff reinstated the duties prescribed in 1424: 1d per long thousand (1200) fresh herring, 4s per last (12 barrels) salt herrings (6s if barrelled by foreigners) and 4d per long thousand on red herrings.⁶

Other commodities: The only commodity mentioned is salt, where duty was ordered to be collected in 1467 at 2s in the pound. The effect was to double the actual rate from 1s to 2s per chalder, where it remained until the 1560s. By 1564 salt exported from Pittenweem was paying 4s per chalder, though Edinburgh kept to the old rate for a few years longer.⁷ By 1572, however, all exported salt was paying 4s, which continued under the 1597 tariff. The Edinburgh customs book

¹ *ER*, xvii, 457-64. The editors have converted from roman to arabic numerals without allowing for the fact that 'c' represents a 'long' hundred (120, not 100); for the correct figure multiply complete hundreds by 1.2. See P. Goulesbrough, 'The long hundred in the exchequer rolls', *Scottish Historical Review*, xiv, 79-82

² 1424/5 c 19, 1426 c 1, *APS*, ii, 8, 13.

³ *ER*, vii, 430, ix, 148.

⁴ 1478 c. 9, *APS*, ii, 119.

⁵ *ER*, iv, cxxviii, vii, 379. The Latin word for cod, *mulones*, seems to have mystified the editors of the *Exchequer Rolls*, see *ER*, ix, lxxiv. The 1597 tariff set the duty at 4s per long hundred.

⁶ 1424 c. 22; *APS*, ii, 8. The same act imposed a duty of 12d in the £ on exported livestock. This was also continued by the 1597 tariff.

⁷ *ER*, vii, 36, 286, 503, 591, xix, 273, 295, xx, 98.

for 1539-40, shows coal paying 1s 4d per chalder, oil 3s per barrel, pitch and tar 1s and tallow £1.¹ The high duty on tallow may have been designed to discourage its export, which had been prohibited ineffectually by several statutes since 1424.² The 1597 tariff left the duties on oil and pitch unchanged, but increased that on coal to 4s a chalder. No tariff was set for tallow, which was to be escheated as prescribed by the acts.³

English goods: In March 1425 parliament imposed a duty of 2s 6d in the pound on English goods, which was levied in kind on malt and other produce.⁴ There were special customars for imported English goods and exported salmon at Aberdeen between 1446 and 1450 and Leith between 1445 and 1453.⁵ Quantities were never large; in 1463 the customar of Edinburgh could assert that no English goods had come to Leith since September 1462.⁶ Leith again had its own customar for English goods from about 1471 to 1492, when responsibility reverted to the customar of Edinburgh.⁷ In 1541-2 he collected no more than £10.⁸ With more peaceful relations between the countries from the 1570s imports of English goods increased. Extensive evasion of duty is attested by an act of privy council of 27 February 1590, re-enacted by parliament in June 1592.⁹ The customs books are uninformative, recording only sums paid by individual merchants, not types, quantities or values. It seems, however, that separate records were kept of certain specific types of English goods, e.g. cloth, wood, brass and gunpowder.¹⁰ As noted earlier the 1597 tariff retained the old rate of 2s 6d, with a supplementary charge for prohibited goods.

Whether or not Skene was the author, the memorandum only survives in a contemporary copy, with a few minor copyist's errors. The author's interest in showing how duty should be calculated means that he sometimes ignores complete units (sack, last, long hundred,

¹ E71/30/7; *ER*, xvii, 394.

² *APS*, ii, 7, 174, 314, 378; *Acts of Lords of Council in Public Affairs*, 474. The editors of the *Exchequer Rolls* translate *cepum* as suet instead of tallow.

³ 'Narve' (Norway) tallow paid 10s per barrel when re-exported.

⁴ 1424/5 c. 19; *APS*, ii, 8; *ER*, v, 553, 618, vi, 8, ix, lxxv.

⁵ *ER*, v, 269, 277, 433, 501, 553.

⁶ *ER*, vii, 212.

⁷ *ER*, viii, 137, x, 358, 387.

⁸ *ER*, xvii, 464.

⁹ 1592 c 37, *APS*, iii, 561.

¹⁰ E71/30/18 (1574), E71/30/21 (1580), E71/30/28 (1593). These can be identified by the entries recording duty paid but not quantities, cf. *ER*, xxii, 336.

'dozen'), giving only the fractions (stone, dacre, ell etc). In most cases the examples cited can be identified in the printed *Exchequer Rolls* as listed in the Appendix, the few exceptions being possibly errors in copying.

Editorial method

In printing the text punctuation and capitals have been standardised and contracted words extended. Editorial corrections to the text are in square brackets.

Rollis of the cheker anent the numeratioun of skynniss, hydiss, mesuring of claith, weying of woll, custume of salmond, clayth, salt and keling, 1597.¹

Anent the nwmeratioun of skynniss and hyddiss and measuring of claith.

Nwmeratioun of hydiss: It is confessit be the merchandice that hydiss hes bene and ar daylie numberit the tyme of the custuming thair of. The quhilk is of writie and continwallie observit in the rollis of the cheker from the dayis² of King David, for in anno 1368 compt is maid be the burgh of Montros of four last fyve daker and ane hyde, and the custume of the last of hydiss is raknit xl s, and in the samen yeir compt is maid be Elgin of fyve hydiss and be Sanctandros of ane hyd. Quhilk ordour of numeratioun is keipit and observit throw out the haill rollis and comptis of the cheker. And also in the compt Air 1513 custume is payit for v hydiss,³ and be the toun of Linlithgo in anno 1512 of v hydiss, and also eodem anno be Montros half j daker of hydiss. And in anno 1534 Ja. 5 Edinburgh payis for half j daker, eodem anno Dysert for v hydiss, 1539 Kingorne iij hydiss, eodem anno Aberdeen viii hydiss and iij hydiss.

Numeratioun of skynniss: Anent the numberatioun and particular telling of skynniss. First it is to be undirstand that sex scoir of skynniss ar reknit to be the hunder according to the act of parliament Ja. 6 p [] c. 108.⁴ Quhilk is conforme to the auld use and wount observit in the dayis of King David in anno 1368 in the custume compt maid be the burgh of Striviling. And in anno 1460 in the custume compt of Edinburgh sex scoir elnis wollin claith is lykvayis reknit for the hunder. It is manifest that skynniss have bene ever particularlie numberit and tauld be ane officiar deput to that effect, callit *numerator pellium*, quaha as yit ressavis his fie thairfoir, and retenis the name and appellatioun bot usis nocht the office. In the custume compt of Montros in anno 1368 compt is maid of thrie woll [s]kynniss. Quhilk ordour is continwallie keipit in all the rollis and comptis of the cheker unto the dayis of King James the fyift inclusive. For in anno 1499 Ja. 4 compt is maid be Striviling of iiij⁵ woll skynniss and be Arbroth eodem anno of vj woll skynniss, and in anno 1492 Ja.4 [Crail]

¹ Endorsement.

² MS 'daylie'.

³ *Rectius* 22 lasts 19 daces and 5 hides. In this and later examples complete lasts and daces are ignored.

⁴ 1581 c 12, *APS*, iii, 210.

⁵ *Rectius* 974. In this and subsequent examples only final digits are given.

of xxx woll skynniss. And in anno 1493 Ja.4 in the compt of Striviling compt is maid of iij skynniss, and eodem anno be Arbroth of xiiij skynniss, and eodem anno be Aberdeen of vj skynniss, and in anno 1496 be Striviling of iiij skynniss, and eodem anno be Perth x skynniss, and eodem anno be Arbroth of j skynne, et eodem anno be Monros of j skyne. Et in anno 1512 Ja.4 compt is maid be Linlithgo of v skynniss, and 1534 Striv[il]ing xxx skynniss, and siclyk Lithgo and Innerkething. And 1531 Edinburgh payis for v skynniss, and 1539 Striviling v skynniss.

Mesuring of claith: Wollin claith suld be meswrit and that be the rig and nocht be the selvage be the act of parliament Ja.3 p.7 c.108,¹ and suld be numberit be particular and speciall number. As in the custume compt of Perth 1468 Ja.3 compt is made of fourte [nine] dosane and sex elnis of wollin claith, and siclyk in the foirsaid custume compt of Striviling Ja.3 1460, and be Dundy in anno 1458 Ja.2, and be the burgh of Perth 1533 Ja.5. And in the custume compt maid be the burgh of Air 1517 Ja.5 compt is maid of tuentie sevin dosane fyve elnis and ane half of wollin claith, and in anno 1490 Ja.4 Northbervik of vj elnis² of wollin claith, et eodem anno be Perth of vj elnis, et eodem anno be Linlithgo of vj elnis, and in anno 1492 be Hadingtoun of ix elnis, and 1493 Ja.4 be Perth of ane half elne of claith, and eodem anno be Striviling of tua elnis of claith, and in anno 1513 Ja.4 be Vigtoun of viij elnis off claith, and eodem anno be Perth of vj elnis, and be Dundee eodem anno vj elnis, and 1512 be Air x elnis, eodem anno be Irving viij elnis, et eodem anno be Edinburgh vj elnis, and 1530 Perth payis for vj elnis, and siclyk Innerkething, Dysert and Aberdeen, and 1531 Aberdeen vj elnis and Dumbartane for j elne of claith, and 1539 Air for viij elnis of claith, and 1542 Air and Dysert for vj elnis, and Kirkcudbright for four elnis of clayth. And 1539 Striviling payis for half j elne of wollin claith.

Weying of voll: The woll was justlie vyit the tyme of the custuming thair of, lykas it aucht and suld be yit without ony pull or warp, wranguslie and faslie usit be merchandis this day quhane the samen is custumat. And first in the tyme of King David in anno 1368 in the compt of Striuling compt is made of ane half stane³ of woll, and in the samen yeir be Dundee of sex stanis woll, and eodem anno in the custume compt of Edinburgh the seck of woll payit tua merkis *per*

¹ The correct citation is 1469 c. 7, *APS*, ii, 95.

² In this and subsequent examples complete 'dozens' (nominal 12 ells) are ignored.

³ In this and subsequent examples complete sacks and/or stones are ignored.

ordinationem parliamenti, and in anno 1447 Ja.2 compt is made of ane half stane of woll be the burgh of Dundee. Item in anno 1499 Ja.4 compt is maid be Linlithgo of vj stanis woll, and 1490 Ja.4 be Kingorne of the fourt part of ane seck of woll, and 1492 be Hadingtoun of ix stane, and be Coupar eodem anno of ij stane, and be Carrell eodem anno of vij stane, anno 1512 be Edinburgh of xij stanis and also eodem anno Edinburgh of ij stanis and 1513 be Dundee of ij stanis, and 1534 Linlithgo for x stanis and 1531 Perth for vj stane, and 1532 Hadingtoun for iiij stane, and 1535 Edinburgh ij stane woll, and 1540 Edinburgh iiij stane.

It is manifest that the custume of salmond and claith contenit in the actis of parliament Ja.1¹ hes bene in use and practit be the cheker comptis eftir following:

Custume of salmonde: The custume of the barrell of salmond extendis to xxx d. for ilk pundis worth of the price thair of. For in anno 1429 Ja.1 in the custume compt of Air ij^clx salmond are sauld for x lib x s and in the rollis and said compt the custume thair of extendis to xxvj s iiij d, and in the custum compt of Montros in the samen yeir the custume of xxix barell salmond of Hamburcht bind and of fyve litle barreillis extendis to xx lib vij s vj d. And in the custume compt of Aberdeen [1435] liij last and ane barrell of greit salmond and xviiiij last and vj barrell grilss payis in the name of custume j^clxxxvij li. And siclyk in anno 1446 compt is maid be the burgh of Air of x s. for the custume of ane pyip of salmond. And trew it is that the pryce of the said pyip culd nocht be abone x li becaus the merchandis confess that the pyip contenis ij barreillis and mony yeirs thairefter viz. in anno 1518 in the cheker rollis the pryce of the barrell is allowit to be ij li² and sua the pryce of the ij bareillis and consequentlie of the pyip extendis to ix li, quhairthrow it is manifest that the pryce of the pyip in the said yeir 1446 excedit nocht ten pundis.

Custume of claith: The custume of ilk pundis worth of claith extendis to ij s conforme to the act of parliament maid be King James the first³ and rollis of the cheker efter following. Primo in anno 1458 Ja.2 compt is maid be the burgh of Air of the soume of xx s for the custume of xx dosane of wollin claith, the price of the dosane extending to x s. And in the foirsaid yeir 1458 the toun of

¹ 1424/5 c. 19, 1426 c. 1, *APS*, ii, 8, 13.

² Customars of Aberdeen allowed £3 as price of a barrel of salmon given to the Sisters of St Clare of Veere (*ER*, xiv, 334).

³ 1424/5 c. 19, *APS*, ii, 8.

Kirkcudbright payit the soum of xvij li v s v d for iij^clxxxvij dosane vollin claith, pryce of the dosane viij s. As also in anno 1460 compt is maid be the burgh of Dumbartoun [Haddington] of the soume of iiij li. xiiij s. for the custume of lxxxiiij dosane wollin cloth, pryce of the dosane x s, and in the samen yeir 1460 Ja.2 compt is maid be the burgh of Kirkcudbright of the soume of xj li for the custume of ij^cxxxv dosane wollin claith, pryce of the dosane viij s, and in the samen yeir 1460 Ja.2 the burgh of Dundy maid thair custume of lxxxij dosanes claith *diversi pretii capiendo de qualibet libra ij s*. Item in the compt maid be Edinburgh 1467 Ja. 3 *precipitur computanti quatenus levet de qualibet librata panni lanei et salis pro custuma ij s quia tantum tenentur solvere*.

Custume of salt and keling: In the quhilk roll it is to be notit that the pundis worth of salt payit of custume ij s lyk as the custume of the pundis worth of keling payit als meikle, for in anno 1429 Ja.1 [Ayr] the custume of xxv dosane keling sauld for l s payit v s for custume, and yit in the said act of King James the first na mentioun is maid of salt and keling.

In the custume compt of Striviling anno 1512 *computans onerat se de v li viij s iiij d custume sexaginta quinque duodenarum panni lanei lati precium ulne xx d*. (Nota albeit this custume is nocht sa meikle as is contentit in the act of King James the first yit it far excedis the custume quhilk now is presentlie payit.)¹

¹ Deleted in MS.

Appendix: Customs accounts cited

The accounts are listed according to the roll in which they appear, followed by the volume of the *Exchequer Rolls* (*ER*). The page reference is given after the name of the port. * indicates that the details given in the memorandum do not agree with the account as printed.

- 1368 (wanting) Dundee, Edinburgh, Elgin, Montrose, St Andrews, Stirling.
- 1429 (*ER*, iv) Aberdeen (511), Ayr (498), Montrose (475).
- 1435 (*ER*, iv) Ayr (628).
- 1446 (*ER*, v) Ayr (215).
- 1447 (*ER*, v) Dundee (263).
- 1458 (*ER*, vi) Ayr (391), Dundee (388), Kirkcudbright (594).
- 1460 (*ER*, vi) Dundee (587), Edinburgh (583), Haddington (589), Kirkcudbright (594), Stirling (584).
- 1467 (*ER*, vii) Edinburgh (503).
- 1468 (*ER*, vii) Perth (587).
- 1490 (*ER*, x) Kinghorn (233), Linlithgow (239), North Berwick (227), Perth (238).
- 1492 (*ER*, x) Arbroath (362), Crail (355), Cupar (354), Haddington (353*).
- 1493 (*ER*, x) Aberdeen (386), Arbroath (385), Perth (383), Stirling (385*).
- 1496 (*ER*, x) Arbroath (610), Montrose (611), Perth (608), Stirling (606).
- 1499 (*ER*, xi) Arbroath (220*), Linlithgow (218), Stirling (227).
- 1512 (*ER*, xiii) Ayr (480), Edinburgh (483,486), Irvine (481), Linlithgow (480), Montrose (489), Stirling (479).
- 1513 (*ER*, xiii) Ayr (569), Dundee (578), Perth (578), Wigtown(576).
- 1517 (*ER*, xiv) Ayr (260).
- 1530 (*ER*, xvi) Aberdeen (41), Dysart (43*), Inverkeithing (36*), Perth (37).
- 1531 (*ER*, xvi) Aberdeen (63), Dumbarton (60*), Edinburgh (64).
- 1532 (*ER*, xvi) Haddington (147).
- 1533 (*ER*, xvi) Perth (228).
- 1534 (*ER*, xvi) Dysart (363*), Edinburgh (360), Inverkeithing (360), Linlithgow (359), Stirling (358).

1535 (*ER*, xvi) Edinburgh (374).

1539 (*ER*, xvii) Aberdeen (181), Ayr (186), Kinghorn (179), Stirling (180).

1540 (*ER*, xvii) Edinburgh (304).

1542 (*ER*, xvii) Ayr (462), Dysart (463), Kirkcudbright (462).

THE TRIAL OF GEILLIS JOHNSTONE FOR WITCHCRAFT, 1614

edited by Michael B. Wasser and Louise A. Yeoman

INTRODUCTION

On 2 March 1614, the inhabitants of Edinburgh witnessed the end of a protracted struggle: Geillis Johnstone was finally tried for witchcraft. The story recorded by the trial was one of a conflict being waged at three levels. The first was at the level of personal and community interaction, as, over a span of years, Geillis slowly acquired a reputation as a witch, and a consulter of witches. Her reputation bore fruit in the spring of 1609, when her enemies made a formal accusation resulting in a trial before the presbytery of Dalkeith. This initial trial signalled the second level of conflict: the unremitting war of the presbyterian kirk against the machinations of the Devil. Geillis was convicted of witchcraft at this time, but the story did not end there. There was a third level still to go - that of the secular legal system, and its struggle for supremacy and the rule of law. Geillis appealed her conviction to the privy council, arguing that a presbytery did not have jurisdiction to try her for witchcraft. On 20 July 1609, the privy council agreed with her, quashed the proceedings of the presbytery, and ruled that a valid trial could be held only by the justice general, or the lord of the regality of Dunfermline.¹ It took five years, but Geillis was eventually tried before the regality court of Dunfermline, only to be acquitted on all the charges.

There are three manuscripts included here. The main one is a draft transcript of the proceedings of the 1614 trial, which was preserved in the records of the high court of justiciary.² It consists of twelve folio pages,

¹ *Register of the Privy Council of Scotland (RPC)*, viii, 328-9. See also *RPC*, xiv, 612, for the personal account of Sir Thomas Hamilton, then king's advocate, and later earl of Haddington. These events are also referred to in the main manuscript.

² National Archives of Scotland (NAS), high court of justiciary, court books, old series, regality of Dunfermline, JC1/38.

eleven of which are in good condition. The twelfth is dirty and torn.¹ The text is mainly concerned with the legal arguments used by the lawyers, but other topics, such as community opinion, are embedded in those arguments. A further discussion of this manuscript can be found under the heading 'Criminal procedure and the organisation of the manuscript' on page 104 below. The other two manuscripts are the summons for the trial, and the execution of the summons against Geillis, the witnesses, and the jury panel.² These can be considered as appendices to the trial transcript. All three manuscripts are held in the National Archives of Scotland. Other aspects of Geillis's story are contained in other sources. The privy council register records Geillis's appeal against the presbytery, but the official presbytery records themselves are silent.³ The Edinburgh commissary court register of testaments also provides supplementary information.⁴ A systematic examination of other local records might well yield still more.

The Geillis Johnstone case touches on many different aspects of Scottish history, making it a particularly valuable document. While there are many other witchcraft trials in print (especially in the pages of Pitcairn's *Criminal Trials*⁵ and the *Selected Justiciary Cases*⁶), this one is especially informative on witchcraft theory and criminal law. It is not mentioned in Christina Larner's *Source-Book of Scottish Witchcraft* (although the 1609 entry in the *Register of the Privy Council* is included),⁷ and it has a number of unusual elements that set it apart from other witchcraft trials. It features the only known accusation of baby sacrifice in Scottish trials and also an accusation of raising the Devil—rare in Scottish witchcraft cases. It is the only known trial in a regality court. The bailie of the regality was Alexander Seton, earl of Dunfermline, who was chancellor of Scotland at this time and was formerly president of the college of justice. He gathered about him a bench of assessors who represented the cream of Scottish legal society. Several decisions resulted that were contrary to normal usage in witchcraft cases. One of these decisions was mentioned in Hope's *Major*

¹ See under the heading 'Editorial method', below p. 104.

² NAS, high court of justiciary, witchcraft papers, JC40/8.

³ See NAS, Church of Scotland records, presbytery of Dalkeith, CH2/424/1 for 1609.

⁴ NAS, commissary court of Edinburgh, CC8/8.

⁵ R. Pitcairn (ed.), *Ancient Criminal Trials in Scotland*, 3 vols. (Maitland Club, 1833).

⁶ *Selected Justiciary Cases, 1624-1650*, 3 vols., eds. S.A. Gillon & J.I. Smith (Stair Society, 1953-74).

⁷ C. Larner et al., *A Source-Book of Scottish Witchcraft* (Glasgow, 1977), 62.

Practicks,¹ making this case a permanent part of Scottish legal history. The trial also represented a contest of wills between the ecclesiastical and secular establishments on questions of jurisdiction and how witchcraft was to be treated.² As such, it has a bearing on the important issue of church-state relations prior to the 1638 National Covenant.

Personalities and the community

Geillis Johnstone was the widow of John Duncan, a burghess of Musselburgh who had died in 1596. She had at least five sons, John (who died in 1608), William, James, Gavin and Robert. The family was not particularly wealthy,³ but it was well off and respectable. William, who helped to defend his mother at her trial, was a burghess of Musselburgh, and Geillis was able to maintain a number of servants, and employ people to thatch her house. Her family was involved in the brewing trade, and so were many of her neighbors.⁴ The accusations against her portray her as a woman of forceful personality, but as hostile testimony they must be treated with caution. Yet the fact that she successfully fought off the accusations against her over a period of five or more years, drawing into the process the leaders of Scotland, argues that either she or her family possessed considerable strength of will.

Geillis's main opponents were members of the Vernor family. The two private pursuers in her 1614 trial were Robert Strachan, burghess of Musselburgh, whose mother was Isobel Vernor,⁵ and John Vernor, also a burghess of Musselburgh. John Vernor had been the principal pursuer in her trial before the presbytery in 1609. The Vernors were prominent in the community, and had strong ties to the kirk. In 1627, Mr Adam Colt, minister of Musselburgh, chose John Vernor, then one of the bailies of Musselburgh, and Robert Vernor, a portioner of Inveresk, as two of his

¹ Sir Thomas Hope, *Major Practicks, 1608-1633*, 2 vols., ed. J. Clyde (Stair Society, 1937-8), ii, 306.

² For another case which prompted secular/ecclesiastical rivalry see that of Grissell Gairdner in Fife, 1610. The Archbishop and 'certane nobilmen' wished to try her—permission was refused. Pitcairn, *Trials*, iii, 95-8.

³ John junior's estate was £451 when he died. NAS, commissary court of Edinburgh, CC8/8/47, fo. 115v.

⁴ Four of the articles in the indictment (6, 11, 17 and 18) include accusations of Geillis's having bewitched people's malt.

⁵ In her testament, Isobel Vernor is described as the widow of Robert Strachan. NAS, commissary court of Edinburgh, CC8/8/49, fo. 190r. The Robert Strachan who appears here is the son of this marriage, as shown below, p. 132, where his mother's sister is said to be a Vernor.

colleagues in the king's commission to report on the state of the parish.¹ Adam Colt led the presbytery's attack on Geillis in 1614. The Vernors were also relatively rich. Isobel Vernor, Robert Strachan's mother, was worth £1768 when she died. She had ties with other pillars of the establishment: she rented from George Nisbet, the town schoolmaster, and lent money to Mr William Penman, the minister of Crichton.² Penman, along with the rest of the presbytery, was apparently very anxious about bringing witches to justice, as his letter of 1607 on behalf of the Dalkeith presbytery (to William Hart, the justice depute) showed. He lamented the lack of enthusiasm among 'the comonne pepill' to 'hazard thame selfs for godd's glorie' in this laudable pursuit, due to their 'superstitious opinioniiis'.³ Contacts like Penman and Nisbet indicate that Isobel Vernor might have wielded considerable influence of her own amongst different—perhaps self-consciously godly—circles. Schoolmasters and ministers were handy people for taking down depositions, gathering evidence and pushing for witch trials.

The community in which Geillis lived consisted of the town of Musselburgh, the villages of Fisherrow and Newbigging, and the surrounding countryside. Most of this belonged to the parish of Inveresk, alias Musselburgh. It was part of the presbytery of Dalkeith, and also a detached part of the regality of Dunfermline. In recent years, the hereditary bailie of the regality had purchased the local estate of Pinkie, and become much involved with it. This made him a member of the community, but since he was also earl of Dunfermline and chancellor of Scotland, his influence and power extended far beyond the community. It was his presence that gave this case most of its unique qualities.

Witch beliefs, interpersonal conflict, and community opinion

As has been argued by Louise Yeoman elsewhere, there were links between certain types of religious experience and a belief in the reality of the Devil and his servants the witches.⁴ Ministers, practicing the conversion-centred type of divinity which was popular in Scotland at this

¹ *Reports on the State of Certain Parishes in Scotland...1627*, ed. A. MacDonald (Maitland Club, 1835), 75, 81.

² NAS, commissary court of Edinburgh, CC8/8/49, fo. 190r.

³ NAS, high court of justiciary, processes, 1550-1975, JC26/5/2. Hart had written to the presbytery asking it to nominate jurors for the trial of Bartie Peterson, the warlock, and the presbytery had obliged—the list of suitable jurors had been enclosed by Penman.

⁴ L.A. Yeoman, 'The Devil as doctor: witchcraft, Wodrow, and the wider world', *Scottish Archives*, i (1995), 93, which gives both Catholic and Protestant examples.

time, were likely to be enthusiastic witch-hunters, since their own spiritual lives could convince them experientially of the reality of Satan. Given their 'police' function as members of the kirk session, they were ideally placed to hear all the rumours and gossip of their parish concerning suspected witches. Given their catechetical function, they were ideally placed to spread elite witch-lore in the course of educating their parishioners. Ministers also constituted an obvious category of local expert in matters supernatural, to be consulted in cases of suspected witchcraft. Thus the presbytery, a body composed at this juncture wholly of ministers, was in some ways the ideal body to investigate such matters as it contained relevant expertise and could easily follow up local leads and question and take depositions; but it could also be just that little bit too keen on burning witches. Ministers who themselves experienced the Devil raging in the 'terrors' phase of conversion, or who saw their lives as a constant battle against the Devil in spiritual warfare, could easily believe that he was busily subverting their parishioners.¹ Since they were in a personal covenant of grace to God with their names in the book of life it was easy to believe that others had sold out to the common enemy of mankind, taking him as their head and master instead of Christ.

There was a school of influential devotional thought of the period, developed by contemporary ministers such as James Melville and latterly Samuel Rutherford, which encouraged godly ladies, and men for that matter, to think longingly and in erotic language of Christ their head and husband. For example, Melville in his poem on the Song of Songs, 'The Reliefe of the Longing Soule', written in 1606 and dedicated to Mrs Nicholas Murray, developed the theme of Christ as the bridegroom and the Church as the bride to express both 'the estate of the church of Jesus Christ and of everie faithful soul within the same'. The soul, already betrothed to Christ, longs deeply in her heart for full union with him, 'like an honest loving damsel betrothed to the husband of her youth' who has had to go on a journey far away. 'Her heart being inflamed with love is loded with languor and desire of meeting, mariage and conjunction with her husband ... The Church and faithful soules are this damsell, Jesus Christ is the husband by the Covenant of Grace contracted with his church.'² Samuel Rutherford writing to Lady Kenmure about prayer uses language that is still more suggestive: 'it is the house of wine where you meet your well-beloved. Here it is where he kisses you with the kisses of

¹ Ibid., 95-6.

² National Library of Scotland, James Melville's poems, Adv. MS 19.2.7, fos.60r.-61v.

his mouth'.¹

If the erotic language of the Song of Solomon was the correct and spiritual way to think of Christ 'your husband', then an appropriate inversion was for malefic little old ladies to physically welcome *their* spiritual head and husband, the Devil, into their beds for a bit of less-than-heavenly houghmagandie - and in a manner unlikely to have met with Solomon's approval. Geillis was not explicitly accused of carnal copulation with the Devil, but we do not have her dittay here, only the allegances to the relevance and the assize. Some of the authorities cited (Perkins and Bodin) certainly did think that sex with the Devil was a common part of demonic pact and service.² It was natural for the godly to think of the Devil's children indulging in direct demonic parody of the socially sanctioned model. That later epitome of the godly man, Archibald Johnston of Wariston, proudly recorded in his diary how he offered up his child to Christ 'as hartily as any witch would to her master the Devil'.³ Such attitudes would help to explain the enthusiasm of the presbytery in the conduct of its case against Geillis. They knew what she must be up to with her head and husband, and they owed it to theirs to put a stop to it. It was not just treason, it was infidelity and (to use Julian Goodare's concept) spiritual fornication: the offspring of which was not the live fruit of an illegitimate babe but the dead fruit of the sacrifice of an unbaptised 'embrion'.⁴ This is why it was so important for Geillis's lawyers to succeed in having the ministers barred. Witch-hunting could pack a spicy emotional kick for the godly, representing the awful distorted mirror image of their own profoundly intimate and intense love affair with Christ.

The influence of continental witchcraft theorists also surfaces in this case. Raising the Devil (as seen in articles 1 and 2 of the dittay) was a rare enough accusation in Scottish witchcraft trials, but the alleged baby sacrifice of article 2 of the indictment is unique in Scotland. It seems to derive from the work of continental theorists such as Bodin and Boguet.⁵

¹ Samuel Rutherford, Rutherford to Lady Kenmure, 1 Feb. 1630, *Letters* (London, n.d.), 13.

² J. Sharpe, *Instruments of Darkness: Witchcraft in England, 1550-1750* (London, 1996), 136.

³ Sir Archibald Johnston of Wariston, *Diary, 1650-1654*, ed. D.H. Fleming (Scottish History Society, 1919), 152.

⁴ J. Goodare, 'Women and the witch-hunt in Scotland', *Social History*, xxiii (1998), 288-308, at p. 294.

⁵ See below, p. 113.

Henri Boguet, a grand juge in the lands of Franche-Comté, devoted an entire chapter of his *Discours des Sorciers* to the subject of how demonic midwives killed the babies they delivered and offered them up to the Devil.¹ What gave the article an electrifyingly Scottish twist was the Devil's disguise as a Highland doctor. This embellishment was based on what was at the time a living tradition of Gaelic medical excellence in the shape of the Beatons and other learned Gaelic physicians.² Gaels such as Irish Jonet, who featured prominently in the accusations, brought a knowledge of Gaelic culture to the lowland burgh of Musselburgh, and much of this story appears to have been drawn from her confession. In it two traditions, Scots popular culture and European elite witch-lore, were woven together almost seamlessly—no doubt the work of the European trained or influenced lawyers and ministers handling Jonet's deposition. However other folklore elements in the case drew on material which appears to belong to a common European popular context - notably the accusation of cattle sacrifice by 'eirding of the twa oxen quik' in article 19, which is a Scottish analogue to the subject matter of David Sabean's *Power in the Blood*, in which an entire small German village actually did bury a bull as a cure for cattle disease.³ One witness in Geillis's case called cattle burial 'ane ordiner cure practiyet be all that had the lyk diseas'.⁴

Both the folk context and the learned context served the same ends in this case—the waging of a burgess-class vendetta: the Vernors and the Strachans plus supporters versus the Johnstones and the Duncans plus supporters. The Vernors and the Strachans managed to enlist notable community support, including both schoolmaster and presbytery. The Johnstones and the Duncans, however, managed to grab both top legal counsel and the chancellor of Scotland.

This vendetta probably began with a marriage alliance between the two families. John Duncan, Geillis's deceased son, had married a daughter or kinswoman of John Vernor. The first article of the indictment featured John's death: according to the Vernors, John was a victim of his

¹ Henri Boguet, *Discours des Sorciers* (Lyons, 1602), mentioned in E.W. Monter, *Witchcraft in France and Switzerland. The Borderlands in the Reformation* (Ithaca, N.Y., 1976), 127. For the rarity of 'raising the Devil' see C. Lerner, *Enemies of God: the Witch-Hunt in Scotland* (London, 1981), 148, 151.

² J. Bannerman, *The Beatons: a Medical Kindred in the Classical Gaelic Tradition* (Edinburgh, 1986).

³ D. W. Sabean, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984).

⁴ See below, p. 135.

own mother's witchcraft, when she accidentally bewitched his shoe instead of David Bairnfather's shoe, thereby killing her son instead of her servant! John died in 1608, one year before the presbytery trial, and John Vernor owed him 450 merks as part of the marriage contract.¹ In addition, the marriage left a sole child heiress, Geillis Duncan. Carol Karlsen's work on New England witchcraft cases advances the theory that female inheritance caused tensions in the community which could result in witchcraft accusations—in this case aimed not at the little girl who inherited, but at her grandmother, who played an active role in the Duncan family fortunes.² It is interesting that the case first surfaced in the presbytery the year after John's death. The testament itself was not registered until 1612. Delays in registering testaments were common, but in the light of Karlsen's work, the possibility of a wrangle is raised.

There is also a connection between this case, with its family feuds, and the witch hunt of 1590-91. Articles 21 and 22 of the indictment accused Geillis of having consulted Annie Sampson, one of the North Berwick witches in 1590, in order to cure people by charming and witchcraft. Sampson was indeed convicted of having cured John Duncan, Geillis's husband, and of having treated Geillis herself with an egg in vinegar,³ and the 1590 hunt, where Geillis's name first became linked with witchcraft, may have had similar origins to Geillis's own prosecution.

In 1590, David Seton, bailie of Tranent, apparently chose witchcraft accusations as his method to secure the ruin of his much richer sister-in-law Euphame MacCalzean. She appears to have had a reputation as a litigious woman, and had also angered powerful people in her pushy matchmaking efforts for her three heiresses—another indication that Karlsen's thesis may have applications in Scotland. The simmering family dispute then spiralled upward to engulf the royal court in a sensational full-scale witchcraft panic and treason trial.⁴ In both cases, all

¹ NAS, commissary court of Edinburgh, CC8/8/47, fo. 115v.

² C. Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York, 1987), 83.

³ Pitcairn, *Trials*, i, 232; NAS, high court of justiciary, processes, 1550-1975, JC26/2/12. It is also interesting to note that by taking her grandmother's name, little Geillis Duncan, the heiress, bore exactly the same name as the servant girl Geillie Duncan who had been at the centre of that witchcraft case. There is a definite chance that the original Geillie came from the same Duncan family.

⁴ L. Yeoman, 'Hunting the rich witch in Scotland: high-status witchcraft suspects and their persecutors, 1590-1650', in J. Goodare, ed., *The Scottish Witch-hunt in Context* (Manchester, 2002) 106-121. For family connections, see NAS, commissary court of Edinburgh, CC8/8/14, fo. 179v., will of Katherine Litill, spouse of John Moscrop,

normal remedies for settling a family feud with the in-laws had somehow failed, and the parties embarked upon the early modern equivalent of taking an appeal to the House of Lords in an argument over a garden fence.

But the broader issue in these two related cases is the failure of early modern burgh communities to cope with a certain type of conflict. Advantageous marriages could bring disadvantageous in-laws. In the course of Michael Wasser's extensive study of cases of violence before the privy council and justice court, only one out of a sample of 806 cases from the period 1603-38 involved violence against in-laws.¹ Either Scots relations with in-laws were exceedingly harmonious or there was a very strong social taboo concerning violence or raising prosecutions against in-laws. Furthermore, while an offensive wife might be divorced, in-laws were as immovable as blood kin, so long as the husband remained married. Violently disliked, financially powerful female in-laws were the subject of what was possibly a double set of taboos against them: they were women and they were kin by marriage. Witchcraft accusations offered one solution, all the more so if the accuser genuinely believed them. This was the route chosen by David Seton in 1590, and the Vernors in 1609/14.

However, no matter how bitter the dispute between the Vernors and Duncans may have been, it alone cannot explain the prosecution. Only three of the twenty-six articles in the indictment refer to the Vernors or Strachans, and women were not usually tried for witchcraft unless they had previously developed a reputation as a witch in the community as a whole.² Evidence concerning Geillis's reputation in the community is embedded in the text. For example, we have already seen that Geillis's family featured in the 1590-1 witch hunt. This shows that her reputation, like that of other witches, was a long time in the making. Many of the articles also portray her as practicing traditional forms of *maleficium*, the staple element of a witch's reputation in her community. Geillis was accused of both curing and injuring people through witchcraft; she supposedly committed murder, transferred illnesses from one person to another, damaged people's malt, cured cows of the 'lowing ill',³ opened

mother of Euphame's husband Patrick and Seton's wife Katherine Moscrop. For Euphame's matchmaking activities: Pitcairn, *Trials*, i, 252; for legal disputes over the lands of Cliftonhall, Pitcairn, *Trials*, i, 247-8.

¹ Based on research done for: M. Wasser, 'Violence and the Central Criminal Courts in Scotland, 1603-1638' (Columbia University Ph.D. dissertation, 1995).

² Lamer, *Enemies of God*, 103-6.

³ A cattle disease characterised by continuous bellowing on the part of the cows.

locked doors, and caused a man to fall off a ladder and break his arm. Her alleged victims ranged from Euphame Douglas, wife to Mr George Nisbet (the town schoolmaster and Isobel Vernor's landlord), to an ordinary weaver of Musselburgh named Robert Craig. In addition, four of the articles—numbers 21, 23, 24 and 25—are concerned solely with consulting other witches, and many of the others include consultations with witches in their contents. Association with other witches was a major ingredient in an individual's own reputation.

The court and the law

As an object of suspicion on the part of her enemies, her community, and the kirk, Geillis Johnstone was in a very dangerous position, and the presbytery found no difficulty in convicting her in 1609.¹ It is surprising, therefore, to find that she was acquitted in 1614. This manuscript explains why: various types of evidence and witnesses were barred from consideration, and those witnesses who did testify—all summoned by the pursuers—said that they knew nothing concerning the charges against Geillis. With no evidence, the jury acquitted her. But why were certain types of evidence and witnesses barred? Why did prosecution witnesses not testify for the prosecution? And were these puzzles linked to other unusual aspects of the trial: the fact that it was tried in a regality court in which the chancellor of Scotland was the judge, the fact that there were thirteen assessors drawn from the top of Scottish legal and political society, the fact that half of the articles of the indictment were rejected by the court before they went to the jury, the fact that the witnesses testified orally before both the defenders and the jury? Unfortunately, there is no evidence in this manuscript or elsewhere that speaks directly to the question of motivation for these unusual proceedings. But we will offer an argument here that explains the proceedings, and in which the question of motivation is supported by plentiful indirect evidence.

Alexander Seton, earl of Dunfermline, was at the apex of both the legal and political establishment of Scotland. Like many other well trained, sophisticated lawyers, he was dissatisfied with various aspects of Scotland's laws and legal system, one of these being how evidence and witness testimony was used in criminal trials.² This has obvious

¹ This is not referred to in the privy council proceedings, but her lawyers do mention it in the 1614 trial, as part of their attempt to bar the members of the presbytery from testifying.

² The story of Scots lawyers' opinions on their native law requires an article in itself to be

implications for witchcraft trials, where low standards of evidence were necessary for many individual convictions, and for all large scale witch hunts. When Geillis Johnstone's case came to his attention he decided to intervene.¹ As chancellor, he sat at the privy council meeting where Geillis's conviction by the presbytery of Dalkeith was overturned.² He was also instrumental in the order issued by the council authorising a trial before Dunfermline himself in his capacity as hereditary bailie of the 'regality of Dunfermling'.³ When the determination of Geillis's pursuers and the kirk made a further trial necessary, Dunfermline ensured that it took place in his own court, rather than before the justice, or a special commission of justiciary appointed by the privy council. He then surrounded himself with thirteen colleagues to support and publicise his decisions, and made a series of rulings designed to eliminate spurious evidence and to demonstrate to Scotland how a criminal trial in general, and a witchcraft trial in particular, should be conducted. Intimidated or actively curbed by the judges, the prosecution witnesses refrained from repeating hearsay testimony and confined themselves to what they knew of their own knowledge, which was that they 'knewis nathing to hir bot honestie'.⁴ Consequently, the jury acquitted Geillis.

As stated above, there is no direct evidence of Dunfermline's intentions: they must be inferred from his actions and other evidence. But as to what was done, and that a concern over standards of evidence was central, there can be no doubt. The various important and unusual aspects of the case are explored below, point by point.

i) The court.

Prosecution of witches in Scotland was based on the Witchcraft Act of 1563. This law specified that any ordinary judge in the kingdom could try a witch: sheriffs, bailies of regality, and more.⁵ However, this provision appears to have lapsed at a very early date. In the late seventeenth

written some day. Some of the reformers' opinions can be seen, however, in a commission to codify the law, *RPC*, 2nd ser., ii, 365-7.

¹ M. Wasser argues that the privy council was deliberately reining in overenthusiastic witch-hunting in this period: 'The privy council and the witches: the curtailment of witchcraft prosecutions in Scotland, 1597-1628', *Scottish Historical Review*, (2003) lxxxii, 20.

² *RPC*, viii, 323, 328-9.

³ *Ibid.*, 329.

⁴ This phrase, or variations of it, was repeated by four of the witnesses summoned by the pursuers.

⁵ *Acts of the Parliaments of Scotland* [APS], ii, 539, c. 9.

century, Sir George Mackenzie thought that it meant only that inferior judges could concur in the punishment, not that they could actually try witches, and he wrote 'Nor find I any instances wherein these Inferior Courts have tryed this Crime.'¹ This is, in fact, the only record we have of a regality court trying a witchcraft case.²

Two observations can be made concerning the choice of the court. First, Geillis had found caution to appear before 'the lord of the regalitie quhair scho dwellis' even before the presbytery tried her, so she was appealing to Dunfermline's authority at an early date.³ Second, the choice of venue meant that the procurator fiscal of the regality conducted the prosecution instead of the king's advocate. The fiscal was so inferior to Geillis's advocates⁴ that he had to hire an advocate of his own to help him plead.

ii) Dunfermline and the assessors.

Alexander Seton was the third surviving son of George, fifth Lord Seton.⁵ He pursued a career in law and politics that saw him rise to the top in both professions. He was president of the college of justice, 1593-1605, and chancellor of Scotland, 1605-22; he was created earl of Dunfermline in 1605. One of the lesser offices that he acquired in his career was that of hereditary bailie of Dunfermline.⁶

The thirteen assessors were also all important men. They included John Spottiswood, archbishop of Glasgow;⁷ Thomas Hamilton, Lord Binning,⁸ secretary; Mr John Preston, president of the college of justice, and three officers of state: the clerk register, the justice clerk and the

¹ Sir George Mackenzie, *The Laws and Customs of Scotland in Matters Criminal* (2nd edn., Edinburgh, 1699), 47.

² Christina Lamer thought that regalities did occasionally try witchcraft, but she gave no instances of this occurring: Lamer, *Enemies of God*, 37. However, there are stray references to trials that might have been held in regalities or other local jurisdictions. See for example *RPC*, xiv, 605, where the earl of Mar reports to the privy council about a trial held in Brechin, the details of which do not appear in any other source.

³ *RPC*, viii, 328-9.

⁴ Mr Alexander King, Mr Alexander Peebles and Mr Laurence McGill. King was one of the the commissioners to treat of a union with England in 1604, so one can see that Geillis had access to the very best legal talent: *RPC*, vii, 457. One of the other lawyers nominated was Mr William Oliphant, now the king's advocate, who would have been Alexander King's opponent if this case had been tried in the king's court.

⁵ For Dunfermline's career, see M. Lee, 'King James's popish chancellor' in I.B. Cowan & D. Shaw (eds.), *The Renaissance and Reformation in Scotland* (Edinburgh, 1983).

⁶ G. Seton, *Memoir of Alexander Seton, earl of Dunfermline*, (Edinburgh, 1882), 102.

⁷ Later archbishop of St Andrews.

⁸ He is better known by his later titles of earl of Melrose and earl of Haddington.

king's advocate. Sir James Skene, a future president of the college of justice, was present; he was just beginning his career at this time. All of these men were lords of session and there were also an additional three lords of session present. The justice depute, who would have presided had this trial been held in the king's court, was also present, and was the lowest ranked of the thirteen men. The group was rounded out by Robert Kerr, earl of Lothian, and James Law, bishop of Orkney.¹ All these men were privy councillors at one time or another. They were all colleagues of Dunfermline's in running the government of Scotland. So what were they doing sitting in on the trial of a witch?

Assessors were added to a court either because the case was expected to be complicated, and the judge was deemed to require counsel, or for reasons of prestige.² It is true that if this case had been heard before the justice depute, a few assessors would have been normal. Margaret Wallace, whose social status and crimes approximated those of Geillis, had three assessors at her trial.³ But Geillis's thirteen assessors were actually more than the nine assessors who sat for the treason trial of the earl of Orkney.⁴ Dunfermline and his colleagues must have considered the case to be important. And the only topic of importance that presents itself is that of restricting overly zealous witch hunting. This becomes even more likely when one considers who has been added and who has been left off the bench. Spottiswood and Binning were actually Dunfermline's rivals for power at this time, rather than his allies.⁵ But both men are on record as opposing an over-enthusiastic witch hunt. Spottiswood decried the excesses of the 1597 witch hunt, and blamed them on the 'credulity' of the ministers, and 'the too great forwardness that way' of many others.⁶ Binning also decried the 'gret and mony inconvenientis and the exceiding great sclander' which past witch hunts had produced, and recorded the privy council's preference for caution,

¹ The full names of all the assessors will be given in footnotes to the text.

² This observation is based on research done for Wasser, 'Violence and the Central Criminal Courts'. For two brief notices of assessors in other works, see D. Hume, *Commentaries on the Law of Scotland Respecting Crimes*, 2 vols. (2nd edn., Edinburgh, 1819), ii, 16-17, and *Selected Judiciary Cases*, ii, pp. xxvi-vii.

³ Pitcairn, *Trials*, iii, 508.

⁴ Pitcairn, *Trials*, iii, 312. Of the nine, five had earlier served at Geillis Johnstone's trial: Dunfermline, Binning, Preston, Cockburn of Ormiston, and Lord Medhope.

⁵ M. Lee, jr., *Government by Pen: Scotland under James VI and I* (Urbana, Ill., 1980) 41, 47, 53-5, 112-13, 117-23, 147-8.

⁶ John Spottiswoode, *History of the Church of Scotland*, 3 vols., eds. M. Napier & M. Russell (Spottiswoode Society, 1847-51), iii, 66-7.

rather than the aggressive pursuit of witches.¹ On the other hand, one man who might have been on the bench, and was not, was more aggressive in his pursuit of witches. George Gledstanes, archbishop of St. Andrews, was currently involved in pursuing witches within his diocese.² Gledstanes was particularly insistent that the presbytery of Kirkcaldy take action against Agnes Anstruther, when the presbytery itself was reluctant to do so, a very different attitude from that displayed by Spottiswood.³ After Gledstanes died in 1615, and Spottiswood succeeded him, nothing more is heard of Agnes Anstruther.

iii) Pleadings against the relevance.

After the indictment against Geillis had been read, her lawyers proceeded to make preliminary challenges either to the relevancy, or competency, of each of its twenty-six articles. This meant that they were attempting to convince the judges that the allegations of fact did not warrant the conclusion made in the libel, or (as was accepted in the case of article 3, which was probably relevant) that improper execution of the indictment invalidated the process. Although objections to the indictment were routinely raised, they were rarely successful. But in this case, twelve articles of the indictment, and parts of two others, were rejected by the judges. By contrast, in the trial of Margaret Wallace, all eleven articles in her indictment were declared relevant,⁴ and when Agnes Fynnies lawyers succeeded in having five out of twenty articles dismissed, J.I. Smith, who edited the case, wrote that this was 'a remarkable if not unique achievement for the defence'.⁵

Three articles (numbers 3, 17, and 24) were rejected because they had not been inserted in the copy given to the defender as part of her summons, as the law required. For the remaining eleven (all of numbers 7, 11, 12, 14, 15, 22, 23, and 26, and parts of numbers 2 and 18) the judges simply referred back, in a very general fashion, to the defence's arguments. Unfortunately, it seems that the same types of arguments appeared in both the accepted and the rejected articles, so it has been impossible to understand the judges's reasoning.⁶

¹ *RPC*, xiv, 613-14.

² *Ecclesiastical Records. Selections from the Minutes of the Synod of Fife 1611-1637*, ed. G. R. Kinloch (Abbotsford Club, 1837), 19, 57, 61, 71, 75, 76, 79.

³ *Ibid.*, 71, 75, 76, and 79. The dates were October 5-6, 1613, and May 3-4, 1614, just at the same time as the Geillis Johnstone trial.

⁴ Pitcairn, *Trials*, iii, 524.

⁵ *Selected Justiciary Cases*, iii, 634.

⁶ This is typical. J.I. Smith was also unable to tell why some articles were rejected and

iv) Testimony in the trial before the presbytery of Dalkeith.

Since the 1614 trial was essentially a replacement for the invalidated presbytery trial of 1609, it is important to understand what went on in that trial, as far as we can. Since the presbytery records themselves are silent, there are two sources: this trial, and the privy council process of 1609. In the 1614 trial, Geillis's lawyers claimed that 'dyverss wemen and uthyr suspect persones, hir evill willeris'¹ were received as witnesses by the presbytery in 1609. Another indication of low standards of evidence and of coercion in the presbytery trial is Geillis's claim in the 1609 privy council appeal that the presbytery had held her 'in proces' before them for seven weeks, subjecting her to 'tryall, examinationis, and quhatsumevir forme of procedoure thay pleisit use aganis hir'.² This strongly suggests that the 'confession' which Geillis is alleged to have made to the presbytery about consulting witches—referred to in article 24 of the 1614 indictment—was extorted from her in some way, perhaps by persistent questioning, by threats, or by sleep deprivation.³ This background must be kept in mind in evaluating the treatment of witnesses and evidence in the 1614 trial.

v) Barring female witnesses.

When the pursuers began to introduce their witnesses, Geillis and her lawyers could either challenge them to attempt to bar them from testifying, or admit them. Some were admitted, but others were challenged. Among the grounds for challenge in Scotland was the fact of being a woman.⁴ At first glance then, it is not surprising that when Margaret Jak, one of the witnesses to the second article of the indictment was challenged, the judges barred her and all other women from testifying. However, in 1591, under pressure from King James, the college of justice had passed an act of sederunt allowing women to testify in atrocious crimes such as heresy—which included witchcraft—and

others allowed. *Selected Justiciary Cases*, iii, 634.

¹ See below, p. 131.

² *RPC*, viii, 328-9.

³ Lamer, *Enemies of God*, 34, 107-9, discusses the importance of sleep deprivation in Scottish witch hunts. Her lawyers did not claim that Geillis was tortured. No confession was presented, and it may have been an oral one only.

⁴ For lists of people who could not be witnesses, including women, see Sir James Balfour, *Practicks*, 2 vols., ed. P.G.B. McNeill (Stair Society 1962-3), ii, 377-9 and Hope, *Major Practicks*, ii, 263.

treason.¹ The records are filled with instances, both before and after this trial, where women did testify in witchcraft trials. How then could a bench composed of the most learned lawyers in the land rule that 'wemen' could not testify 'in this matter'?² As usual, no reason for the decision was given, but two possibilities exist. First, the judges might have reasoned that the 1591 act permitted but did not require the admission of women, and so they followed their own preferences in the matter.³ Second, they might have argued that an act of sederunt from the college of justice could not be applied in a private regality court.⁴ This returns us to the novelty of trying a witch in a regality court.

To modern sensibilities it is an outrageous act of bias to use gender as a basis for eligibility to testify. But in the early seventeenth century and previously, it was viewed as a question of maintaining high standards of evidence—women simply were not fit to testify. In the lists of those ineligible, women were grouped with children, perjurers, thieves, the kin of the pursuers, and the insane—all people whose testimony, for reasons of bias or incompetence, would not be trustworthy. In the *ius commune*, in which people such as Dunfermline had been educated, emphasis was placed on the 'weighing' of testimony. At least two eyewitnesses were required to prove a crime, but if the witnesses were female, then even three or more were not sufficient.⁵ Thus Geillis's lawyers argued concerning Margaret Jak that women could not be admitted as witnesses in matters involving forty shillings, so how much less 'in this matter of lyfe and death.'⁶ When exceptions were made and women were admitted, it did not constitute a challenge to these beliefs, it simply represented a necessary lowering of standards in order to obtain convictions. King James made this explicit in his arguments to the jury that had acquitted

¹ MacKenzie, *Laws and Customs*, 265-6; Hope, *Major Practicks*, ii, 268. For James's personal role see H. Stafford, 'Notes on Scottish Witchcraft Cases, 1590-91', in N. Downs, (ed.), *Essays in Honor of Conyers Read* (Chicago, IL, 1953), 109, and *Calendar of the State Papers relating to Scotland and Mary Queen of Scots, 1547-1603* [*CSP Scot.*], 13 vols., eds. J. Bain et al., (Edinburgh, 1898-1969), x, 522.

² See below, p. 130.

³ The English ambassador Robert Bowes, whose report informs us of James's role, also wrote that 'The authors of it are not wholly of one mind about it.' *CSP Scot.*, x, 522. In 1591 Dunfermline was on the session but was not yet president—he was probably involved in the debate.

⁴ The college of justice was a normal venue for legislation regarding witnesses: Hope lists as many 'Statuts of Sessione' as he does acts of Parliament. Hope, *Major Practicks*, ii, 267-8.

⁵ Mackenzie, *Laws and Customs*, 265.

⁶ See below, p. 130.

Barbara Napier.¹ Jean Bodin argued that not one in a hundred thousand witches would be convicted if normal rules of law were applied.² Thus, when the judges barred female witnesses, it must be seen as a statement in favour of higher standards of evidence.

vi) The testimony of Mr Adam Colt and the presbytery of Dalkeith.

Another unusual ruling was the barring of the testimony of the presbytery of Dalkeith, represented by Geillis's parish minister, Mr Adam Colt. For once, the reason for the decision was given—it was due to the defence's demonstration that the presbytery had previously sat in judgement on Geillis, and had had their verdict reduced by the privy council. This sounds very convincing—until one notices that the privy councillors in their 1609 ruling had specifically admitted the presbytery's right to investigate Geillis, and to submit their findings to the proper judge.³ Eight members of the bench in this trial had been present at the sitting of the privy council when this ruling was delivered.⁴ It seems odd that no one remembered that the presbytery *did* have the right to testify, especially when it was normal procedure for the ecclesiastical authorities to submit evidence in witchcraft trials.

To understand this ruling, we must return to the original presbytery trial. Geillis and her lawyers, both in 1609 and 1614, mentioned the use of illegitimate witnesses, procedures, and evidence against her at this trial. Although the trial was reduced on purely jurisdictional grounds, we have suggested that informally, Dunfermline and many of his colleagues were concerned about the quality of the evidence as well. The fact that they barred female witnesses in the 1614 proceedings tends to confirm this. But if the ministers had been allowed to testify in 1614, then all of this illegitimate 1609 evidence would have been admitted once again, through them. For example, women testified in 1609 and were barred in 1614, but the ministers, in presenting their evidence, could simply repeat to the jury what the women had said in 1609.⁵

¹ Robert Bowes to Burghley, 8 June 1591, *CSP Scot.*, x, 525. This trial took place in 1591.

² *Materials toward a History of Witchcraft Collected by Henry Charles Lea, LL.D.*, 3 vols., ed. A. C. Howland (New York, NY, 1957), ii, 573.

³ *RPC*, viii, 329: 'without prejudice, however, to the right of the said presbytery to use all means for discovery of her dealings and to give information thereof to the judge ordinary'.

⁴ *Ibid.*, 323. The eight men were Dunfermline, Orkney, Elphinstone (Lord Kildrummy), Preston, (president), Binning (then Sir Thomas Hamilton of Binnie, Lord Advocate), Cockburn (justice clerk), Drummond (Lord Medhope), and Hay (Lord Fosterseat).

⁵ For example, in the trial of Agnes Fynn in 1644, the depositions taken by the kirk

vii) Hearsay evidence: the testimony of the witnesses who were admitted. In the manuscript, fifteen people are listed as prosecution witnesses, of whom four were barred by the judges.¹ Yet despite the fact that the pursuers had summoned them, and must have felt that they would testify as to Geillis's crimes, each one denied specific knowledge of any wrongdoing. This was very important to Geillis's acquittal, for a conviction on even one of the articles would have resulted in her execution. But how are we to understand this failure to testify against Geillis? Remember that Geillis had been convicted before the presbytery in 1609, that her lawyers stated that most of the accusations in 1614 were repetitions of the 1609 charges, and therefore many of these witnesses probably testified against her in 1609. What happened in 1614 to change this?

There are two possibilities, which are not mutually exclusive. First, it may be that the witnesses were subjected to bribery or intimidation. Second, it may be that the initial testimony in 1609 was hearsay evidence, which was blocked in 1614. Support for the first option is seen in the way David Bairmfather was questioned. He was asked whether Geillis or any of her friends had approached him to tell him what to say, or whether he had received any clothes or any other 'guid deid' from them, to which he replied 'no'.²

Support for the second option is less direct but much more pervasive. When the testimony is examined, it is clear that almost no hearsay is involved.³ For example, when William Thomson testified concerning the sacrifice of a baby to Satan (in the second article), he admits seeing the baby in the basin, but denies knowing what happened to it thereafter. This lack of hearsay can be contrasted with the testimony offered at the trial of Agnes Fynnies in 1644. At that trial, depositions taken before the kirk session were introduced as evidence in the trial. For the third article, John Walker testified to a conversation between Agnes and his wife

session - many of them given in by women - were simply reproduced for the jury. *Selected Justiciary Cases*, iii, 634-5, 661-6.

¹ In addition to Margaret Jak, barred because she was a woman, and Adam Colt and his colleagues, disallowed because of their previous involvement in the case, two men, William Penman and Isaac Runcieman were barred for other technical legal reasons.

² See below, p. 132.

³ The only exception is the testimony of Richard Bennett, the last of the witnesses, who repeated what Adam Colt had told him. Unfortunately, this appears on the last folio, which is torn vertically, so we do not have the entire testimony. However, Bennett makes clear that he is only repeating what Colt said, and does not appear to confirm it.

which he himself did not hear.¹ Agnes's lawyers protested against this, saying that 'he depones not that he hard the pannell utter the thretting speitches lybellit, and sua is onlie Testes ex auditu, that is to say witnes be heiring of ane other'.² Unfortunately, the protests did no good; the judges admitted the evidence, and the jury convicted her on it. Since threatening speeches followed by some type of injury was ipso facto regarded as proof of witchcraft, allowing hearsay testimony made conviction easy: witnesses need only report what they heard in the street or alehouse. Lack of hearsay testimony undoubtedly contributed to Geillis's acquittal.

But were the judges actively suppressing hearsay testimony that had been offered in 1609? There are a number of indications in this direction. According to Geillis's lawyers, many of the witnesses at the presbytery trial had been 'hir evill willeris', and their testimony suspect.³ When Mr Patrick Henderson testified, he said 'upone his grit aith' that he knew nothing of Geillis 'bot be a cowmoun repoirte',⁴ suggesting that 'common reports' were not acceptable evidence in this trial. Henderson was a man with strong ties to Adam Colt, Geillis's parish minister, whose testimony had been previously barred.⁵ He might have discussed the Geillis Johnstone case with Colt so that, if Henderson had testified as to the 'common report', Colt's evidence might have entered through another person.

Another telling phrase is used by David Bairnfather when he said that he 'knewis nathing to hir bot honestie'.⁶ This is a phrase that was used occasionally in slander trials in the ecclesiastical courts, when someone was made to retract their accusation of witchcraft against the complainant.⁷ In assessing this parallel, remember that the pursuers suspected that Bairnfather's testimony had been influenced by Geillis or her friends. Why this suspicion? Had Bairnfather at an earlier date—the 1609 trial, for example—said something very different, based perhaps on what he had heard, rather than what he knew of his own direct knowledge, and now, in 1614, was changing his testimony?

¹ *Selected Justiciary Cases*, iii, 662-3.

² *Ibid.*, 668.

³ See below, p. 131.

⁴ See below, p. 134.

⁵ *RPC*, viii, pp. xx, 84, 87, 499.

⁶ See below, p. 133.

⁷ See for example, *Selections from the Records of the Kirk Session, Presbytery, and Synod of Aberdeen*, ed. J. Stuart (Spalding Club, 1846), 57.

viii) Irish Jonet's deposition.

The last item of evidence discussed was Irish Jonet's confession, which had been extracted extrajudicially under torture, and in which Irish Jonet implicated Geillis. Her lawyers made two attempts to bar this testimony, of which the second was successful. The first was during the pleadings against the relevance, when the lawyers tried to have the entire second article of the indictment rejected. The judges did not permit this, and the clerk actually records that her confession would be remitted to the jury 'quhat the said deposition can wirk'.¹ But after the witnesses had given their testimony, the issue was raised again, with the defence providing three arguments against accepting the confession: first, that it had been taken extrajudicially, while she had been imprisoned, second, that she was a woman, and third, that she was 'ane infamous divillish persone',² each one of which should disqualify her confession from being accepted. At one point the lawyers argued that if she had been there in person, her testimony would not have been accepted—how then, her written deposition? Following these arguments, the judges did disallow her confession. But however logical this may seem to us, especially considering the fact that she had been tortured, it goes against the entire philosophy and practice of witch hunting. The use of confessions taken from a witch in order to try other witches was indispensable to any major witch hunt. These were normally extracted under sleep deprivation (watching and warding) and very occasionally under torture. No-one who suppressed such evidence could be an enthusiastic witch hunter.

ix) Oral testimony by the witnesses.

So far, all the unusual aspects of this trial can be directly tied to the special circumstances of witchcraft trials, or of this trial in particular. For example, were this a murder trial, the decision to bar women from testifying would be entirely unexceptionable. But one unusual decision had a wider significance, foreshadowing future practice. This was the ruling by Dunfermline and his assessors that the witnesses were to give their testimony orally, in the presence of both the defender and the jury. This is the universal mode of proceeding today. But this was not the case in the early seventeenth century, when a wide variety of methods were used to inform the jury of the facts.

In 1587, a statute enjoined that from now on all 'ressoning, writtis, witnesses and vther probatioun' was to be in the presence of both the

¹ See below, p. 115.

² See below, p. 138.

parties and the jury.¹ But in the following decades this law was not interpreted as requiring witnesses to testify in the presence of the defenders and the jury. Instead, a wide variety of practices were followed. The jurors themselves were still regarded as witnesses to the crime, and proof was frequently left to them.² Often, testimony was simply read from previously written depositions, and the witnesses might be called on to confirm their testimony—or they might not. The witnesses might be questioned in the hearing of the jury, but not of the parties. Sometimes the jurors even took the witnesses with them after they retired, and questioned them there, outside of the presence of both judge and parties.³

In light of these practices, the methodology followed here must be regarded as novel and refreshing. Sir Thomas Hope, one of the most influential Scottish jurists, felt that it set a precedent. In a murder trial in 1619, he cited ‘the criminall cause persewit be Strauchane aganis Geillis Johnnestoune’ as justifying his desire to have witnesses testify before the parties and the jury.⁴ When he was writing his ‘Major Practicks’, he repeated this observation.⁵ But for many years and decades thereafter, the previous methods continued to be followed. It was not until the Restoration that Dunfermline’s innovation really took hold. Mackenzie held that it was a rule of Scots law that witnesses must be examined before both the defender and the jury, and he argued that ‘this is much juster, than the Laws of other nations are, who allow neither Advocat nor party to be present, whilst the witnesses depones’⁶—a claim which we would not dispute.

It was argued at the beginning of this section that the various unusual aspects of this trial can be understood as Dunfermline’s attempts to raise the standards of evidence for this trial—attempts which resulted in

¹ APS, iii, 460-1, c.57.

² This principle was stated by Geillis’s lawyers, and the pursuers left six of the fourteen articles to be considered by the jury alone.

³ For a discussion of witness testimony and the laws of evidence in Scotland at this time, see *Selected Justiciary Cases*, ii, pp. xxviii-xxxii; I-II; iii, 634-5. I.B. Willock, *The Origins and Development of the Jury in Scotland* (Stair Society, 1966), 191-203, contains a discussion of court procedure as it affected the jury. For an example of reading a deposition, see the trial of Grissell Gairdner for witchcraft, NAS, high court of justiciary, books of adjournal, old series, 1576-1699, JC2/4, fos. 367r.-369v.; Pitcairn, *Trials*, iii, 95-8. For an example of the jury interrogating the witnesses after they had withdrawn, see the trial of Harry Listoun for murder, Pitcairn, *Trials*, iii, 575.

⁴ Pitcairn, *Trials*, iii, 471.

⁵ Hope, *Major Practicks*, ii, 306.

⁶ Mackenzie, *Laws and Customs*, 270.

Geillis's acquittal. Mackenzie, the champion of high standards of evidence, was also a major opponent of witch hunts, and was instrumental in bringing large scale witch hunting finally to an end in Scotland.¹ The link between attitudes toward evidence and witch hunting can hardly be made clearer than this.

Criminal procedure and the organisation of the manuscript

Since the manuscript is a rough draft transcript of a trial, a knowledge of criminal procedure will be useful in understanding its organisation and contents. An early modern Scottish trial can be divided into four sections. The first consisted of preliminaries. The court was 'fenced', that is, legally constituted. The participants appeared and the court took cognisance of them, people who had posted cautions for the appearance of the parties were relieved of these cautions, the indictment was read, the pursuer swore that he had good cause to pursue, and the defender entered her plea. The second stage consisted of arguments against the relevance. The defender or her advocates challenged the various points of the indictment. Assuming that all or parts of the indictment were allowed to pass to the jury, the third stage began. The jury was chosen and sworn, and evidence was presented to the jurors if the judge permitted it. Each of these stages could feature arguments between the parties and their counsel. Once this was finished, the fourth stage began. The jury retired to a separate room, elected a chancellor, deliberated and reached a verdict, and returned with its verdict to court. The verdict was then proclaimed. If the defender was found guilty (which was not the case here), the judge could impose a sentence immediately, or he could delay sentence while he deliberated or consulted with others.

Various parts of the manuscript correspond to these different stages, but because it is a rough draft, it occasionally jumps around. The writer was probably John Bannatyne, servant to Mr Patrick Bannatyne, justice clerk depute (the man who kept the justiciary records), and later justice clerk depute himself.² This helps explain why it has been preserved in the justiciary records. The first folio contains a full record of the preliminary

¹ Lerner, *Enemies of God*, 186-90.

² NAS, Register House miscellaneous documents, RH15/I4/7 and 8, where John Bannatyne's succession to Patrick in 1626 is discussed. The handwriting in the manuscript closely resembles that in the books of adjournal (NAS, high court of justiciary, books of adjournal, old series, 1576-1699, JC2) after 1626—that is, after John had succeeded to the office.

phase of the trial, and then an increasingly abbreviated account of subsequent stages. The record of these subsequent stages contains occasional marginal notes from the writer to himself about what should later be expanded. The account then cuts off in mid-sentence, in the middle of the third stage. Most of this was reproduced and expanded later on. On the second folio, an account begins of the second stage of the trial, the arguments against the relevance. This was organised according to each of the twenty-six articles of the indictment, and continues through the top of folio 8v. It is the neatest and best organised section of the manuscript. The next three folio pages, from the top of 8v. to the top of 12v., contains the record of the third stage of the case: the names of the jurors, the witnesses, and their testimony, together with the battles fought by counsel for each side over who and what was to be admitted to the cognisance of the court. In this section, the clerk was obviously struggling over the exact wording to be used, and what information to include, as often entire paragraphs were crossed out (but are still legible); the factual information contained in these deleted paragraphs is often reproduced later on. This section extends onto the torn folio, folio 12, whose treatment will be discussed below. So too does the final section of the trial, the jury's retirement, consideration of the evidence, and verdict. This section is normally the shortest in the record, and is here restricted to the final seventeen lines of folio 12v.

Editorial Method

The following editorial decisions have been followed: punctuation, capitalisation, and paragraphing have been modernised when necessary. Additions written above the lines or in the margins have been brought into the main text. All abbreviations have been expanded. Original spelling has been maintained, with these exceptions: u/v, w/u, w/v and i/j have been modernised, 'y' has been used for the symbol yogh, and a thorn has been written 'th', not 'y'. Variant spellings have been preserved, but expansions have been made in a uniform manner. An apostrophe has been introduced for possessives. Text which the writer crossed out has been included in its proper place, in double square brackets. Single square brackets signify an addition of the editors, such as an 'and' where appropriate.

As mentioned above, the final folio was torn lengthwise and was very dirty, and therefore required special treatment. Each line in the folio has been printed as a separate line, with three ellipsis points at the end of the

line (for fo. 12r.) or the beginning of the line (for fo. 12v.) to indicate where the missing text begins. The paragraphs of the manuscript have been preserved as well and a space has been left between each paragraph. When a word is only partially preserved, but can be identified from the context, the rest of the word has been supplied and put in single square brackets. Occasionally, when standard phraseology is being used, or the context is obvious, an entire word has been supplied and put in single square brackets. Single square brackets have also been used around a word, or part of a word, when the dirt has obscured it beyond definite identification, but its probable identity is confirmed by the context. Additional commentary has been supplied in the footnotes on things such as blank spaces, illegible words, the significance of various phrases, and the editors' interpretation of the text.

Acknowledgements

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M.B.W. & L.A.Y.

Dunfermline 1614

[Ir.] Curia justitie domini et regalitatis de Dunfermeling et Mussilburghshyre¹ tenta in pretorio de Edinburgh virtute dispensationis dominorum consilii et sessionis S.D.N.² regis³, secundo die, mensis Marcii 1614 per nobelem et prepotentum dominum, Alexandrum,⁴ comitem de Dunfermeling, dominum Fyvie et Urquhartis, magnum huius regni Scotia Cancellarium ac ballium hereditarium dicti regalitatis et domini de Mussilburghshyre, nec non per dominum Jacobum Richardsoun de Smetoun militem, et Georgem Hay de Monkton, balliuos deputatis dicti domini et regalitatis, sectis vocatis curia legitime affirmata⁵

Assessores dicto domino Cancellario in dicta curia⁶

Johnne, archebishope of Glesgow⁷ James, bishope of Orkney¹

¹ Musselburgh was a semi-detached appendage of the regality of Dunfermline. Sometimes it was referred to separately as the 'regality of Musselburgh', sometimes together with Dunfermline as is done here, and sometimes it is subsumed under the style 'regality of Dunfermline'. Its records were kept separate from those of Dunfermline proper.

² This stands for 'supremi domini nostri'.

³ This reference to the court of session occurs, presumably, because the session's permission was required to hold the trial in Edinburgh—outside the territorial boundaries of the regality. ('Court of session' and 'college of justice' were interchangeable terms. The members of the college of justice are known as lords of session.) On 16 May 1609 another Dunfermline regality case—this time for homicide—was held in Edinburgh, and it too was by the dispensation of the 'dominorum consilii et sessionis'. NAS, register house, RH11/27/17.

⁴ Alexander Seton, Lord Fyvie, 1598; earl of Dunfermline, 1605; a lord of session, 1586; president of the court, 1593-1605; chancellor of Scotland, 1605-22.

⁵ Justice court of the lordship and regality of Dunfermline and Musselburghshire held in the tolbooth of Edinburgh by virtue of a dispensation from the lords of council and session of our sovereign lord the king, the 2nd day of the month of March 1614 by the noble and potent lord Alexander, earl of Dunfermline, lord Fyvie and Urquhart, lord high chancellor of this kingdom of Scotland and hereditary bailie of the said regality and lordship of Musselburghshire as well as by Sir James Richardson of Smeton, and George Hay of Monkton, bailie deputed of the said lordship and regality, the court has been legitimately fenced.

⁶ Assessors to the said lord chancellor in the said court. All of the following assessors were privy councillors at some point in their careers. The following people were not councillors at the time of this trial: James Law, bishop of Orkney, Sir Alexander Hay of Fosterseat, Sir James Skene and Sir William Hart.

⁷ John Spottiswood, archbishop of Glasgow, 1603-15; archbishop of St. Andrews, 1615-39; chancellor of Scotland, 1635-38; a lord of session, 1610-39.

Robert, erle of Louthiane² Thomas, Lord Bynnie, secretar etc³
 Mr Johnne Prestoun, president⁴ my lord of Kildrumie⁵
 My Lord Fostersait⁶ my lord clerk of register⁷
 my lord justice clerk⁸ Sir William Oliphant of Newton⁹
 my lord of Medope¹⁰ Sir James Skene of Curriehill¹¹
 Sir William Hart of Preston, justice¹²

Intrantes

Geillis Johnnestoun, relict of umquhile Johnne Duncane in Mussilburgh, dilaitit of dyvers pointis of witchcraft and consultatioun with witches at lenth set down in hir dittay following productet aganis hir.

Perseweris

Robert Strauchane, burges of Mussilburgh
 Johnne Vernour, burges thair
 Robert Douglas, portioner of Inveresk, procurator fischall
 Mr Thomas Wilsoun, advocat¹³, thair prelocutor

Prelocutoris for the pannell

Mr Alexander King, advocat¹

¹ James Law, bishop of Orkney, 1605-15; archbishop of Glasgow, 1615-32.

² Robert Kerr, second earl of Lothian, 1609-24. His brothers and sisters attributed his suicide in 1624 to the malice of witches, a reminder of the ubiquitous role that witches played as scapegoats. See *RPC*, xiii, 453n, and 2nd ser. ii, 442, 624.

³ Thomas Hamilton, originally of Drumcairn. Lord Binning, 1613; earl of Melrose, 1619 (he exchanged this title for that of Haddington in 1626); king's advocate, 1596-1612; clerk register, 1612; secretary, 1612-27; privy seal, 1627-37; a lord of session, 1592; president of the court, 1616-26.

⁴ A lord of session in 1595, president of the court, 1609-16.

⁵ Alexander Elphinstone, Master of Elphinstone, later fifth lord (1638-48). He was a lord of session, but when his tenure began and ended is unknown.

⁶ Sir Alexander Hay of Fosterscat, a lord of session, 1604-29.

⁷ Sir Alexander Hay of Newton and Whitburgh, clerk register, 1612-16, a lord of session 1610-16.

⁸ Sir John Cockburn of Ormiston, justice clerk, 1591-1623, a lord of session, 1588-1623.

⁹ He was king's advocate, 1612-28, a lord of session, 1611-26.

¹⁰ Sir Alexander Drummond of Medhope, a lord of session, 1608-19.

¹¹ A lord of session in 1612, president of the court, 1626-33.

¹² He was king's advocate, 1594-96, justice depute, circa 1598-1617. As justice depute, Hart would have been the principal judge had this case been tried in the justice court. He had previously tried a number of witches in the justice court. He was also actively involved in investigating witches: see for example *RPC*, viii, 322.

¹³ He was admitted as an advocate in 1586, and was the son-in-law of Archbishop Patrick Adamson.

Mr Alexander Peiblis, advocat²
 Mr Laurence McGill, advocat³
 William Duncane, burges of Mussilburgh

The said Geillis Johnestoun with hir prelocutoris takis instruments of hir entrie and compeirence this day and place and protestis for releif of George Andersoun, burges of Mussilburgh, hir cautioner, of his cautionrie.⁴

The persewaris⁵ productet my lord chancellor his precept deulie execute and indorsate, be the quhilk the said Geillis Johnestoun was summoned to compeir befor his Lordship as heritable bailye of the said lordship and regalitie of Mussilburghshyre this day and place to underly the law for the severall points of sorcerie and witchcraft and consultatioun with witches specified in hir dittay underwritin, lykwise productet be thaim, and upoun the productioun thairof askit instrumentis. And inrespect thairof, and that thai offerit thameselfis reddie to persew, protestit for relief of thair cautioneris fand be thaim to that effect. Off the quhilk dittay the tenor followis:

Heir to tak in the hail dittay as it stands. Beginnand as followis the pointis of dittay aganis Geillis, etc.⁶

Eftir reding of the quhilk dittay and accusatioun of the said Geillis Johnestoun be vertew thairof upoun the severall pointis above writtin, it

¹ He was admitted as an advocate on 24 Jan. 1581.

² He was admitted as an advocate in 1586.

³ He was admitted as an advocate in 1592.

⁴ As cautioner, George Anderson had put up a sum of money guaranteeing that Geillis would appear before the court on the day of her trial. If she had not, the money would have been forfeited. This phrase signifies a legal procedure by which Geillis asks for written confirmation that she has appeared, ('takis instrumentis of hir entrie') and that her cautioner, George Anderson, be relieved of his legal obligations. ('protestis for releif of...') Anderson was summoned by the pursuers as one of their witnesses but did not testify. He was married to Christine Duncan, who may have been related to Geillis.

⁵ An abbreviated one folio version of this manuscript, possibly an earlier draft (corresponding roughly to parts of fos. 1r and 2r), exists in the same file, in the same hand. It states at this point that 'Mr Thomas Wilson, advocat for the persewaris' was pleading here. This is the only point at which it adds extra information to the main manuscript.

⁶ At this point in the trial, the indictment was read aloud, and arguments were made concerning the legal relevance of each point of the indictment. The actual indictment is not here—the clerk's note to himself to write down the indictment was not acted on—but folios 2-8 of the manuscript contain a record of the arguments, which provides us with the essentials of the indictment. See below, pp. 112-128.

is allegit and affirmet be the pannell and hir prelocutoris that sho nevir ministrat, etc., and sa furth as the allegances and answeris and interlocutoris standis. To wryte forder eftir this mark *¹ Memorandum to tak in all as it stands quhill the byding the said mark.

Thaireftir the said persewaris for cleiring to the assyse of the said Geillis Johnestoun, hir guiltines of the 14 severall articles above writtin (fund relevant be the lordis) and remittit to thair tryell, productet thir witnessis under writtin, lafullie summoned be vertew of my lord chancellor's precept, [and] desyres thame to be callit upoun, ressavit, admittit, and suorne to depone according to thair knowlege and conscience anent the veritie of this mater.

It is declairit be the pannell and hir [1v] prelocutoris, that albeit it be nocht the forme or ordor in criminall causes to admit or ressave witnessis eftir the mattir be remittit be the judge to the knowlege of ane assyse, bot that the assyse thaim selfis to quhas tryell the samyn is remittit becomis baith judge and witnessis thairin: nevertheles for manifestatioun of the pannell's giltines or innocencie of the saidis crymes, quhair of be hir grit ayth she hes declarit hir self to be altogidder innocent alreddie, she is content to admit the probatioun of hir dittay be sufficient and unsuspect witnessis by exceptione maiores² for the assyse's forder informatioun, under protestatioun that all lafull exceptiones and objectiounes to be proponit be hir and hir prelocutoris in hir name aganis the saidis witnessis be also admittit, and thairupoun askit instrumentis.

The persewaris first for preving of the first poynt and cleiring of the pannell's giltines thair of anent the taking of hir sone Johnne Duncane's shoe, thinking it to be David Bairnefather's than hir servand, and offering the samyn to the devill to the wicket end set down in the first article of the dittay, productet the thre witnessis following. Viz: David Bairnefather, Adame Spens in Fisherraw and James Carmichell in Mussilburgh. The lords of consent of the pannell admittis the said David Bairnefather to be witnes. It is allegit be the pannell and hir prelocutoris aganis the said Andam [sic] Spence and James Carmichell that thai can nocht be admittit witnessis to depone aganis hir in the said caus becaus thai ar baith bot mene serving men nocht worth the king's unlaw, and seing thai ar to be examinat upoun ane matter of lyf and daith, the witnessis to be ressavit

¹ At this point the clerk is making a note to himself. A mark follows his words, and is repeated at the top of folio 9r., to be found on p. 128, below.

² Witnesses of substance above all exceptions: i.e. worth more than 40 shillings and not barred from testifying for any reason

thairfor aucht to be testes omni exceptione maiores¹. Answeris that thai ar baithe honest men, undefamet, and knawis best the veritie of the said factis, and thairfoir for cleiring the treuth thairof should be admittit. The lordis admittis the said James Carmichell and Adame Spens to be witnessis, quhairupoun the persewaris askit instrumentis.

For cleiring the second article of dittay anent the conference had be Geillie Johnestoun with Irishe Jonet, ane notorious witch,² quha raisit the devill betwixt thame, [and] brocht him in to visset hir sone in forme of ane hieland doctor, and anent the offer maid to him of the infant bairne in maner specifiet in the said article, producet Mr Patrik Hendersoun,³ the bretherne of the ministrie of the presbyterie of Dalkeith,⁴ the laird of Smetoun, William Thomesoun, son to Johnne Thomesoun in Newbiging, Margaret Jak his mother, Robert Duncane in Fisherraw, Mr Adame Colt, minister,⁵ [and] William Penman, bailie of Mussilburgh. Admittis the laird of Smetoun, Mr Patrik Hendersoun, Robert Duncane, and William Thomesoun of the pannell's consent to be witnessis.

It is allegit be the pannell aganis Margaret Jak, spous to Johnne Thomesoun in Newbiging that sho can nocht be ressavit as witnes in this caus becaus sho is ane woman, quha of the law can nocht be admittit witnes in ane matter of xl shillingis, and far less in this matter upoun lyf and daith. It is answerit thairto be the persewaris that the cryme being for witchcraft, quhairupoun sho is to be examinat, quhilk is lege divina⁶ a cryme of lese majestie aganis God and that the said Margaret is ane honest women quhais depositioun is socht, sho for tryell of the veritie of the fact aucht to be admittit nochtwithstanding of hir sex, and allegance

¹ Witnesses barring all major exceptions

² This is probably 'Catherine Carrutheris alias callit Erisch Jonett' who is referred to in the witchcraft trial of Euphame MacCalzean in 1591. Pitcairn, *Trials*, i, 251.

³ He is identified later as 'reider in Edinburgh'. See below, p. 135. He is probably the same Patrick Henderson, reader in Edinburgh, who was suspended in 1637 for refusing to read the prayer book, for the earl of Rothes says that he 'hath bein ther these many yeirs'. John, earl of Rothes, *A Relation of Proceedings Concerning the Affairs of the Kirk of Scotland from August 1637 to July 1638*, ed., D. Laing, Bannatyne Club, Edinburgh, 1830, 4. He is also mentioned in 1608 in a case involving an 'impertinent' sermon against the church of England, *RPC*, viii, pp. xx, 84, 87, and 499, and in 1644 a Mr Patrick Henderson, 'clark to all the sessiones of Edinburgh', participated in the interrogation of Agnes Fynnies, an accused witch. *Selected Justiciary Cases*, iii, 661.

⁴ Except for Mr Adam Colt, who represented them, the ministers are never identified in the manuscript.

⁵ Minister of Musselburgh, 1597-1643. He was one of the eight presbyterian ministers summoned to a conference in London in 1606, and was detained there for eight months due to his opposition to episcopacy. See *RPC*, vii, pp. lvii-lix.

⁶ by divine law

foirsaid, maid aganis the same. The lordis repellis wemen to be witnessis in this matter.

X¹ Hier also to tak the allegances maid aganis William Penman and aganis the presbyterie, thair answeris and interlocutoris, and aganis Runcieman, with the interlocutoris, etc.

For cleiring to the assyse of the fyft article of the dittay anent the outbringing of Irish Jonet furth of the tolbuith of Mussilburgh be witchcraft quhairin sho was wairdit, in causing Gavin Duncane hir sone put his finger in the lok of the dur, etc., productet the said Gavin Duncane hir sone, quhome the lordis, of the pannell's consent, admittis.²

For cleiring of the xix article of dittay anent the cureing of the gudman of Carberrie his oxin of the lowing evill, in maner thairin mentionet, productet Mr Mungo Rig of Carberrie.

For cleiring of the xx article of dittay anent the raising of the devill be the said Geillis within hir awin hous to understand quhat should be hir end, etc., productet Robert Dykis, [and] Gavin Duncane, hir sone.

For cleiring of the 25 article of dittay anent the confessioun maid be the said Geillis at Martinmas last, being deidlie seik, in presence of dyvers witnessis, that sho had consultation with witches, productet³

[2r.] The dittay being red and the said Geillis accuset upone the first article thair of.

1. It is allegit and affirmet that the pannell nevir ministrat ony medicamentis or cures [[quhilk]] be witchcraft or incantations quhilk witches ar ony in use to do. And for definition of witchcraft, quhat it is, citet Bodyn,⁴

¹ The clerk has decided at this point that he can no longer record here all the objections, debates, and rulings concerning witnesses who were challenged by the defence. He merely refers briefly to them, including Isaac Runcieman, who was proposed for a witness to the eighth article of the indictment, and was rejected. The full story concerning these people is told later on in the manuscript. See below, pp. 129-32. Thus to this point, the introduction of, and debate over, the witnesses has been fully recorded: in the next few lines we have a very brief summary of all subsequent proceedings related to the witnesses.

² The manuscript jumps from the fifth to the nineteenth article. The witnesses for the eighth article, who are given below, p. 131, are omitted here.

³ This is the last word of the last line of folio 1r. of the manuscript: the information being recorded ceases at this point. The next folio begins to record the debates against the relevancy, which was chronologically earlier than the introduction of the witnesses.

⁴ Jean Bodin, 1530-1596. French economist, philosopher, and writer. The reference is to his book, *De La Démonomanie Des Sorciers*.

Parkyns,¹ and that part of Prosperus² quhair he wrytis de delictis et poenis.³ And quhair it is allegit in the first article of the dittay that the pannell upone malice consivet aganis hir servand come to the kill⁴ the samyn to haif bene David Bairmefather's, hir servand's shoe, quhilk was offerit be hir with thre dropis of hir blood to the Devill, quhairupon the death of her sone followit, etc.: that [[pairt thair of]] article is nawayis relevant except it war condiscendit thairin quhat war the wordis of invocaciones uset be hir et quibus mediis⁵ the conjuraciones and offering war maid and quhat the forme of the diseas was that was laid upone hir sone quhilk is nocht set in the dittay. Nather is it condiscendit thairin [[the dittay]] quhat answer was gevin be the Devill eftir the words of invocation and how the seiknes was laid upon hir sone quhair of he deceissit et quibus mediis, without the quhilkis war speciallie condiscendit upone, the first article of the said dittay is nocht relevant and consequentlie can nocht pass to ane assize.

It is answerit thairto be the persewar that the definition maid be Bodyn of witchcraft, citet be the pannell, is onlie philosophical ressoning thairupon and sould nocht be respectit in this caice, seing the dittay bearis that the pannell, being offendit with her servand, consivet ane evill will aganis him, and for revenge of the allegit wrang done be him to hir, put the witchcraft in practiye [as] contenit in the dittay. In respect quhair of, [[the]] and of the dittay relevantlie sett down, the said first article sould be put to the knowlege of ane assyse. And as to the cleir definition of witchcraft, quhat it is, citet de moderius resolutions⁶ thairupon.

The Lordis findis the first article relevant conjunctim,⁷ and remittis the

¹ William Perkins, 1558-1602, an important English Calvinist and writer. The reference is to his book, *A Discourse of the Damned Art of Witchcraft*. For more information on Bodin and Perkins, see S. Clarke, *Thinking With Demons: the Idea of Witchcraft in Early Modern Europe* (Oxford, 1997) and S. Anglo (ed.), *The Damned Art: Essays in the Literature of Witchcraft* (London, 1977).

² This is apparently a reference to Prospero Farinacci, 1554-1618, an Italian legal theorist and lawyer whose works on criminal law were widely available at this time. It is almost certainly from his *Praxis et Theoricæ Criminalis Libri Duo in Quinque. Titulos Distributi Quorum Prior Inquisitionis: Accusationis: Delictorum: Poenarum: Carcerum et Carceratorum Materiam...* Frankfurt 1597; see Book I, Title III, 'De Delictis et Poenis', 286-91.

³ of crime and punishment

⁴ kill—a kiln

⁵ and by which ways

⁶ Joost de Damhoudere [Iodocus Damhouderius] *Praxis Rerum Criminalium*, 1st edition, Antwerp, 1554. The pursuers were not using such modern authorities as the defence.

⁷ conjunctly

samyn to the tryell of the assyse, quhairupon the perseweris askit instrumentis.

2. It is allegit aganis the second article of the said dittay, that the samyn is nawayis relevant becaus it is nocht qualifeit thairin that the pannell consortit with Irishe Jonet sciens et prudens¹ that she was ane witch.

Secundo, quhair it is allegit in the said article that the pannell, with Irishe Jonet, invocat and raisit the Devill to play the part of the hieland doctor in maner specifiet thairin: non relevat except it war condiscendit quibus mediis he was raisit be thame, et quid dictum aut factum fuit,² and that the words of invocation war speciallie denominat and expressat in the dittay.

[2v.] Tertio, quhair it is allegit in the said article that eftir the devill had sichtit the patient, and had gevin his opinion of his diseas at his away cuming, the deid bairne in the basing was offerit and sacrificet to him be Geillis: that part quhair of is nawayis relevant, becaus it is cleirlye testifeit be all that wrytis of sorcerie and witchcraft that the devill being raisit, may for his prize ressave ane quick and na deid offering, and it is manifest be the dittay that the pannell's dochtir in law was deliverit lang befor hir time of ane deid bairne, and that was only ane embryon quhairwith scho partit, sa that the devill wald ressave na sic deid offering, and thairfoir that part of the said article is nawayis relevant. Nather is it condiscendit upone quo modo³ the said offering was maid.

Last, quhair it is allegit in the said second article that the said Irische Jonet, being thairefter apprehendit and put in ward within the tolbutth of Mussilburgh for sorcerie and witchcraft, confessit to the persones contenit in the said article that the said Geillis gave James Duncane her son's bairne to the devill with hir awin hands, and that the said Irische Jonet laid the devill thairefter hir self: that part of the said Irische Jonet hir deposition is nawayis relevant and sould not be respectit becaus gif ony deposition or confessioun was maid be the said Irische Jonet, the samyn was in carcere extra judicium.⁴ Nather can hir allegit deposition work aganis the said Geillis, sho being ane woman quho of the law can nocht be wites in ony matter. Like as it is affirmet that the said Irische Jonet being heivelie torturit in the stokis and irnes, [[being]] [[was]] the said confessioun aganis the pannell was extoirtit out of hir for eschewing

¹ deliberately and knowingly

² what was said and what was done

³ how

⁴ in extrajudicial confinement

the pane of the tortur.

And quhair it is affirmet in the said articles that Robert Duncane hir sone, becaus of the grit noyse that rais in the hous at the devill's away passing, was sa affrayit that with feir he tuik seiknes and keipit bed quhile he wes charmed thair of be his mother and curet: non relevat,¹ except it war qualifeit be the persewaris be quhat cure or plaister the diseas was removet.

And thairfoir the said second article as being altogidder irrelevant in the haill partis thair of sould nocht pas to ane assyse.

To the quhilk it is answerit be the persewaris that the foirsaid allegiances aucht to be repellit, and the dittay in the secund article thair of stands relevant and sould pas to ane assyse, in respect it is affirmet that Geillis Johnestoun hir consultationis with Irishe Jonet, ane notorious witche, was sciens et prudens hir to be [3r.] sic a devillische woman, anime et intentione,² for effectuating the uses specifeit in the dittay. Viz.: for rasing the devill to cure hir sone of his diseas. And as to that part of the allegiance contening the offering of the bairne to the devill that it was embrion and ane deid thing: aucht to be repellit in respect it is sufficientlie qualifeit in this dittay that [[sho]] the mother of the bairne, drawing neir the time of hir perfite birth, was deliverit of the said bairne a schorte time of befoir, [[be resso]] quhilk deliverie was hastenet be ressonne of the mothir's displesour for the seiknes of hir husband, sua that it was na embrion quhair of sho wes deliverit and quhilk wes offerit to the devill, bot ane bairne quhilk anes had life. Inrespect quhair of, the said allegiance sould be repellit, and the dittay in the said second article sould pas to ane assyse.

The Lords be interlocutor findis the first part of the secund article of dittay relevant anent the consultations with Irische Jonet to the effect contenit in the dittay, [[relevant]] and referris the samyn to the assyse. Repellis that [[artic]] part of the article anent the charming of hir sone as nocht relevant, and as to the deposition of Irische Jonet, [[lets the assyse cognose thairupoun]] remittis the samyn to the assyse quhat the said deposition can wirk.³

3. It is allegit aganis the thrid article that the pannell sould nocht be put to the tryell of ane assyse for the cryme set doun thairin becaus it is nocht

¹ not relevant

² by spirit and purpose

³ But with regard to Irish Jonet's depositions, see pp. 137-8 below. The lack of reference to 'instruments', here and in several later articles, is probably an omission by the clerk.

specifeit in the coppie of the dittay geven to hir, and sho is nocht summoned thairupon upon xv dayis warning quhilk aucht to haif bene done, etc.

It is answerit be the persewar that he only eikes this point to the former article.

The Lords ordanis this thrid article to be deleit because sho was nocht summoned thairupon, nor yit is it insert in the coppie of hir dittay geven to hir.

4. It is allegit be the pannell aganis the fourt article of the dittay, anent the consultation with Irishe Jonet, ane witche, for charming James Duncane hir sone, etc: non relevat except it was condiscendit that the said consultation with hir was sciens et prudens that sho was ane witche. [3v] And as to the allegit charming practiyet be hir self upone hir sone, non relevat unles it war qualifeit in the dittay quibus mediis the said charme was uset, et quid fecit vell quid dixit.¹ And thairfoir the said fourt article sould be repellit as altogedder irrelevant.

It is answerit be the persewaris the allegeance aucht to be repellit in respect of the dittay and acts of parliament, the virtue of the quhilk factis, and tryell thairof refers to the assyse.

The Lordis be interlocutor finds the fourt article conjunctim to be relevant with the former part of the second article and remittis the samyn to be tryit conjunctim be the assyse.

It is protestit be the pannell that incaice this fourt article be nocht sufficientlie verifeit and proven that sho consultit with Irische Jonet sciens et prudens that sho was ane witche the tyme of the allegit consultations, that nathing follow upon the assyse's determination thairupon bot obsolvator.

The persewaris protestis in the contrair.

5. It is allegit be the pannell aganis the fift article of dittay, anent the outbringing of Irishe Jonet furth of ward, being wardit in the tolbut of Mussilburgh for the time, and the durris loket fast upon hir as the said article beiris: the samyn is nawayis relevant nocht condiscending quibus mediis the fact thairin contenit was practiyet and done, bot allanerlie be hir sone's putting of his fingers in the lok of the dur, quhilk is meir ridiculous. Lyk as the said fact is altogedder denyit be the pannell to be of veritie.

To the quhilk it is answerit be the persewaris that the dittay in the said

¹ what she did or what she said

article stands relevant in respect the factis sett down thairin was done at hir direction, be hir sone, and that scho come furth of the said tolbutth eftir hir sone had done his mother's direction et ita probatum ab effectis.¹
The Lords remittis this fift article to the tryell of the assyse, quhairupon the persewaris askit instrumentis.

[4r.] 6. It is allegit be the pannell that the sixt article of dittay, anent the inchanting and bewitcheing of William Duncane's malt, taking fra him the fruit and proffet thairof and of his industrie of brewing, etc.: non relevat, nocht condiscending thairin quibus mediis the samyn was done, vel quid fecit vel dixit, without the quhilks war speciallie condiscendit upon the samyn can nocht pas to the knowlege of ane assyse.

Answeris, aucht to be repellit inrespect of the dittay.

Findis the sixt article of the dittay relevant and remittis the samyn to the tryell of the assyse.

7. It is allegit be the pannell and her prelocutoris aganis the sevint article of dittay, anent the allegit bewitcheing of Euphame Douglas, spous to Mr George Nisbet, in maner specifeit in the said article, etc.: that the samyn is nawayes relevant, nocht condiscending thairin quibus mediis the said witchcraft or sorcerie was perpetrat, vell quid fecit vel dixit in laying on thairof, et quo modo et qua forma² the samyn was done, quither be [[[inchantment]]] inchantit wordis, venemous oiles or ointmentis, herbis or ruitis inchantit, or be quhat uther medicamentis the samyn was put in practiye. Lykas for the cleiring of the persewaris malice in the upgeving of the said article of dittay, the pannell desires that Mr George Nisbet, the said umquhile Euphame's husband, to be callit and inqyret upone the verritie thairof, quha as scho understandis is present within this hous, and will be his declaration purge hir of that calummie and devillische fact.³

It is answerit be the persewar that the alleageance foirsaid aught to be repellit in respect of of the dittay and notorietie of the pannell's giltines of the crymes thairin contentit.

The Lordis repellis the sevint article of the said dittay as nawayes relevant in respect of the answer maid thairto, quhairupon the pannell askit instrumentis.

¹ and so proved from effects

² how and by which manner

³ Mr George Nisbet was one of the prosecution witnesses mentioned in the summons of 11 Feb. 1614.

8. It is allegit aganis the aucht article of dittay anent the inchanting and bewitcheing of Isaac Runsieman in maner and for the causs contenit in the said aucht article, etc.: the samyn is nawayis relevant, nocht condiscendand thairin quibus mediis the cryme thairin contenit was done. [4v.] Answeris, aucht to be repellit in respect of the dittay quhilk he referris to the Lordis.

The Lordis find this article to be relevant and referris this aucht article conjunctim to the tryell of the assyse, quhairupon the persewar askit instrumentis.

9. It is allegit be the pannell and hir prelocuters aganis the nynt article, anent the bewitcheing of Robert Strauchane's [[daughter]] sister in maner contenit in the said article, etc.: the samyn is nawayis relevant nocht condiscendand thairin quid fecit vel dixit vel quibus mediis the fact libellit was execute.

To the quhilk it is answerit be the persewar that the dittay stands relevant nochtwithstanding of the said allegiance, in respect the wordis of sorcerie and inchantment war secretlie spoken and done be hir to the bairne, quhairupon seiknes and daith followit.

Findis this nynt article of the dittay relevant and remittis the samyn to the tryell of ane assyse, quhairupon the persewaris askit instrumentis.

10. It is allegit be the pannell against the tent article of dittay, anent the bewitcheing of Robert Craig, wobster in Mussilburgh, quhairby he contractit ane deidlie seiknes with ane heich rage, furie and madness quhilk continewit a five nytes togidder, and for consultatioun with Irische Jonet for assuadgeing of the said furie thairefter, etc.: the samyn is nawayis relevant nocht condiscendand quibus mediis the said cryme was comittit. And as to the last part of the said dittay, non relevat except it war condiscendit that the pannell consultit and advyset with the said Irishe Jonet sciens et prudens hir to be ane witche. And forder, it is affirmet be the pannell that the said Robert Craig, his famelie being visset with the pest, he tuik the pest and raget thairin quhairof in end he deceisset, quhilk is notourlie known.

Answeris, aucht to be repellit in respect of the dittay and of the bewitching of the said Robert Craig in maner sett down thairuntill, quhilk sall be cleirly verefeit to the assyse.

Findis the tent article relevant and remittis the samyn to the assyse, quhairupon the persewar askit instrumentis.

[5r.] 11. It is allegit be the pannell and hir prelocutoris against the ellevint article of the said dittay anent the bewitcheing of divers of hir neichtbours, thair persones, guids, geir, malt, work, etc.: repeittis the former answer maid be the pannell to the sevint article of dittay of befoir, with the addition that the said elevint article is nawayis relevant nocht condiscending upone the time and place quhen and quhair the said witche craft was committit, the persones' names aganis quhome it was done, et quid male sequitum est,¹ quhat dampnage and skaith the said persones sustentit thairby, nather yit condiscending that the said Irishe Jonet was then knawn to be ane notorious witche, and that the pannell sciens et prudens hir to be ane witche, uset the said charmes and inchantmentis contentit in the said elevint article, and that forme of inchantment or charmeing thair uset be hir.

To the quhilk it is answerit be the persewars, the allegeance foirsaid aucht to be repellit inrespect of the dittay beiring hir to haif opint the lokis and durris be hir sorcerie quhilks war close lokit, and in taking of the saids persones contentit in the said article their haill industrie, quhairby they gaid bakwardis thairintill.

The Lordis repellis this ellevint article as nawayis relevant in respect of the answer maid thairto, quhairupon the pannell askit instrumentis.

12. It is allegit be the pannell aganis the twelf article of hir dittay, anent the inchanting of Johnne Thomesone's stuff in Newbigging within his kill divers nights, and raiseing of the devill be conjurationes, etc.: the said twelf article is nawayis relevant nocht condiscending upone the speciall tyme of the making of the said inchantment, quibus mediis, quo modo et qua forma, and heirto repeittis the answeris preceeding maid to the sevint and ellevint articles with this addition: lykwayes, that the said article is nawayis speciall nocht condiscending upone the forme of conjuration uset be the said Geillis, nor quhat answer nor response sho ressavit fra the devill eftir the said conjuration, nor quhat followit vel quid male sequitum est thairupon to the persones mentionet in the said article, nor quhat dampnage hurt or skaith they ressavit thairby, without the quhilkis the said dittay in the particular article abovewritten can nocht pas to ane assyse.

Answeris, aucht to be repellit in respect of the dittay beiring hir to haif raisit the devil be conjurationes in maner sett down thairuntill.

Repellis this twelf article as nawayis relevant inrespect of the answer maid be the pannell thairto, quhairupon the pannell askit instrumentis.

¹ and what evil followed

[5v.] 13. It is allegit be the pannell aganis the threttene article of hir dittay, anent the charmeing of Thomas Barbour's bairne be witchcraft in maner specified thairin, etc.: non relevat unles the persewar condiscend quhat forme of charming was uset and quhat war the particular wordis utterit be hir in useing of the saidis charmes.

To the quhilk it is answerit be the persewaris that the allegeance foirsaid aucht to be repellit in respect of the dittay relevantlie qualifeit in the said article, and thairfoir sould pas to ane assyse.

Findis this threttene article relevant conjunctim, speciallie the last part thairof, and remittis the same to the assyse, quhairupon the persewar askit instrumentis.

It is protestit be the pannell incaice the allegit charmeing contenit in the said article be nocht sufficientlie tryet be the assyse, that sho be nocht fund giltie of that article.

The persewaris protestit in the contrair.

14. It is allegit be the defender and hir prelocutoris aganis the fourteine article of hir dittay, anent the allegit afftaking of the seikness of Issobell Vernour be sorcerie and laying the same upone hir new borne infant, quhairof the infant deit, etc.: that the said xiv article is nawayis relevant nocht condiscendand thairin quibus mediis, quo modo, vel qua forma the said inchantment and sorcerie was maid, quither be wordis in a straunge language as the devill ussis to do under the name of ane sanct or uther, or gif it was done be charecters, or be quhat uther medicament the samyn was done, thir being the devill's instrumentis and illusiones quhairby he ussis to dissave thais quha takis thame to his service.

To the quhilk it is answerit be the persewaris that the dittay stands relevant in the said article, and inrespect thairof sould pas to ane assyse nochtwithstanding of the said allegeance.

Repellis be interlocutor this fourtene article as nawayis relevant inrespect of the pannell's answer maid aganis the samyn, quhairupon the pannell askit instrumentis.

15. It is allegit be the pannell that the fiftene article of hir dittay, anent the bewitching of Archibald Flemyng in Mussilburgh for nocht theiking of hir hous, making him be hir allegit sorcerie to fall af ane ledder and thairby to brek his arme, etc.: that the same is [6r.] altogedder ridiculous and aucht lykwayes to be repellit as nawayis relevant, nocht condiscending thairin quhat forme or qualitie of inchanting or charmeing

was uset be the said Geillis to, or upone, the said Archibald Flemyng, quibus mediis the samyn was uset, quhither be woirds or uther acts or facts of witchcraft or divination, etc.

To the quhilk it is answerit be the persewars that the said article stands relevant, and inrespect thairof aucht to pas to ane assyse nocht withstanding of the allegeance.

Findis that the said fiftene article can nocht pas to ane assyse in respect of the irrelevancie thairof, and allegeance maid be the pannell and hir prelocutoris thair against, quhairupon the pannell and hir prelocutoris askit instrumentis.

16. Item it is allegit be the pannell and hir prelocutoris against the saxtene article of hir dittay, anent the secreit repairing under night towards the dwelling hous of James Duncane hir sone, and be sorcerie and witchcraft inchanting the lokis of his durris, and convoying hir self in and out thairat at hir plesour, etc.: that the said saxtene article aucht also to be repellit as nawayis relevant, nocht condescending upone the speciall tyme quhan the said Geillis repairit to the said James Duncane's house, quid fecit, vel quid perpetravit thairuntill¹, quha were present the tyme of the allegit comitting of the said witchcraft thairin, quibus mediis the samyn was done et qua forma, nather yit condescending that the said Irish Jonet was then ane notorious witche sa reput and haldin.

Answeris, aucht to be repellit inrespect of the dittay.

Repellis this sixtene article as nawayis relevant to pas to the knowlege of ane assyse, inrespect of the answer maid be the pannell aganis the samyn, quhairupon the pannell askit instrumentis.

17. It is allegit be the pannell against the seventene article of the said dittay, anent the inchanting of Johnne Vernour his stuff and malt and taking thairby his hail proffeit and industrie of brewing fra him, etc.: that the said xvii article is nawayis relevant, nather yit can the samyn pas to ane assyse, inrespect the samyn is altogidder perenall,² nocht condescending thairin quibus mediis, vel qua forma the fact libellit was done, nather yit is this article insert in the coppie gevin to hir, quhairupon sho aucht to haif bene servit upone xv dayis.

The persewaris passes fra the said article pro loco et tempore.³

¹ what she did or what she perpetrated

² Sic. Apparently a misspelling for general.

³ For this time and place, ie. they were reserving their right to pursue this article in the future.

Ordanis the said article to be deletit inrespect the samyn is nocht insert in the coppie of hir dittay.

[6v.] 18. It is allegit be the pannell aganis the xviii article of hir dittay, anent the bewitcheing and inchanting be sorcerie and witchecraft of Thomas Calderwoid, his malt, guids, and geir, taking thairby fra him the proffeit and tred of making of malt, and anent the declaration maid be Robert Murray upon his deid bed, etc.: that the said article in the hail pointis thairof is altogidder irrelevant nocht condiscending thairin quibus mediis, vel qua forma the said witchcraft was done. And as to the allegit confessioun or deposition maid be Robert Murray quha is now deid, nihil operatum,¹ except the said deposition buir per expression quhat particular factis, hurt, or harme was done. Quhilk declaration aucht nawayis to be respectit, seing it was extra presentiam partis non coram iudicem,² the deponer nevir being sworne nor examinat thairupon in presence of ane judge, et est cautione testis vincus,³ quha can nocht prove a matter of fourtie shillings of the law.

Answeris, aucht to be repellit inrespect of the dittay.

Findis the factis sett down in the said article relevant and remittis the samyn to the assyse to be tryit be thame, and repellis that part of the said article anent the declaration of Robert Murray as nocht relevant, quhairupon the persewars askit instrumentis.

19. It is allegit be the pannell and hir prelocutoris against the ninetene article of dittay producet aganis hir, anent the cureing of the Laird of Carberrie his oxen and ky of the lowing ill be sorcerie and witchcraft in maner set down in the dittay, etc.: that article is nawayis relevant inrespect thair is na sorcerie or inchantment particularlie qualifeit thairin, quo modo vel quibus mediis the samyn was done, bot only be eirding of the twa oxen quik, quhilk the pannell denies to be of veritie.

Answeris, the article stands relevant and sould be referrit to the assyse.

Remittis this xix article to the triell of ane assyse, quhairupon the persewaris askit instrumentis.

20. It is allegit be the pannell and hir prelocutoris against the twentieth article of hir dittay anent hir allegit raising of the devill within hir

¹ it can work nothing.

² outside the presence of the party (i.e. Geillis) and not before a judge.

³ and is to be treated with caution as a restricted witness, i.e. one not competent to testify in this case.

dwelling hous and seiking of responses at him, and how ane terrible fire was raisit be the devill within the hous to the terror of hir self and hail household, thairby signifeing to hir quhat sould be hir end, etc.: that article is nawayis relevant nocht condescending thairin quid dixit [7r.] vel quibus mediis he was raisit, quhilk factis and horriblenes thairof is only forget¹ and maliciouslie inventit be the persewaris aganis the pannell, and sho altogidder denies the samyn to be of veritie.

Answeris, the allegiance aucht to be repellit inrespect of the dittay quhilk is sufficientlie knawn to the assyse.

Remittis the article to the assyse to be tryit be thame.

21. It is allegit be the pannell and hir prelocutoris against the xxi article of dittay, anent the consultatioun with Anny Sampson,² ane notorious witche for the time, for cureing be sorcerie and witchcraft of Mathow Johnestoun of ane diseas in maner specifeit in the said article etc.: that article is nawayis relevant unles it war speciallie condescendit upone thairuntill that the pannell consultit with the said Anny Sampson sciens et prudens hir to be ane witche.

Answeris the persewaris, the allegiance aucht to be repellit in respect of the dittay beirand consultation with Anny Sampson, quaha was then ane notorious witche and practiyet witchcraft in maner contenit in the said article.

Findis that part of the said article relevant anent the consultation and remittis the samyn to the assyse.

22. It is allegit be the pannell aganis the xxii article of dittay, anent the cureing and charming be witchcraft of Johnne Duncane, hir husband, and consulting with the said Anny Sampson thairanent, etc.: that article is nawayis relevant nocht condescendand quhat forme of enchantment or charmeing the pannell uset to hir husband, et quibus mediis the samyn was uset and wrocht, and that the said Geillis Johnestoun sciens et prudens that the said Anny Sampson was ane witche, consultit with hir and cravet hir help and cure as ane witche. And forder, albeit the said Anny Sampson had declaret or confessit ony sic thing,³ hir declaration sould nocht be respectit incaice it war product, as it is nocht, scho being

¹ Forged.

² Annie (or Agnes) Sampson was tried for witchcraft on 27 Jan. 1591. Pitcairn, *Trials*, i, 230-41.

³ Healing John Duncan was item number eighteen in Sampson's dittay. Pitcairn, *Trials*, i, 232.

[a] persoun infamis and a notorious witch, convict, condemnit and execute to the daith for witchcraft at Edinburgh. It is affirmet be the pannell that umquhile Johnne Duncane hir husband survived sax yeir togidder eftir the allegit time of his charmeing contenit in the dittay, viz., to the foirscoir saxtene yeir of God, and that the said Anne Sampson deceissit and was execute in anno foirscore ten of befoir,¹[7v.] and for verificatioun thairof productet the said Johnne Duncane's testament togidder with ane note of the said Annie Sampson's convictioun, and of the time thairof.

Answeris, aucht to be repellit in respect of the dittay and consultatioun thairin contenit.

Repellis the said xxii article as altogidder irrelevant [[quhairupon]] in respect of the pannell's answer maid thairto, quhairupon the pannell askit instrumentis.

23. It is allegit be the pannell against the xxiii article of hir dittay anent the consultation with Marioun Greg, blekster² in Mussilburgh, ane notourious witch,³ to the cureing and charmeing of Robert Duncane and taking ane heavie seiknes af him in maner contenit in the said article etc.: the samyn is nawayis relevant nocht condiscending upone the maner, forme, and qualitie of the cure uset be the pannell to hir said sone, quibus mediis the samyn was done be hir, and that scho sends for the said blekster wyfe sciens et prudens, and consultit with hir upon witchcraft knawing hir to be ane witch, nocht condiscending upone the name of the persone upone quhom the witchcraft was cassin. And as to any pretendit confessioun maid be the said blekster wyfe in presence of Mr Adam Colt, etc., thairanent, na respect aucht to be had thairto, the said pretendit confessioun thairanent being maid extra presentiam partis, parte non citata nec jurata nor sworne judiciallie to that effect, et in carcere detenta quhilk is null of the law.⁴

Answeris, aucht to be repellit in respect of the dittay, and that the said Marioun Greg was wardit for witchcraft quha, eftir consultation with the pannell, tuik the said seikness af hir sone and laid the samyn upon ane dog of Issobell Vernour's, quhilk dog ran mad and deit.

It is forder allegit be the pannell that the said Marioun Greg was nocht

¹ 1596 and 1590.

² Someone involved in blacking leather.

³ There is no Marion Greg from Musselburgh mentioned in C. Lamer's *Source-Book*.

⁴ outside of the presence of the party (ie. Geillis), by a party not cited or swome ... and detained in prison

wairdit for witchcraft bot only was tane and wairdit to beir witnessing aganis the pannell, of quhome, eftir tryell, ressaving na confessioun to the pannellis prejudice, scho thaireftir was set at libertie.

Findis the said xxiii article nawayis relevant inrespect of the pannell's answeris maid thairto, quhairupon the pannell askit instrumentis, etc.

24. It is allegit be the pannell aganis the xxiiii article of dittay, anent the allegit confessioun maid be hir befor the presbiterie of Dalkeith, that scho hantit and keipit companie with charmers and witches for cureing of hir bairnes of the seiknessis, etc.: that the said twentie foire article is nawayis relevant inrespect [8r.] thair is na sic pretendit confessioun productet. Nixt, non relevat [[expr]] except it war expreslie set doun thairuntil that sciens et prudens the said Geillis had consultet with witches, the said article lykways being general, nocht condiscendand upone the name of the persones with quhome scho consultit, quhat was the maner and forme of the consultatioun et quid male sequitur [est], and quhat followit thairupon quid fecit vel perpetravit to ony persone's hurt dampnage or skaith. And last, the said article can nawayis pas to ane assyse becaus it is nocht insert in the coppie of the dittay gevin to hir, nather is scho served thairupoun upone xv dayis wairing conforme to the act of parliament.¹

The Lordis ordanis the said article to be deletit in respect scho is nocht served thairupon, nather is it insyrt in the coppie of hir dittay.

25. It is allegit aganis the twentie fyve article of the said dittay productet aganis hir, anent the allegit confessioun maid be hir about Martinmes last, being deidlie seik in presense of divers honest persones that scho had uset and consultit wittinglie and willinglie with witches and followit thair directions in cureing of hir bairnes and freinds, etc.: the said article is altogidder generall and nawayis relevant to pas to ane assyse unles it war condiscendit thairuntill quhat the persones' names ar with quhome scho consultit, and that scho consultit with thame sciens et prudens knawing thame to be witches, and also that the persones' names to quhome the allegit confessioun was maid war lykwayis condiscendit upone.

To the quhilk it is answerit be the persewar that the said allegiance aucht to be repellit inrespect of the dittay beirand that scho consultit with witches anime et intentione knawing thame to be witches. And as to the persones' names befor quhome the confessioun was maid, declairis the samyn was maid in presence of Mr Adame Colt, minister, Johnne

¹ This may refer to an act of parliament passed in 1540: see *APS*, ii, 358 c.7.

Achieson, Walter Broun, George Andersoun, Richard Bennet and Matthew Vallenge, and thairfoir the said article of dittay sould pas to ane assyse.

Findis the said article relevant inrespect of the dittay and the persewaris' answer maid to the allegance foirsaid, and ordanis the samyn to pas to ane assyse, quhairupoun the saids persewaris askit instrumentis.

26. It is allegit be the pannell aganis the 26 and last article of the said dittay, anent the declaration maid be Mr Andro Blakhall, minister,¹ to the persones contenit in the said article, that he suspectit evir Geillis Johnestoun to be ane witche and ane consular and keipar of companie with witches, speciallie with Anny Sampson and utheris, etc.: that article is nawayis relevant [8v.] as foundit upoun the confessioun of Mr Andro Blakhall, the saymn being allegit to haif bene maid extra presentiam partis, nocht judicillie, the said Mr Andro nocht being suorne to that effect, na sic pretendit probatioun being productet, nor yit condiscending upone the maner, forme, nor qualitie of the consulting [[with]] of witchcraft with the said Anny Sampson and utheris, sciens et prudens hir to be ane notorious witche, without the quhilkis war expreslie qualifeit, the samyn can nawayis be sustenit as relevant to infer aganis hir [[agan]] the cryme of witchcraft or hir to be giltie thairof, or to haif bene ane consular with witches.

Answeris, aucht to be repellit inrespect of the dittay.

Repellis the last article as altogidder irrelevant [[testis]] and nawayis to pas to ane assyse inrespect of the pannell and hir prelocutoris' answeris, quhairupoun the said Geillis Johnestoun and hir prelocutoris askit instrumentis.

Eftir discussing of the quhilk particuler allegences maid aganis everie particuler article of dittay in maner foirsaid conforme to the saidis lords' severall interloquoris gevin thairupoun, in maner expremitt above writtin, twelve of the foirsaidis articles being repellit as nawayis relevant, and fourteen thairof admittit and referrit be the said lords' interlocutoris to the tryell of ane assyse notwithstanding of the pannell and hir prelocutors' allegences maid to the contrair, the saidis persewaris productet my lord chancellor his precept deulie execut and indorsit upoun the persones of

¹ Minister of Inveresk (i.e. Musselburgh), 1574-1609. The *Fasti* says that he died on 31 Jan. 1609, but he was among the ministers summoned before the privy council by Geillis on 20 July 1609: H. Scott (ed.), *Fasti Ecclesiae Scotticae*, 7 vols. (Edinburgh, 1915-28), i, 324; *RPC*, viii, 329.

assyse underwrittin,¹ lauffullie summoned to compeir this day and place to pas upoun the said Geillis Johnnestoune's assyse for the severall crymes above mentionet, and desyret the said persones of assyse to be callit upoun conforme to ane particuler roll productet be the said Robert Strauchane, persewar, and subscriyvit with his hand, who, upoun the production thairof, askit instrumentis. Followis the names of the persones ressavit, suorne, and admittit upoun the assyse. Assisa: Thomas Giffert.²

Assyse

Thomas Giffert of Sherefhall	Johnne Scott, bailie of Mussilburgh ³
Mr Johnne Edmestoun of Natoun	Johnne Broun, thair
Mr Patrik Edmestoun, his brother	Walter Smart, thair
James Hervie in Inverask	Robert Bennet, thair
Johnne Thomesoun in Newbiging ⁴	Richert Cowane, thair
	Alexander Ramsay, thair
	Richerd Allane, thair
	Johnne Smart in Fisherraw
	Robert Broun, thair
	Williame Calderwoid thair

[[The persewaris takis intrumentis of the sweiring of the assyse.]]

[[Robert Strauchane, ane of the persewaris, being suorne be his grit aithe, declarit that the hail pointis contenit in the dittay ar of veritie and that the said Geillis Johnnestoun was culpable thairof, quhairupoun he, with the remainder persewaris, askit instrumentis, and inrespect thairof and of the constant bruit of hir giltines of the saidis crymes, protestit for wilfull error

¹ Only the names of the people chosen to sit on the jury are found below. The full jury panel of 47 people, from whom the 15 jurors were chosen, is contained in the messenger's executions of summons, to be found in the appendix.

² Thomas Gifford was chancellor of the assize and this is probably why his name appears first here.

³ Scott was also listed among the witnesses to be summoned. See the appendix below, p. 144.

⁴ Article number twelve alleges that Geillis enchanted "Johnne Thomesone's stuff in Newbigging" (see above, p. 119), therefore, John Thompson should not be sitting on the jury. However, no objection appears to have been made to his presence there—indeed, no objections to any jurors are recorded, in marked contrast to the numerous objections made against witnesses.

gif thai acquit hir thairof.¹

And the pannell with hir prelocutoris protestit in the contrair and]]

The [[saidis]] foimamet xv persones of assyse being ressavit, [[gaif]] and solemlie suorne, gaif thair aithes conforme to the ordors, quhairupoun instrumentis war askit be the persewaris. The said Robert Strauchane, persewar, being suorne upone the treuth and veritie of the dittay, be his grit aith declarit the hail pointis thairof as the samyn is set down to be of veritie and the said Geillis Johnestoun to be giltie and culpable of the crymes mentionet thairuntill, and thairupoun he with the remanent persewaris askit instrumentis. The said Geillis Johnestoun be hir grit aith declarit to the assyse that sho is altogidder innocent of the said crymes.

[9r.] *² Nocht to reshape (?) this

Thaireftir the saidis persewaris for cleiring to the assyse of the said Geillis Johnestoun hir giltines of the xiiii articles above writtin, fund relevant be the lordis and remittit to thair tryell, productet thair witnessis underwrittin, lafullie summoned be virtew of my lord chancellor his precept to this dyet,³ desyreing thaim to be callit upoun, ressavit, and suorne to depone according to thair knowlege and conscience in the said matter.

It is declarit be the pannell and hir prelocutoris that albeit it be nocht the ordor in criminall caussis to ressave witnessis, bot that the assysoris, the matter being admittit to thaim, ar baithe witnessis and judges, yit thai ar content for cleiring of the pannell's [[giltines]] or innocencie of the said crymes quhairof sho hes gevin hir aith that sho is innocent, etc., to admit the probatioun of the dittay be witnessis for the assyse's forder informatioun under protestatioun that all lafull exceptiones to be proponit be hir aganis thaim judiciallie sould be admittit.

1. And for preving of the first point of dittay, anent the taking of hir sone's shoe beleveand that it was David Bairnefather's hir servand's, and offering the samyn to the devill in maner contenit in the first article,

¹ Protesting for wilfull error was a threat made to the jurors to prosecute them for a deliberately false verdict. This threat was frequently made in Scottish trials, but rarely acted on.

² This mark corresponds to the one that is found at the beginning of the manuscript, above, p. 110. This entire section is scored out in the text from the words 'Nocht to reshape this' to p. 130, footnote 1.

³ There is no list included in this manuscript. The chancellor's precept mentioned here, containing the names of all the witnesses originally summoned, can be found in the appendix, below, pp. 141-42.

productet the said David Bairnefather in Newbigging, Adame Spens in Fisherraw, and James Carmichell in Mussilburgh as witnessis for preving thairof.

2. And for verifeing of the secund article of the said dittay, [[productet]] anent the conferens had be Geillis with Irish Jonet, ane notorious witche, quha raisit the devill and brocht him in to hir sone in forme of ane hieland doctor, and offering of the bairne to the devill in maner specifeit in the said secund article, and for preving of the hail remanent pointis thairof, productet Mr Patrik Hendersone, reider in Edinburgh, Williame Thomesoun, sone to Johnne Thomesoun in Newbiging, Margaret Jak his mother, and Robert Duncane in Fisherraw, [[as witnessis for preving thairof]] [[for preving of]] Sir James Richardsoun of Smetoun, William Penman, bailye of Mussilburgh, Mr Adame Colt, minister, and the presbiterie of Dalkeith.

4.¹ [[And]] Lyk as for preving of the fourth article anent the consultatioun with the said Irish Jonet, ane notorious witche, for charmeing James Duncane hir sone in maner thairin expremit, productet the presbiterie of Dalkeith [[and]]

5. And for cleiring of the fyfth article [[productet Gavin Duncane hir sone]] anent the outbringing of Irishe Jonet furth of the tolbutth of Mussilburgh, quhairin sho was wairdit, be witchcraft in causeing of Gavin Duncane hir sone put his finger in the lok of the dur, [[etc.]] produces the said Gavin Duncane.

8. And for preving of the aucht article of the dittay, anent the bewitcheing of Isaac Runcieman for nocht redeliverie of the silver claspis mentionet thairin, productet the said Isaac Runcieman.

19. And for preving of the xix article of dittay, anent the curing of the guidman of Carberrie his oxin of the lowing evill in maner thairin mentionet, productet Mr Mungo Rig of Carberrie.

20. And syklyk for preving of the [[f]] tuentie article of dittay, anent the said Geillis hir raising of the devill within hir awin hous at midnyght [[and]] to understand [[of hir daid]] [[of]] quhat should be hir end, and remanent circumstances set down thairin, productet Robert Dykis and Gavin Duncane.

25. And for verifeing of the xxv article of the said dittay, anent the [[said]] confessioun maid be the said Geillis [[upoun hir deid bed]] [[being]] at Martinmes last being deidlie sick, in presence of dyverss persones that sho had consultit with witches, etc., productet Richerd

¹ These numbers correspond to the relevant articles of the indictment: therefore, they do not proceed in strict numerical order.

Bennet in Mussilburgh.

Lyk as for preving of the uther sex articles remittit to the said assyse's tryell, refeiris the samyn to the assyse [[awin knowlege and conscience]] thame selffis to cognose thairupoun according to thair knowlege and conscience.¹

It [[was]] is objectit be the pannell and hir prelocutoris that the said James Carmichell and Adame Spens can nocht be ressavit as witnessis to depone aganis hir upoun the said first article of dittay, because thai ar baith but pure serving men nocht worth the king's unlaw, and [9v.] seing thai ar to be examinat upoun ane matter of lyfe and daith, the witnessis to be ressavit thairupoun aucht to be testes omni exceptione maiores.

To the quhilk it is answerit be the persewaris that thai ar baith honest men undefamet and [[thair]] knawis best the verritie of the said fact and thairfoir, for cleiring of the treuth, should be admittit.

Admittis the said David Bairnefader of consent of partie.

Admittis the saidis Adame Spens and James Carmichell nochtwithstanding of the allegeance abovewrittin.

It is allegit be the pannell aganis Margaret Jak, spous to Johnne Thomesoun in Newbiging, that sho can nocht be ressavit as wites in this matter becaus sho is ane woman, quha of the law can nocht be admittit wites in ane matter of xl shillings and far less in this matter of lyfe and death.

To the quhilk it is answerit be the persewaris that seing this is a matter of witchcraft, quhilk is tressone aganis the law of God, and thairfoir aucht to be tryit quocum quomodo for [[the]] plbner² sclander of the persones giltie of sic haynous crymes, sho, [[aucht]] with the remanent witnessis of hir sex to be product be thame, sould be admittit.

The lordis repellis wemen to be witnessis in this matter.

It is allegit aganis William Penman that he can nocht be ressavit as witness becaus he is mareit with ...³ Vernour, the persewar Robert Strauchane his mother's sister, and [[in respect thairof]] hes concurrut with the persewaris in upgeiving of the dittay aganis hir.

The lordis repellis William Penman to be witness.

It is allegit be the pannell and hir prelocutoris aganis Mr Adame Colt and remanent the [[pre]] bretherene of the ministrie [[of the pre]] and presbyterie of Dalkeith, that thai aucht nocht to be ressavit as witnessis in

¹ This is where the scored-out section ends.

² Sic. The text requires 'public' here.

³ There is a blank in the text here.

this matter becaus the pannell, [[was]] being first convenit befor thaim
 at the instance of Johnne Vernour for dyverss allegit pointis of
 witchecraft and allegit consultatioun with witches quhair of ane grit pairt
 ar specifit in this dittay, and for tryell thair of dyverss wemen and uther
 suspect persones, hir evill willeris, being ressavit and examinat be the
 said presbyterie, and sho, be thair sentence decretit, fund giltie of the
 saidis poyntis, the samyn proces was sensyne [[re]] callit to be reducit
 befor the lordis of the grit commissioun¹ quhair the hail presbyterie
 compeirit as partie in the said Geillis's contrair, and eftir tryell tane be the
 saidis lordis thairin, the said sentence was reducet, and fund null. And
 thairfor, the said bretherene of the presbyterie being anes hir judges, and
 thaireftir in the reducioun hir partie, thay can nocht now be admittit as
 witnessis in this matter aganis hir in favour of hir persewaris.

[10r.] To the quhilk it is answerit be the persewaris that the said
 bretherene of the presbyterie aucht to be admittit as witnessis
 nochtwithstanding of the said allegiance, becaus the first pursuite was at
 the instance of Johnne Vernour and this pursuite now intentit is at Robert
 [[Vernour's]] Strauchane's instance et ita variatur de persona.² And the
 reducioun of the decretit befor the grit commissioun procedit upoun the
 informaltie of the first proces deducit afor the presbyterie and for na
 uther caus, and thairfor thai, upoun the first tryell tane be thaim,
 understanding best the pannell's giltines or innocencie of the saidis
 crymes, being testes omni exceptione maiores, sould now now be admittit
 witnessis for the assyse's forder informatioun in this matter remittit to
 thair tryell.

Repellis the [[ministeris]] bretherene of the presbyterie of Dalkeith to be
 witnessis in this matter inrespect of the decretit of reduction producet,
 beiring thaim anes to be judges.

[[Admittis the saidis Mr Patrik Hendersoun, Robert Duncane, Sir James
 Richardsoun of Smetoun, [and] William Thomesoun of consent to
 depone in this caus.]]

It is allegit aganis Isaac Runcieman that he can nocht be admittit witness
 in this matter becaus the allegit fact set down in the 8 article of the dittay,

¹ This is probably a mistaken reference to the court of high commission established in 1610, seven months after Geillis's case was heard by the privy council. Once in place, the high commission began to review disputed presbytery cases, rather than the privy council. See J. Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999), ch.6.

² and therefore the person varies, i.e. this is a different pursuit and the argument doesn't apply.

quhairupoun his depositioun is soucht, is committit aganis him self, and as he could nocht pas upoun the assyse in caice he had bene callit, na mair can he be admittit witness to geve any declaratioun thairin, the fact being allegit done aganis him selff, the veritie of the quhilk is sufficientlie knawin to the assyse.

Answeris, aucht to be admittit nochtwithstanding of the allegiance.

Repellis the said Isaac Runcieman as witness.

Admittis the said Gavin Duncane, the gudman of Carberrie, Robert Dykis, and Richerd Bennet, of consent of partie, as witnessis.

The [[persewaris]] pannell protestis that the witnessis's depositions in this matter may be tane judiciallie in presence of the lordis, partie, and assysois to the effect the treuth of the pannell's giltines or innocencie of the crymes lybillit may be knawin the better.

[[The lordis ordaneis the saidis witnessis to be examinat judiciallie in thair presence [[befoir the]] and in presence of the assyse befoir thai be incloset.]]

[10v] The depositiones of the witnessis following, tane up judiciallie in presence of the lordis, the assysois, and parteis, asweill persewaris as defendaris, befoir the assyse war incloiset.¹

1. David Bairnefather, being sworne and demandit² gif he was servand to Geillis Johnestoun, confessis that he was hir servand a fyve yeir syne or thairby. Demandit gif he hes ressavit ony informatioun of hir, or of ony of hir freindis, to depone in this matter to hir behaif, or hes ressavit ane new stand of cloithes and ane cloik of gray or ony uther guid deid for that effect, declaris as he sall answer to God he ressavit na sic acknowledgement or guid deid or promeis of guid deid. Nather yit confereit he with the said Geillis or ony uther in hir name upone sic matter, or was travellit with be ony thairuntill. Being demandit gif he left his service and come away [[with]] fra the said Geillis against hir will or nocht, or gif the tyme of his service with hir he persavit hir to be ane witche or ane hanter with witches, and gif the diseis set down in the first

¹ Although it is not recorded here, Sir Thomas Hope states that this procedure was followed despite an allegation (presumably on the part of the pursuers) that the witnesses should be examined outside of the presence of the 'partie' (presumably meaning the accused). Hope, *Major Practicks*, ii, 306.

² Who was asking the questions is never specified, but it was probably Dunfermline and his assessors.

article of the dittay [[anent]] quhilk was cassin upone Johnne Duncane hir sone be occasioun of the shoe offerit be hir to the devill, was of veritie? Declairis he left the said Geillis's service [[with]] of his frie will and with hir guid will also, and that during the tyme of his being in service with hir he newir could persave any witchcraft in hir as is repoitit, or that sho hantit with ony bot the speciall honest nychtboris of the toun and of best rank. Nather knawis he ony thing concerning the taking of hir sone's shoe and offering thairof, nor of the caus of seiknes quhairof hir sone Johnne deceissit, bot that it was ane ordinar diseas of ane fever quhairof he depairtit. And knawis nathing to hir bot honestie.

2. James Carmichell, sworne, declaris he is servand to Richerd Bennet and getis ten pund of fie in the half yeir. Demandit quhat he knawis of Geillis Johnnestoun concerning the taking of hir sone's shoe and offering thairof to the devill, and how the seiknes was laid upone hir sone, quhairof he deceissit in grit rage in maner contenit in the first article of hir dittay, declairis as he sall answer to God he knawis na sic thing to be of veritie, and nevir understuid ony thing of hir bot ane honest guid woman of quhome, during his being in service with hir, he ressavit satisfioun of meit and fie honestlie.

3. [[David]] Adame Spens, sworne and examinat, est conformis superioribus¹ and knawis nathing of hir bot honestie.

[11r.] 4. Williame Thomesoun, sone to Johnne Thomesoun, sworne and examinat upone the second article of Geillis Johnnestoun hir dittay and quhat he knawis thairof, depones as he sall answer to God he knawis na sic crymes set doun thairin to be of veritie. Demandit gif he saw the new borne bairne lying in ane basing standing upone the burd, and gif thaireftir the samyn was gevin be [[Jeillis]] Irishe Jonet or Geillis Johnnestoun to the devill in ane offering, or uther wayis to his knowlege quhat became of the said bairne, declairis he was in James Duncane's hous shortlie eftir his wyfe's delyverie of the said bairne, and that he saw the samyn in the basing standing upone the burd heid, bot that the samyn was offerit to the devill or quhat become utherwayis thairof, be his grit ayth he knawis nocht.

5. Robert Duncane, sone to the said Geillis Johnnestoun, sworne and demandit quhat he knawis of the secund article of hir dittay, depones he

¹ the same as the above, ie. he agrees with the preceding witness.

knawis nathing thairof. Being demandit gif he was seik at that tyme quhan his guid sister James Duncane his wyfe pairtit with the bairne, and how he was curet of that diseas, declairis he was seik a sex dayis of befor and convalessit, bot was nocht chairmet nor curet be witchcraft or ony uther unlauffull meane,¹ ather be his mother or ony uther to his knowlege as he sall answer to God.

6. Mr Patrik Hendersoun, reider in Edinburgh, suorne and examinat, demandit quhat he knawis of Geillis Johnestoun concerning the conference had be hir with Irishe Jonet for cureing of hir sone James Duncane of his seiknes be witchcraft, and of the raiseing of the devill in forme of ane hieland [[doth]] doctor and offering to him of the infant bairne, and charmeing of hir sone Robert Duncane of his seiknes, and remanent crymes contenit in the secund article of hir dittay, depones upone his grit aith that he knawis nathing of the said Geillis bot be a cowloun poirte.

7. Sir James Richardsoun of Smetoun,² sworne, demandit quhat he knawis of the fact set down in the secund article of the said Geillis's dittay or of ony uther fact of witchcraft quhair of sho is accuset, depones he knawis nathing thairof.

[11v.] 8. Gavin Duncane, suorne and examinat, being demandit gif his mother Geillis Johnestoun or ony uther hes delt with him to conceill the verritie of the fact set down in the fourt article of hir dittay, declairis as he sall answer to God, na persone delt with him in that matter, ather to conceill or reveill the samyn. Being demandit gif be his mother's directioun he past at the tyme contenit in the said fourt article to the tolbut of Mussilburgh, Irish Jonet being than wairdit thairuntill, and pat his finger in the lok of the tolbut dur, and at his returning hame to his mother gif he found the said Irishe Jonet in the hous with hir, and gif he had declairit and confessit this to ony persone to be of verritie, depones as he sall answer to God, he nevir ressavit any sic directiounis of his mother,

¹ That Robert Duncan was testifying on this point shows to what extent Scottish criminal trials could be inconsistent, even with such legal luminaries as Dunfermline on the bench, for this part of the second article had been declared irrelevant by the judges and assessors—the jury should not have considered it, and there was no need for Robert to testify on it. See above, p. 115.

² Smetoun was one of the baillie deutes of the regality, and was sitting on the bench during this trial. It is very interesting to find a man acting as a witness in a trial in which he was also a judge.

nor yit past he to the said tolbutth dur and pat his finger in the lok thairof, nor that he evir saw at ony tyme the said Irishe Jonet in his mother's hous, nor yit maid ony sic declaratioun as set down in the said article.

9. Mr Mungo Rig of Carberrie, sworne and demandit upone the veritie of the fact set down in the xix article of the dittay, and gif the said Geillis Johnstoun war the curer of his oxin of the lowing evill in forme and maner set down thairuntill, declairis at Witsunday was ane yeir or thairby, he him self being absent fra hame, at his hamecuming it was shawn to him be his servandis that his ky and oxin was vexit with that diseas and that for cureing thairof his hyrd had eirdit ane of his guds quik within his awin boundis and upone his awin proper landis, nocht betuix my Lord's¹ landis or marches as is set down in the dittay.² Quhilk forme of cure as his servandis than tould to him was ane ordiner cure practiyet be all that had the lyk diseas upone thair bestiall. Bot that the said Geillis Johnstoun was in his boundis or gaif ony directioun for cureing of his oxin be chairmes or uther wayis, declairis hir to be altogiddir innocent and frie thairof, nather that evir sho was in his boundis to his knowlege at ony tyme, and nevir understandis any thing of hir bot to be ane honest woman.

10. Robert Dykis, suorne and demandit gif he knawis ony thing concerning the said Geillis's raising of the devill within hir awin hous in December last, and of the fyre that was raisit be him and quencheing thairof in maner speicfeit in the tuentie article of the dittay, declairis as he sall answer to God he knawis nathing thairof.

11. Gavin Duncane, sworne and examinat upone the verritie of the said article est conformis Robert Dykis in omnibus.³

[12r.] Richird Bennet⁴ suor[ne]...

¹ 'My lord' probably refers to the earl of Dunfermline, principal judge in this case, whose lands of Pinkie, like the lands of Carberry, lay within the parish of Musselburgh.

² See article 19, above, p. 122. This relates to the burial of the oxen.

³ The testimony of the witness confirms to that of Robert Dykes in all things. This is the last word on fo 11v. The last folio, fo.12, has been torn vertically, only half of it remaining, and fo. 12v. is very dirty and soiled. Therefore, the following sections will receive special treatment. For the various editorial decisions, please see the introduction, above, pp. 105-6.

⁴ Richard Bennett was the last of the witnesses whom the pursuers intended to call. He was testifying as to the 25th article of the dittay.

last he hard Geillis Johnestoun...
 tyme confest in his presence t...
 with witches and followit...
 at sic tymes qu[hat] thay had be...
 specifiet in the xxv article of...
 the persones that war than prese[nt]...
 of the said confessioun be hir....¹ ...
 Johnestoun being seike at that tyme...
 visseit hir Mr Adame Colt, m[inister]...
 portioner of Inveraske² being thai[r]...
 conforting hir...³ At quhilk ty[me]...
 member ance hard Mr Adam Co[lt]...
 hir gif the bruite that ...⁴ ...
 and consultation with witch[es]...⁵ ...
 was than upone the pointe of death...
 To the quhilk the said Geillis [tha]...
 in the deponer's presence God forg[ive]...
 haif bruitit me for⁶ never kne[w]...
 and honestie.⁷ Upoun the ma...
 mes (be the voice - foirsaidis)⁸ the said Geillis Johnestoun w...

[[⁹ The persewaris desyret [m]...
 callit upone for exhibition...
 [Jo]nettis depositiones tane...
 handis.

¹ There is a space after this word, and the narrative must have resumed again in the part that is now missing. The narrative to this point probably featured the question that was put to Bennett, consisting largely of a repetition of the charge contained in the article. Bennett's answer begins after this point.

² This is probably Robert Douglas, portioner of Inverask, procurator fiscal of the regality of Musselburgh, who was one of Geillis's prosecutors in this case.

³ There is a blank space between the words 'hir' and 'At'.

⁴ There is an illegible word here, prior to the tear in the page.

⁵ There is one or more illegible words here, prior to the tear in the page.

⁶ There is an oblique here, the meaning of which is unclear.

⁷ This is a variation of the testimony of previous witnesses who said that knew 'nothing of her but honesty'.

⁸ The words in round brackets were in the margin. This is the last line of Richard Bennett's testimony.

⁹ These next paragraphs, which have been crossed out, constitute the successful attempt on the part of Geillis and her lawyers to have Irish Jonet's depositions, which had been taken under extra judicial torture, excluded from the proceedings. The same story is told once again on the opposite side (fo. 12v.) in a section that has not been crossed out.

Compeirit the said Mr¹ ...
said Irishe Jonet's dep[ositionis]...

It is allegit be the pannell...
Irishe Jonet hir deposi[tionis]...
admittit nor respectit be the...
article of hir dittay. Jur...
tane in carcere sho being...
frie woman in face of Ju...
sho had bene at libertie...
the said depositiones thay...
gif sho war here present...
to beir witnessing thairin...
said Irish Jonet war...
uset as ane witnes...
being baith ane wom[an]...
devillishe persone. A...
maid be hir in car[cere]² ...

The lordis inrespect of³ ...
Adame Colt that the...
[car]cere and nocht in Judge[ment]...
[depo]sition can nocht be ress[avit]⁴ ...
And thairfoir the said [lordis]...
the said Mr Adame [Colt]...⁵]]

[12v.]...[Richiesoune] with the said Mr Mungo Rig of Car[berrie]
...Robert Dykis the lordis admittis to be witnessis

¹ From information contained further down the page, it can be surmised that this paragraph records Mr Adam Colt's presentation of Irish Jonet's depositions, in response to a request by the pursuers in the previous paragraph.

² This paragraph contains Geillis's and her lawyers' arguments against admitting Irish Jonet's depositions into evidence, and includes: i) that she was illegally imprisoned, ii) that she was of ill repute, and iii) that she was a woman. At one point they argue that even if she were here in person she could not testify in the case ("gif sho war here present"). However, no mention is made of her having been tortured, a fact that was referred to in the arguments over the second article; see above, p. 114.

³ This phrase signifies that the judges are beginning to give their decree.

⁴ This phrase signifies that Irish Jonet's depositions have been excluded from the jury's consideration.

⁵ This is the last line of folio 12r.

...the saidis persewaris declairit that
 ...[y...] the samyn to the knowlege and
 ...[thairupoun] according to thair conscience
 ...the [m...] to be callit upoun for ex
 ...[Irishe] Jonet's depositiones tane up be [him]¹

...[]² and productet the said Irish Jonet['s]
 [depositiones]

...pannell and hir prelocutoris that the said Irishe Jonet hir
 ...be ressavit nor respectit be the assyse for preving
 ...[]³ inrespect the samyn was tane in carcere
 ...ane frei woman in face of [judgement]
 ...sho [had bene] at libertie the tyme of the making
 ...[c]ould work na mair nor gif sho war
 ...[being] summoned to beir witnes thairuntill
 ...said Irish Jonet war heir productet and had be[ne]
 ...witness sho could nocht haif bene admittit
 ...[w]oman and ane infamous divillish persone
 ...depositiones maid be hir in carcere should
 ...[]⁴

...of the declaration maid be Mr Adame Colt that
 ...was tane in carcere [ext]ra Judic[ium] []⁵
 ...[in]g nocht to be ressavit as ane probation in that
 ...[depositiones] was gevin up again to the said Mr⁶
 ...quhairupoun the pannell askit instrumentis.⁷
 ...that the witnessis depositiones to be ex[aminit]⁸

¹ This paragraph begins the retelling of the same story as the crossed out paragraph above: the arguments over Irish Jonet's depositions, and the judges' decision to bar them from consideration.

² There is an illegible word here.

³ There is an illegible word here.

⁴ There are a few illegible letters here that mark the end of a paragraph.

⁵ There is an illegible word here.

⁶ This is probably Mr Adam Colt: the judges were returning Irish Jonet's rejected depositions to him.

⁷ Once again, this paragraph is a record of the judges' ruling on the question of the admissibility of Irish Jonet's depositions. The fact that it was the 'pannell' who asked for instruments is very telling—this was usually done only when a ruling in the defender's favor had been made.

⁸ This is the last paragraph in the manuscript. It conforms to the pattern found in the books

...be tane up judicialle and thair declarationes
 ...[productet] the pairtie and assysois to the effect
 ...[pannellis] giltines or innocencie of the crymes
 ...be knawin. Followis the depositiones
 ...depositiones of the witnessis, etc.
 ...of assyse being chosen, [suorne, and admittit]¹
 ...of the said Geillis Johnestoun be dittay of the hail
 ...abovewrittin findis relevant as said
 ...[said] denyit be hir to be of veritie and
 ...of [the] saidis witnessis ressavit, suorne, and ad[mittit]
 ...[said] assyse's forder information in the said matter
 ...furth of court to the assyse hous
 ...[be pluralitie] of voittis thay electit and choset the said
 ...Sherefhall in chancellor,² ressavit and voittit
 ...was of dittay []³ above written
 ...[tryell] and being ryplie and [at lenth]
 ...[toge]der with the depositiones and declarationes of
 ...suorne and examinet judicialle in thair
 ...[]⁴reenterit again in court
 ...[]⁵ be the mouthe of
 ...[Thomas Giffert] of Sherefhall thair chancellor [finds pro?]
 ...said [Geillis] Johnestoun to be clene⁶
 ...of the hail xiiii articles of dittay
 ...be the lordis and [remittit] and [ane]
 ...of the first /2 /4 /5 /6 /8 /9 /10 /13⁷

of adjournal of the justiciary court. (NAS, high court of justiciary, books of adjournal, old series, 1576-1699, JC2/5, provides a contemporary record, 1611-19.) It begins with a very short summary of the trial proceedings to date, then continues with standard phraseology, describing the jury's withdrawal from court to consider their verdict, their return, and the promulgation of that verdict, and concludes with the defender asking for instruments of the verdict.

¹ The phrase 'chosen, suorne, and admittit' is an example of the standardised language used in this paragraph.

² The jurors elected Thomas Gifford of Sheriffhall to be their chancellor.

³ There is an illegible word here.

⁴ There are a couple of illegible words here.

⁵ There are a couple of illegible words here.

⁶ The full phrase is 'clene, innocent and acquit'. See for example, the homicide trial of William Miller, alias Marischal, 2 June 1615, in NAS, high court of justiciary, books of adjournal, old series, 1576-1699, JC2/5, fos. 167v-168v. This is the standard phrase throughout this period.

⁷ These numbers refer to those articles that were found relevant. Those after number thirteen were on the missing section of the page.

...[articles] of dittay and of the haill
...[con]sultation with witches mentionet thairin
...[said Geillis] Johnestoun and hir prelocutoris askit
[instruments].

Appendix: The summons and executions of the summons in Geillis Johnstone's case.

Alexander, erle of Dunfermling, Lord Fyvie, etc., grit chancellor of Scotland, heretable baillie of the lordschip and regality of Mussilburghschyre, and Sir James Richardstone of Smetoun, knyght, and George Hay of Monkton, oure baillie deputtis of the same lordschip, to oure lovittis Alexander Frog...¹ oure officer and servand speciallie constitute, greting. Forsamekle as it is complenit to us be oure lovit Robert Strauchane, burges of Mussilburgh, and Robert Douglas, portionar of Inveresk, procurator fischall of the lordschip and regality forsaid, that quhair they ar to accuse and persew Geillis Johnestoun, relict of umquhile Johne Duncane, burges of the said burgh of Mussilburgh, of certane pointis of witchecraft and consulting with witches, in maner contenit in the dittay to be gevin in aganes hir, the cognitioun and tryell of the quhilkis crymes we hae appointit to be before us within the tolbuyth of Edinburgh the secund day of Marche nixtocum; quhairfore, necessare it is to the saids compliners to leid sic probatioun in the said mater, and to have sic witnessis wairnit and summond to compeir before us the same day as ar requisite for cleiring and preving of the pointis of the said dittay:

Theirfore we charge yow that ye lawfullie summond, warne, and charge the said Geillis Johnestoun to compeir personallie before us within the said tolbuyth of Edinburgh the said secund day of Marche nixtocum, in the houre of caus, to underly the law for the horrible crymes forsaidis and to be punischit thairfore in hir persone, gudes, and geir, with all rigour conforme to the lawis and practique of this realme. And siclyk that ye lawfullie summond, warne, and charge, Johne Scott, baillie of Mussilburgh; Mr George Nisbet thair; Richard Bennet thair; Alesone Duncane his spous; William Trumbill thair; Jeane Nisbet, dochter to the said Mr George Nisbet; Walter Broun and Geillis Duncane his spous; Mathow Vallange; Alexander Hunter; Robert Dykes, servand to the said Geillis Johnestoun; Mr Adame Colt, minister; Williame Quhyte in Mussilburgh; George Wilson thair; Williame Thomesone thair; James Pinckartoun thair; Alexander Prestoun thair; Marioun Halyburtoun, meidwyfe thair; Katharene Craig; Jeane Craig; and Marioun Craig; Beigis Duncane, Robert Duncane, and Gavin Duncane, and Williame Duncane, sones to the said Geillis Johnestoun; George Andersone, elder; Cristine Duncane, his spous; Jonet Thomesone, wedow in Newbigging;

¹ There is a space in the text here.

Margaret Jak thair; David Bairnefather thair; Johne Thomesone in Myllhill; Gilbert Falconer; Adame Spens in Fisherraw; Margaret Spaniyie; Bessie Johnestoun; Marioun Greg callit Bleksterwyfe; Jonet Scott, spous to Williame Duncane; James Carmichaell in Mussilburgh; Johne Achesone; Katharene Conthorgude; George Cranstoun in Inveresk; George Stewart thair; William Stewart in Mussilburgh; Archibald Galbraith; Thomas Harret; Johne Vernour at the eist port of Mussilburgh, Issobell Vernour, Johne Vernour, millar thair; Archibald Fleming thair; Katharene Makcannoch thair; Mr Mungo Rig of Carberrie; William Broun, and William Bruntoun his servands,...¹

To compeir before us the saids day and place in the houre of cause to beir leil and suthfast witnessing in sa far as thay knaw or sall be spereit at thame in the said mater, ilk persone under the pane of fourtie poundis.

And siclyk, that ye summond, warne and charge ane assys of certane persones leist suspect, to sufficient number, [and] best knawing the veritie in the said mater, duelland within the boundis of the lordschip and regalitie forsaid, quhais names sall be gevin to yow in bill or roll, to compeir before us the saids day and place in the houre of caus, to pas upone the assys of the said Geillis Johnestoun, ilk persone under the pane of fourtie poundis,² ... as ye will answer to us thairupone, etc.

Subscreyvit with our hand and signed under the seall of oure office at Edinburgh, the ellevint day of Februar, the yeir of God, I^m sex hundreth and fourtene yeirs.³

Dunfermylne Cancellarium⁴

Upone the sevintene day of Februar, I^m vi^c and fourtene yeiris,⁵ I, Alexander Frog, officer of the lordschip and regalitie of Mussilburghshyre, be virtew and at command of this within writtin precept, lawfullie summond, wairnit and chargit Geillis Johnestoun, relict of umquhile Johne Duncane, burges of Mussilburgh, personallie apprehendit [[and del]] in hir awne duelling hous in Mussilburgh and delyvert to hir ane copy of this precept with ane just copy of the dittay gevin in aganes hir, to compeir before the judges within specifiet, day and place within mentionat, in the hour of caus, to underly the law for the

¹ There is a break in the text at this point, and the next word begins a new paragraph.

² Again, there is a blank in the manuscript.

³ 1614

⁴ A seal was placed over the very end of this word.

⁵ 1614

crymes within [[s¹]] mentionat, in maner within contenit. This I did before thir witnessis, Mathow Douglas in Mussilburgh, and Walter Walker, massoun thair, with utheris dyvers, and for the mair witnessing heirto, subscriyve with my hand, [and] my signet is affixt.
Alexander Frog, offycar.²

Upone the thretene day of the said moneth of Februar, the yeir of God forsaid, I, the said Alexander Frog, be vertew and at command of this precept, lawfullie summond, wairnit, and chargit Johne Scot, baillie of Mussilburgh; Mr George Nisbet thair; Richard Bennett thair; Alesone Duncane, his spous; William Trumbill thair; Jeane Nisbet, dochter to the said Mr George Nisbet; Walter Broun, and Geillis Duncane his spous; Mathow Vallenge thair; Alexander Hunter thair, [and] Robert Dykis, servand to Geillis Johnestoun, all personallie apprehendit, to compeir before the judges within specifiet, day and place within mentionat in the hour of caus, to beir leill and suthfast witnessing in sa far as thai knaw or sall be speirit at thaim in the actioun and caus within contenit, under the pane within rehersit. This I did before thir witnessis, Johne Hunter and William Stob, with utheris dyvers, and for the mair witnessing heirto, subscriyvit with my hand, [and] my signet is affixt.
Alexander Frog, offycar.

Upone the tuentie day of the said moneth of Februar the yeir of God forsaid, I, the said Alexander Frog, officer, lawfullie summond, wairnit, and chargit Mr Adame Colt, minister; William Quhyte in Mussilburgh, George Wilson thair; William Thomsone thair; James Pinkartoun thair; Alexander Prestoun thair; Marioun Halyburtoun, medwyff thair; Katharene Craig, Jeane Craig, and Marioun Craig; Beigis Duncane, Robert Duncane, and Gavin Duncane and Williame Duncane, sones to the said Geillis Johnestoun; George Andersone, elder; Cristine Duncane, his spous; Jonet Thomsone, wedow in Newbigging; Margaret Jak thair; [[Johne]] David Barnefather thair; Helene Niklsone thair;³ Johne Thomsone in Mylhill; Gilbert Falconer; Adame Spens in Fisherraw; Margaret Spainyie; Bessie Johnestoun; Marioun Greg, callit Bleksterwyff; Jonet Scot, spous to William Duncane; James Carmichell in Mussilburgh; Johne Achesone; Katherene Concorgude; George

¹ In the text, this appears as an 's' with an 'm' written over it. Probably, the officer began to write 'specified', changed his mind, and wrote 'mentioned' instead.

² There is a seal affixed to this execution, and to most of the subsequent ones as well.

³ She was not included in the original summons, and her name was inserted above the line.

Cranstoun in Inveresk; George Stewart thair; William Stewart in Mussilburgh; Archibald Galbraith; Thomas Harret; Johne Vernour at the eist port of Mussilburgh; Issobell Vernour; Johne Vernour, miller thair; Archibald Fleming thair, [and] Katherene Makcannoch thair, all personallie apprehendit, to compeir before the judges within specifeit, day and place within mentionat, in the hour of caus, to beir leill and suthfast witnessing sa far as thai knaw or sall be spereit at thaim in the mater within contenit under the panes within rehersit. This I did before thir witnessis, Johne Hunter and William Stob, with utheris dyvers, and for the mair witnessing, heirto subscriyve with my hand, [and] my signet is affixt.

Alexander Frog, offycar.

Upone the tuentie sevint day of the the said moneth of Februar the yeir of God forsaid, I, the said Alexander Frog, officer, lafullie summond, wairnit, and chargit Mr. Mungo Rig of Carberrie, William Broun, and William Bruntoun his servators, all personallie apprehendit, to compeir before the judges within specifeit, day and place within mentionat, in the hour of caus, to beir leill and suthfast witnessing in sa far as thai knaw or sall be spereit at thaim in the actioun and caus within specifeit, under the pane within citet. This I did before thir witnessis, Johne Hunter and Cuthbert Boyle, with utheris dyvers, and for the mair witnessing heirto subscriyve with my hand, [and] my signet is affixt.

Alexander Frog, offycar.

Upone the tuentie ane day of the said moneth of Februar, the yeir of god forsaid, I, the said Alexander Frog, officer, lafullie summond, wairnit, and chargit James Fawsyde, younger of that ilk; David Prestoun of Quhytehall; Thomas Giffert of Sherifhall, Mr. Johne Edmondstoun of Natoun; Mr. Patrik Edmondstoun, his brother; David Edmondstoun in Edmondstoun toun; James Diksone in Sherifhall Mure; William Merstoun, portionar of Inveresk; James Hervie thair; Johne Malster thair; Johne Auld thair, [and] Thomas Thomsone thair, all personallie apprehendit, to compeir before the judges within specifeit, day and place within mentionat, in the hour of caus, to pas upone the assys of Geillis Johnestoun within writtin, ilk persone under the pane within contenit. This I did before thir witnessis, [[hunte]] Johne Hunter in Mussilburgh, Johne Porteous in Monktonhall and William Stob, with utheris dyvers, and for the mair witnessing heirto subscriyve with my hand, [and] my signet is affixt.

Alexander Frog, offycar.

Upone the tuentie tua day of the said moneth of Februar, the yeir of God forsaid, I, the said Alexander Frog, lafullie summond, wairnit and chargit Johne Scot, baillie of Mussilburgh; Johne Broun, lait baillie of the said burgh; Walter Smart, also lait baillie thair; Robert Bennet thair; Richard Cowane thair; Edward Thomsone thair; Alexander Ramsay thair; Ranald Thomsone thair; Richard Allane thair; Alexander Prestoun thair; James Robesone, merchand thair; Johne Thomsone in Newbigging; David Marche thair; James Smart in Fischeraw; Johne Smart thair; Robert Broun thair; William Calderwode thair; William Tait thair; Johne Hunter at the eist port of Mussilburgh; James Lithgow thair; William Scot thair; William Kemp, younger, thair; Alexander Cas thair; Johne Greinlaw thair; Edward Makquhan thair; Gilbert Tod thair; Johne Gairner, younger, in Fisheraw; George Dryden thair; Henry Watsone thair; George Waderstoun in Inneresk; Pieter Stevin in Mussilburgh; William Adamsone thair; William Baxter in Fisheraw; Johne Foirman in Inveresk, [and] Mathow Wricht thair, all personallie apprehendit, to compeir before the judges within specifiet, day and place within mentionat, in the hour of caus, to pas upone the assys of the said Geillis Johnstoun, ilk persone under the pane within contenit. This I did before thir witnessis, James Smart in Fisheraw, Thomas Sandersone, officer in Mussilburgh, Gilbert Tod and Johne Hunter thair, with utheris dyvers, and for the mair witnessing heirto, subscriye with my hand, [and] my signet is affixt.

Alexander Frog, offycar.

MISTRESS RUTHERFORD'S CONVERSION NARRATIVE

edited by David G. Mullan

INTRODUCTION

The subject of this document is, presently, unknown apart from the narrative itself, in the title of which she is named simply 'Mistres Rutherford'. It would appear that she was born in the early years of the seventeenth century; the narrative continues until sometime around 1630, when it stops abruptly.¹

The story is dominated by three intersecting dimensions of movement—her circulation among the homes of various people to whom she is related; her journeys from place to place around Edinburgh until her migration to Ireland; and her movement up and down the emotional register of evangelical presbyterianism.

1. *Family connections.* The first problem here is that one cannot know for certain whether Rutherford was her family name or her husband's name. Scottish custom would suggest the former, but the level of confidence is not such as to make a firm statement. She tells us that she was four years of age when her mother died; but there is as yet no means of proving the identification. Her father's death followed five years later, at which time she transferred to the house of her grandparents, presumably maternal, from what we learn later. Her grandmother died when Mistress Rutherford was twelve, at which time her grandfather's sister came home to run the domestic front. His death followed when she was about fifteen, and she went to live with her mother's sister's husband, i.e. Mistress Rutherford's uncle, whom she identifies as the laird of Anniston. This individual can be identified as John Muir, who had mining interests at Leadhills in

¹

I have discussed the document in 'Mistress Rutherford's Narrative: A Scottish Puritan Autobiography', *Bunyan Studies*, 7 (1997), 13-37.

partnership with the advocate Robert Foulis.¹ Muir's wife—or at least he was at one time married to this woman—was Margaret Foulis, who was the daughter of Thomas (the goldsmith and financier) and Robert's first cousin. So, if Muir's wife at the time was Margaret, then Mistress Rutherford was a granddaughter of Thomas Foulis.² Thereafter she moved over to the household of Robert. Eventually she settled on a husband. Though certainty of identification is not possible, the Edinburgh parish marriage register does name an Anna Rutherford, who married Alexander Syme 30 July 1629.³ But there is also an Elizabeth Rutherford noted among some women banished from Edinburgh and Leith in 1674. The writer of this life would by then have been elderly, but so were some of the other participants, such as the relicts of John Livingston and Robert Blair.⁴ Unfortunately all this pertains to the realm of speculation.

2. *Travels.* The centre of Mistress Rutherford's world was Edinburgh, where she was sent at age fourteen in order to study in Betty Aird's school for girls. Aird was the daughter of William Aird, minister at St Cuthbert's, Edinburgh; her brother John was minister at Newbattle, south of Edinburgh.⁵ No other records of the school survive, but from the narrative it is clear that Mistress Rutherford learned domestic sciences and evangelical presbyterian religion. She reports having visited the village of Granton, on the south shore of the Firth of Forth, now a suburb of Edinburgh, then spending some time at the Robert Foulis family home in Cockpen in the vicinity of Dalkeith, again south of Edinburgh. She also visited neighbouring Newbattle. Her interest in attending communion services—of a certain, i.e.

¹ The third son of James Foulis of Colinton. He was admitted as an advocate on 5 Mar. 1606; he died Feb. 1631. See *Register of the Privy Council of Scotland*, 2nd ser., iv, 343-5; *The Faculty of Advocates in Scotland, 1532-1943*, ed. F.J. Grant (Scottish Record Society, 1944), 76.

² I am grateful to Dr Julian Goodare for supplying this family tree. For Muir and the Foulises at Leadhills see J. Goodare, 'Thomas Foulis and the Scottish fiscal crisis of the 1590s', in W.M. Ormrod *et al.*, (eds.), *Crises, Revolutions and Self-Sustained Growth: Essays on Fiscal History, 1130-1830* (Woodbridge, 1999).

³ *Register of Marriages for the Parish of Edinburgh, 1595-1700*, ed. H. Paton (Scottish Record Society, 1905), 601.

⁴ *Register of the Privy Council of Scotland*, 3rd ser., iv, 295.

⁵ Sir Archibald Johnston of Wariston, *Diary, 1632-1639*, ed. G.M. Paul (Scottish History Society, 1911), 107n.; Samuel Rutherford, *Letters*, ed. A.A. Bonar (Edinburgh, 1891; repr. 1984), 284-5. I am grateful to Dr Louise Yeoman of the National Library of Scotland for her help in identifying Aird and also Rachel Arnot.

presbyterian, type—led her to the village of Bathgate, west of Edinburgh. After her marriage, she visited Irvine in Ayrshire before continuing to Ireland. In both locations she had close contact with outstanding evangelical presbyterian ministers. The narrative ends in Ireland following the deaths of her husband and her bairn.

3. *Pilgrimage*. The author presents a catalogue of the prevailing religion of her time and place; indeed one could supply a passable description of Scottish Jacobean (and later) piety by annotating Mistress Rutherford's narrative. Hers is a history of religious melancholia, and fits very well the description provided by William Sargant.¹ It commences when she was but eleven years of age. We see her wrestling to find assurance of faith. The darker side of supernatural belief impinges on her life. She thinks that the devil is after her, and then comes to fear that she is becoming a witch. There was no witch craze at the time of her youth, but she would have known about the phenomenon, perhaps even from sermons, and in her highly suggestible state it is a condition she would have undoubtedly reflected upon.² She ponders suicide; she goes to church; she finds both solace and consternation in communion; Betty Aird and others try to give her spiritual counsel and support; she is aware of pulpit controversies, namely Arminianism (a doubtful point; she has likely read the trouble back from the perspective of a later time) and the dispute over kneeling, in the wake of the Five Articles of Perth;³ she prefers sitting, and attends what was undoubtedly Richard Dickson's act of defiance in the West Kirk on 7 March 1619 when he served the Lord's supper according to the presbyterian mode and lost his position as a result; Aird and other friends bring her closer toward the non-conformist presbyterianism of Edinburgh and elsewhere, and it may be that she begins to connect with the privy meetings which arise in the time. She frets over whom to marry, and then does wed, without enthusiasm, and seems to find as much joy in her marriage as one might expect for such a depressive personality.

¹ W. Sargant, *Battle for the Mind: A Physiology of Conversion and Brain-Washing* (London, 1957), esp. chs. 5-7.

² D. Mathew, *Scotland under Charles I* (London, 1955), 57; C. Larner, *Enemies of God: the Witch-Hunt in Scotland* (London, 1981); C. Larner, *Witchcraft and Religion: the Politics of Popular Belief* (Oxford, 1984), esp. ch. 2; L.A. Yeoman, 'The Devil as doctor: witchcraft, Wodrow and the wider world,' *Scottish Archives*, i (1995), 94-5.

³ D.G. Mullan, *Episcopacy in Scotland: the History of an Idea, 1560-1638* (Edinburgh, 1986), ch. 9.

By way of literary context, we have the autobiographies of the ministers Robert Blair and John Livingston, and these do contain some materials of interest which parallel the young woman's experience, but of course they also differ both in scope and in purpose. We also have the story of Jean Livingston, but that is a death row conversion and deals with only a few days before she was beheaded in 1600 at the bottom of the Royal Mile;¹ also there is the narrative of Bessie Clarkson's struggle for assurance, published by her minister, William Livingston of Lanark.² However, neither of these are autobiographical, and neither covers the same length of time nor presents the same extensive range of religious ideas or hints of domestic life as we find in Mistress Rutherford's story. Wariston's famous diary invites comparisons. While of a different though related genre, of seemingly interminable length, and by an educated male who considered going into the ministry, it describes the same piety. Communion is important; he hangs on the words of preachers; his mother and female friends along with ministers have roles to play; he feels terror and senses the presence of the devil; he frets over his marriage. One might also compare her writing to another extensive journal, *Spirituell Exercises*, that of the Aberdeen Doctor, John Forbes of Corse, which, though from an episcopalian who was no stranger to religious emotion, breathes much the same Augustinian piety, without the maniacal ravings of a man who walked close to the precipice of insanity.³

Perhaps chronologically closest to Mistress Rutherford's work is the autobiography of John Spreul, town clerk of Glasgow 1635-1664. He was born in 1616, and in the later 1630s declined to enter the ministry because of the intrusion of kneeling into the observance of the Lord's supper. He charts his spiritual progress through ups and downs until 1644 when 'I attained to such absolute assurance of my

¹ *A Memorial of the Conversion of Jean Livingston, Lady Waristoun, with an Account of her carriage at her Execution, July 1600*, in C.K. Sharpe (ed.), *Lady Margaret Cunninghame, Lady Waristoun* (Edinburgh, 1827). See the interesting study of the case by K.M. Brown, 'The laird, his daughter, her husband and the minister: unravelling a popular ballad', in R. Mason & N. Macdougall (eds.), *People and Power in Scotland* (Edinburgh, 1992).

² [William Livingston,] *The Conflict in Conscience of a Dear Christian, Named Bessie Clarkstone* (Edinburgh, 1631).

³ National Archives of Scotland, CH12/18/6; King's College, Aberdeen, MS 635, 635A. There is a Latin translation in his *Opera Omnia*, 2 vols. (Amsterdam, 1703-2), ii, 92-265.

salvation, so that I never came to such a perswasion since.¹ We see clearly the importance of prayer in his life, and also how he contrasts his own practice of family prayer with prevailing habits.

Compared with the well-known *Experiences of God's Gracious Dealing with Mrs. Elizabeth White*,² the narrative by Mistress Rutherford is a good deal longer, and while equally interior, it contains a number of interesting references to the outside world, some of which allow us to relate her experiences with some degree of precision to the broader historical context. Also in this wider realm, though again of different genre, one may find numerous parallels with Mistress Rutherford's piety expressed in *The Christian Life and Death of Mistris Katherin Brettergh*.³

John Bossy writes of 'the multiplication during the seventeenth century of spiritual autobiographies which recounted the chain of experiences by which grace had come to convert and sanctify the soul';⁴ von Greyerz has noted the existence of 100 autobiographies and 300 diaries from seventeenth-century England, many of them spiritual in nature.⁵ In Scotland the same impulse was at work, and Alexander Hume, minister of Logie, advised that one should make, if possible, a written record of deliverances by divine mercy.⁶ This

¹ *Some Remarkable Passages of the Lord's Providence towards Mr. John Spreul, Town Clerk of Glasgow, 1635-1664*, 5, in [J. Maidment,] *Historical Fragments, Relative to Scottish Affairs, from 1635 to 1664* (Edinburgh, 1833). A manuscript version may be consulted in National Library of Scotland, Wodrow MSS, Octavo xv, no. 2.

² D.B. Shea, Jr., *Spiritual Autobiography in Early America* (Princeton, 1968), 184, stated that the work was not published before 1741; however, it was first published in Glasgow, 1696. Long regarded as a religious piece originating in New England, P. Caldwell has demonstrated that White's life was passed in Buckinghamshire, England, dying there on 5 Dec. 1669 in childbirth. See her *The Puritan Conversion Narrative: the Beginnings of American Expression* (Cambridge, 1983), introduction.

³ [William Harrison,] *The Christian Life and Death of Mistris Katherin Brettergh* (London, 1612). See R. M. Warnicke, 'Eulogies for Women: Public Testimony of their Godly Example and Leadership', in B.S. Travitsky and A.F. Seeff (eds.), *Attending to Women in Early Modern England* (Newark, Delaware, 1994), 172-3.

⁴ J. Bossy, *Christianity in the West, 1400-1700* (Oxford, 1985), 133-4.

⁵ K. von Greyerz, 'Biographical Evidence of Predestination, Covenant, and Special Providence,' in *Weber's Protestant Ethic: Origins, Evidence, Contexts*, eds. H. Lehmann and G. Roth (Cambridge, 1995), 276.

⁶ Alexander Hume, *Ane Treatise of Conscience* [1594], in *The Poems of Alexander Hume*, ed. A. Lawson (Edinburgh, 1902), 136.

undoubtedly gives the general setting for her essay, but we do not know its exact occasion, whether at the request of one of her pastors, for the sake of her own family, or just a memorial of her own experience, however unstable, of God's mercy. Nor do we know when it was written—it might have been on paper by 1630; it might not have been reduced to writing until 1670 or even later, if she lived to old age. One hint about time of composition may be located in her use of the Authorized Version (1611) of the Bible. Frequently her citations are of passages which are identical in the AV and in the Geneva Bible; when the two diverge, the former is followed, hence in the notes the AV is regularly cited. Through the early decades of the century the Geneva Bible was the more common in Scotland;¹ the most likely circumstance is not that Mistress Rutherford contradicted the tendency of the 1630s, but rather that by the time of writing she had become familiar with the AV as it infiltrated the country.

Editorial Method

The narrative exists in Robert Wodrow's hand, finely written, on sixteen octavo pages. It is generally readily decipherable, though there are a few exceptions, and these are identified in the notes. Punctuation and capitalisation have been modernised; additional paragraph breaks have been introduced. Original spelling has for the most part been retained, but abbreviations and contractions have been expanded; e.g. yt to that, wt to with; yr to there or the, thir to these, tho to though, thôt to thought, brôt and brot to brought, & to and, etc. Page divisions in the manuscript are indicated in square brackets, i.e. [4]. Other bracketed materials in the text supply additional letters and words for the sake of clarity.

The manuscript is in the University of Edinburgh Library, Laing MSS, La.III.263: Wodrow Octavo 33, no. 6. It is published here with the kind permission of the Edinburgh University Library.

D.G.M.

¹ D. Anderson, *The Bible in Seventeenth-Century Scottish Life and Literature* (London, 1936), 11-12.

I was ten years of age. For it pleased the Lord to take my mother from me quhen I was four years and my father when about nyne, and to put me in company of my goodsir, wher I might have learned meikle grace if I had been that wise I should, for my goodam was a most religiouse woman, and took great pains in bringing me up in the fear of God for she took me with her to her prayers, twice a day,¹ but I mocked God in so doing and knew not what it was to pray more than a beast. Within this way went till I was near 11 years of age,² and then it pleased my graciouse God to cast me in sicknes for I took the meazles, and after them I took a feaver, and then I was troubled with a continouall fear of the Devil coming and taking me away, so that in the night I could not sleep for fear of him, and in my sleep I was molested with dreams, so that my life became wearisom to me. And I desired rather to die than to live, for in morning I wished it to be evening and in evening I wished it to be morning, for I could get no rest for fear and terrors. Many a time wished I for warrs to come into the kingdom, that I might have been slain so being that I had been guilt of doing it myself.

Then my body grew better and I gaed to the kirk, but in the preaching I could not be free of him. Ther was not an object I got my eye upon, but I feared the Devil to go in it, and to come and destroy me. So that in company or alone I could get no rest, but ever thought that he to quhom I gave myself so oft would once come and take me. All my petition to God was to come and deliver me from the Devil and to receive me into his favour, and many promises to be a new creature. Till on[e] day I went to the kirk, and in time of sermon I was³ over fearing the Devil to have come and take me away from amongst

¹ David Dickson complained about too little attention to how children and servants 'grow in knowledge, or fear of God'. *Select Practical Writings* (Edinburgh, 1845), 82. On the place of privacy in women's intimate spiritual life, Retha Warnicke, "Private and Public: The boundaries of women's lives in early Stuart England," in Jean R. Brink, ed., *Privileging Gender in Early Modern England* (Kirksville, Mo., 1993), 128, 132, 139.

² Hume, *Treatise of Conscience*, 112, advised his readers: 'Enter in sharp trial and examination of thy life and conversation, from thy youth up,' while Zachary Boyd, *Two Sermons, for those who are able to come to the Table of the Lord* (Edinburgh, 1629), 84, counselled: 'seeke the Lord early yee Schollers'; see also Zachary Boyd, *Selected Sermons*, ed. D.W. Atkinson (Scottish Text Society, 1989), 251. C.L. Cohen, *God's Caress: the Psychology of Puritan Religious Experience* (New York, 1986), 202: 'Conversion begins with the soul's initial conviction of sin, an event that usually took place before an individual reached twenty-five.'

³ 'I was' is repeated.

them, and apprehended him to be roaring without the kirk (for it was a loud wind) so I besought the Lord to deliver me from him that I might have peace in his house, and from that time I was never so troubled with him.

The next Sabbath day I went to the kirk, and all my former fears left me. Then I thought it was my prayer that had removed it from me and so I did quhat I could to rob God of his glory. Then I restrained from my banning¹ and became more settled, and used prayer and reading, but ofttest reading, with great heavines somtimes, so that I was forced sometimes to go to prayer, but I went ofttest to reading because I got it done with least difficulty. Upon a Sabbath night at even the household being come in, and putting off time with sporting, I went into a dark place of the chamber, that my sister and other bairns should not see me, and sat down on my knees and prayed to God, but ere I got out 3 words I was ravished and taken up with joy that I cannot express, so that at that time I may say I tasted of the powers of the world to come. The excessiveness of it lasted scarce a quarter of an hour, but it left such a stamp behind it that my mind was ravished with it. But I mixed it with pollution, for I beheld their pastime and had no greif for it, for of a truth I knew it no[t] then to be a sin which they wer doing, so ignorant was I of the things of God.

Then after that I had still a love to God's children, but in special to ministers, so ignorant was I not knowing that grace seasoned, and not knowledge without² it be sanctified. For my manifold infirmitys I cannot remember them, and at this time the Lord knowes, before quhom I am writing, I have not a heart to be greived for these which I do know. I went on sometimes using the means³ and sometimes neglecting them till I was 12 years of age. Then it pleased the Lord to take my goodam from me, and I became more slack till I got the bussines adoe that she had, and then I neglected it altogether, and so

¹ swearing. See Philip Stubbes, *A Crystal Glass for Christian Women, containing a most excellent discourse of the godly life and Christian death of Mistress Katherine Stubbes* (London, 1591), in J.L. Klein (ed.), *Daughters, Wives, and Widows: Writings by Men about Women and Marriage in England, 1500-1640* (Urbana, Ill., 1992), 143.

² unless.

³ means of grace. John Forbes of Alford defined these as preaching, the Lord's supper, prayer, daily meditation, and conference. *A Preparative Sermon, to the Lords table* (Delft, 1632), 16.

lived in security¹ till a year was spent, for my goodsir's sister came home and guided the house, and my labour was offputting of time in playing but some time that I learned to sew.

Then I went to Edinburgh to the school but I was kept at home in the house to learn with my aunt, and not put to the school till the word of this pestilence came in the town, and then I went out of town with an aunt and there notwithstanding all my former defection, it [2] pleased the Lord to blow upon me with his Spirit and to make me use the means with great contentment, so that I had a great delight in the service of God, and would have awakned in the morning with so good desires and gotten my heart so poured out before God in words with desire, but not with tears. I used prayer twice or thrice a day, privat my alone, and evening and morning in the family. But in secret I was overfeared that some should have come in on me, so that for fear I have been oftimes raised. Then the Lord blessed me with a memory that I would have remembered some of the preaching, and had great delight in hearing the Word, and was very glad quhen the Sabbath came, but after the sermon was done I spent the rest of the day in playing with the rest of the bairns, so great was the strenth of my corruption and impenitence, that notwithstanding of all his goodnes and mercy in giving me his Word to be a light to me, yet I walked on in darknes, in not giving the Lord the whole day. This and many more offences I did that I remember not oft—the Lord cover them and blot them out of his remembrance.

I was 14 years of age at this time, and I went on in using the means so long as I was in their company with quhom I went out of town, till the word of the pest was away, and then I went into the town to go school and then I neglected the means altogether; nothing remained but a love to grace quherever I saw it in any, and to the Word. I went on carelessly passing my time with the rest of the bairns, till one Sunday I was in the old Kirk at the preaching, and in the time of sermon it was casten in my mind that ther was not a God. Then I began to remember the former feelings I had, thinking they would bear witnes against me, that ther was a God. The more I strove against it the more I was molested with it. Then I took me to reading and cast up the 4. of Daniel, quher Nebuchadnezar was turned to a beast till he knew that the most High ruled over the children of men. Then many a time I wished to have been a beast that I might know there was a God.

¹ Wariston feared that he might abuse God's blessings, turning them into pillows 'for to lull me a sleape in securite and impenitence'. *Diary*, 60.

When I prayed against it I was the more troubled, for the enimie would cast it into my mind, Quhat is that thou is doing? Thou is praying to God; there is no God.

I continoued in this state 8 days, and then I got liberty and went on in the service of God with great sweetnes about 20 dayes, having no temptation that I remember, but had such a love to the Sabbath, and a delight in the Word, till on[e] day they wer telling of witches, and I apprehended myself to be one, and 4 dayes I was tempted with that temptation, but I drew me offer to God by prayer to pardon me if I wer one, and to save me from being one if I wer not one.¹ Then that temptation left me and I was put to Betty Aird's school. And then I had heavines in my mind but not great tentations that I remember of, but many wer my infirmitys and backslidings; I abode a quarter of a year with her in the school, and she took great pains in upbringing of her scholars in the fear of God, but I (the wickedest of them all) took litle thought of it.²

Then I was brought home from the school to sew at home, and my sister aboad at the school. I was tempted to do evil to my sister, so that I durst not look at her for fear of thinking evil against her; the more I strove against it the more I was troubled with it, and especially quhen she was present, but it pleased the Lord of his great mercy to me to remove the temptation from me. It continued about a moneth with me, and after it was gone from me I began to weary of my life. Then I was tempted to put violent hands in myself.³ The tentation increased of wearying of my life that there was few hours in the day, yea few minutes, but I would think there is meikle of my life spent, and it's nearer to an end than it was, and I knew not how soon it may please the Lord to call on me, why should I worry. This temptation continoued not still in this greatnes; I had some hours of breathings that the temptation left me for a season. When it came violently, I was

¹ 'Witchcraft is the worst craft in the World, it is the shame of mankind, & the disgrace of Christianitie, a matter of unspeakable grieffe to the Godlie to see Sathan, so farre prevaile over Christians, Gods Sacraments so abused and the Professours of the Covenant of Grace, to enter in Covenant with Satan.' William Struther, *Christian Observations and Resolutions*, 2 vols. (Edinburgh, 1628-9), ii, 313.

² E.S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (2nd edn., New York, 1966), 92, wrote that 'the ultimate purpose of education [for New England Puritans] ... was salvation'.

³ G.E. Geddes, *Welcome Joy: Death in Puritan New England* (Ann Arbor, 1981), 96-9, indicates that Satan was viewed as the agent who tempted to suicide, and that suicide was typically taken for a sign of reprobation.

forced to run to God by prayer to save me from doing of it, and to remove that thought from me, for then I knew it not to be a temptation, so great was my ignorance; but I prayer¹ I found no freedom, but was altogether deserted. Then I would reason with myself, If I do this thing I will never get mercy. Then I would run to prayer again. Ther was a wife that told fortunes, and the woman with quhom I was boarded would have her to tell mine, so she said I would live long. Then I thought I was glad I would not get it done at that time. Such [3] was the malice of my enimie, that if he could not get me brought to do it, he would make me belive a lye and look to freits,² so great was my corruption. Other times I would leave have gone to company quhen it was so strong upon me, for fear I should have done it. Then I would run to God again by prayer, but could find no access, but was deserted. But it was his secret power that upheld me, or then I had made shipwrack of salvation. This temptation left me for a season and I had sweetnes and a delight in the service of God, and contentment in the Word preached, and was sometimes taken up in praise that I had such contentment.

Then they took me out of the town and I wanted the means of God's publick worship on the workday, and had it but once in the Sabbath, and after I was there about 20 dayes the temptation set on me again so that I laid by my knives for fear I should have done evil with them. Somtimes I reasoned with myself against it, other times I ran to God by prayer to deliver me from it. But ay the more I prayed against it the more this temptation came on me; till one night after supper was ended there was folk coming from a fair, and I was looking out of a window to see them, and quhen I turned in again I saw none within the house for they wer all gone out to see the folk that wer come from the fair. Then, I being my alone, the temptation set upon me again. Then I went to prayer but found no freedom in it. Then I thought it was not meet to be my alone and went out to the rest, and thought that one day or other, I would be overcome with it; for I thought that they who once had an intention to do it would not escape the doing of it at lenth, but from that time I was not so troubled with it. Then I went on in using the means, but very coldrifly³ till six weeks after or such a time, and the temptation came again, and then I took it to be a madnes or high spiritednes because it left me at somtimes. Such was my ignorance

¹ Probably an error in transcription for 'but in prayer' or 'but when I prayed'.

² superstitious practices.

³ Coldly, indifferently.

that I took it not to be a temptation. My sister was at Edinburgh at the school, and when the temptation left me I was in fear it should set upon her, for I thought it to be but a naturall desert in the blood. Glad was I quhen I heard word from her at any time that she was well, for many a time I looked for black newse from her. But blessed be the Lord that has disappointed Satan, and kept both her and me to this day. Lord grant it to be in mercy that his majesty hath done it.

Then those temptations left me and I walked secure for about half a year. And then my goodsir's wife became very evil to me. Somtimes I took it very hardly, at other times I thought it came from God, so at lenth I began to use the means again, but how I was drawn to it I do not remember. Then I began to read, but without understanding. I read most part in Isaiah, and reading the 58 ch.¹ I found that the Sabbath should be a delight, and that we should not speak our own words on it. Then it pleased the Lord of his unspeakable mercy to work in me a delight in it, so that the week through I was thinking long for the Sabbath, and was affrayed to speak a worldly word on it, but was drawn on with such a delight in using the means that I cannot express. Then I set my order of prayer to be thrice a day on the weekday, and on the Sabbath after the preaching, I spent the rest in reading and prayer. Quhen I went not to the kirk, I withdrew myself from the rest of the house, and went to a chamber my alone to seek God somtimes by reading, somtimes by praying. But such was the strenth of my corruption that a very litle temptation would have drawn me away for sometime.

My sister would have drawn me to a bern² [with] a freind of mine own company, that was but a naturall³ woman, and all our conference

¹ Isaiah 58:13-4: 'If thou turn away thy foot from the sabbath, from doing thy pleasure on my holy day; and call the sabbath a delight, the holy day of the Lord, honorable; and shalt honour him, not doing thine own ways, nor finding thine own ways, nor finding thine own pleasure, nor speaking thine own words: Then shalt thou delight thyself in the Lord; and I will cause thee to ride upon the high places of the earth, and feed thee with the heritage of Jacob thy father: for the mouth of the Lord hath spoken it.' See Wariston, *Diary*, 133-4; and Archibald Simson, *Heptameron, the Seven Dayes* (St Andrews, 1621), 93-6. Von Greyerz, 'Biographical Evidence', 278, cites the *Diary of Sir Simonds d'Ewes* from 1623: 'Still one idle beginning drawes on manye consequents, for as I had not spent the precedent day well, nor the weeke, soe neither did I this blessed Lords day, for all which I beseech my good God to forgive me.'

² bern, meaning here, pasture; i.e. 'My sister would have drawn me to a pasture where we met a friend ...'

³ unregenerate, in a state of sinful nature, not a state of grace.

was but naturall and worldly bussines, and sometimes I would weary of myself, and have come to company; all this I did with a conscience crying against me. This way spent I the Lord's day mixing his worship with my pollutions, notwithstanding of all his great mercys to me.

Then I was tempted to bid[e] from the kirk because I thought I gote more good by reading at home,¹ but the tentation prevailed not, for quhen the rest went I dought not bide at home. When I went to the kirk I profited litle by the preaching for my understanding was very weak. I used on the means with great sweetnes and confidence, hoping to be better, and sometimes I was cast down. As for the Sabbath, for all the delight the Lord gave me in it, litle preparation sought I to it. I might well seek it by prayer, but I laboured not to try myself to see my polluted heart, that I might be truly humbled in my sweet Lord's sight, who was and is willing to lift me up if I could seek to him in sincerity. I continued on in using the means or rather abusing them, for sometimes I sought the Lord with saul² for a temporall blessing. [4] But blessed be his name that granted me not that quhich I desired, but truly my cheife end in seeking him was for himself and grace to walk in the way of his commandements.

I walked on in this maner till a freind of mine desired me³ from my goodsir and then I began to fear falling away,⁴ but this fear turned to my good for it put me oftner to prayer, but it pleased the Lord that I went not at that time but stayed at home with my goodsir, and continued on in using the means with great sweetnes and contentment that I cannot express. Then ther came occasions to me

¹ See William Struther, *True Happines, or, King Davids Choice* (Edinburgh, 1633), 79, and Robert Rollock, *Lectures upon the First and Second Epistles of Paul to the Thessalonians* (Edinburgh, 1606), 324. John Abernethy counselled, 'Beware of idlenesse and solitarinesse, use holy company, with holy mirth, and singing of Psalmes': *A Christian and Heavenly Treatise: Containing Physicke for the Soule* (3rd edn., London, 1630), 135.

² soul.

³ a proposal of marriage.

⁴ One scholar has written about the relatively 'carefree and enjoyable' state of the young maiden's life. 'Once marriage was in prospect, however, young women often entered a tense and anxious period ... Marriage could represent a major trauma for women'. S.H. Mendelson, 'Stuart women's diaries and occasional memoirs', in M. Prior (ed.), *Women in English Society, 1500-1800* (London, 1985), 191-2. See also G.F. Moran & M.A. Vinovskis, *Religion, Family, and the Life Course: Explorations in the Social History of Early America* (Ann Arbor, 1992), 94-5. If Wariston is any measure, marriage was not necessarily a stress-free moment for men, either. Wariston, *Diary*, 2.

that my friends would have me to embrace sore against my will. I besought God to free me of it if it was not for his glory and my good. So my goodsir dyed and I was free of that, and now I have cause to bless God for it. Then after my goodsir dyed I was troubled with fears of his appearing to me, or the Devil in his liknes.¹ This tentation continoued 20 dayes.

I aboad with my mother's sister's husband, the laird of Anestan,² till the Whitsunday. I used on the means; before the Whitsunday, the sacrament was given and was making myself for it, and on the Saturday before there came a juggler, and the laird caused him to play some of his pratts, and there conveened some of the people to see him, and I (as wretched as any) came among the rest to see him, and saw him play his juggler pratts. Presently I went to seek God, but could find no access to his majesty. Then my conscience began to check me, for indeed I did it with a strife. Upon the morn I went to the kirk with the rest, and before the minister came in I was perfectly deserted, and should I have gained heaven for on[e] tear, I had it not to give, neither could I pray a word. His text was Rev. 3:15.³ As for the preaching I got litle good of it. Then I held back from the table⁴ till they said it was the hindmost table and then I rose really and went to the table and at the table I was tempted with shamefullnes, for I had some sense. Then within a quarter of an hour after I had received it, I had taken mine own condemnation; then I thought them that loved me before might fly from me as the pest. This tentation molested me much in the kirk so that I knew not quhat to do, but it pleased the Lord of his great mercy to remove it from me quhen I came out of the kirk till I came home, and then it set on me again, for I had retired myself to privat exercise, and because I got not that liberty in prayer that I would have had, I doubted the more. Then my sister called me to get meat, and would aw me to take meat, and so I neglected to seek any more for the space of 2 hours, so easily was I distracted, and that temptation left me, but after quhat manner I remember not. This was

¹ The minister Robert Blair confronted apparitions when a student. *The Life of Mr Robert Blair*, ed. T. M'Crie (Wodrow Society, 1848), 8.

² John Muir.

³ Revelation 3:15: 'I know thy works, that thou art neither cold nor hot: I would thou wert cold or hot.'

⁴ John Spreul recounted how, during sermon time at a communion service, 'I was put upon the rack, while I could neither satisfy myself to byde from communicating, nor yet durst I adventure to communicat.' *Some Remarkable Passages*, 4.

about the Pasch, and the next Sabbath after the sacrament was given, for I took it the first day, I sat and beheld the minister give it, but was not moved more than a stone, but in a part was very glad that the battail of it was by my head, of want, I mean, of preparation.

So I used on the means till Whitsunday and then I went to the town to Mr Robert Foulis, and abode with him and the first Sunday I was there, I went with the rest to Granton¹ to get milk, and so neglected my exercise quhich I used on the Sabbath. Then the next week I went not for want of a snude,² and my gown was not come home, and in time of sermon, my heart began to be greived, that I was not there with the people of God. But from that time I grew more secure till Lambas, and then I went with the rest of the family to Cockpen³ till the session sat down.⁴ And quhen I was in Cockpen I was using prayer but very coldrify. My sister and another woman lay with me, and we could not sit down one of us in our part of the house and another in another, and so we made it to one [of] us to pray publickly with the rest and they put it upon me, so as the Lord assisted me, I was doing to them and myself. I was using prayer in secret myself, but as for my life I made litle conscience of it. I dare not say but I had a conscience checking me when I did wrong, and knew.

This way I walked till one day I was setting beside my cusin's wife sewing, and it was cast in my mind, that ther was not a God. Then I rose from my seam, and went to prayer in my yeard, but could find no freedom. Then I came in again and it set on me again; then I ran to prayer and besought the Lord to take that thought from me, but the more I prayed the more I was troubled with it. Then I began to fear I should think it quhen I wer [5] dying, and then I would get no mercy. This way I wrestled; the Sabbath came, and I went to the kirk and was not troubled with it. There was a freind of mine with us, and after the preaching my cousin's wife would have me to go to the feilds with her and I would have stayed at home, partly because my freind quhom I loved was to go from me, and would have met with him, but my

¹ A village near Edinburgh on the Firth of Forth.

² hair ribbon.

³ Cockpen, a parish in the presbytery of Dalkeith. Its minister from 1592-1623 was William Knox; b. 1569; MA, St Andrews, 1589. In 1617 he signed the protestation in favour of the liberties of the kirk. H. Scott (ed.), *Fasti Ecclesiasticae Scoticae*, 11 vols. (2nd edn., Edinburgh, 1915-2000), i, 306-7. He was succeeded in 1624 by Adam Penman.

⁴ The court of session.

cheife cause was to redeem time. I had spent evil on many Sabbaths before, but my aunt would have me to go with her, and I went with her. So we pulled berrys by the way, and I withdrew myself from the rest and went to prayer, but could not be freed of that temptation. Then I came to the rest of the company and we went to Newbatle¹ and came to a gentleman's house and got meat, and then we came home again. And there was a place of scripture casten in my mind, the 18 of Ezekiel 26 v. [i.e., Ezekiel 18:26]: Quhen a rightiouse man turneth [from] righteousnes, and committeth iniquity, his righteousnes shall not profit him. Then I thought on the sweetnes I had in the service of God, and how I had fallen from it, and could see nothing but damnation, for I thought that place debarred me, for I had made a pitifull defection.² This way I reasoned by the way till I came home, then I went up to my chamber, and there was a freind of my cusin's wife's there that I could not put furth, and I lay on my face on my bed as if I had been sleeping, and laboured to pray but could not. I was so tempted that I rose and came down to the rest and we went to our supper, and my cusin bad[e] me eat my meat, and I made excuse I had eaten at Newbatle. Then I wrestled on with that temptation, somtimes getting victory and somtimes overcome, somtimes hoping to be freed of it, and other times near to dispair to be freed of it. Then it became more slack and I was not so meikle troubled with it.

At this time, we had a man that was sick and I read to him quhen I belived not myself, and he would have said to me, I was happy, I did all that I could to win souls to Christ, and the Lord delighted in those.³ Then I wist not what to do, that I should have been thought a Christian, and then nothing but a misbelieving creature. This way I wrestled on somtimes believing that there was a God, and other times (and I should have quit the life) I could not get it belived. Then it left me, and it troubled me somtimes, and I used on the means having somtimes contentment, and wondered at the great mercy of God that

¹ A village south-east of Edinburgh.

² 'If the wound proceed from tentations of blasphemie, and with filthy and abominable thoughts in the minde, judging thy selfe to be nothing else but an incarnate divell, because of these filthy fantasies that are so *Terribilia de fide, horribilia de divinitate*: Remember they are not thy personall sinnes, but thy crosses'. Abernethy, *Christian and Heavenly Treatise*, 134.

³ David Calderwood's Mother Kirk exclaimed upon 'that consciencious diligence in winning of others, & working upon your acquaintance to bring them within the bosome of my love.' [David Calderwood], *The Speech of the Kirk of Scotland to her Beloved Children* (n.p., 1620), 21.

should have spared me, but when that tentation came, all was dung down. But I had ever a love to God's children¹—our minister, a man of ours who loved the best part of it, [and] that man who was sick.² Blyth was I quhen I saw them and sorrowfull quhen I saw them not.

This way I wrestled on till Martimass, that we went into the town, and then it grew more than before, and violently set on me but cheifly in the time of God's worship. So in time of hearing, I was for the most part distracted at reasoning against it. There still remained a light in the mind to the contrary, even in the time of the tentation, for I would rather have chused to have been burned than to have thought it. Glad was I when it left me at any time, and would have gon to pray or to hold it off. But then my combat began so that I was oftimes³ driven from prayer, for fear it should seize on me, in the time of it. Other times the violence of it was a means to encrease my crying to God against it. But at lenth it so grew on me that I durst not read a word on my Bible, thinking that if I had thought it reading his Word, I had done with mercy. Therafter tentations of doubts if the scriptures wer the word of God or not, and if I had a soul and the immortality of it, and some questions of the resurrection arose in my mind. I laboured against them with arguments to prove the contrair, but then Satan increased his tentation, that quhat argument I used to prove those he immediatly objected against, so that I was so overcome with the temptation that I lost all reasoning against it, and took me only to prayer and the more the [6] temptation grew the more I cried to God against it, quhen my heart would say the contrary, till I was near to faint under it, and then it pleased the Lord to remove them from me immediatly and cleared me of it.

Then entered I in the exercise of conscience and had legall terror⁴ for the time of 6 weeks. The sins of my youth from the time I was

¹ [James Melville,] *A Spirituall Propine of a Pastour to his People* (Edinburgh, 1589 [read 1598]), 42; Andrew Simson, *An Exposition upon the Second Epistle Generall of Saint Peter* (London, 1632), 77; Archibald Simson, *Christes Testament*, 87; John Weemes, *The Portraiture of the Image of God in Man* (3rd edn., London, 1636), 175-6.

² If one adds 'and', there are three men; without 'and', there are probably only two.

³ 'I was' is repeated.

⁴ William Struther wrote about pastors awakening consciences 'by the terrours of the Law': *Scotlands Warning, or a Treatise of Fasting* (Edinburgh, 1628), 66. Abernethy believed that hardness of heart must be cured through the law, 'with legall threats and thundring comminations', and the preacher would do well to present 'feareful examples' to his listeners: *Christian and Heavenly Treatise*, 6. For

capable of reason [were] pointed out to me; after[wards] other [sins] as I was able to¹ endure the sight of them.² Therafter I was led into originall sin and those passions that broke out in me before I was capable of reason, and those wer cleared to me by seing of other children so passionatly greit unto that cause given them, I knowing the like to have been in my self,³ and by it not only sinned myself, but disturbed the mind of those who I had to deal with me, and if they had any good, distracted them. These considerations so wounded me that I could see nothing but damnation. Then further was pointed out to me the not spirituallly spending the Sabbath, my worldly thoughts and words, my wants in prayer on it and preparation for it, my unworthy receiving of the sacrament. The sight and sense of these things put my soul in such torment as is inexpressible, finding myself guilty of every breach of every precept of the law, and it arrainging me before the tribunall of God and my own conscience, taking part with it and against me. To go to God I durst not, I had so provoked him. To be freed from that law, I saw no way, I found no faith to lay hold on Christ, the enimie tempting me to desperation, and laying out the sins of my parents before me, holding out the 2d command, his visiting the sins of the fathers upon the children etc., and bearing in upon me all that my Christian parents would witnes against me, and all believers from the foundation of the world, and challenging me of my former thoughts of atheism, causing me to think I had committed the sin against the Holy Ghost.⁴ Till this time I had not revealed my mynd to

an example of what might be the outcome of such a religious psychology, see Livingston, *Bessie Clarkstone*, 1, and *Life of Blair*, 71.

¹ Three words have been scored out, 'bear the wound'. It is not obvious what significance this might bear; certainly the notion of sight of sin is consistent with the ensuing narrative. Did the transcriber's mind wander? Did he conceive an emendation in the text, only to remind himself that Mistress Rutherford had chosen her words carefully, and that an alteration here would demand further alterations later in the text? One suspects that the former suggestion is more likely.

² 'Bot quhen the lord begins to chop, to appeal to the Conscience, & to open the eies of the hairt, that man may see the uglines of his awin sin: Then begins the Conscience to accuse, to condemne, and to torment man with terribil prickis, with fearfull terrors, and intollerable paine.' Hume, *Treatise of Conscience*, 102. The notion of a sight of sin was not uncommon in the pastoral literature. Hume used the term frequently; see 103, 108, 109, 111, 116, 117, 120, 137. See also Archibald Simson, *Sacred Septenarie*, 55; Archibald Simson, *Heptameron*, 2; James Sibbald, *Diverse Select Sermons* (Aberdeen, 1658), 180; William Cowper, *The Workes* (London, 1623), 87; Wariston, *Diary*, 2, 250.

³ Augustine, *Confessions*, 1/6.

⁴ Matthew 12:31-2.

any, for I thought there was none in the world like me; all had faith but me. My soul was thirsting insatiably for mercy, but durst not seek it, I had so offended.

In end, when I was like to be overwhelmed, I went to Betty Aird hoping she would pray for me to God, if so wer that mercy might be had.¹ I showed her the sins of my youth that so terrified me and that I durst not go to God. I wanted faith and repentance. She said I was in no other estate nor God's children was in before, among quhom Mr Robert Bruce,² Rachel Arnot,³ and herself wer a part. Then I began to gather hope of mercy; seing any of God's children wer in the like case, my mind was a litle eased quhen I went from her. But Satan doubled his tentations, and made me still keep up the tentation of atheism and his unjust challenge of it to be the sin against the Holy Ghost. So that what confort any ministred to me for other things, that took it away. The tentation of dispair struck sore at me, and fears to be a fearfull spectacle of wrath to many, so that quhen I lay down at night I looked not to rise in the morning without some remarkable thing coming upon me. I could look to nothing but I feared to be devoured by it, thinking I was a traitor to God and all was at his command to execute justice at his pleasure. This tentation assaulted me most quhen at God's publick worship, for there I thought there was manifest to see it (for the Lord mercifully drew me to the means of his worship in my

¹ 'Let the advice of some godly, skilfull, and well experimented Physician meddle with thee, to take away thy melancholious distemper.' Abernethy, *Christian and Heavenly Treatise*, 136; see also Archibald Simson, *Sacred Septenarie*, 104.

² A famous minister in Edinburgh in the 1590s, who, after his suspension, drew flocks of people wherever he was. He was one of the great early architects of Scottish puritan piety. Bruce died in 1631.

³ Rachel Arnot was the daughter of an Edinburgh provost, Sir John Arnot of Birswick, who also held other notable offices. She is more famous for having been a grandmother of Archibald Johnston of Wariston. *Diary*, pp. xi and 370n. See [John Corbet,] *The Epistle Congratulatorie of Lysimachus Nicanor* ([Dublin,] 1640), a stinging satire showing the proximity of the covenanters to Jesuits. On p. 74, in the margin, appear the initials R.A. The adjoining text reads:

break not off your nocturnall devotions, and assembling together for the better, and not for the worse. But doe it more secretly than Andrew Lesley, of whom they say, that hee forsooke Ireland to go to the Covenant, the first fruits whereof was to forsake his wife, to joyne himselfe with an harlot. The good old Matron of the holy Sisters of Edinburgh [i.e. R.A.], did more cunningly cover her daughters infirmity of the flesh, who (as she said to her sisters at their meetings) had fallen in a holy fornication with a brother, not out of Lust, but Love: and therefore decreed, that she should not confesse it before the congregation, lest the Gospell should be scandalized.

greatest trouble, and made it so dear to me because it was his ordinance, that and I should have been made a gazing stock to Angels and men, and dyed eternally for it, I dought not bide from it). This tentation was very troublesome to me quhen I was with God's children, for still I feared my justly deserved judgment should come upon me, and they to get a part of it for countenancing me that was a traitor to God, and quhen they would be speaking comfortably to me, I would be weeping and crying in my heart, not to afflict them for my cause. I durst not vent it to them least they should apprehend their danger, and go from me, for they wer as dear to me as my own soul, and one look of them more precieuse than a kingdom; this tentation grew so great that I was forced to stay from them, with a doolfull heart being loath that they should be the worse of me. Then Bethia Aird asked why I stayed from her, and I told her my fear, desiring her to stay from me. She answered, God was not unrightiouse; he would not punish the sins of one upon another.

From that time I was fred of that tentation, but my fears of a visible judgment [7] to come on myself continoued, till one day I was coming up a street in Edinburgh and fear seized on me to be made a fearfull spectacle before I wan to the head of it. My heart answered, If it should be so, it was the Lord had done it, and was his own creation he had done it to, and I was content to have his power and justice execut on me if his wisdom had so determined. And from that time I was no more troubled with that fear. My convictions continoued that I knew not quhat to do. To go to God I durst not, I had so offended him, and to bide from him I dought not; my soul was tossed between those 2 extrens. Yet I was drawn by a secret power to the publick means of God's worship, and found somtimes a kind of ease in my mind, after but quhen I had any ease I thought all was gone and I given up to a reprobat sense. And quhen the trouble was lying on I dought not bide it. The torment of my conscience was so great—still was holden out to me sins of my youth, those passions I had before I was capable of reason wherby I had molested those I had to do with, and my being the author of their sin of that kind and my unworthy receiving of the sacrament, and not spirituall spending of the Lord's day, the eating the bread of idlenes, not labouring with my hands sufficiently for it, thinking myself a burden to the freinds I was with, and my doing all that ever I had done in the worship of God without faith, thinking I never had faith and so all that ever I did was sin. Satan did still bear in on me, [that] I had committed the sin against the Holy Ghost, and this

he grounded on his tentation of doubling of deily,¹ and laboured to make me despair of mercy. Then I thought repentance would be denied, for to that sin it is not given. If I had a world I would have given it for one true tear of repentance. Many a tear had I but I thought none of them wer true, but added to my guiltines. I fand noe faith to lay hold on Christ. Then Satan temted me to put violent hands in my self, making me think it so far from sin, that it would be good service to God to execut his justice on such a traitor that looked so well favoured. That I did not descern to be a tentation; glad would I have been to do anything that I thought could have been service to God, so I made litle resistance. I delayed the doing of it from time to time till I had been at prayer and would have gone to the place and somtimes cryed violently for mercy. Other times I durst not take God's name in my mouth, I had so offended him, but would have lain on the ground saying in my heart, Lord thou knowest quhat I would be at! This tentation lasted 4 dayes. It did not continoually assault. I had some hours of breathing, but quhen it presented itself, I made litle resistance, it was so cloaked with the service of God. But I found a secret lingering from doing of it, till the end of those 4 dayes, and then I was near resolved to do it. But by providence ther was a book lying beside me that spoke of sundry temptations (called *The Strong Helper*²) and I took it up to read, and that tentation fell up to me, and

¹ deily? i.e., devilry.

² John Hayward, *The Strong Helper, Offering to Beare Every Mans Burden: Or, a Treatise Teaching in all Burdens and Troubles of Minde, How to Obtaine Ease, Helpe and Comfort at the Hands of God* (London, 1609). Hayward, a graduate of Trinity College, Cambridge (1578-9), was from 1594 to 1618 rector of St Mary Woolchurch, London. *Alumni Cantabrigiensis, Part I*, 4 vols., eds. J. & F.A. Venn (Cambridge, 1922-7), ii, 341. She might have read on 135:

The sixt and last branch of these burdens is accusing thoughts, disturbing peace and breeding terrours of conscience when it pleaseth God to bring to our remembrance our sinnes past, and to set them in order against us, allowing satan to be the mustermaster: Who privie to our sinnes and to all circumstances concurring in the doing of them, presents them unto us in their true colours amplifying and aggravating our ignorance that would not learne, our contempt of God whose will we knew, yet had no care to doe it; our unthankfulnesse, our pride, our crueltie, and our uncleannes, with whatsoever other thing that may make our sinnes fearfull unto us: not forgetting to let us see withall, what wrath from heaven, and what torment in hell those sinnes have deserved.

This is a most grievous burden, breeding desperation in the wicked, and unspeakable feare in the elect.

the answer to it out of Gen. 9:5,¹ At the hand of every beast will I require your blood. If at a beast, much more at our self.

From that time I was freed of that tentation. Still my sense of sin and wrath continued, that I could see nothing but wrath and damnation, till I was brought to that, that I durst not read a word on my Bible, thinking it an abuse of the Word for me to read it. I would have taken my Bible and thrust it into me with tears that I had made myself unworthy of the reading of it. For the sharpest threatening in it, I loved it with all my heart, because the Lord had spoken it. I durst not take God's name in my mouth, I had so offended him. I would have lyen on the ground looking on the heavens (with a secret envying²) for mercy, groaning for greiving so mercifull and loving a God, thirsting for Christ on any condition. And [if] it had been to go to hell with him, and if it had been possible to have suffered all the torments of the damned, and letten me look to Christ, I would have done it, such was my thirsting for him. Then my fear of hell left me, for it was litle in my estimation, by the offence I had done to God. My heart brake within me for offending him. I had an unsatiable desire to have his wrath pacified, so that if my torment would have been a mean to have done it, I would gladly have embraced it. I became so loathsome in my own sight,³ that I abhorred myself. I had an unsatiable desire for faith and repentance and mercy but found none of them to my sense.

Then foolishly I sought a sight of all my sins, thinking that would work repentance (and did not seek such a mixture as his wisdom saw good[]). [8] But I got such a sight of them that and⁴ the Lord had not⁵ removed the sight of them shortly, I had dispaired of mercy utterly. The sight of them lasted to my judgment half an hour, and another half hour in that measure of sight and sense would have undone me. Quhen I was fainting under them and like to be swallowed up in a moment's time, the sight of them was removed from me out of my remembrance, and thereafter no more sight at once nor [than] I was able to endure. My fears decayed, my sorrow for offending a mercifull God

¹ Genesis 9:5: 'And surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man.'

² envying.

³ Dickson, *Select Practical Writings*, 138, accused his hearers of never having 'been loathsome in thine own eyes'.

⁴ if.

⁵ 'the Lord' is repeated.

continued, but without fear of reprobation. Then I got liberty to read (for I was haddened from it by tentations) and in my reading I fell on Hezekiah's sicknes, the Lord sending the prophet to him to set his house in order for he should dye and not live, and after his weeping to God, the Lord added to his life 15 years.¹ Thus use I made of it—he was in the way to death and had received the sentence of it, and yet upon his entreating the Lord, mercy was granted. So howbeit I had received the sentence of reprobation in myself, ther was hope of mercy.² Further, I thought of Peter's denyall³ who heard Christ say before, Whosoever denys me before men him will my Father deny before the angels quhilk are in heaven.⁴ He doing it and got repentance, got mercy; and Paul's persecution and yet obtained mercy.⁵

From these considerations the Lord was pleased to work some hope of mercy in me. Further, his majesty was pleased to make me mark particular providences to myself, in carying me to the places quher God's children wer met together,⁶ unknowen of me and giving them such compassionat hearts towards me, quhilk further strenthened hope. Then I longed for the sacrament but could hear of none but in Edinburgh (at that time it was given kneeling). Then my longing was such that I resolved to take it there, thinking the humblest gesture rightest.⁷ But when I am in this purpose the Lord mercifully prevented me, drawing me to read and falling on Christ's words to his disciples,

¹ 2 Kings 20:1-7.

² She misunderstood the doctrine she heard; a decree of reprobation is ineluctable. The point in her favour is that so long as one lives, one cannot be sure of lying under this decree; thus one continues to seek salvation and the assurance of it. Sibbald, *Sermons*, 109; Abernethy, *Christian and Heavenly Treatise*, 132; Dickson, *Select Practical Writings*, 106.

³ Mark 14:66-72 and parallels.

⁴ A conflation of Matthew 10:33 and Luke 12:9.

⁵ Abernethy, *Christian and Heavenly Treatise*, 134.

⁶ Perhaps she refers to the conventicling penumbra of presbyterianism. See D. Stevenson, 'Conventicles in the kirk, 1619-37: the emergence of a radical party', *Records of the Scottish Church History Society*, xviii (1973), 99-114.

⁷ See works by David Calderwood, including *A Defence of our Arguments against Kneeling* (n.p., 1620); *A Dispute upon Communicating at our Confused Communions* (n.p., 1624); *A Solution of Dr. Resolutus, his Resolutions for Kneeling* (n.p., 1619).

after breaking the bread, Take it and divide it among your selves.¹ I knowing they divided it not but received it from their minister, this put me so through other² that for the verse I durst not take it.³ Then I heard thereafter that it would be given in the West Kirk.⁴ As I dought, I was seeking preparation for it. Sense of sin and challanged for lost and abused time, thinking all my former life was spent in sin, remained. Sometimes I was led to mourn for sin in generall, somtimes in particular—bitter mourning for sins of youth, longing to meet with children, I sinned in destroying time with [which] to give them warning. Somtimes the not spirituall spending the Lord's day, abuse of Word and sacrament, not worshiping in spirit and in truth, thinking I never had faith, and that all that ever I did was sin. Times of bitter mourning for these particulars, and my abuse of so long time knowing it all lost, and I to have been living on earth without God, this wounded my heart. Somtimes I mourned in great bitternes for offending a mercifull and loving God. Sometimes I conceived a hope of mercy, other times the heart tortured with fear of reprobation, but no fear of hell, for fear of punishment was not then cared for, but the displeasure of God was bitter as death, and I dought not think of being frustrat of God. This way I wrestled till the time of the sacrament came, thinking all the time I wanted grace, longing for faith and repentance, the other graces of the Spirit, and if I had had a world I would have given it for grace. I had an exceeding longing for Christ

¹ Actually, after Jesus gave thanks for the cup. Luke 22:17.

² i.e., 'This made me so confused that because of the verse I dared not take it.'

³ David Calderwood wrote:

I appeale to the consciences of all true Professors, if ever they did see any exercises so gracious, powerfull and heavenly, as were our communions. It is well known what graceles, confused, cold & disordered communions we had in sundry parts this last yeare, where kneeling was put in practise.

Solution, 48. Josias Welsh, son of John, and minister of Templepatrick, wrote to Anna, countess of Eglinton, on 16 Oct. 1632 about the wonderful work that God was doing in Ireland. Up to 1,400 or more attended; 'such motion I never saw; new ones commying in that never knew Him before', though he also recognised that troubles were coming. He was very pleased the previous Sunday in Antrim there had been no kneeling, rather 'the true paterne of the institution directlye followed'. W. Fraser, *Memorials of the Montgomeries, Earls of Eglinton*, 2 vols. (Edinburgh, 1859), i, 224.

⁴ Almost certainly this was on 7 Mar. 1619 when Richard Dickson administered the sacrament according to the presbyterian understanding. Scott (ed.), *Fasti*, i, 95; W. Sime, *History of the Church and Parish of St. Cuthbert, or West Kirk of Edinburgh* (Edinburgh, 1829), 42-4; David Calderwood, *The History of the Kirk of Scotland*, 8 vols., ed. T. Thomson (Wodrow Society, 1842-9), vii, 352-5.

on any condition, and it had been to have endured all the torture of the damned (reserving the want of God, I would gladly have undergone all as I thought for Christ[]).

The Saturday before the communion I had a sore battail with tentations yet some mixture of hope. On the Sabbath morning I was much tempted to bide away for want of preparation.¹ It was a great rain, and it in the West Kirk and to go soon to, and I unfit for it. Yet the Lord drew me. When I came to the kirk, the kirk officer put me in a desk my alone where I had large time before any came in to it, in quihlk time ther was brought before me a great number of sins, one after another and a promise foranent them. In praying, some things was seen quihlk strenthened confidence quihlk I passed. When the minister came [9] in I set myself to hear but through many temptations. Sermon ended and they went to the table. I thristed to be at it but durst not through tentations. I was a reprobat, violently cast in my mind, and so I thought I would profane it, and fill up my own damnation, yet I dought not bide from it, and after a number was served I rose trembling, and through the violence of tentations would have turned back, but the throng of the people held me forward. When I came to the table it was filled. Then I thought I was debarred but could not win back for the throng. When the table was toom² I, with the throng of the people, was carryed within the foorm.³ Immediatly

¹ John Welsh counselled his hearers to prepare very carefully. There was much unprofitable observance of the sacrament, 'because of the want of the holy preparation before the action, and that holy disposition in the doing of the action, and of that holy resolution after the receiving of the same'. Welsh, *Forty-eight Select Sermons* (Glasgow, 1786), 372. Alexander Hume would have advised her to go to sermon, but so long as she was in her distress and until she had some awareness of salvation, 'I would not counsell thee to present thy selfe to the holy Communion, and supper of the Lord Jesus': *Treatise of Conscience*, 119. But see Cowper, *Workes*, 267: 'And of this tryall the Apostle meanes here: so that this precept doth command us to search out our iniquities, & to depart from them, but doth no way import that we should not communicate at this Table, because that new tryall discovers to us new trangressions; for wee come not heere as men without sinne, but as poore and miserable sinners, seeking the Saviour of the world, knowing that hee came not to call the righteous but sinners to repentance.' See also E.S. Morgan, *Visible Saints: the History of a Puritan Idea* (Ithaca, 1963), 75-7.

² empty.

³ bench. Lord Binning reported that 'neither man nor woman, during the space of almost foure houris, offered to receive sitting upon the furmes, except one onlie basse fellow'. Calderwood, *History*, vii, 359-60, cited in I.B. Cowan, 'The Five Articles of Perth', in D. Shaw (ed.), *Reformation and Revolution* (Edinburgh, 1967), 176.

my hellish temptations left me, and thought, Here is a table for sinners, such as I am. At that time I gat bleeding Christ apprehended, and his merit applyed for pardon. What inexpressible joy, so that I had much adoe to keep from crying out for joy, and immediatly the reader sang 103 Ps. 4, Who did redeem thy life from death, and so I sang it with faith and shouting joy. At this time I got only Christ applyed for pardon of sin but not for working of grace, for truly my narrow heart could hadd [hold] no more, neither at that time was I capable of further. My heart was eased and joyfull the rest of the day till the publick [worship] was ended. When I came home I retired myself and went to prayer and minted¹ at praise, and was begging mercy for guiltynes and shortcoming in deutys. Satan suggested I was mocking God in seeking mercy when he had pardoned abundantly. But this tentation (though oft and sore assaulted that night with it) prevailed not for I saw such wants and weaknesses in that exercise of prayer, that I neither dought nor durst cause to seek mercy, and fand constant need of it. Sight of sin continoued with a loathing of myself for it, and I had such indignation at myself, that I knew not how to be avenged on myself because of sin. Satan suddenly suggested in the mind, Curse thyself, but this was presently seen to be sin and rejected. The more I heard of God's goodnes or read of it, my heart was now wounded for offending of him. The 5th of Isaiah,² his speaking of his vineyard, I applyed to myself, with an speech in Mal. 1:6,³ If I be a father, quher

¹ ventured, attempted.

² Isaiah 5:1-7: 'Now will I sing to my wellbeloved a song of my beloved touching his vineyard. My wellbeloved hath a vineyard in a very fruitful hill: And he fenced it, and gathered out the stones thereof, and planted it with the choicest vine, and built a tower in the midst of it, and also made a winepress therein: and he looked that it should bring forth grapes, and it brought forth wild grapes. And now, O inhabitants of Jerusalem, and men of Judah, judge, I pray you, betwixt me and my vineyard. What could have been done more to my vineyard, that I have not done in it? wherefore, when I looked that it should bring forth grapes, brought it forth wild grapes? And now go to; I will tell you what I will do to my vineyard: I will take away the hedge thereof, and it shall be eaten up; and break down the wall thereof, and it shall be trodden down: And I will lay it waste: it shall not be pruned, nor digged; but there shall come up briers and thorns: I will also command the clouds that they rain no rain upon it. For the vineyard of the Lord of hosts is the house of Israel, and the men of Judah his pleasant plant: and he looked for judgment, but behold, oppression; for righteousness, but behold a cry.'

³ Malachi 1:6-7: 'A son honoureth his father, and a servant his master: if then I be a father, where is mine honour? and if I be a master, where is my fear? saith the Lord of hosts unto you, O priests, that despise my name. And ye say, Wherein have we

is my honnour, if I be a master, quher is my fear. These places brak my heart and made me spend large time in weeping to God for offending of him. A litle after this my tears wer not so frequent, but had a continuall heavines for offending and sinning against a loving God and loathing myself and indignation at myself continued.

Then I thought I had no repentance because I had not constantly tears, till ane day coming from Leith Kirk¹ with Bethia Aird (it being a small weit²), she said, This mist breaks the clods and moistens the ground better then a great shower, so a continuall heavines for sin breaks the heart more than gushes of tears, for, said she, after tears sometimes the heart will be harder. This she spake, not knowing my doubt, which I took from God; it refreshed me. Then I thought, I am yet in the way. I continued in this exercise of loathing myself above a quarter of a year, sometimes greiving for the sins of others, especially those of our family whose behaviour I saw. I was still drawn to the means of his worship, publick and secret, and fand times of sweetnes in both, but for the publick my refreshments wer most quhen I went abroad, for in Edinburgh I was sundry times sent home troubling, for some of them taught Arminianisme,³ and my understanding weak,

despised thy name? Ye offer polluted bread upon mine altar; and ye say, Wherein have we polluted thee? In that ye say, The table of the Lord is contemptible.'

¹ Does she refer to North or South Leith? In the former, the minister from 1613 until 1620 (and again from 1627) was David Forrester who was in trouble with the High Commission over his manner of administering the Lord's supper. From 1620 until 1627 Henry Charteris, the once and future professor of divinity (and principal) at the University of Edinburgh was minister. At South Leith, David Lindsay *primus*, who became bishop of Ross in 1600, passed on the torch in 1613 to his son of the same name, the author of *Heavenly Chariot* and *Godly Mans Journey*. He was succeeded in 1627 by John Cranston, and then by William Wishart in 1630.

² rain.

³ It is not clear who might have taught Arminianism at this early date. It would seem to have been too early for William Forbes whose teaching might have had some Arminian notes in it. He did not arrive at St Giles until 1622. See D.G. Mullan, 'Theology in the Church of Scotland, 1618-c.1640: a Calvinist consensus?', *Sixteenth Century Journal*, xxvi (1995), 595-617. G.D. Henderson claimed that Scotland was suspicious of Arminianism 'before the Synod of Dort, as we know from the *Duplyes* of the Aberdeen Doctors'. See 'Arminianism in Scotland', *London Quarterly and Holborn Review* [clvii,] (1932), 493. He refers to *Duplyes of the Ministers and Professors of Aberdene* (Aberdeen, 1638), 42-3: 'for yee complayned of Arminian Corruptions, even before Pearth Assemblie; branding some of the most Learned of our Church with that Aspertion'. Did the Aberdeen Doctors find this in *Answers of some Brethren of the Ministerie* ([Edinburgh,] 1638), 21? Probably they had some other allusion in mind, but there is no documentary evidence to support the contention.

belived it, till through God's mercy by Betty Aird as an instrument I was taught to lay by quhat they said as man's words, but that I saw warranted in the Word of God.

Then I began to understand betwixt absence and presence. When I fand God I was well, and quhen I fand him not I was dungit and heavy (I was full 19 years at this time) and about Lambas thereafter we went out of town to Cockpen. I had there an ardent thirsting for grace, and fed on the means in secret, but quhen conscience chocked for eating the bread of idlnes. Quhen I fand not life in the use of means I thought all was gone, and all I did a fool's sacrifice. [10] I fand litle information of my case by the Word preached there. Then I longed for death¹ that sin might cease and I might enjoy God fully, for his absence was very bitter to me. And one Sabbath I arose timely to seek preparation for the right spending of the day (quhilk I had come short of at night) and went to the waterside aneath the place, and lay aneath the watter brae, laying out my wants to God. My longing for God and death (that I might enjoy him without intermesion) encreased that I could do litle but mourn for to be out of the body and to be with him. After a times weeping for this, I saw the day rising and I was struck with fear to enter in it for fear of not spiritually spending it. While I am weeping for enjoying of God and fear to mispend the day, John 14 at the beginning is cast into my mind, Let not etc. in my Father's house etc.² This he made me belive and apply, thinking heaven was keeping for me, and though I wanted sensible presence now and then, yet he would carry me through and keep me by his power for it. Further was pointed out to me by that word, Ye belive in God, belive also in me. Christ and God was one and quhat desire, love, faith, or fear I owe to the one I owe to both as unseparable: God in Christ reconciling the world to himself,³ with lost me, so I held redemption of both. And so they both wer the object of my faith and obedience. This was not flitting thoughts but a continouing light of the truth, for at that time my longing was for God and I had not mine eye on Christ. Thus lovingly was I improved; I had a sweet blyth day.

¹ *Life of Blair*, 105, shows how this could become a serious pastoral problem when 'enthusiasm' invaded emotional piety.

² John 14:1-2: 'Let not your heart be troubled; ye believe in God, believe also in me. In my Father's house are many mansions: if it were not so, I would have told you. I go to prepare a place for you.'

³ 2 Corinthians 5:19.

Therafter I went on in the use of means through many tentations—the mind oppressed with heavines when I was straitned or wanted sense, and eased when I fand it. My conscience was tender but not well informed, for through scrouples sundry dutys was I heartlesly gon about or neglected. Then I durst not sing a psalm if my present case had not been answerable to it, which made me sometimes when I heard others sing, that I might not in truth joyn with it. But after a long times teasting in this, and oft forbearance, I was told by a minister, I bowt¹ sing by the understanding and not by sense, as I read the Word, whither it answer my condition or not, and in reading of it lyed not, for it was the truth of God and so was the psalmes. Then I sang them as his worship, oft wishing in my heart to be as was there expressed. Then quahatever had been my doubt or temptation or exercise, how heavy soever, quhen I met with Christians, if I had not been at that present under the exercise of it, I durst not vent it to them for fear of hypocrisy and lying. Then I was tempted to think I was a hypocrit. Many a stollen time of prayer had I for fear of it, and oft smoared² motions in publick for fear of it. It continoued about 3 quarters of a year with me till I was so slated with it, I should not have given a sigh the never so secret alone but the enemie should have suggested, Thou art a hypocrite. This he grounded because I had not such a sense of God and greif for sin as I would measure to myself, to wit, while I was satisfied with the measure of it, which I wan not to. What argument I brought against it was dung back by the violence of tentation. When I was like to be overcome with heavines under it, it pleased the Lord to remove it. Honnour to him who performes all things for me. I had other temptations that passes my reckoning. But this was most weakning to me in God's service and most unresistable. After this tentation was removed I was made to question all the work, whither it was a work of God or not. But this tentation, though oft and bitterly assaulted, yet prevailed not long. For I was convinced God had a work in me, and that a naturall spirit without changes would never have put me to such changes. Then I doubted if I had faith or repentance or love or fear of God; this held me longer reasoning than the other, for my sight of shortcoming [11] said with the tentation. Yet my thirsting for God and these graces increased, and if I had had 1000d worlds I would have given them for God and those graces in this lively exercise of them; then often I ran to prayer for those graces.

¹ bowt [?], rise up.

² smothered.

And one day when I was like to be slain with heavynes (for quhen I had yeilded to the tentation as most true) I had occasion to meet with Charles Mowat¹ who drew from me quhat troubled me and took his Bible and read the 7th chap. 2 Cor. 11. v.² and went through the particulars (he had knowen some of my former exercises) and I durst not in conscience deny but I had found these marks³ in some measure. This eased the heart for a season. When I had sundered with him, the tempter set sore on for the rest of the graces of the Spirit, especially faith and love, thinking I had none of them. I wrestled under this some dayes. Then I went to Bethia Aird. She asked why I was so sore cast down for the want of God if I had no love to him, and why did I not run to a loose, merry, sinfull life as others, if I feared him not. Said she, You must try your love to God by your love to the brethren his children, 1 John 3:14, And he that loveth him that begat loveth him also that is begotten of him.⁴ This convinced me, for the children of God wer dear unto me all as my own soul, as well those I know not personally yet knowing them to have grace, they wer dearer to me nor dear naturall freinds wanting grace, though they had been in another kingdom. She said further, It was not great faith he looked for, for the grain of mustard seed was a litle grain,⁵ yet faith as it's faith in his sight, who accepts the will for the deed, and the desire of grace for

¹ Noted in John Livingston's *Memorable Characteristics*, in W.K. Tweedie (ed.), *Select Biographies*, 2 vols. (Wodrow Society, 1845-7), i, 346. 'He kepted many a blessed meeting in Nicolas Balfour's house in Edinburgh; he waited on the Earle of Buchan, and his affairs, at Edinburgh and London.'

² 'For behold this selfsame thing, that ye sorrowed after a godly sort, what carefulness it wrought in you, yea, what clearing of yourselves, yea, what indignation, yea, what fear, yea, what vehement desire, yea, what zeal, yea, what revenge! In all things ye have approved yourselves to be clear in this matter.'

³ 'Feelest thou thy senselessness and incredulity? Missest thou the Holy Ghost away? Lamentest thou for the absence of God out of thy heart? Mournest thou for thy sin, that hath brought this security upon thee? Wrestlest thou against this hardness of thine heart? Longest thou for the Lord's returning to thy soul? And labourest thou to get thy heart cloven and drawn asunder, that the love of God may yet be shed abroad in thy heart by the Spirit? And usest thou the means diligently? If this be thy case under thy induration and security, it is an undoubted token that thou art the child of God; for where there is a minting and endeavouring to do well, God accepts of the will, and in his own time he will give thee the strength and grace to perform it.' Welsh, *Forty-eight Select Sermons*, 312-13; see also Archibald Simson, *Christes Testament*, 130.

⁴ 1 John 5:1.

⁵ Mark 4:31 and parallels.

grace itself. It pleased the Lord to bless these and the like arguments to me and refuted the temptation after this—a time quhen I found God in the means. I thought all was well, and quhen I fand him not, nothing could give content till he was found again.

Then I was made to question the reality of my grace, thinking my faith a temporary faith and repentance temporary and obedience a temporary obedience. When the tempter could not prevail in making me to think I had none, then the truth of all was called in question. This doubting for the truth of grace caused great bitternes in the mind, and often I was made to doubt if I was the child of God or not, with lesser temptations going through the mind like bees. Oft was I at prayer and reading my alone, but of times that I did was cast back in my teeth, as a fool's sacrifice to my sense, till one day I was bemoaning my wants to God and in great bitternes for my evil heart and blindnes this word was spoken comfortably into the heart in prayer: I will bring the blind a way that they know not.¹ The manner of the speaking of it to the heart convinced me it was God's Spirit quhich had spoken it, quhich sweetened the heart a time; but my combat returned again. I had now and then times of refreshment in the means, but quhen I was hadden back at any time, all was called in question I had formerly found. My doubts of the truth of grace continoued, thinking all a temporary work, and often doubting if I was a child of God or not.

I was one Saturday alone seeking preparation for the Sabbath and feared to enter in it for want of preparation for it, and fear of not spiritually spending it, my former doubts sorely assaulting me, and fearing I was none of his children, thinking I would never win through the tentations I was assaulted with from day to day. While I am in this bitternes praying to God, as I dought, the 43 of Isaiah at the [12] beginning is spoken into the heart: Fear not I have redeemed, I have called thee by thy name; thou art mine, quhen thou passest through the watters I will be with thee, etc. This brought with it sweetnes in the mind, and confident I was his, and hope that he would be with me in temptations, quhich I understood by watters and floods there spoken of. This greatly strenthened me for a time but shortly assaulted with questioning of it. But remembering the tempter called in question if our Lord was the Son of God² strenthened me much; I saw ther was no truth but Satan would call into question.

¹ Isaiah 42:16.

² Matthew 4.

Shortly after I went to Bathgat¹ comunion, and had a sore battail with tentations before it and after it with misbelife, only in this time some comfort from Hab. 3. and 4th² read publickly in the kirk. After coming home I was in great heavines, and after shedding with³ my sister went to my chamber to pray for saving grace to her, for she was not then effectively called.⁴ And as I was bowing my knee it was spoken in to the heart, Before they call I will answer, and while they are speaking I will hear. And 10 dayes after she wrote to me she was lost⁵ and saw nothing but damnation. This comforted me very much, and confirmed me he heard my prayer. Yet Satan doubled his tentations, and former doubts of the soundnes of grace, but the Lord, by the reading of Dykes on The Deceitfulnes of the Heart,⁶ cleared me in those points and confirmed me; so by degrees I was led on, but not marking rightly the Lord's dealing I made myself manyfold tentations, sometimes under sweet sense, somtimes under bitter.

¹ James Simson was minister at Bathgate 1618-54; he was a member of the Glasgow general assembly of 1638. He may have been a son of Patrick of Stirling. Scott (ed.), *Fasti*, i, 193; W.J. Couper, 'Levitical family of Simson', *Records of the Scottish Church History Society*, iv (1932), 211.

² Habakkuk 3:4: 'And his brightness was as the light; he had horns coming out of his hand: and there was the hiding of his power.'

³ parting company with.

⁴ Robert Rollock defined effectual calling as 'a revealing inwardly in his hart that election and choising of God that was from all eternitie': *Thessalonians*, 336. See also John Craig, *A Short Summe of the Whole Catechisme* (London, [1583]), 47r.

⁵ lost, in the sense of unregenerate. Divines counselled that people could not know that they were of reprobate status in this life, as an individual might be called effectually by God at any time, from any depth of sin. Robert Sibbald preached that no one should surrender to that 'dangerous temptation which sometimes is suggested unto men, namely that they are none of those whome God hath chosen'. Rather, let the sinner ask for mercy. *Sermons*, 109. Presbyterians were of the same opinion.

⁶ Daniel Dyck, the elder, *The Mystery of Selfe-deceiving: or a Discourse and Discovery of the Deceitfulness of Mans Heart*. Dyck was a non-conformist driven from his charge by Bishop Aylmer, and defended by Archbishop Grindal. He refused the surplice. His famous treatise was published first in 1614, the year of his death, and reprinted a number of times thereafter. See *Short Title Catalogue*, 7398-7406. An example of what she might have read in Dyck (p. 7):

O ye many blinde corners, the secret turnings and windings, the perplex labyrinth, the close lurking-holes that are here [i.e. in the heart]! who would think that within the compasse of so small a piece of flesh, there should be roome enough to harbour such swarmes of vaine and vile thoughts, desires, and affections.

Then the time of the communion of Bathgate (for it was given thrice a year) came. I was under great sense of want, and many doubts and fears, with sight and sense of sin, and longing for some refreshing blinks of God. The day of it the Word preached wrought on the heart and wounded and cast down exceedingly. I was sore assaulted with tentations, and the heart driven far from comfort. Then this word was pressed upon the heart, Ye are they quhich continou with me in my tentations, therfor I appoint unto you a kingdome, as my Father hath appointed unto me.¹ This strenthened the heart exceedingly, and I had some faith in the act of receiving, and was sensibly refreshed in the applying the Word.

Therafter I went on in a painfull seeking in secret, the conscience very tender and affrayed of sin, and much assaulted with temptations, and sore cast down quhen I found not God, or at least life in the use of means, and still evil pleased with myself for my shortcoming of a spirituall spending of the Sabbath. Though I durst not speak worldly purposes on it, yet if my heart had not been in a spirituall frame, it made me very heavy. And from any wants in this kind and shortcoming of that I would have been at in his worship and service, Satan and my evil heart grounded many a doubt. Then I was content to have wanted comfort till my dying day if the Lord would give me strenth to worship him in spirit and in truth, and keeping me walking the way of his obedience without swerving from it.

But still my shortcoming filled my heart with doubts and much heavines. Then I was tempted with fear of the apparition of Satan in some bodily shape, but especially quhen I was retired to spirituall exercise, and had sore wrestling with it. But and if I should have been distracted with fear I durst not leave that place, nor neglect any time I took formerly. I knew quhen I was about exercise I was in the way of God's obedience, and so had his promise of protection, yet faith in this, though it held me wrestling at the duty, it brake not off the tentation for I was assaulted with it near half a year. In this time I lay my alone and had nobody in that quarter of the place but myself, for I would not tell my aunt of it least she should cause some lye by me in the chamber and I should be hindred, for I stayed up at night late and oft timely in the morning. Then I feared Satan would transport my body, but this stayed the mind: If God so should permitt, he did so to Christ my Lord. But it was objected, If I be transported it will make all the country loath religion, quhen they see Satan has such power [13]

¹ Luke 22:28-9.

over those who are thought to be Christians. This with the fear of it troubled me so that sometimes the extremity of fear would make me near to cry, but the fear of dishonouring God in doing so made me silent, and chuse rather to dye for fear, before I should let naturall people know such a thing.

Then by a providence our minister fell to preach on Christ's tentations, which much strenthned me, yet it left me not. To express all the reasoning of the heart with it wer impossible. One night I was free of it, so I stayed late my alone, after all the people wer in bed and about the place a long time. Then I came in to my aunt's chamber for she desired me to lye beside her that night. And as I had drawn the curtain and lyen down, as I thought there came one before the bed, and took a full grip of me by the wrist. Then I thought whatreck¹ of me, but God will be dishonoured, and the profession spoke evil of by this. When I thought I was liften up, the Lord sweetened the heart and made me think the Lord was so used before, and it was he who permitted this war would guard his own honnour, and make his wayes to be loved and followed by his, come of me quhat would. Then I said, The Lord hath broken thy power, Satan, and immediately the grip is letten go, and a noise in the floor as [if] part of the house had fallen, and was there removed. I was so void of fear that I looked out to see what it was like, the fire being clear, but saw nothing. From that time I was not troubled with those tentations.

Then the time of the sacrament came, and I was much assaulted with temptations and fears not to persevere in the way of grace. This and the want of preparation caused much heaviness and bitterness of mind. When I heard the threatnings I applyed them with trembling and greife but loved the sharpest of them from my heart. When the table was served I durst not go, my heart was wringing with greife and fear. The minister said, Fear not litle flock, it is your Father's good plesure to give you the kingdom.² This word made me to go to the table for I gote it belived and applyed to me. Since it was his will to give a kingdome, my unworthines could not call back his purpose. I received the elements with some measure of faith quhich eased and refreshed the heart. But shortly after, my combat returned, sore fears of falling from the exercise of grace, and sometimes thinking I would never win to a continoued spirituall worshiping of him. I feared never to persevere but to fall away and yet I had not any fear of hell, but feared

¹ What does it matter?

² Luke 12:32.

exceedingly to want God. I made litle resistance to these, but rather fed on them, because the[y] made the heart so sad I thought them profitable. Till one day I was reading: He that beliveth hath set to his seal that God is true, and he that beliveth not hath made God a liar.¹ This struck me through the heart, and made misbelife bitter as death. I hated it then as hell, and wist not how to get amends of myself for it. The sin of it appeared exceeding sinfull, and wounded the conscience for wronging God so greatly. Therafter I was made to believe because it was his will, and what his Word said I belived it to be surer then [if] I had both seen it and felt it.² This stayed, and guarded the heart for a time. But quhen I came to particular application, then I was made to look to the condition of the promises, and want of the lively exercise of the graces of the Spirit occasioned much vexing reasoning in the heart, and weakned faith much, and sadded the heart much with the fears of backsliding, so that I knew not what to do. For though I fed on the using of the means, still my heavines increased, for I saw such imperfection in the doing of all that my fears encreased.

One day I told John Gillon³ my case, and he cast up the 32:40 and 31:33 of Jeremiah: I will not depart from them to do them good, but I will put my fear in their heart, that they shall not depart from me, and I will put my law in their inward parts and write it in their heart, and I will be their God and they shall be my people. This the Lord made me apply; it rejoiced the heart much. Therafter I went on in greater sweetnes and promises of performance, and particular graces in the covenant made more clear, and I made to believe for conscience sake. Sight of feelings hereafter would make the heart sad and chase to God for mercy, but made me not call his love in question to me (I was near 22 year at this time). This going on in sweetnes lasted long. I had sundry doubts and tentations, but the Lord blunted them. In this time I had a particular of marriage in hand quhich my friends would have me

¹ A conflation of John 3:33 and 1 John 5:10.

² William Livingston advised Bessie Clarkson 'that wee walked by faith and not by feeling, and must not measure our selves, nor Gods goodnesse and love by our sense.' Livingston, *Bessie Clarkson*, 6. See also Samuel Rutherford, *Quaint Sermons*, ed. A.A. Bonar (London, 1885), 113: 'The greatest praise to your faith, the greatest honour to Christ that can be, is when faith walketh upon fewest legs, neither feeling nor joy, nor comfort, nor experience, nor sight, but only this one: He is faithful who has promised; so said my beloved Christ, and I will believe.'

³ Perhaps he who is mentioned in letters from Elizabeth Melville, Lady Culross, to John Livingston: Tweedie, *Select Biographies*, i, 353, 369.

to embrace,¹ it promising fair in outward things and he a professor. But I was not satisfied with the measure of his grace and was far averse, but I being dark in God's will in it, feared a deceit in the heart in my aversnes, and least² my naturall freinds should think me foolish, and religion made me so, I durst not make it known to them, for in all things they wer justified. So I laid it over on God with earnest and oft seeking the leading of his Spirit and the knowledge of his will with strenth to follow it, whatever it was. So I lute³ freinds be going on, and I seeking impediments from the Lord if it wer not his will. Upon some considerations, it was delayed. In this time my husband [-to-be] came, and proponed his purpose to me. His grace pleased me well but I feared my heart's deceitfullnes the more, and durst not let grace itself move me till I was loosed of the other. Then our sacrament was given and they both came to our kirk; the gentlman came to our place. I was feared my heart should have distracted for I was dark of God's will what to do, so I ran to the Lord, and begged the taking of both these particulars out of my hand and do his will in both of them, and make me but a beholder of his work [14] and lead me in the right going about his work spiritually. So the Lord took both these particulars out of my mind as if I had never heard of them, till the Munday thereafter. The Saturday was a profitable day. The Sabbath the Word wounded softned comforted, so it was a sweet mixed day. On Munday the laird (who⁴ was one of my friends) most for the match with the gentlman,⁵ upon some occasions given by him and his freind, gave over the marriage and would not hear of it.

Then my husband with his brother-in-law came to our place and proponed his purpose to so many freinds of mine as wer there. They liked it but I durst do nothing for want of light. That night I spent most part that night in prayer to God for light and leading, and the morn till 10 hours, that they met on it. Then I was called to give my mind. Again I went to prayer, and with great earnestnes and a loosed heart begged his leading with a kind of refusing to do anything without him. While I am in this exercise I am called upon and rose and went with

¹ Wariston's friends favoured his marriage: *Diary*, 8.

² lest.

³ let.

⁴ The MS has the first parenthesis so inserted as to include 'laird' but this is obviously misplaced.

⁵ 'greatly in favour of the match'.

fear for I was dark as to God's will. And as I was going to the room they wer in, on a suddain the Lord filled the heart with such a sense of himself that cannot be expressed with assurance of his leading me. When I came to my freinds I put it on them to do as they saw good, so they put him to return home and bring them the surtys of his estate. The day therafter my heart was filled with peace, I may say which passeth understanding,¹ let be expression. The excessiveness of it lasted me two dayes, but the nature of it lasted some weeks. It was all the time after the two dayes, a sweet feeling peace guarding the heart. But those 2 days I cannot make language of it, only it was the power of God; therafter I dare not say but I found the Lord leading me through all the passages of my particular without breaking of my communion with God. The day of accomplishing it [wedding] was a sad day but I know not wherfor. Therafter I fand God in the means, and his presence going along with me to Irvine, quher the Lord kept us till he cleared some doubts I had as to my married lot by the Word preached by Mr David Dick² on Job.

Thereafter we went on in our journey to Ireland. I fand the Lord by the way, and good times at Port Patrick,³ and his presence the morn after we landed at the Craigs at Groonis Port.⁴ After some stay in that country I grew deader and had severall doubts but did not question the minister. At the communion of Dunagor I was refreshed but my bonds not fully loosed (it was about Candlmass) till the liberty of the gospell. At a Friday meeting at Antrim the Lord made Mr Welsh clear many doubts to me concerning my case in dealing for the gospell,⁵ quhich eased me. Then I went to the communion at Lorn and had a mixed day

¹ Philippians 4:7.

² or Dickson. He was born in Glasgow c.1583 and attended the city's university. He was appointed to Irvine parish in 1618. For his non-conformity he was sent into exile to Turriff for some months. He was famous as a physician of souls and rose to high prominence during the covenanting period, teaching divinity at Glasgow and then Edinburgh.

³ Port Patrick: if before 1630, then the reference is to the parish of Inch and Saulseat, minister John Watson; from 1628 Port Patrick was separate and in 1630 the minister was James Blair.

⁴ Groomsport.

⁵ Josias Welsh 'was much exercised in his own spirit, and accordingly, much of his preaching was anent exercise of conscience'. Tweedie, *Select Biographies*, i, 327.

with much combat. On Monday Mr Blair¹ preached [on] 68 Ps., Let God arise.² I was bettered by it but my bonds not fully loosed till blessed Cunningham's³ communion, a sweet and comfortable day.

There I got Christ taken to be my life and head. This brought such fulnes with it my narrow heart could hold no more. I was in reasonable case till blessed Blair's communion, and there Saturday, and the Sabbath fornoon with some dayes before, a sore combat, till a litle before I went to the table. At the table they sang the 34 Ps. 6. verse, This silly wretch for some releife, etc.⁴ This did me good. There I got Christ taken for sanctification with much comfort,⁵ and had a good evening my alone. Then I would fain have dyed. The week after was better than formerly. The next day we went again to Bangor, quher I fand the Lord in his ordinance. As I sat at table it was cast in my mind, Take Christ to be all, thou needs more than thou has applyed or taken him for yet. Thou needs strenth in tentation, and an outgate from trouble with a number of other particulars, in a moment's time was cleared to the mind, without distracting from hearing. Upon these terms I received the seals, that Christ shall be all unto me, and I gat him taken so, and belived he would be so. My husband and I had many sweet times together before, but none mor sweet nor the week after this.

The Wendsday thereafter I was retired my alone, within our house. It pleased the Lord to give such a measure of presence in prayer and sense of himself that I was not able to endure that my narrow heart

¹ Robert Blair was born in Irvine in 1593. He studied at Glasgow and was much influenced by Robert Boyd. Due to his non-conformity he could not find a charge in Scotland; thus in 1623 he went to Bangor in Ireland where he remained until finally silenced in 1634. He then returned to Scotland, becoming minister of Ayr in 1638 and St Andrews in 1639.

² Psalm 68:1-3: 'Let God arise, let his enemies be scattered: let them also that hate him flee before him. As smoke is driven away, so drive them away: as wax melteth before fire, so let the wicked perish at the presence of God. But let the righteous be glad; let them rejoice before God: yea, let them exceedingly rejoice.'

³ Robert Cunningham, minister of Holywood.

⁴ Psalm 34:6: 'This poor man cried, and the Lord heard him, and saved him out of all his troubles.'

⁵ Probably reflecting the influence of Blair: *Life of Blair*, 34.

cryed, Lord Hadd,¹ for as I thought my joynts loosed with it. Then my Lord measured as I had strenth to bear it.

Shortly after this my husband took his death. The first six dayes of his sicknes I was very heavy and the mind tortured with fear of his death, and in great displeasure with myself for want of submission to God's will. The next 3 dayes after this I was haddin for the most part seeking the sense of God's love and presence to him (for it was withdrawen as to his sense). The Saturday, the last of these 3 dayes, I was kept in a sweet hopefull earnest longing for and waiting on the Lord to manifest himself to him. And that night it pleased the Lord to answer my expectation to the full. Honnour to him. Then I was brought home [?] to submission to my Lord's will. The morrow after (being the first communion day of Kilkenny after the liberty) his sicknes encreased and three times I went, only for to seek his life from God, but still in prayer cared by it and led upon God's affairs through the world and born-down truth in that land. When night came my mind grew very heavy, and fear of my husband's death seized sore on me so that I feared to dishonour God with exceeding greif, so that I went from [15] company to a garden alone and fell on the ground asking his life. But being straitned in that, my heart was wrung with the loss of such a help in a Christian course and a loving husband, and I a stranger in that place. Quhen my heart was tortured with greife it was lovingly spoken in to the heart, Thy maker is thy husband thy redeemer, the holy one of Israell, the God of the whole earth.² This confortd and swetned the heart exceedingly, and made the heart well content to loss. But that same night my heart started from submission and had sore wrestling to attain to it. Two dayes therafter it pleased the Lord to remove him. In that instant of time, it pleased the Lord to give me a sweet blink of the joy we was entered in, that so long as that tast lasted, I was put to mint to joyn in praise with him, but I was not able to bear such a life long, and gave ear to tentations, and let the eye fall down on my loss, and brought the heart in confusion and much greif all that night. On the morrow I had a heavy morning and much greif; but a loving constraint laid in the heart to bless my Lord for the loan of him, and saw much mercy in it toward noon day, but tossed and driven from this and like to be overcome with greif. But hearing the 2 last lines of the ... Psalm read, to sing, In God alone I put my

¹ Perhaps El Shaddai, as in Wariston, *Diary*, 325. In Genesis 17:1 the term is translated as 'Almighty God'.

² Isaiah 54:5.

trust, etc.,¹ this brought the heart to be weel content with God alone and saw it mercy. I had no other to lean to, that he might be all to me himself.

Two dayes after I took a sore feaver, in quhich time I felt much of God's presence and overcoming mercy. All these times I aimed at the right discharge of his worship and service, though in the time of it deserted to my sense. In this time of my sicknes wer brought to my remembrance, with his approbation of them as very acceptable in his sight, all the communions quher my soul had but bitternes in the time of them, and fear they should have added to my guiltynes. At this time my Lord witnessed to my heart, they wer service acceptable in his sight, my carriage to my husband his children, getting this approbatioun in the conscience quhilk gave me much peace and sweetnes in the heart and made me wonder at free love and rich mercy in God, he doing the work and giving me the praise. Honnour to him, that justifies the ungodly. After my sicknes I had som times of heavynes for my loss, sometimes a feeling contentment in the good pleasure of the Lord's will in all that he had done. The conscience of his will in the thirstines, silencing all the reasonings of the heart, and lovingly justified the Lord's dealing with me, and would have fain have given him the praise of his wisdom in working that quhilk seemed hardest to me. But this duty of praise was far above my reach. The furthest lenth I wan was to bless him. I could do nothing in it, accounting it a lesning of his praise if I could have done anything in it; I was glad he was exalted above all blessing and praise. I was somtimes not so sensibly born up, but halden wrestling with the reasonings of my heart, and much ado to bring them in willing subjection to my Lord's will. Somtimes in my greife and hard reasoning of heart, my eye would be drawn off [f] his sovereignty that needs not give any account to angels of his doings far less to me, dust polluted with sin. Somtimes I was led into sweet rejoicing in him for his sovereignty; the acknowleging of it gives ease to the mind in all straits.

Then Mr Blair's communion came and I went to it. I was sore assaulted on the Saturday, with sight of shortcoming in every duty required, and had not, nor the week before, assayed searching of myself, and would fain have been to some outmost part of the feilds

¹ The number is lacking in the text, but she is referring to Psalm 73:28: 'In God alone I put my trust, thy wonders will I tell.' *The CL. Psalmes of David, in Scottish Meter: after the Forme that they are used to bee Sung in the Kirke of Scotland* (Edinburgh, 1615).

after sermon for that effect. But being weak and near my time, I was not able to through the difficultys in that purpose, quhich brought the want of my husband's help to my mind and added to my heavynes, for at the last communion there my husband and I had a blest time in the feilds together. So I sliped to the kirk in a dark desk, where the Lord was found and supplied wants, and pointed out failings with the sense of them profitably mixed. The morn after was a sweet substantiall day. It gedd well with the work and with me. Thereafter I was hald on a profitable exercise till 4 dayes before my delivery; in quhilk time I fand near acces in prayer and homelynes in drawing near to God out of conscience of his allowance, till that night my pains came, and then my Lord withdrew to my sense and all my desires retraits and turned back to my sense. A condemned malefactor could not desire life more earnestly nor I thirsted for presence; and if I had been posed on my oath I could not discover whether thirsting for presence or submission to his will in withdrawals was greatest. We went on together, the one of them weakned not the other. As pain encreased they [these] 3 sense[s] of absence, thirsting for presence, and submission to the divine will increased. Tentations of want of my husband in that strait wer cast in the mind, but the conscience of the Lord's will dang them back. When I was delivered, then it pleased the Lord to manifest himself, and sweeten the heart all the time of the sicknes with the sense of his love.

The Lord led me into a lively laying hold on the covenant for the child the day he was baptized, with earnest seeking the Lord to ratify it in heaven. I had exercise of this kind for him all the dayes of his life. Quhen after this time I had many changes, ups and downs, battails without, actions and times of deadnes,¹ sometimes in diversitys of exercise and looking quhat I could see of God therin, sometimes the mind dark and overclouded, other times much mercy pointed out in sundry particulars, but ofttest the acknowledgment of his sovereignty guarded and stayed the heart. Then I went to the sacrament of Mosraigne² and had much reasoning in my mind before it, quhat it was to discern the Lord's body aright, and what it was to be a worthy partaker. But I fand [16] darknes in the knowledge of this; the more I thought on it, I saw myself further from it. I saw much nothingnes in

¹ On the phrase 'deadness of heart', see David G. Mullan (ed.), *Women's Life Writing in Early Modern Scotland: Writing the Evangelical Self, c.1670-1730* (Aldershot, Hampshire, and Burlington, VT, 2003), 157, n.130.

² Probably Mazareine. Cf. Sir John Clotworthy, presbyterian notable, who was Viscount Mazareine. See *Life of Blair*, 71n.

myself and was oft put to seek all the parts of my preparation from the Lord, and while my heart is in heavynes for my utter inability and ignorance of God, that word is spoken to the heart, I have girded the[e] though thou hast not knowen me.¹ This use I made of it, that though I be ignorant of him, yet he hath taken fast hold on me, and will keep that he hath taken for he is faithfull and true, let me be what I may. So empty and bare as I was, I fled into free grace and acceptance through him who justifies the ungodly and had a sweet mixed day, and had some good times of dayes hereafter, I viewing the free priviledges I had in the well ordered covenant,² made betwixt the Father, and the Son in my behalf.

After this the ordinary strain of the Lord's work with me was sweet senses, yet having some times of heavines for my shortcoming in a spirituall strain mixed therwith. Then I perceived much athiesm in the heart, under sweet feelings. For somtimes I saw the eye of the mind stewn³ off God, on the present good gotten, and the heart by degrees drawn from rejoicing in God to rejoice in the good gotten, quhilk on a suddain drew on deadnes. The sight of this sadded the heart and drew me somtimes to God, to seek that he would keep his own room in the heart in every condition he put me in.

Then the sacrament was to be given at Holywood. I had some battail with temptations and a hard heart and unabilitys in that duty of preparation, quhilk caused heavines, but the day of it the Lord made his ordinance very lively, and the Word speak seasonably into the heart. While I was at table it was said, Take God to be thy God; the heart was well content to do so. Then it was suggested, He must be thy fear, love, delight, and portion and the motive and end of obedience, rule and object of thy worship. Thy child, nor no created thing, may have farder nor longer room in thy heart nor he allowes; thou may not kneel to altars and at communion. In the twinkling of ane eye these wer made clear to the heart and distracted not from hearing. With loving willingness I embraced the seals in his strenth on⁴ termes. The

¹ Isaiah 45:5.

² A common rendering of 2 Samuel 23:5. See, e.g., Mullan, *Women's Life Writing*, 30-1. A Restoration presbyterian, Alexander Wedderburn, performed the heroic feat of preaching forty sermons on this verse. See *David's Testament, opened up in forty Sermons upon 2 Samuel 23:5* (Edinburgh, 1698).

³ Perhaps a form of 'stew', 'steal'; hence, 'the mind stolen off God', in the sense of strayed from.

⁴ Several letters have been scored out.

afternoon was sweet and the Word lively. The Munday a brave day. Some time after this I had of sweet rejoicing in God for himself, some times of sweet, profitable, weights¹ with tendernes of his honnour and will, sometimes deadnes in prayer, and in hearing times of heavynes.

Then my child took his death. I was 3 dayes before his death much straitned in praying for him. Having all his life befor had sweet liberty for him, and believing I was heard of God for him, it was like to make me question all I had found for him before. I wrestled a good part both of night and day as I ought for the pardon of originall sin, but was still straitned till I came to that, that if I knew that God had decreed wrath, I should as gladly rejoice in God executing justice, as manifesting mercy. But since I know not the council² of the Lord it was my part to wrestle for mercy, and I went on as I dought, begging the Lord to magnify himself in mercy; till nigh his death, then I got the heart loosed, and with eager earnestnes, begged the pardon of originall sin, and the imputed righteousness of Christ. While his breath is near going out, it was spoken lovingly to the heart, I have pardoned according to thy word,³ quhilk I belived with joy. Yet a litle after my heart was wounded for the want of my child.⁴ But contentment in the good pleasure of my Lord's will overcame it and made up my loss with more solid feeling sweetnes than any created pleasure could give.

I was therafter tempted to doubt of his happines but when thoughts of that wer cast in, the Lord made my heart to answer, If my Lord hath decreed, what is that to me? So the tentation brake and prevailed not, for then his decrees wer dear to me as mine own soul.

¹ heavy.

² counsel.

³ Numbers 14:20; 'thy word' in the sense of 'thy petition'.

⁴ Mendelson, 'Stuart women's diaries and occasional memoirs', 197-8.

FISCAL FEUDALISM IN EARLY SEVENTEENTH-CENTURY SCOTLAND

edited by Julian Goodare

INTRODUCTION

In the early seventeenth century, Scotland's feudal conveyancing system was not just a technical matter for property lawyers. Fiscal feudalism was of much interest to the crown as a source of revenue. The two documents edited here, one written by an administrator and the other by a lobbyist, go some way towards describing the system as it operated in practice and offer comments on its advantages and disadvantages both for the crown and for the subjects. The first is 'Ane Breiff Information for the Thesaurer', written by Mr Alexander Colville in c.1616; the second is 'Memoriall anent the Change of Holding of Lands whereof his Majestie is Immediate Superior from Simple or Taxt Waird unto Few', an anonymous document datable to between 1641 and 1644.

Feudal tenure: reddendo, casualties and accidents

Leading Scottish landlords held their lands directly of the crown, though they could sublet or grant out part of those lands to other landlords. Four main forms of tenure from the crown were recognised in the early seventeenth century.¹ The most basic was ward and relief (which the 'Memoriall' called 'simple waird').² Three further forms, all more or less variants of it, existed: blench-ferme, taxed ward and feu-ferme.³ The

¹ There are accessible accounts of the tenures in W. Rodger, *The Feudal Forms of Scotland Viewed Historically* (Edinburgh, 1857), 28-38, and P. Gouldesbrough (ed.), *Formulary of Old Scots Legal Documents* (Stair Society, 1985), chs. 11-13. J. Clerk & J. Scrope, *Historical View of the Forms and Powers of the Court of Exchequer in Scotland* (Edinburgh, 1820), was written in the 1720s and has value as a near-contemporary source.

² Below, p. 198.

³ Blench-ferme and taxed ward had originated as variants of ward and relief, while feu-ferme had originated as a perpetual lease that gradually approximated to the form of a feudal tenure.

legal fiction was that all lands had originally been the crown's, and had been granted as a reward for the grantee's past service to the crown (usually military service) and to provide the resources with which to sustain future service.

Tenure from the crown involved a *reddendo* ('rendering') in the form of regular cash or services. Each of the four forms carried its own *reddendo*, specified in the grantee's charter. In addition to regular payments there were, secondly, irregular dues known as 'casualties', which fell due under certain fixed circumstances and which could sometimes be heavy. Closely related to the casualties were a third form of dues, also irregular, which the 'Breiff Information' called 'accidentis'.¹ These differed from casualties in that they tended to be penalties for misconduct rather than dues naturally arising in the course of a vassal's career. There were thus three ways in which the crown could profit from its position as feudal superior.

The *reddendo* or regular dues from each of the forms of tenure can be summarised as follows. Ward and relief was a development of medieval knight service, and the demand in its charter for 'service used and wont' had long been understood to mean military service.² Taxed ward was identical in this respect, differing only in the casualties (to be discussed shortly). The blench-ferme charter contained a modest annual *reddendo* such as a small or nominal cash sum, or a symbolic object like a rose, usually payable only if asked.³ This might have been thought to confer exemption from military service but in practice it did nothing of the kind, because the eclipse of the specificities of knight service had led to the re-emergence of the traditional duty of *all* vassals of the crown (and indeed other royal subjects) to perform military service.⁴ Feu-ferme involved an annual cash payment to the crown which was fixed in perpetuity (and thus subject to diminution through inflation) but which, as the 'Memoriall' pointed out, could still be substantial.⁵ In theory, and probably often in practice, the annual feu duty had been fixed as equivalent to (or even as an augmentation of) the rent formerly paid by tenants directly to the crown. The 'Memoriall' said that ward and relief

¹ Below, p. 218.

² A. Grant, *Independence and Nationhood: Scotland, 1306-1469* (London, 1984), 135.

³ An attempt at systematic conversion of blench-ferme dues to cash was abandoned in 1606: *APS*, iv, 287-8, c. 13.

⁴ G.W.S. Barrow, *The Anglo-Norman Era in Scottish History* (Oxford, 1980), 161-9; J. Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999), ch. 5.

⁵ Below, p. 220.

and taxed ward were '*feuda militaria*' (military fees), and denied that status to feu-ferme (it did not mention blench-ferme).¹ This might have been true in theory but was irrelevant in practice. Overall, then, the regular dues which the crown could receive from its vassals were modest. It could receive military service from all vassals, irrespective of tenure, but it could expect significant regular cash sums only from those holding by feu-ferme.

When it came to the casualties, the position was different.² Lands held by ward and relief were subject to four casualties, any of which could be heavy: ward, marriage, relief and non-entry. The first arose, and the second could arise, if the heir was a minor. Ward was the right of the superior to take the lands into his own hands, collecting the rents, until the heir was aged 21 (if male) or 14 (if female). The superior also had the right (and duty) of custody and upbringing of the heir. The casualty of marriage involved the superior's right to offer the heir, once of marriageable age (normally 14 for males, 12 for females), an appropriate marriage partner. He could claim a payment of two years' value of the lands, known as the 'single avail', if the marriage was accepted or if the heir remained unmarried during the wardship, and the 'double avail' if the heir married someone else.

Relief, the third casualty, arose at the entry of most heirs or other successors, and was a payment of one year's value of the lands. Heirs entering to their lands having been wards did not pay relief unless they delayed entry, but heirs of full age always had to pay.³ The final casualty, non-entry, was technically a payment of a year's value of the lands as a penalty for each year when an heir failed to enter to his lands. This could arise through straightforward late entry, or the subsequent discovery of a defective title could create a technical non-entry extending back for many years. As it was a penalty, the 'Breiff Information' with formal correctness called non-entry an 'accident' rather than a casualty.⁴ However, later accounts regarded non-entry as a casualty, perhaps because it was common. Many heirs hesitated before entering to the

¹ Below, p. 221.

² See in general C. Madden, 'Royal treatment of feudal casualties in late medieval Scotland', *Scottish Historical Review*, lv (1976), 172-94.

³ John Skene, *De Verborum Significatione: the Exposition of the Termes and Difficill Wordes Contained in the Foure Buikes of Regiam Majestatem and Uthers ...* (Edinburgh, 1599), s.v. relevium.

⁴ Below, p. 218.

estate of an indebted predecessor, as this was the point at which they incurred liability for the debts.¹

These casualties were considerably reduced in the other forms of tenure. *Blench-ferme* lands were subject to non-entry but not to ward or marriage, and a relief could be only a double payment of the annual *reddendo* (which was rarely substantial).² Taxed ward was a variant of ward and relief, in which definite, limited values (hence 'taxed') were assigned in the charter to the casualties of ward, relief and marriage. Ward became a fixed annual sum payable to the crown, relief a single payment usually the same as the annual value of the ward, and marriage a multiple of that sum (often five times). Usually non-entry was added to the figure to which ward was taxed, thus precluding any claim for non-entry unless there was non-entry with no prior ward. The right and duty of custody of the heir could not be disposed by the crown, but fell as of right to the heir's nearest adult kinsman on the father's side, who also gained the lands during the wardship and paid the crown its dues. There could be variations on this; the 'Breiff Information' noted charters in which the relief was taxed but not the ward or marriage.³ As for *feu-ferme*, the only casualty was a double payment of the *feu-duty* at the entry of an heir, equivalent to relief.

The valuation of land for the feudal casualties was not normally calculated at the current rental value. There were no public valuations of land at current prices in early modern Scotland before 1639, because landlords resisted the making of such valuations in the knowledge that they would lead to increased taxation. Instead 'new extent' was used, a valuation created in 1366 which went alongside 'old extent' which was used for parliamentary taxation and the parliamentary franchise.⁴ The casualty of marriage was a partial exception in that it could be 'modified and liquidat be the Lordes of the Session, to ane certaine summe of money, after consideration of the rentall'—that is, by reference to current

¹ Some attempted to have themselves entered heir to someone else (such as a grandfather rather than an indebted father), a practice which attracted legislation in 1695: *APS*, ix, 427-8, c. 39.

² Sir Thomas Hope, *Major Practicks*, 2 vols., ed. J.A. Clyde (Stair Society, 1937-8), III.25.13. It could be called the 'duplicand' (*duplicatio*) rather than relief.

³ Below, p. 216.

⁴ R. Nicholson, *Scotland: the Later Middle Ages* (Edinburgh, 1974), 174-6; J. Goodare, 'Parliamentary taxation in Scotland, 1560-1603', *Scottish Historical Review*, lxxviii (1989), 23-52, at pp. 24-6; T. Thomson, *Memorial on Old Extent*, ed. J.D. Mackie (Stair Society, 1946), 149-51, 304.

values.¹ The 'Breiff Information' advised that 'the thesaurer aucht to consider the fertilitie of the ground', which sounds as if current values were being taken into consideration in negotiating compositions. More specifically it said that while non-entry was normally valued by the 'retour dewatie' (the valuation by new extent), the lords of session could issue a declarator entitling the superior to the full 'maillis and dewaties' (the actual rents).²

This concludes the list of casualties arising from the tenures of ward and relief, blench-ferme, taxed ward and feu-ferme. Two further forms of tenure should be mentioned briefly. Firstly, within royal burghs there existed burgage tenure, which was theoretically direct from the crown. However, the administrative autonomy of the burghs had long severed any relationship between the individual burghess and the royal administration, and the documents below do not deal with burgage tenure.³ Secondly, the lands of the church were traditionally held from the crown by the tenure of free alms, with a *reddendo* of prayers for souls. This had been terminated by the act of annexation of 1587, annexing all ecclesiastical temporalities to the crown.⁴ The crown, like the ecclesiastical lords it superseded, had been in the habit of granting these temporalities out by feu-ferme. This was part of the process by which feu-ferme tenure came to spread so widely in Scotland. The act of 1587 had been repealed insofar as concerned the bishoprics in 1606. The royal commissioner to parliament had described this as the 'brek' of the act of annexation, but it was only a partial repeal—it did not touch monastic and other lands.⁵ The bishops themselves as feudal vassals of the crown did not concern the authors of the documents edited here; they presumably held by a revived tenure of free alms in which no substantive regular dues were incurred, and there would be no casualties either because they did not acquire their lands by succession.⁶ At the time of the

¹ Skene, *De Verborum Significatione*, s.v. maritagium. Cf. Thomas Craig, *Jus Feudale*, 2 vols., ed. J.A. Clyde (Edinburgh, 1934), II.21.18, II.21.28; Clerk & Scrope, *Historical View*, 202.

² Below, p. 219.

³ Craig, *Jus Feudale*, II.19.26.

⁴ *APS*, iii, 431-7, c. 8.

⁵ *APS*, iv, 281-4, c. 3; earl of Montrose to James VI, 7 July 1606, *Original Letters Relating to the Ecclesiastical Affairs of Scotland*, 2 vols., ed. D. Laing (Bannatyne Club, 1851), i, 56.

⁶ Thus the 'Breiff Information' remarked that the crown was no longer concerned with 'those landis that ar haldin Nomine Cane ... becaus for the most they hold of bischopis and nocht of the king': below, p. 214.

'Breiff Information', the earl of Mar was hearing reports from court that the king was planning to have the act of annexation repealed in its entirety at the visit to Scotland that he planned. This would have threatened other possessors of former ecclesiastical superiorities—notably the so-called 'lords of erection' who held monasteries as 'erected' secular lordships. But nothing came of the scheme.¹ As for the lords of erection, they seem mostly to have received blench-ferme titles. This contrasts with England, where the lands of the dissolved monasteries were granted or sold by the tenure of knight service, broadly equivalent to Scottish ward and relief.²

Finally, feudal land tenure could give rise to what the 'Breiff Information' called 'accidents'. These were distinct from casualties because they were not chance occurrences but carried some element of fee for a privilege or penalty for a misdeed. The 'Breiff Information' gave a long list of 'accidents', some but not all of which were connected with feudal land tenure.³ What they had in common was that they were all gifts, privileges or licences of some kind under the privy seal, for which composition had to be paid to the treasurer. The treasurer's officials had to negotiate the value of this composition with the documents' recipients, thus giving them important roles not only in conveyancing, but also in the administration of criminal justice and the implementation of economic policy.

At one time, the most important feudal 'accident' had been recognition. This was a procedure allowing a superior to reclaim an estate if the vassal, as proprietor, alienated more than half of it. The thinking behind this was that the vassal had rendered himself unable to provide the service to which he was bound by his tenure. The practice of recognition is described as an accident, and some later accounts call it a 'peculiarity' or a 'legal technicality', though it has sometimes been treated as a casualty. The point was that it was a penalty for a deliberate act, rather than a chance occurrence as a true casualty should be.⁴

Recognitions had been much used in the past, particularly by James IV. They had been criticised at the time, and the 'Breiff Information'

¹ Viscount Fenton to Mar [Dec. 1616], HMC, Mar & Kellie, ii, 72. Cf. M. Lee, *Government by Pen: Scotland under James VI and I* (Urbana, Ill., 1980), 156.

² J.M.W. Bean, *The Decline of English Feudalism, 1215-1540* (Manchester, 1968), 257-8.

³ Below, p. 218.

⁴ Rodger, *Feudal Forms*, 38; Madden, 'Feudal casualties', 172.

attests to their continuing unpopularity.¹ However, the frequency with which the subject was discussed had declined by our period. An act of 1606 had reduced the scope for recognitions by making feu-ferme dispositions by subject-superiors null without their superior's consent. Recognition, rather than nullifying the alienations as in the 1606 act, would instead have allowed the superior to recover the lands as a penalty for them. In 1633 the act of 1606 was extended to tenants in chief of the crown, though this act was not intended to come into force immediately and in fact did not do so until the Restoration.² The 'Breiff Information' treated the 1606 act as already applicable to tenants in chief in 1616; whether this was an error on Colville's part, or whether it reflected actual practice at the time he wrote, is an open question. By saying that the king as superior 'may recognoss and miskown the dedis of sutche vassallis' Colville was at least confusing the issue, since the 1606 act was an alternative to the procedure of recognition.³

Liferent escheats, which the 'Breiff Information' and other sources called simply 'lyfrentis', were also significant 'accidents'. They consisted of the forfeiture of the vassal's lands during his lifetime (without prejudice to his heirs) to the superior, following on from horning. Horning was in theory outlawry for rebellion, but the 'rebellion' was usually a technical one, often involving a civil offence such as non-payment of a debt. Stair regarded liferent escheat as a casualty, but

¹ Below, p. 220; N. Macdougall, *James IV* (Edinburgh, 1989), 160-3; T.M. Chalmers, 'The King's Council, Patronage and the Governance of Scotland, 1460-1513' (University of Aberdeen Ph.D. thesis, 1982), 23; Madden, 'Feudal casualties', 184-6. For the more limited use made of recognitions by James V, see J. Cameron, *James V: the Personal Rule, 1528-1542* (East Linton, 1998), 4, 331.

² *APS*, iv, 287, c. 11; v, 33-4, c. 16. The 1633 act was intended to come into force at the next parliament. This met in 1639, and the shire commissioners demanded that the act be 'rectified', or at least that confirmations should be granted of feus made 'upoun easie conditionis': *Aberdeen Council Letters*, 6 vols., ed. L.B. Taylor (London, 1942-61), ii, 144. The act was suspended in 1640, and repealed in 1641: *APS*, v, 292, c. 44; 414, c. 105. These acts were in turn rescinded at the Restoration, thus returning to the position of 1633 against feuing by tenants in chief. Cf. Hope, *Major Practicks*, III.28.13; James, Viscount Stair, *Institutions of the Law of Scotland*, ed. D.M. Walker (Edinburgh, 1981), II.11.15.

³ Below, p. 218. Recognitions continued to have some relevance in the late seventeenth century. For a case in which an estate held by taxed ward was held to recognosce, see [Sir George Mackenzie,] *Pleadings in some Remarkable Cases before the Supreme Courts of Scotland, since the year 1661* (Edinburgh, 1673), 53-61. This may be the case discussed by Stair, *Institutions*, II.11.16. They were regarded as still competent by Clerk & Scrope, *Historical View*, 200-1, 206-8, but only under limited conditions.

pointed out that it was 'introduced by statute or custom', distinguishing it from the other casualties 'arising from the nature of the feudal contract'.¹

The remaining feudal 'accidents' listed by the 'Breiff Information' can be dealt with more briefly. Non-entries have already been discussed above among the casualties. Tutories were connected with wardships but concerned the minor's person rather than his or her lands.² Bastardies were the royal right to inherit the lands of a deceased bastard, which would normally be granted to a third party in return for a composition. Finally, *ultimus haeris* ('last heir') was the right of the feudal superior to succeed to the lands and goods of a vassal dying with no other heirs, which would be granted out in the same way.³

The 'Breiff Information'

This four-page document is a memorandum of advice to a treasurer of Scotland, probably on his appointment, describing how he should administer the feudal casualties. It is undated, but the manuscript is original and from the early seventeenth century. Its location among the papers of John Erskine, second earl of Mar, who was treasurer from 1616 to 1630, allows its likely date to be fixed as 1616. Its author, Mr Alexander Colville, can be identified as a younger son of Robert Colville of Cleish. Robert Colville had been treasurer clerk in the 1570s, and his son had probably either worked for him or gained some similar and more recent experience, or both.⁴

The memorandum outlined the division of responsibilities between treasurer, comptroller and collector, noting that the two latter dealt with

¹ Stair, *Institutions*, II.4.66. The most important statute was one of 1535: APS, ii, 349, c. 38.

² On royal appointment of tutors-dative see Sir James Balfour of Pittendreich, *Practicks*, 2 vols., ed. P.G.B. McNeill (Stair Society, 1962-3), i, 114, 118; Hope, *Major Practicks*, IV.10.4; Stair, *Institutions*, I.6.11. The tutor acted as the heir's legal representative, and in the late sixteenth or early seventeenth centuries the tutor gained priority over the donor of the ward in being awarded custody of the heir: Stair, *Institutions*, I.6.15.

³ On bastardies see Hope, *Major Practicks*, IV.8.1-17, and Clerk & Scrope, *Historical View*, 218-22. On *ultimus haeris* see Balfour, *Practicks*, i, 232-3, and Clerk & Scrope, *Historical View*, 222-4; Hope does not seem to deal with it, perhaps indicating that the issue arose only rarely.

⁴ The authorship and date of the 'Breiff Information' are discussed in more detail below, pp. 209-12.

superiorities of royal lands and church lands.¹ The three offices of treasurer, comptroller and collector had since 1610 been combined in a single officer, normally called the treasurer. The accounts, however, continued to be kept separately until 1635, and the 'Breiff Information' treated the offices separately. 'All that passethe by the thesaurar ar ather infetmentis of landis or Accidentis.'² The different kinds of infetments—blench, ward and feu—were described. The document was crisply and logically set out, except for a final section of miscellaneous though still valuable observations, evidently written on a separate occasion.

The most significant aspect of the 'Breiff Information' was its advice to the treasurer on current practice—how the scale of compositions for infetments was arrived at. Thus, for instance, blench lands were to be most favourably treated. Feuars ought to pay four times the feu duty if they were kindly tenants, but ten times if they were 'strangeris'. Ward lands 'ar most profitable for his majestie' because of the value of wardships and reliefs; the practice here was discussed in detail. The memorandum assumed that it was normal for lands to be transferred to an heir, but there was some discussion of purchases and how a 'stranger or conquerer' should be treated.³

More was to be demanded from 'strangeris or new intrantis' than from the 'kyndlie tennentis'. The latter phrase in this context simply meant the heritable proprietors.⁴ The 'strangeris or new intrantis', by contrast, were purchasers, and the higher charge on them could be seen

¹ For earlier enactments on the subject see *APS*, iii, 97, c. 4 (1578); 309, c. 26 (1584); 378, c. 10 (1585); 560, c. 34 (1592); 563, c. 41 (1592). Signatures (on which see p. 199 below) that bypassed the proper channels could evade the checks that were supposed to safeguard royal rights and those of other subjects. For political struggles between the administrators and the king's chamber over this see Goodare, *State and Society*, 110-13. These struggles largely ceased in 1598. After 1603 routine signatures were authenticated by the cashet, an iron stamp of the king's sign manual. A few important signatures were still sent to court, and the resulting charters appear in *RMS* with English place-dates, e.g. *RMS*, vi, 1505, 'Apud Quhythall'. The 'Breiff Information' did not discuss how the important signatures were identified, but it must have been through informal liaison between the treasurer and his officials.

² Below, p. 214.

³ Below, p. 216.

⁴ Below, p. 215. The 'kyndlie tennent' mentioned later, p. 216, must be a proprietor inheriting ward lands. Kindly tenants could also be hereditary rent-paying occupiers, but these did not concern the 'Breiff Information'. For the various usages of the phrase, see M.H.B. Sanderson, *Scottish Rural Society in the Sixteenth Century* (Edinburgh, 1982), 57.

as a tax on land purchase. Royal policy tended to sympathise with ancient proprietors and to frown on the emerging land market of the period.

The traditional distinction between 'Royaltie' (the lands of lay lords, held of the king), 'Propertie' (the royal demesne) and 'Kirklandis' (the lands of the church, held of the king) had largely broken down. The lands of secular lords had often been converted into newer tenures than the traditional ward and relief, usually reducing the king's rights as feudal superior. The royal demesne had largely been feued out, so the king was now a superior of these lands too rather than a proprietor.¹ And the superiorities of the church had been annexed to the crown in 1587, although as we have seen the act of annexation had been partially repealed in 1606. Still, for the feudal casualties the traditional threefold distinction remained vital, so Colville had to provide guidance as to how to reconstruct it, saying, for instance, that 'quhairsoevir thar is anie steward or stewardrie it is to be understode the landis thairwithin ar to be of the propertie'.²

The 'Breiff Information' provides valuable comment on regional variations in levels of feu duty, which was 'exceeding great ... in sum pairtis of Mentethe or the landis of the kingis propertie in the heylandis, iles or princes landis quhair the dewateis ar as raked ffermes'. Colville, himself a Fifer, also had a metropolitan contempt for 'those of the northe pairtis'.³

Colville presumably had personal experience of the work that he described. When he said that 'The thesaurer aucht narowlie to reid and remark the auld charteris of ward landis', this might imply personal attention to duty on Mar's part. But the remark that 'subtill wretaris ... will preace to deceave the officiaris' gives a more credible picture of a government department at work.⁴ How often the junior 'officiaris' like Colville had to consult with their superiors is unknown. Perhaps they had authority to compone for signatures of lands up to a certain value, with the receivers of rents or even the treasurer depute or treasurer becoming involved for larger grants. The department evidently found its principal

¹ The feuing of the crown lands awaits its historian, and whether any significant royal demesne remained unfeued is unknown. The 'Breiff Information' does not seem to discuss the issue of conversion of traditional tenancies into feus; the discussion on p. 213 below assumes that a feu charter already exists.

² Below, p. 214.

³ Below, pp. 219.

⁴ Below, p. 217.

working relations not with the landed proprietors themselves but with their lawyers—the writers to the signet.

The practical nature of Colville's advice is indicated by the way in which he usually wrote about 'signatures' rather than more abstract 'infefments' or 'real rights'. Signatures were the documents under the king's sign manual activating the seals; they contained a full narrative in the vernacular of the rights that would be expressed in the final letter of gift (under the privy seal) or charter (under the great seal). It was, or had been, Colville's business to negotiate with the writers to the signet over the drawing up of these documents—the precise wording of the rights to be granted, and the value of the composition to be paid. This figure had to be recorded on the signature and collected by the treasurer's officials.¹

Colville's observation that 'thois officiaris of estait that have bene rigorous in recognitionis ar remarqued this day to be subjectis of Godis judgmentis' provides a glimpse of the moral context within which people thought about these financial transactions.² It is comparable to the contemporary English belief that the heirs of those who had acquired the monastic lands died out in the third generation.³

The 'Memoriall'

A contrast with the 'Breiff Information' is provided by our second document, the 'Memoriall anent the Change of Holding of Lands whereof his Majestie is Immediate Superior from Simple or Tax Waird unto Few'. It originated not within the administration, but outside it; and it was concerned not with day-to-day details of existing practice, but with broad questions of changing policy. As we shall see, it can be dated to between 1641 and 1644. Its reference to what 'kings for the time' had done, and its warning that 'this inconveniencie and dissadvantage will still continue to his majestie and his successors' if its advice is not heeded, suggests that it is addressing a new regime.⁴ Evidently this was

¹ Gouldesbrough (ed.), *Formulary*, 47-8. After 1603 the king was not available to superscribe signatures, and a cashet—an iron stamp under the control of the privy council—was used.

² Below, p. 219. For extended contemporary moralising on this, see Sir John Scot of Scotstarvet, *The Staggering State of Scottish Statesmen*, ed. C. Rogers (Grampian Club, 1872).

³ C. Hill, *Economic Problems of the Church from Archbishop Whitgift to the Long Parliament* (Oxford, 1956), 162-3.

⁴ Below, p. 222.

the regime of the covenanters, who governed in the name of Charles I but regarded themselves as making a new departure in government.

The 'Memoriall' was addressed to the king, but some of it did not address him directly, at least in the sense of making direct policy recommendations. One notable section addressed the people themselves rather than the government—something that was legitimate under a constitutional regime but likely to be considered seditious under absolute monarchy. It began by saying that the king should let his people decide what they wanted. It then continued that they could be expected to want (because it would be in their interest) to have their lands changed from ward and relief to taxed ward rather than to feu-ferme. The two final clauses reverted to the more conventional mode of policy-making, by pointing out benefits to the crown of taxed ward. Clause 6 argued for taxed ward in preference to feu-ferme, while Clause 7 said why it was preferable to ward and relief.

The document's interest thus lies in what it reveals about people's attitudes to the status of the various tenures and their administration. Its distinction between the 'base and servile' feu-ferme and the 'noble and military' taxed ward sounds like Thomas Craig's *Jus Feudale*.¹ Craig's work was printed only in 1655, but circulated in manuscript before then. The emphasis on the advantages of feudal military tenure may have seemed Quixotic in the 1640s, when warfare was conducted by paid soldiers organised in regiments; but perhaps some landlords who served as officers liked to feel some connection between their vocation and the honourable phraseology of their charters.²

Both the 'Breiff Information' and the 'Memoriall' were interested in the question of a son being infeft in his father's lands in the father's lifetime, with the father retaining a liferent interest in the lands.³ The primary purpose of such an infeftment was to avoid casualties.

The 'Breiff Information' concentrated on the tactical issues raised for the crown by a request for such an infeftment. The treasurer should recognise that if he granted it he would surrender the crown's prospective right to wardship and marriage. But if the treasurer refused the

¹ Below, p. 221; Craig, *Jus Feudale*, I.10.16-18, I.10.27, Craig, however, was willing to see feu-ferme extended on condition that its dues were made payable in kind: *Jus Feudale*, I.16.5. He offered no substantive comment on taxed ward.

² They also had themselves painted wearing obsolete medieval armour: S. Stevenson, 'Armour in seventeenth-century portraits', in D.H. Caldwell (ed.), *Scottish Weapons and Fortifications, 1100-1800* (Edinburgh, 1981).

³ Below, pp. 218, 220.

infertment, the 'uncertain contingencie of waird and marriage ... for many years may not fall out' (as the 'Memoriall' put it). Perhaps the father would live long enough for the son to grow up and marry, whereupon 'the king will gaitt no thing bot the releif allanerlie'. So the 'Breiff Information' advised that the treasurer should 'heir rasonabill conditionis'—that is, should bargain with the father for a substantial composition. It is easy to imagine that the crown might get the best of such bargains in the long run, since the treasury officials might draw on long experience whereas fathers were facing what was, for them, a novel situation. The rise of the legal profession in our period must have tended to level the odds, since writers to the signet could also gain experience in bargaining. But before the days of actuaries, both treasury and landlords were betting on an unpredictable genetic lottery.

The 'Breiff Information', however, had nothing to say about the conversion of ward and relief tenure to some other form. This is perhaps surprising, since such conversions were taking place, and the general issue of whether this was desirable was sometimes raised. One suitor in 1616, seeking conversion of his lands from ward and relief to blench (he explained that it was better to hold them all by one tenure), observed: 'Quhilk is ane mater of no noveltie, bot hes bene done werie frequentlie in tymes past be his majesties progenitouris, and a gryt many by his majestie himself'.¹ Colville's silence here seems to be an example of him discreetly drawing back from expressing an opinion on broad issues of policy. The field in which he could offer advice was that of day-to-day administration. By contrast, the 'Memoriall' was concerned primarily with the broadest issues.

One of the main arguments of the 'Memoriall' was that the crown had inadequate administrative machinery to collect casualties—'his majesties officers being so much taken up otherwayes could not be involved in the trouble of such pleas and processes'—and was obliged to give them away.² The advantages of sale of wards and non-entries, rather than direct management, had been recognised since at least the fifteenth century: deductions from the estates' gross revenues included management costs (which for the crown, obliged to reward its officers,

¹ National Library of Scotland, [...] Oliphant to John Murray of Lochmaben, 6 Jan. 1616, Denmylne MSS, Adv. MS 33.1.1, vol. vii, no. 1.

² Below, p. 222.

could not be ignored), widows' terces, and the maintenance of the heirs themselves.¹

There are probably more details still to recover about the debate on the reform of ward and relief tenure. The question of whether a general change should be made had been debated since at least 1628, when Sir Alexander Strachan of Thornton's proposal to farm the casualties (on which more shortly) mentioned that a future parliament might change all the ward holdings either to feu-ferme or taxed ward.² In the covenanting period, the debate was probably important, even though it may have been drowned out by public discussion on more pressing matters. The shire commissioners in the 1639 parliament pointed the way in which things were likely to go by urging the king to convert ward lands to feu-ferme.³ In the event, the 'Memoriall' was unsuccessful in its promotion of taxed ward. Feu-ferme had been spreading for a century, and its rise was to be further promoted. On 29 June 1646, at Newcastle, a commission was appointed with authority to convert ward and relief tenure into feu-ferme in return for a composition. It stated that it was prompted 'by a petition of the subjects'.⁴ The author of the 'Memoriall' would have been disappointed, but perhaps not surprised.

The context of the commission seems to have been a Scottish move to regularise the administration now that they had the possession of the king, who had surrendered to the covenanters in May.⁵ The earl of Crawford-Lindsay had been treasurer since 1644 but received a fresh commission, for life, on 25 June 1646, shortly before the commission on tenures was appointed.⁶ The English court of wards had been abolished on 24 February 1646. Unlike in England, however, there was in Scotland 'no general law for taking away the wards', and revenue was still being raised from them in 1682 and even in the 1720s.⁷

Fiscal feudalism (i): the money involved

¹ A.L. Murray, 'The Exchequer and Crown Revenue of Scotland, 1437-1542' (University of Edinburgh Ph.D. thesis, 1961), 110-11.

² HMC, Mar & Kellie, i, 167.

³ *Aberdeen Council Letters*, ii, 144.

⁴ *RMS*, ix, 1673.

⁵ D. Stevenson, 'The king's Scottish revenues and the covenanters, 1625-1651', *Historical Journal*, xvii (1974), 17-41, at p. 33.

⁶ *RMS*, ix, 1672.

⁷ A[lexander] M[udie], *Scotiae Indiculum, or the Present State of Scotland* (London, 1682), 50; Clerk & Scrope, *Historical View*, 198-205.

The documents indicate that the feudal revenues were considered fiscally significant. The 'Breiff Information' was written with an eye to maximising royal revenues, while the 'Memorial' was an effort by a member of the propertied elite to reduce fiscal burdens. The actual sums collected were small, though not insignificant. The treasurer's accounts covering the years 1611-19, for instance, show annual averages of about £6,400 from compositions of charters and presentations, and about £8,800 from compositions of wards, non-entries, reliefs, marriages and legitimations.¹ This latter figure was little more than 2 per cent of the crown's gross annual revenue from all sources—about £400,000 in this decade.² Yet the feudal revenues had a fourfold significance that transcended the modesty of the sums collected.

Firstly, the sums collected by the crown were lower than the actual totals raised from casualties paid by the propertied elite. This occurred when wardships were sold to third parties, enabling them to step in and collect the estates' rents during the heirs' minority. Detailed research remains to be done on these purchasers, but many were courtiers or their clients; they were in a good position to buy wardships cheap, with the king treating this as a convenient way of rewarding them for their service at court. The heirs' families would feel the full burden of their exactions. In Elizabethan England, the costs of wardship to a landed family were probably three times and perhaps five times as much as the crown's net revenue; the rest went to officials, informers and speculators.³

Secondly, the feudal revenues possessed prestige because they were raised from the people of highest status—the feudal tenants in chief of the crown, including the magnates. It was partly because he had the responsibility of negotiating the payment of compositions from such important people that the treasurer himself was normally a peer.

Thirdly, the feudal revenues did not have to remain at £8,800 per year; there were prospects for increasing the amounts. Many wardships were sold to the families concerned, thus enabling them to retain the estates' rents. The price of that sale bore no necessary relationship to the value of those revenues, and should be regarded in practice as an

¹ Calculated from NAS, treasurer's accounts, 1610-11, 1611-12, 1612-14, 1614-15, 1615-16, 1616-18, 1618-19, 1619-20, E21/79-86.

² This estimate is compiled from records of all the main branches of revenue.

³ J. Hurstfield, *The Queen's Wards: Wardship and Marriage under Elizabeth I* (London, 1958), 343-5.

arbitrary if modest tax. But wardships could also go to outsiders, enabling them to collect the rents. In theory the crown could offer wardships for sale at competitive prices in a more open market. A serious move towards such a policy would attract speculative buyers seeking a return on their investment from the estates, and this in turn would tend to drive up the prices offered by the families, as they strove to protect their estates from an outsider's depredations. This is what had happened in England when Sir Robert Cecil suddenly doubled or tripled the usual cost of wardships in 1599.¹ This aggressive policy, the precursor of the abortive 'Great Contract' of 1610, was never introduced in Scotland, but the English experience showed that it was possible.²

Fourthly, some of the related treasury revenues, as the 'Breiff Information' shows, were related to law and order and to commercial policy. Those who committed certain crimes, or who failed to pay their debts, could be outlawed ('put to the horn'). The next step, if they failed to reconcile themselves to the court or to pay the debt within a year, could be that the liferent of their lands would escheat to their superior—often the crown.³ Those wanting to encourage a crackdown on disobedience to the law could urge a more rigorous enforcement of this provision. As for commercial policy, there were numerous statutes banning the export of certain commodities (known as 'forbidden goods'), but the crown could grant licences for the export of these goods. This gave the crown a recognised means of regulating overseas trade. Such licences also had a fiscal component, since they would normally be granted in return for a composition to the treasurer—the aspect in which the 'Breiff Information' was interested.⁴

The most lucrative feudal revenues were listed by the privy council in 1601. The key signatures to be composed were gifts of wards, marriages, taxed wards, new infeftments, escheats of earls, barons or lords or their liferents, remissions and respites.⁵ Most of these were discussed by the 'Breiff Information', with remissions and respites being the first items on

¹ Hurstfield, *The Queen's Wards*, 312-14.

² Cf. A.G.R. Smith, 'Crown, parliament and finance: the Great Contract of 1610', in P. Clark *et al.* (eds.), *The English Commonwealth, 1547-1640* (Leicester, 1979), and J. Cramsie, *Kingship and Crown Finance under James VI and I, 1603-1625* (Woodbridge, 2002), ch. 4.

³ Stair, *Institutions*, II.4.61-9.

⁴ J. Goodare, 'Parliament and Society in Scotland, 1560-1603' (University of Edinburgh Ph.D. thesis, 1989), 318-20.

⁵ *RPC*, vi, 275-6.

its list of 'accidentis'. However, gifts of taxed ward—that is, conversions of ward and relief tenure to taxed ward—were omitted from the 'Breiff Information', although they form the whole subject of the 'Memoriall'.

Fiscal feudalism (ii): development of policy

An act of the Octavians, in 1596, ordered that the king should not dispone any wards, non-entries, marriages, bastardies, liferent escheats or recognitions without their advice, and that 'he wha payis maist to the kingis weill and proffeit sall be preferit to all uthers, notwithstanding ony consanguinitie, affinitie, or uther caussis whatsumevir'.¹ In 1610, the king promised that he would grant no casualties without the advice of the treasurer and other officers—although the former Octavian Sir John Skene had wanted to make the *consent* of the treasurer a requirement.² In 1615 it remained possible to ask the king himself for a wardship, as Sir John Cockburn of Ormiston did for that of his grandson.³

The extent to which ward and relief tenures were being converted to taxed ward was a matter of concern to the financial administration from at least 1612. A list of recent grants of taxed wards, with their values, was compiled about then from the register of signatures. One thing that the compiler wanted to know was whether all the casualties were being taxed, or just some. Each entry was annotated in the margin with 'W.N.R.M.' if ward, non-entry, relief and marriage had all been taxed (as they usually had), or with 'W.N.M.' or other combinations.⁴

Mar was apparently thinking about revising the rates of compositions at some point soon after 1625. He had a list compiled, again perhaps from the register of signatures, of the major compositions (apparently those over 100 merks) that had been paid on 'Infefments and confirmations' and 'Wards, non-entries and marriages' between 1582

¹ *RPC*, v, 760. This was repeated in one of Sir John Skene's proposals in the years before 1610: A.L. Murray, 'Sir John Skene and the Exchequer, 1594-1612', *Miscellany One* (Stair Society, 1971), 152.

² British Library, 'Copies of documents relating to the revenues of Scotland', Add. MS 24275, fo. 9r.; Murray, 'Sir John Skene', 152.

³ National Library of Scotland, Ormiston to James, 3 Feb. 1615, Denmylne MSS, Adv. MS 33.1.1, vol. vi, no. 14.

⁴ NAS, list of taxed wards, 1599-1612, E43/22. The earliest infefments noted are 1599, but there may have been earlier folios, now lost. The document has been compiled in a single hand and then annotated, perhaps in a different hand. Further research might discover whether the infefments listed were charters of succession, or new conversions of ward and relief to taxed ward.

and 1625.¹ One might speculate that a document compiled at this time was connected with the king's revocation, but the dates it covered were irrelevant to the revocation (much of which was concerned with royal minorities, and some of which concerned grants made at any time); 1582 seems to have been an arbitrary starting date. Nor does Mar's list evince concern for whether the grants fell within the 'annexed property', in which case they might have been queried by the revocation. So the list is more likely to have been compiled in order to aid future policy-making.

As for the revocation of 1625, this announced the cancellation of any past conversions of ward and relief tenure to blench-ferme, 'in soe far as the same is or may be fund and veriefied to have beine granted against the lawes and actes of parliament'.² The revocation, like those of earlier monarchs, was worded very broadly and might have been interpreted as attacking other forms of conversion of tenure also. It has been said that 'the king probably did benefit considerably from his right to restore tenures to ward and relief', but only detailed research could establish whether this occurred.³ The issue was certainly not central to the work of those implementing the revocation.

The next initiative came from Sir Alexander Strachan of Thornton, who proposed in 1628 to farm the feudal casualties for seven years. His proposals, printed in the *Mar and Kellie Papers*, contain valuable commentary on fiscal feudalism and may profitably be read together with the documents edited below. From those holding by ward and relief he proposed to collect *annual* compositions from wardships, valued at one-third of the rents of the lands. This was a potentially lucrative innovation. For marriages he would collect one year's rent, apparently treating this as a standard levy and abandoning the question of whom the heir married. For non-entries he would collect half of the crown's due (but did not specify how this was to be assessed). For taxed wards and marriages the exact dues would be collected. Heirs themselves would have first refusal of their own casualties on these terms. He envisaged a future parliament converting ward and relief tenure either to taxed ward or feu-ferme,

¹ NAS, 'Ane note of the greatest Compositiounes of Infefmentis Confirmatiounes &c and Wardes Nonentress and Mariages', 1582-1625, GD124/10/305.

² *APS*, v, 24-5, c. 9.

³ Stevenson, 'King's Scottish revenues', 23.

apparently with the idea that the dues would be fixed at more substantial sums than had usually been granted hitherto.¹

Strachan's proposal had considerable fiscal potential. He claimed that it would not damage the heirs themselves—he was only going to cream off a third of their rents, whereas at present a donator could appropriate the whole lot. It is true that the main losers would have been donators to casualties, but these were often the heirs themselves or their families. The net result would have been a regularisation of feudal transactions but a substantial transfer of resources from landed society to the crown. In the event the proposal was condemned as 'most pernicious to his majestie and the best of his subjects' by the treasurer depute, Lord Napier, who in his self-important memoirs claimed sole credit for having it withdrawn.² Strachan then turned to an alternative project, receiving in November 1628 a commission to collect omissions and concealments in treasury revenues due before March 1628.³ In 1630, when this commission ran into trouble, he returned to the feudal casualties project, offering once more 'to performe that motion which I formerlie made concerning ... the wards, mariages, releeves and non entries', offering to pay the crown £2,000 sterling (£24,000 Scots) per year, and claiming that this revenue had not exceeded £1,500 for the last three years. This was similar to his previous project except that he would collect only a fifth of the rents for untaxed wards instead of a third. The proposal was again not taken up.⁴

Some notes may be offered on the development of policy in the 1630s. One of the things that Charles wanted the convention of estates to establish in 1630 was 'that the caswalties of the crowne pay at least three

¹ HMC, Mar & Kellie, i, 163-8. It was later stated that Strachan had claimed that the crown would receive £5,000 sterling (£60,000 Scots) from the project: *ibid.*, 179.

² Archibald, first Lord Napier, *Memoirs* (Edinburgh, 1793), 24-6.

³ This commission had a stormy history and was eventually cancelled in Nov. 1630. For this commission see M. Lee, *The Road to Revolution: Scotland, 1625-1637* (Urbana, Ill., 1985), 84-5. There is more detail in A.I. Macinnes, *Charles I and the Making of the Covenanted Movement, 1635-1641* (Edinburgh, 1991), 68-9, 93-4, but this account unfortunately includes details from the rejected feudal casualties project (such as the figure of £24,000 to be raised from the casualties) within its account of the operational omissions and concealments commission. Nor is it clear that either the feudal casualties project or the omissions and concealments commission were 'an aspect of the Revocation Scheme'. This book does however provide valuable context for understanding policy on the feudal casualties.

⁴ NAS, Strachan to Charles, n.d. [early 1630], GD22/3/777.

times the worthe of the seales.'¹ This seems to have been an attempt to link compositions on casualties with the fees paid for expeding documents under the seals. Strachan's 1628 proposal had pointed out that 'certane rates ar alreddie set down and appointed to be payed to the keipers of your majestie seales for ech grant of those casualties'.² On 13 November 1630, the exchequer made an 'Act anent a proclamation to be anent persons acted be the advocat for redemption of their infestments because of omitted marriages that if they came within the space of tuo moneth and take new infestments with the reddendo of their marriage when it shall happen, the saids lords will deal favourably with them, as to the composition.'³

In 1632, George Nicol claimed that the king was being defrauded of £25,000 sterling (£300,000 Scots) per year in casualties. He seems to have had remissions particularly in mind, since he also made the inflammatory claim that there were more malefactors and rebels in the country than free tenants. His assertions are hard to assess; he was whipped and banished for slandering the government, but he was deprived of the opportunity to defend himself in a criminal trial.⁴ Nicol was probably not alone in seeing remissions as a law and order issue. His proposal also illustrates the way in which the strictly feudal casualties were increasingly viewed alongside other royal rights, notably the penal statutes (imposing fines for such things as usury, carrying firearms, forestalling and regrating, or selling flesh in forbidden time). The 'Breiff Information' had discussed some of these items under the heading of 'Accidentis', and omitted others altogether.⁵

In 1634, a financial reform commission singled out grants of non-entry as a drain on the revenues.⁶ In November 1634, Michael Elphinstone, master of the household, received a commission to search for and collect concealed wards, marriages and non-entries up to the

¹ Charles to earl of Menteith, 2 June 1630, W. Fraser, *The Red Book of Menteith*, 2 vols. (Edinburgh, 1880), ii, 31-2.

² HMC, Mar & Kellie, i, 167. This probably referred to the table of fees established in 1606: *RPC*, vii, 167-73.

³ British Library, 'Notes furth of the registers of exchequer, 1583-1674', Harl. MS 4628, fo. 8r.

⁴ S.A. Gillon & J.I. Smith (eds.), *Selected Justiciary Cases, 1624-1650*, 3 vols. (Stair Society, 1954-74), i, 218-22; *RPC*, 2nd ser., v, pp. xlv-xlvi, 8, 37-9. Cf. Lee, *Road to Revolution*, 135.

⁵ Below, p. 218.

⁶ NAS, exchequer act book, 1634-1639, E4/5, fo. 23r.

value of £3,000 sterling (£36,000 Scots), apparently in satisfaction of a royal debt to him.¹ In June 1637, the exchequer ordained that they would not infest a son in the father's lifetime without a 'considerable composition proportionable to the ward and marriage'; alternatively a clause would be inserted in the signature expressly reserving the ward and marriage to the crown.² Thereafter other issues supervened for the time being.³

The documents: authorship and date

The 'Breiff Information' is a single folded sheet, written on all four pages in a single hand. The title is at the head of the text. It is not signed or dated, but on the cover, in a different contemporary hand, is written: 'Information: Mr Alex^r Col. Anent the Tresorye.' It is held in the National Archives of Scotland among the Mar and Kellie papers, at GD124/10/117.

Identification of the author, 'Mr Alex^r Col.', requires a decision between two alternative candidates. The document itself reveals some things about its author. He clearly has experience as a junior member of the treasury administration, having acted as assistant either to a treasurer, a treasurer depute or a treasurer clerk, or perhaps himself having been treasurer clerk. The warning that 'subtill wretaris will mak sutche ane construction and cohesioun with intricatt wordis that they will preace to deceave the officiaris'⁴ suggests that the author has seen such deception at first hand, and the whole document is written in the tone of one who has much practical experience. The author is not senior enough to make recommendations for *improvements* in policy or procedure: the document describes existing practice and assumes throughout that this is fixed.

The most likely person to have been in a position to acquire practical experience of this kind is Alexander Colville, a younger son of Robert Colville of Cleish. Robert Colville was treasurer clerk during the 1570s, acting also in a variety of related roles such as collector of taxation. He participated in the Ruthven Raid of 1582, and seems to have lost his post

¹ NAS, exchequer act book, 1634-1639, E4/5, fo. 31r.-v.

² NAS, exchequer act book, 1634-1639, E4/5, fo. 210v.

³ Stevenson, 'King's Scottish revenues', 26-8.

⁴ Below, p. 217.

when the Ruthven regime collapsed in 1583; he died the next year.¹ It is plausible that he would have groomed a younger son to succeed him.

Alexander Colville's existence is known only because he was denounced by the privy council in 1605 for the 'cruell wounding' of Gilbert Adglay.² It seems unlikely that he was an official member of the treasury staff at that point. The records, however, are recalcitrant. References to a treasurer clerk tend to peter out after 1580, and by the early seventeenth century there seems to have been a small team of treasury staff.³ The document's author clearly had experience of the treasury in the early seventeenth century, as we shall see when we consider its date. If this Alexander was the author, as is probable, he was either a member of the treasury staff during some period after 1600, and possibly before, or was assistant or servant to someone who did.

The Colvilles of Cleish had connections with the earl of Mar, which would help to explain why Mar would turn to a member of that family for advice on the treasury. Mar was himself a leading Ruthven Raider. Although there were many Ruthven Raiders, Robert Colville of Cleish seems to have been particularly closely connected with Adam Erskine, Mar's cousin, during and after the Raid.⁴ Robert Colville's successor, also Robert Colville of Cleish, our Alexander's elder brother, supported Mar in a private quarrel in 1595.⁵

The other possible author is another Alexander Colville, the first Alexander's cousin and neighbour. This second Alexander was a younger son of Alexander Colville, commendator of Culross, who died

¹ *Treasurer's Accounts of Scotland*, xiii, passim; *Exchequer Rolls of Scotland*, xxi, 545; *Register of the Privy Seal of Scotland*, viii, 1680.

² *RPC*, vii, 74. In this record he was not designated 'Mr', as the author of the 'Breiff Information' was, but this could be an oversight by a council clerk who would not necessarily feel respectful towards a criminal being denounced. Or he could have obtained an M.A. degree after 1605.

³ The treasurer's clerical staff in 1605-6 consisted of Adam Lawtie, writer, and John Oliphant, 'register to the compter', plus two messengers: NAS, treasurer's accounts, 1605-6, E21/78. With some changes of personnel, this team continued until at least 1620. Colville does not appear to be mentioned, nor do there seem to be explicit references to a treasurer clerk, though the office certainly continued to exist. Until these MSS are published it will be hard to obtain comprehensive information from them.

⁴ *RPC*, iii, 613, 619.

⁵ Mr John Colville to Robert Bowes, 5 July 1595, *Calendar of the State Papers relating to Scotland and Mary Queen of Scots, 1547-1603*, 13 vols., ed. J. Bain et al. (Edinburgh, 1898-1969), xi, 630.

in 1597.¹ He was appointed a justice depute in 1607, evidently through the patronage of the earl of Argyll, justice general.² He was described as Argyll's 'agent' in 1616, and his connection with his patron can be traced from 1600 to the 1620s.³ He was a more prominent figure than the first Alexander; he was normally designated 'Mr', and he eventually acquired the estate of Blair. But there seems to be nothing connecting him with Mar or with the treasury—and since he *was* a prominent figure, any such connections should have left traces in the records. This second Alexander therefore seems a much less likely author.

The most straightforward interpretation of the document's origin is that Colville wrote it for the earl of Mar around the time when he became treasurer, on 9 December 1616. It must postdate 1606, since it cites a statute of that date.⁴ However, 1616 is not the only possibility. When Mar was appointed, there was already a treasurer depute, Sir Gideon Murray of Elibank, who had held office since 1612, and who continued until his death in 1621 to bear more responsibility for day-to-day treasury work than the grandee Mar.⁵ Murray had acted for Mar's predecessor, the royal favourite Robert Kerr, earl of Somerset, who was Murray's nephew and who had been appointed treasurer on 23 December 1613. It might be suggested that Colville wrote the 'Breiff Information' in 1612 for Murray, or even in 1613 for Somerset (although Somerset seems to have had no practical connection with his office). But the fact that Murray provided continuity across 1616 need not rule out that date, since it seems reasonable to assume that Mar would have wanted his own sources of advice, so as not to rely wholly on Murray. Mar's long-standing personal connections with the Colvilles of Cleish reinforce the view that he commissioned the document and tend to confirm the 1616 date.

Turning to the 'Memoriall', this is found in a late seventeenth-century volume of copies of Scottish administrative and financial documents,

¹ Alexander Colville, commendator of Culross, was a younger son of Sir James Colville of Ochiltree, afterwards of East Wemyss (d. 1540). Robert Colville of Cleish, treasurer clerk, was the son of Sir James's illegitimate son Robert. For these relationships see J.B. Paul (ed.), *The Scots Peerage*, 9 vols. (Edinburgh, 1904-14), ii, 546-52, 569-71.

² R. Pitcairn (ed.), *Ancient Criminal Trials in Scotland*, 3 vols. (Bannatyne Club, 1833), ii, II, 527.

³ *RPC*, x, 442; *RMS*, vii, 255, 431, 553; *RPC*, viii, 191, 742; J. Willcock, *The Great Marquess: Life and Times of Archibald ... Marquess of Argyll, 1607-1661* (Edinburgh, 1903), 353, 364.

⁴ Below, p. 218.

⁵ For his colourful career see A.C. Murray, *Memorials of Sir Gideon Murray of Elibank* (Edinburgh, 1932).

now in the British Library, Harl. MS 4612, with the modern title 'Papers relating to Scotland'.¹ It is undated, but its reference to 'his majesties commissioners of thesaurie and exchequer'² places it within the dates 17 November 1641 and 23 July 1644, since the treasury was in commission between these dates. There had been earlier exchequer commissions, but never treasury commissions—except in 1611-13, but the commissioners then (popularly known as the 'New Octavians') may in fact have been assessors to the treasurer depute. By the time the treasury was next placed in commission, in 1667, the issues discussed in the document were no longer current.³

There is no clue to the identity of the author of the 'Memoriall', but he was evidently a landlord outside the royal administration and with the interests of himself and his fellow-landlords uppermost. The forthright statement that 'the people ... themselves are the best arbiters of their own interest' was one with which the covenanters would have had strong sympathies. It would not have appealed to James VI, Charles I or their ministers. They would have preferred the contrasting view of the royal servant Colville, who brooded gloomily on the selfish 'nature of all men', and declared that 'the thesaurer aucht to sie to that so far as he may'.⁴ Feudalism was in essence hierarchical.

Editorial method

Paragraphing is original. Capitalisation and punctuation have been modernised where this helped the sense; the complexities of punctuation of one paragraph of the 'Breiff Information' have been discussed in footnotes. Contractions have been expanded. The letters *i/j* and *u/v* have

¹ This MS also contains a copy of Sir John Skene's 'Proposals anent the order of the checker', which was consulted by Dr Athol Murray in his edition of that document. He pointed out that the copyist seemed to be an Englishman unfamiliar with certain Scots words and expressions: Murray, 'Sir John Skene', 136, 147. This problem does not seem to affect the 'Memoriall', which as a text is more straightforward.

² Below, p. 220.

³ On the commissions of 1611, 1641 and 1667, see A.L. Murray, 'The Scottish treasury, 1667-1708', *Scottish Historical Review*, xlv (1966), 89-104, at pp. 89-90. There is more detail on the 1641 commission, which the 'Memoriall' was addressing, in Stevenson, 'King's Scottish revenues', 29-33. The commissioners of 1641 were listed in *APS*, v, 428, c. 152, and in Robert Baillie, *Letters and Journals*, 3 vols., ed. D. Laing (Bannatyne Club, 1841-2), i, 396. Baillie also discussed the politics of the appointment of the commission of 1641 'after the English fashion'.

⁴ Below, p. 218-219.

been modernised. Underlined passages have been italicised. Some headings in the 'Breiff Information' have been moved from the margin into the text, as indicated. The manuscripts' page numbers ('Breiff Information') or folio numbers ('Memoriall') have been inserted in square brackets.

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J.G.

**Ane Breiff Information for the Thesaurer
by Mr Alexander Colville**

[p. 1]¹ All his majesties landis ar of thre natures: *Royaltie; Propertie; Kirklandis*.

The wnder officiaris of his majesties royaltie ar his schireffis, and above thame his controllour.

The wnder officiaris of his majesties propertie ar his stewardis and chalmerlandis, contable yeirlie in the exchequir (as the schireffis), and above thame the controllour: so that quhairsoevir thar is anie steward or stewardrie it is to be understode the landis thairwithin ar to be of the propertie.

The kirklandis that ar called the new augmentationis hes for thair cheif officiar the collectour.

All that passethe by the thesaurer ar ather infeftmentis of landis or Accidentis.

As thair is thre natures of landis so is thair thre naturis of infeftmentis.

1. Infeftmentis of the royaltie do pas the thesaurer, and ar registrat be the thesaurer clerk to chairge the thesaurer.
2. Infeftmentis of the propertie do pas the controllour, and ar registrat in the controllour clerk his register to charge the controllour.
3. Infeftmentis of kirklandis do pas by the collectour, and ar registrat in his register. Yit confirmationis of kirklandis do pas the thesaurer and his register.

As thair is thre natures of landis and thre kyndes of infeftmentis, so is thair thre natures of holding landis, viz. *Blanche; Ward; Few*.

As for those landis that ar haldin *Nomine Cane*,² quhilk hold bothe ward and pay ane certane dewatie, becaus for the most they hold of bischopis and nocht of the king we pas thame. Onlie this to be

¹ In NAS, Mar and Kellie MSS, GD124/10/117. Endorsed on the cover, in a different contemporary hand: 'Information: Mr Alex' Col. Anent the Tresorye'.

² 'by the name of cain'. Cain was a traditional produce rent which had originated in the Celtic regions of pre-feudal Scotland, but which had analogues in other regions: A.A.M. Duncan, *Scotland: the Making of the Kingdom* (Edinburgh, 1975), 152-5. However, it was not particularly associated with bishops' lands, and the 'Breiff Information' may be as confused here as it is later in the paragraph. For further contemporary cogitations on cain see Craig, *Jus Feudale*, 1.10.27.

considdred: that they did all appertene to the Rid Freiris Templeris, quha wer all Massacred for thair landis and wealthis by the pope.¹

*Signotouris of blenche landis*²

Off all signatouris, those of the blenche landis aucht to be most favorabile respected: the neirest consideratioun quhairof is by regarding the retour dewatie, and thairby to mesour the compositioun, quilk gif it be from the father to the sone or neirest cousin german in lyn [p. 2] aucht the mor to be favored, so that to sutche the composition may triple the retour dewatie if it be small, and dowble gif it be great; and to strangeris or new intrantis, the dowble should be exacted of thame mor then of the kyndlie tennentis.

Signatouris of few landis

Signatouris of few landis in the royaltie aucht to be valewed be the few dewatie gif it be rasonable, bot if it be exceiding small they ar to be valued be the retour: and the quadrupule thairof is rasonable to sutche as ar kyndlie tennentis, and to strangeris the sextuple: and if the few dewatie be great, the thesaurer must haif recours to the few dewatie as said is.

Signatouris [of] kirklandis

Signatouris of kirklandis aucht nocht to haif sutche favour as utheris, inrespect they ar his majesteis new augmentationis and ar nocht possessed with sutche annient and kyndlie tennentis; bot becaus for the most they ar the effectis of his majesteis liberaletie, they aucht to be the mor exacted quhen they fall furth.

¹ There had been at least eight houses of Trinitarian canons, also known as Red Friars, in Scotland. It is not clear how they came to be confused with the Knights Templar, who wore white and were not friars, and whose property had been transferred to the Knights Hospitaller in the fourteenth century. See I.B. Cowan & D.E. Easson, *Medieval Religious Houses, Scotland* (2nd edn., London, 1976), pp. xvii, 107-12. A similar confusion was made by David Calderwood, *History of the Kirk of Scotland*, 8 vols., eds. T. Thomson & D. Laing (Wodrow Society, 1843-9), v, 175.

² This and the following four subheads placed in margin in MS.

Signatouris [of] propertie

Signatouris of the propertie, they do oftymes contene within thame selffis thair awin valuation at the entrie of the air. Bot this is nocht to be respected in twa causes: 1. quhen the taxt entrie is verie small, then the thesaurer may discreitlie tak sum augmentation; 2. quhen ane stranger is receaved, then the thesaurer is nocht astricted to stand to the taxed entrie, becaus the chartour beareth thir wordis, '*ad introitum heredis*',¹ expreslie quhilk wordis can no wayis be extendit in favouris of a stranger or conquerer. Bot in sutche signatouris of the propertie as ar nocht expreslie rewled and taxed as said is, the thesaurer most haif recours to the few dewatie, quhilk if it be rasonable, may admit a triplicatioun, if it be small, mor then the quadruple to kyndlie possessouris and mor yit to strangeris, bot if the few dewatie be exceding great, as in sum pairtis of Mentethe² [p. 3] or the landis of the kingis propertie in the heylandis, iles or princes landis³ quhair the dewateis ar as raked fermes, in sutche landis nather the dowble nor the single of the few dewatie awcht to be exacted but sum discreit consideratioun, quhilk must be altogether rewled be the thesaurer[s] discretion: ever remembring that the admission of ane kyndlie tennent is nocht to wndo him, but to fyn him with sum rasonabil consideration as said is.

Signatouris of ward landis

Signatouris of ward landis, becaus of all signatouris they ar most profitable for his majestie, thairfoir they aucht the better to be adverted. Quhairfoir it is to be considered that all ward landis ar of twa natures, that is *taxed* or nocht *taxed*. Taxed wardes and mariages ar *stricti juris*⁴ and ar rewled accordinglie.

¹ 'at the entry of the heir'.

² Local research might shed more light on this. Cf. Craig's reference to 'the crown-holdings in feu-farm in Strathearn', where 'although all the crown-holdings are in feu-farm, the charters contain a clause reserving the right of marriage to the king': Craig, *Jus Feudale*, II.21.13; cf. II.21.1.

³ For some details of recent increases in the crown's income from the Isles, see J. Goodare, 'The Statutes of Iona in context', *Scottish Historical Review*, lxxvii (1998), 31-57, at p. 45. The 'princes landis' were the ancient demesne of the Stewarts before they came to the throne, erected into a 'principality' in the fifteenth century: W.C. Dickinson, 'An inquiry into the origin and nature of the title Prince of Scotland', *Economica*, iv (1924), 212-20.

⁴ 'of the letter of the law'.

The thesaurer aucht narowlie to reid and remark the auld charteris of ward landis, becaus thair wilbe sumtymes ane chartour bearing ane taxed *releuium*¹ only, and nather ward nor mariage taxed, as sum chartouris will have this claus: *Reddendo Inde servitia debita et consueta: nec non centum libras pro releuio cum contingerit.*² Sumtymes it will be so, sumtymes nocht so cleir, so that sum subtill wretaris will mak sutche ane construction and cohesioun with intricatt wordis that they will preace to deceave the officiaris and mak thame beleif that ward, mariage and all is taxed quhen the releiff is allanerlie taxed. Thairfoir thair aucht to be ane exact reiding of ward chartouris, and everie word so pondered that the new may be conforme to the awld.³

In signatouris of wntaxed ward landis, thair is to be considered the aige of him or hir quha is to be receaved the kingis tennent. For gif he be verie young and the king receave him tennent, bothe his ward and mariage is lost to the king. Thairfoir the compositioun of sutche signatouris aucht to be regarded according as the tennent is neir to infancie or majoritie.

The thesaurer aucht to have ane speciall intentioun to the father or freind⁴ that cravethe a minor⁵ to be infest, [p. 4] or gif the father be verie aged and the chyld verie young, or gif the father be *in lecto agretudinis* or *mortis*,⁶ in sutche cases infestmentis to minoris aucht to be refused altogether, inrespect they ar so far prejudiciall to his majestie: and manie infest thair sones fearing deathe, to defraud the king of his ward and mariage.

Yit the thesaurer aucht nocht to refuse all ward infestmentis, quhilk gif he wald ever do wald prejudice his majestie heichlie as his daylie casualteis: so that it chall [sic] be weill done to heir rasonabill conditionis, for quhen minoris enter to thair majoritie and ar mareid, the king will gaitt no thing bot the releif allanerlie: and in this regaird the valuation of

¹ 'relief'.

² 'Rendering therefor the service due and accustomed, and also one hundred pounds for relief when it occurs.'

³ Sir John Scott, director of chancery, was commissioned in 1626 to compare signatures for heritable infestments carefully with the old infestments, particularly those that proceeded upon surrenders, and to complete a 'docate' certifying that the terms were identical before they passed the cashet. This was said to have been intended but not implemented in James VI's time. Charles to council, 12 Feb. 1626, *Earl of Stirling's Register of Royal Letters, 1615-1635*, 2 vols., ed. C. Rogers (Edinburgh, 1885), i, 17.

⁴ i.e. usually a relative.

⁵ This word altered.

⁶ 'on a sickbed or death-bed'.

ward landis wilbecum as blenche landis, for quhen the kyndlie tennent is bothe major and mareid, he can nocht be refused but must be entered upon sutche conditionis as ar in blenche landis. The thesaurer aucht to inquyr and gaitt good informatioun of sutche as do sell or wadset heretablie thair ward landis without sum direct deid done be his majestie, quho being thair superiour may recognoss and miskown the dedis of sutche vassallis directlie, according to the act of S^t Ihonstonis last.¹

Accidentis

Accidentis ar of manie kyndis, as remissions, raspettis, recognitionis, nonentress, tutories, datives,² bastardies, wltimus haeris,³ presentationis to forfeald landis, escheistis, lyfrentis wardis and mariages,⁴ composition of fynes, ryotis, wnlawes of justice courtis, licences for transportatioun [of] victuall or vther commoditeis.

Becaus sumtymes thair is great oversicht committed in remissionis becaus the nature of all men ar so inclyned that they wilbe reddier to forgive the faltis that ar committed aganis the omnipotent God then the

¹ This refers to the act, 'Anent setting of fewis be subvassellis of waird landis', of the parliament held at Perth, 9 July 1606. The act complained that subvassals holding by ward and relief were taking advantage of the procedure for feuing lands set out by an act of James II (in 1458: *APS*, ii, 49, c. 15), feuing their lands to subvassals of their own, 'quhairby they do manefast prejudice to thair saidis superioris in altering of the said first halding, express repugnant to the meaning of the said first act, quhairas the said halding can be nawayes alterit be the vassellis without sum direct deid done be thair superioris tending to approve the said dispositioun'. It was therefore enacted that 'it sall nawayes be lesume to the vassellis of ony erle, lord, prelat, baroun or ony uther frie halder within this realme quha haldis thair landis of thair saidis superioris be service of waird and releiff' to feu their lands without the superioris' consent, any such feus being null. *APS*, iv, 287, c. 11.

Colville assumes that this applied to vassals of the crown, although it is far from obvious that the act was intended to be so applied. The act was in fact extended to vassals of the crown in 1633: *APS*, v, 33-4, c. 16. However, Colville's remarks would be inexplicable (except as a straightforward error on his part, which is possible) unless the act was already being so applied in at least some cases when he wrote.

² This should probably read 'tutories dative', i.e. tutors appointed by the crown.

³ 'last heir', i.e. the superior's right to be treated as heir to properties to which no heir by descent could be found.

⁴ This should probably read 'lyfrentis, wardis and mariages'. 'Lyfrentis', or in full 'liferent escheats', were an important source of revenue arising from the escheat of persons at the horn. However, the phrase 'wardis and mariages' is inexplicable here, since these were not 'accidentis' in any meaningful sense and have already been discussed by Colville in their proper place.

[p. 5] faultis committed aganis thame selffis, above all thingis the thesaurer aucht to sie to that so far as he may. For it will fall furth that the killing of deir will nocht be so easelie pardoned as the slauchter¹ of ane man.²

Recognitionis³ aucht nocht so to be wsed as to wndo the tennent, bot onlie importis ane fyne; and thois officiaris of estait that have bene rigorous in recognitionis ar remarqued this day to be subjectis of Godis judgmentis.

Nonentries bothe in ward landis and blenche landis is alyik, becaus no nonentreis befor it be declared be the lordis of sessioun can be further extended then to the retour dewatie bothe in ward and blenche landis, bot efter the declaratour the maillis and dewaties will appirtene to the superiour of bothe.

The thesaurer aucht ever to be slow quhair the mater is dowlfull, and endeavour to be weil informed.

The thesaurer aucht to consider the fertilitie of the ground, the powar and meanes of the suter, and his intentiounis, so far as he can.

The thesaurer shall be advertised that of all the schireffis⁴ countreyes in Scotland, those of the northe pairtis ar most subject to wndermynd and circumvent thair nychtbouris by wnlauhtfull suittis; and this appeareth to be trew becaus thair is certane of thois pairtis that cum to Edinburgh expresslie provyded with wnlawfull suittis for thair awin particular and the rwin of thair nychtburis.

¹ Before this word, there is an erasure where the author may have begun to write 'murder'.

² The point is that killing of deer was less likely to be pardoned because it affected the lord personally.

³ A new pen begins at this point but the hand is probably the same. After writing a paragraph, the writing begins to speed up.

⁴ Word blotted and unclear.

**Memoriall anent the Change of Holding of Lands whereof his
Majestie is Immediate Superior from Simple or Tax Waird unto
Few**

[64r.]¹ It being his majesties unquestionable right and prerogative that he may gratifie his subjects holding their lands waird of him by changing the said holding either to taxt waird or few: and the question being only, whether it be fitter that the said change should be to few or to taxt waird: these reasons may be represented to his majestie for the change to taxt waird.

His majesties true and great interest is the sincere affection and loyalty of his people, and his royall designe and inclination being to endear his government by such change of holding of his vassalls as may most ease them, with a due respect allwayes to his majesties interest, even as to the matter of benefite. The people the vassalls themselves are the best arbiters of their own interest and ease and whether the change of holding should be to taxt waird or to few: and his majesties commissioners of thesaurie and exhecquer [sic] may and certainly will advert that whether of the saids wayes the change be, it be in just and reasonable terms in order as to his majesties interest as to benefite, and therefore they should be att liberty, as they have ever been, to apply for the change of holding either to taxt or few, as they think most fitt and convenient.

2^o. It appears to be the interest of the vassalls that the change should be to taxt waird, in respect the few holding is more heavy and grievous by reason that they will thereby be lyable to a certain burden for paying yearly a certain and constant few duety, whereas by [64v.] the waird holding they were only lyable to the uncertain contingencie of waird and marriage which for many years may not fall out and there are diverse remedies and methods which may [be] and are in use to be taken for preventing the samen by the infesting the appearand heir in the time of the vassall, seing the waird and marriage are only due by the decease of the vassall and the minority of his appearand heir and the heir not being married for the time.

¹ In British Library, 'Papers relating to Scotland', Harl. MS 4612, fos. 64r.-65v. Late seventeenth-century copy.

3^o. The payment of few duety to his majestie is attended with great trouble and vexation, seing the vassalls that by the waird holding are free of any trouble would be oblidged to apply yearly to the exhequer [sic] for payment of the samen, and if they doe not, may be charged summarly and denounced; and the fees of clerks and other servants for expeding the *Æques* doe often times equall if not exceed the few dueties.

4^o. If they be deficient in payment of few dueties by the space only of two years, it is ordained by expresse act of parliament, James 6th, parl. 15, cap. 246, that they shall tyne and amitt the right in the same manner as if there were a clause irritant in the infestment.¹

5^o. Fewes and empheteuses are not properly Feuda and their holding is base and servile, and is rather of the nature of tacks than of Feuda or free holdings, and therefore when lands are disponed in few ferme the right bears *Assedasse Locasse*² which imports the selling in perpetuall tacks, and the vassalls holding either blench or waird were only considered as his majesties free holders to elect and to be elected commissioners to parliaments and others,³ and it would fright noblemen and gentlemen of considerable estats and lands [65r.] holden of his majestie waird, which is ancient and proper and a noble way of holding, from desiring his majesties royall favour to change their holdings if they would be only changed to few, which as is said is a base way of holding and lyable to many inconveniencies.

6^o. These who holds their lands waird either simple or taxt are by the nature of their rights, being *feuda militaria*,⁴ lyable and oblidged to serve his majestie in war and other occasions, whereas fewars by the nature of their holdings are not lyable to that duety: so that it would be a prejudice to his majesties interest that the changes of holdings should be to few which has not so great and military dependencies on his majestie.

¹ *APS*, iv, 133, c. 17 (1597).

² 'leased and let'. Cf. Gouldesbrough (ed.), *Formulary*, 43. Feu-ferme had originally developed as a form of perpetual lease, rather than directly as a form of ward and relief tenure.

³ The phrase 'were only considered' was probably put in the past tense because it applied to the act of 1587 (*APS*, iii, 509-10, c. 120) admitting shire commissioners to parliament and conventions of estates. The act was still in force, being amended only in 1661 when feuars and other heritors were also enfranchised (*APS*, vii, 235-6, c. 253). Cf. J. Goodare, 'The admission of lairds to the Scottish parliament', *English Historical Review*, cxvi (2001), 1103-33.

⁴ 'military fees'.

7°. By the change to tax waird, that advantage would accrue to his majestie that the holding would be still noble and military as formerly, and whereas formerly the casualities were both contingent as to the falling of them and when they fell were so uncertain what the import of them could be, and could not be recovered without great difficulty and processe of declarator for the marriage and of maills and dueties and removings for wairds: and upon that consideration and because his majesties officers being so much taken up otherwayes could not be involved in the trouble of such pleas and processes, the kings for the time were necessitate to give away the said casualitys and had no profite nor benefite of the samen: and this inconveniencie and dissadvantage will still continue to his majestie and his successors if the holding should not be changed to tax, for then the waird marriage and nonentry being taxed and liquidate would be [65v.] certain and without any trouble or processe the benefite of the samen might be brought in.

**WITCHCRAFT CASES FROM THE REGISTER OF
COMMISSIONS OF THE PRIVY COUNCIL OF SCOTLAND,
1630-1642¹**

edited by Louise A. Yeoman

INTRODUCTION

This edition supplements the most recent listing of Scottish witchcraft cases, published in 1977 by Christina Larner, Christopher Hyde Lee and Hugh V. McLachlan.² Most of their cases from 1611 to 1630 were derived from the three volumes of the register of privy council commissions. This register was established in 1608 as a central record of the issue of commissions of justiciary by the privy council.³ The commissions it contained were calendared in the published *Register of the Privy Council of Scotland* [*RPC*], which combined the various series of privy council records into (usually) a single chronological listing. But when *RPC* was published, the register of commissions was not available after 1630 because the fourth volume, which should have been PC7/4, was missing. However, it has more recently been rediscovered. It was in the National Library of Scotland, Advocates' MS 31.3.10, and it was unpublished.⁴

This edition thus fills a gap in the records of Scottish witchcraft. It continues the process of establishing and refining the pattern of witch-hunting over time, to which some important recent contributions have been made. Julian Goodare has confirmed that in 1590-1 and 1597 Scotland fell prey to two intense but separate witchcraft panics as

¹ I would like to thank Dr Michael Wasser, Dr Julian Goodare, Dr Donald William Stewart and Dr John McGavin for their help and advice in editing this item.

² C. Larner *et al.*, *A Source-Book of Scottish Witchcraft* (Glasgow, 1977).

³ National Archives of Scotland [NAS], register of commissions, 1607-1630, PC7/1-3.

⁴ It is mentioned in Scottish Record Office, *Guide to the National Archives of Scotland* (Edinburgh, 1996), 23, though mis-cited as Adv. MS 31.2.10. The first scholar to use its witchcraft records was M. Wasser, 'The privy council and the witches: the curtailment of witchcraft prosecutions in Scotland, 1597-1628', *Scottish Historical Review*, (2003) lxxxii, 20.

opposed to the single '1590-7' witch-hunt posited by some scholars.¹ From 1597 to 1628 there were apparently no major witch-hunts. Michael Wasser has argued that prosecution was discouraged during these years by judges such as Alexander, earl of Dunfermline, who in their role as privy councillors issued commissions to try witches.² In addition, Dr Wasser and I have argued that Dunfermline held a show-case trial of a suspected witch, Geillis Johnstone, in 1614 in his own regality court, in such a way as to ensure that the accused woman received a fair trial. Dunfermline may have been a sceptic on witch-hunting whose example deterred other would-be witch prosecutors.³

In 1629-30, however the situation changed radically. Christina Lerner's *Source-Book of Scottish Witchcraft* demonstrates that a series of panics occurred—at least 172 suspects were accused in 1629, and 99 in 1630, according to privy council commissions alone. By 1631 however when Lerner could find only 12 or so suspects in total (from all sources), it seemed that the panic had passed. By 1632 there were only five suspects and for the rest of the 1630s never more than nine people could be found being accused in any one year.⁴ Clearly the 1630s were a quiet period in Scottish witch-hunting, but how quiet? Without the evidence of the missing register of privy council commissions the question could not be settled. Now at last the figures for the 1630s can be given.

The register covers the period 1630-1642. In it are 56 commissions to try witchcraft and the names of 104 suspected witches (excluding charmers). Of the 104, only six are mentioned in Lerner *et al.*, *Source-Book*. When added to Lerner's evidence the register gives a different impression of the pattern of Scottish witch-hunting over the 1630s.

The manuscript does not just contain witchcraft commissions. Commissions to try slaughter, broken men and other offences all occur: the usual gamut of privy council commissions is covered. Although the main purpose of this text is to calendar the witchcraft cases, cases of

¹ J. Goodare, 'The framework for Scottish witch-hunting in the 1590s', *Scottish Historical Review*, lxxxi (2002), 240. The most recent reference to a witch-hunt of '1590-7' comes in L. Normand & G. Roberts (eds.), *Witchcraft in Early Modern Scotland: James VI's Demonology and the North Berwick Witches* (Exeter, 2000), 88-9.

² Wasser, 'The privy council and the witches', 30-1, 40-3.

³ 'The trial of Geillis Johnstone for witchcraft, 1614', eds. M. Wasser & L. Yeoman, above p. 94.

⁴ Lerner *et al.*, *Source-Book*, 85-98.

charming are also calendared to facilitate comparison. The only other exception given is a case of bestiality, included due to the rarity of the offence.

The first case is given in full and thereafter the witch and charming cases are calendared according to the following formula: name, place, crimes, names of commissioners, powers of the commission, date and place of commission, names of members of privy council signing the commission. Efforts have been made to identify the places where the accused witches came from and the names of those signing the commissions. The commission concerning Anna Tait (fo. 102v.) is also given in full, due to its unusual nature. Anna was caught attempting to kill herself; she then produced a unique confession which covered the subjects of abortion, murder, attempted suicide and witchcraft. Her trial in the burgh court of Haddington has been added as an appendix.¹

One of the most interesting details to emerge is the scale of the Inverkip panic of 1631-2. The tip of the iceberg of this large panic can be found in the register of the privy council for 1632 where two names of accused women appear: Janet Love in Greenock and Helen Wodrow in Barphillan.² They were protesting against their treatment by William Cochrane, sheriff depute of Renfrew (later earl of Dundonald), John Hamilton, minister of Inverkip and Robert Sempill of Nobleston. Janet Love, wife of James Galbraith in Greenock, had been accused by a suspected witch who had been tortured before execution. On this basis Cochrane had apprehended her and kept her prisoner and then sent her to Hamilton 'who instead of powerfull exhortations, prayers and other meanes of that kynde, cruelly caused torture the complainer with bow strings, stob her with preins, lay her in the stocks, call wedges in her schinnes and otherwise most miserablie intreate her'. She was willing to be tried before the justice court and found caution to appear but she appealed against her case being heard by Cochrane as he was, in her words, a 'partial judge' in this matter. Helen Wodrow, widow of John Henderson in Barphillan, testified how 'About seven weeks ago under cloud and silence of night' William Cochrane came to her house 'put violent hands upon her, meddled with the keys to her kists and carried her prisoner to the house of Robert Sempill of Nobleston and kept her captive'. Sempill was ordered to deliver her into the custody of the archbishop of Glasgow who would 'peruse' the depositions against her.

¹ NAS, Haddington burgh court register, B30/10/13, fos. 24r.-26v.

² *RPC*, 2nd ser., iv, 473.

When the case is compared with the commissions issued to Cochrane, Lord Sempill and Bryce Sempill of Cathcart, it can be seen that they received commissions to try another 30 men and women. Put in the context of the pattern for witch prosecutions across the entire 1630s, the episode can be seen as an anomaly. It accounts for a third of all witchcraft accusations over the entire period covered by the register. No other local panic between 1631 and 1642 produced more than 8 accused witches; the Inverkip panic produced 32 accusations which reached the privy council in one form or another. In this respect it was on a par with the most intense local panics of 1629-30. The only comparably intense panic in such a small area was the Peebles hunt of 1629 which also produced 30 accusations in privy council commissions.¹

The roots of the episode are frustratingly obscure as no depositions or trial records seem to survive. The key probably lies in the support of the local Catholic noble family, the Sempills combined with a successful partnership between Cochrane and Hamilton.² The complaints of Love and Wodrow to the privy council show neatly how the ecclesiastical and secular arms worked hand in hand. Ironically it was the minister and not the sheriff depute who took the role of torturer-in-chief whilst the sheriff depute whisked away prisoners under cover of night. This was unusual; as Michael Wasser has shown, torture was rare and was not as a rule authorised by privy council commission.³ The privy council was clearly less than happy with their over-enthusiastic approach to the matter, as its action in taking both women out of their immediate jurisdiction showed.⁴

It was perhaps a case of too much education, rather than too little on the part of minister and sheriff depute. They were educated at the University of Glasgow in the 1620s, which had strong links with the continent, drawing its professors from the Protestant universities of France. Cochrane as earl of Dundonald retained a strong connection with the university, endowing bursaries there.⁵ Up to the early 1620s

¹ Lamer *et al.*, *Source-Book*, 85-98.

² Hamilton had a Glasgow MA 1622: H. Scott (ed.), *Fasti Ecclesiae Scoticanæ [Fasti]*, 7 vols. (2nd edn., Edinburgh, 1915-), i, 265.

³ Wasser, 'The privy council and the witches', 34.

⁴ *RPC*, 2nd ser., iv, 473.

⁵ Robert Boyd of Trochrig, principal 1615-22, had studied at the French Protestant universities of Tours, Montauban and Saumur, and John Cameron, his successor, at Bordeaux, Bergerac and Sedan: J. Coultts, *A History of the University of Glasgow* (Glasgow, 1909), 85-7; *Dictionary of National Biography [DNB]*, iv, 631.

Glasgow had a strongly evangelical Calvinist streak to its teaching too, under regents such as Robert Blair, the eminent covenanting divine.¹ Such factors may have led to a familiarity with continental witchcraft theory combined with a strong belief in Satan's direct intervention in everyday life. A mixture of the two in both men may have led to an unfortunate mutual interest in witch-hunting.

An interesting parallel may be drawn here with exorcism. Tom Freeman examining cases of exorcism in England has suggested that 'perhaps paradoxically, the readiness of Elizabethan clergy to conduct exorcisms was a result of dramatic improvements in their education ... the Reformation had undermined the moral authority and status of the clergy by stripping the priest of his role as the dispenser of sacramental grace ... by successfully exorcising demoniacs, the Protestant clergy regained something of their status as miracle workers, dramatically enhancing their status and prestige'.²

Hunting witches was also a way in which a graduate minister and a graduate sheriff depute could enhance their prestige and show that they were worthy of their hire. They could use their learning to protect the local community against Satan and his retainers the witches. Learning was considered to be important in witchcraft cases, as can be shown by the learned authorities who were cited in court and by complaints about the unlearned nature of assizers. Margaret Hunter and Janet Donald in Dumbarton complained about the danger of being tried for witchcraft where 'base ignorant people without letters or knowledge' might be put on an assize.³ In the context of increasing professionalisation, witchcraft cases could provide a justification for local officials being highly qualified and an opportunity for them to show off their learning.

The local context of the Inverkip hunt is also worth examining. Cochrane, at the time, was in the process of establishing substantial Renfrewshire estates. His family had actually been grafted onto the ancient stock of the Cochranes through an advantageous marriage by his father who had changed his name from Blair to Cochrane in order to inherit the Cochrane estates.⁴ William the sheriff depute, his second son,

¹ Coutts, *History of the University of Glasgow*, 85-7. Radical presbyterian ministers John Livingstone (early 1620s), David Dickson (until 1618) and Robert Blair (1616-22) were all there at various points in the period 1617-22 either as students or regents.

² T.S. Freeman, 'Worlds of wonder, days of demons? Puritan exorcisms in England and New England', unpublished paper.

³ *RPC*, 2nd ser., iii, 97.

⁴ J.B. Paul (ed.), *The Scots Peerage*, 9 vols. (Edinburgh, 1904-14), iii, 344; *DNB*, iv, 631.

was an active and ambitious man.¹ It is possible that his role as a zealous witch-hunter was a way of establishing his prestige in the community. John Hamilton's later career showed a preference for the radical part of the covenanting spectrum, as a Protester and then as an outed minister.² Such radical Presbyterian credentials indicate someone who might naturally be expected to be zealous for the Lord in such matters.

Bryce Sempill of Hunterhill, the other sheriff depute, came from a quite different background. He was in repeated trouble with his kin and neighbours, in the years of the witch-hunt and the period just prior to it. In 1629 he perpetrated a vicious assault with a knife and then a sword on an unarmed kinsman, John Sempill of Aikinbar.³ On 15 February 1631, Sempill was accused of trying to ruin a neighbour Thomas Kirkpatrick of Closeburn.⁴ He and Robert Charters of Kelwod were trying to force Kirkpatrick's eviction. Sempill was involved in the valuation of Renfrewshire as was reported in a letter of the privy council in February 1631 excusing him from appearing at the assizes in Londonderry in Ireland. The letter does not say why he was bound to appear at the assizes.⁵ He was also almost certainly a Catholic, like the rest of his prominent kin. Hew, Lord Sempill, who headed the commission as Sheriff of Renfrew was a prominent Catholic.⁶ On 12 March 1629, Lord Hew was summoned before the privy council and asked to give assurance about the Protestant education of his children.⁷ It is interesting then, to find Lord Hew heading up the commission and one of his kin running into trouble as an over-zealous witch-hunter.

A tantalising possibility arises when the situation is compared with another intense local witch-hunt: the North Berwick case. This also took place on the lands of another Catholic noble family—the Setons, who like the Sempills were involved and apparently sympathetic in the hunt—providing custody for the prisoners in their own dungeons, and also providing the chief over-zealous witch-hunter.⁸ The Seton foray into witch-hunting came in the wake of anti-Catholic initiatives by Robert Bowes the English ambassador. Bowes's clamour against

¹ *Scots Peerage*, iii, 344.

² *Fasti*, i, 265.

³ *RPC*, 2nd ser., iii, 97-8, 118.

⁴ *RPC*, 2nd ser., iv, 144-5.

⁵ *Ibid.*, iv, 154.

⁶ *RPC*, 2nd ser., iii, p. xviii.

⁷ *Ibid.*, 91, 117-18.

⁸ L. Yeoman, 'Hunting the rich witch in Scotland: high status witchcraft suspects and their persecutors, 1590-1650' in J. Goodare, ed., *The Scottish Witch-hunt in Context* (Manchester, 2002), 106-121.

Catholics holding legal office threatened the family directly, as at least one member, the future earl of Dunfermline, was a lord of session.¹ It is also interesting to compare the conduct of Cochrane and Hamilton to that of the chief North Berwick witch-hunter, David Seton, bailie of Tranent. Seton also irregularly tortured suspects personally in the privacy of his own home.² The suspects who were apprehended were then interrogated by a variety of people including prominent ministers such as the radical Presbyterian Robert Bruce.³ In the North Berwick hunt, Catholic noble community and Calvinist Kirk were both engaged in hunting witches.

Another interesting parallel can be drawn with the English Catholic and Puritan exorcisms of the 1590s and 1600s.⁴ Here power over the Devil was used to gain prestige for minority faiths. Being tough on witches may have been an excellent way for Catholic nobility to show their loyalty and to make themselves popular. Witch-hunting seems to have been a shared culture amongst Protestant and Catholic officials and gentry. In the case of Inverkip, Catholic sheriff and sheriff depute worked in harmony with the staunch Calvinist sheriff depute and minister. Witch-hunting may have been a cohesive factor in these cases.

The register of commissions also shows the reaction to the excesses of 1629 to 1630. On 10 December 1624, the privy council passed an act requiring that all requests for a commission to try witches must pass through the bishop of the diocese in which the accusation originated.⁵ The provision did not seem to be much used. Before April 1630, the archbishop of St Andrews, Spottiswood, was recorded by the privy council as checking the depositions of a suspected witch on only one occasion—the case of Janet Reany in Dunfermline in 1628.⁶ From March 1630, both archbishops (St Andrews and Glasgow) are frequently recorded as perusing depositions in contentious witchcraft cases.⁷ The evidence of the register is that this was systematised in the wake of the 1629-30 panics. Over the period covered by the register during which episcopacy was still operative, late 1630 until April 1637 (with one exception at the very beginning), only one significant group

¹ G. Brunton & D. Haig, *An Historical Account of the Senators of the College of Justice* (Edinburgh, 1836), 198.

² L. Yeoman, 'Hunting the rich witch in Scotland', 107.

³ NAS, justice court processes, JC26/2/11.

⁴ Freeman, 'Worlds of wonder, days of demons'.

⁵ *RPC*, 1st ser., xiii, 620.

⁶ *RPC*, 2nd ser., ii, 317.

⁷ *RPC*, 2nd ser., iii, 477, 533-5, 606.

of witchcraft commissions were granted with no bishop or archbishop either granting or recommending the commission (having perused the depositions in advance). These were the Inverkip cases: commissions fos. 29r., 29v. and 35v. They were authorised by the marquis of Hamilton, the earls of Haddington, Winton, Linlithgow, Perth and Lauderdale, Lord Melville, Sir Thomas Hope, Sir John Scot of Scotstarvit, James Baillie and Sir George Elphinstone. Possibly this happened because James Law, archbishop of Glasgow (d. 1632) was unavailable for some reason—perhaps illness. He was 69 at the time. From this point onwards, no commissions to try witchcraft were issued without the involvement of a bishop.

From the beginning of Spottiswood's term as chancellor, both archbishops usually signed any commission to try witchcraft. The greater involvement of the episcopate in screening the depositions seems to have been a reaction to the excesses of 1629-30. Certainly Spottiswood was capable of taking a sceptical attitude to accusations (much like James VI and I after 1603). Spottiswood denounced the accusations against Bessie Pursell as 'meere fantasies'.¹ During the short period for which the register covers the commissions of the nascent covenanting regime the picture changes with bishops and archbishops being replaced by legal officials. The lord advocate and lord justice clerk signed both the post-1638 witchcraft commissions.

More sceptical episcopal screening may have helped to increase a natural post-panic drop in witchcraft prosecutions. However, despite this, there were small peaks in 1633 and in 1636 although the underlying trend was downwards. The figures, adjusted by adding cases from Lerner and two cases known from the privy seal records of escheats, are as follows:

1631	44 plus
1632	22
1633	33
1634	15
1635	7
1636	19
1637	7
1638	3
1639	1
1640	8 plus
1641	4
1642	3

¹ *RPC*, 2nd ser., iv, 111-12.

The later drop in known cases is easily explained by the beginning of the civil war period when the authorities would have more pressing matters on their minds. The mini-peaks seem to be explained by local panics either in the north of Scotland (in Orkney, Ross and Sutherland) or in East Lothian and Berwickshire (two significant outbreaks in the fishing ports of Dunbar and Eyemouth). No commissions for Orkney are included in the register, as it was a special case.¹ Witchcraft trials in Orkney were authorised by the sheriff of Orkney and not by the privy council.

The geographical spread of prosecutions differs little from the panic years of 1629-30.² Clearly witch-hunting had reached all parts of Scotland which were accessible to the system of granting privy council commissions. There were cases in Lewis, Caithness, Sutherland, Inverness, Ross and Cromarty and Bute, yielding a large crop of suspected witches who were clearly Gaelic speakers. The frontiers of state interference were clearly established in the Gaedhealtachd. The highest concentration of cases, however, was in Renfrewshire, due to the Inverkip hunt of 1631-2. Renfrewshire prosecuted twice as many witches as any other county, the prosecutions coming mostly from a single parish. Even those strongholds of witch-hunting East Lothian and Berwickshire when added together did not prosecute as many cases over the entire period of the register as this small area did in the space of about six months.

The traditional picture of a witchcraft panic shows that panics are fuelled via relaxation of normal standards of evidence, and the permitting of torture—something which often happened when witch-hunting escaped the restraints of central control.³ This would lead to more and more accusations which became less and less credible—leading to scepticism and a backlash with consequent tightening up of procedures at a central government level. Such was the case in 1597 and again in the wake of 1629-30. The lack of bishops or archbishops in the Inverkip commissions perhaps indicates an accidental loosening of restrictions in the wake of a major panic which allowed another intense

¹ Wasser, 'The privy council and the witches', 28.

² Cf. Lamer *et al.*, *Source-Book*, 85-98.

³ E.g. in the case of Matthew Hopkins whose activities in England happened in the absence of the usual assize court judges: J. Sharpe, *Instruments of Darkness: Witchcraft in England, 1550-1750* (London, 1996), 140.

hunt to occur. The question then arises: how is it that, when everyone has supposedly learnt their lesson, that panics do recur? How are former lessons unlearned?

Michael Wasser suggests that there were two important reasons for the renewed panic of 1629-30. Firstly Charles I's removal of judges of the court of session from their dual role as privy councillors may have weakened the control of a sophisticated, sceptical, civil-law educated elite over the commission-issuing process; and secondly the introduction of circuit courts in 1628 may have had a direct causal effect in stimulating demand for prosecutions.¹ Without rehearsing Wasser's arguments in detail it may be worthwhile to note that the process of 'giving up the king's dittayes' (by which prominent people in a sheriffdom were asked to name those they suspected of various crimes so as to set an agenda for the circuit courts) may, as he suggests, have been one of the mechanisms which helped to elicit a flood of witchcraft accusations. As the initiative could not cope with the high levels of popular demand, requests for witchcraft prosecutions had once more to be satisfied through the privy council. Demand was so high that it appears that the episcopal screening process collapsed and high numbers of commissions were issued. In both cases royal initiatives by Charles I appear to have backfired in unexpected ways—perhaps because Charles did not make the effort to understand the distinctive Scottish situation.

Dr Wasser argues that a dominant royal official such as Dunfermline could discourage witch-hunting.² Dunfermline died in 1622, but prosecutions remained low until 1629. Following upon this argument it may be suggested that Spottiswood played a similar role in the 1630s. It is noticeable that there were no prosecutions for witchcraft before the justice court during Spottiswood's term as chancellor.³ Yet it must be noted that Dunfermline held witchcraft trials and that Spottiswood 'having seen and perused' witchcraft depositions allowed commissions to be granted. What criteria were satisfying these more 'sceptical' magistrates? Unfortunately we do not know. On the rare occasions where any evidence is mentioned in the commissions, it often concerns the suspected witch renouncing God and her baptism. Spottiswood signed at least one of these commissions. It may be that he regarded a confession of the demonic pact as sufficient to warrant prosecution. As the work of Stuart Macdonald shows, watching and warding was

¹ Wasser, 'The privy council and the witches', 45-6.

² *Ibid.*, 40.

³ Larmer *et al.*, *Source-Book*, 12.

essential to obtaining confession evidence through sleep deprivation and this was apparently not regarded as torture or as an abuse which would invalidate confessions.¹ Such 'voluntary' confession evidence may have been regarded as convincing by contemporary churchmen and lawyers. This was certainly the case later in the century in New England where ministers deemed voluntary confession to be one of the best 'proofes sufficient for conviction'.²

Such arguments deal with the central-control dimension of the Scottish witch-hunt and not with the circumstances on the ground which precipitated witch-hunting panics. The commissions themselves do not provide great detail about local factors. Detail is supplied only in cases whose depositions supplied truly sensational material. The most striking case of this in Adv. MS 31.3.10 is that of Anna Tait, who was 'thrie several times deprehendit putting violent hands in herself at her awne hous', in Haddington in 1634.³ Poor Anna told a terrible story of adultery, poisoning, domestic murder, unwanted pregnancy (her daughter's), botched home-abortion and death. So far, so comprehensible, but an integral part of Anna's narration was that she consulted with the Devil to do all this. Finally 'upon the 8th of December instant; she had carnal copulation to the divell in her awne bed, and that upon the 11th of December the divell came to her bedside, gripped her be the hair of her head and did nip her cheike'. As Anna was warded for her suicidal attempts only on 18 December, this all sounds surprisingly recent—especially when it is compared with the murder of her first husband, which must have happened many years ago, as she had an adult daughter from her second marriage.

More light is shed on the matter by the records of Anna's trial in the burgh court of Haddington.⁴ If anything, these make for even more grim reading than the commission. We learn the full extent of Anna's suicidal behaviour—having tried several times to hang herself using her own head-dress (her curch), Anna was taken into custody where her behaviour became even more extreme. She attempted suicide both by trying to cut her own throat and then 'when your handis were bound and your feit maid fast in the stocks, no uther meanes being left to accomplish your devilishe designes, ye knoked your heid to the wall and

¹ S. Macdonald, 'Threats to a Godly Society: The Witch-Hunt in Fife, Scotland 1560-1710' (University of Guelph Ph.D. dissertation, 1997); cf. S. Macdonald, *The Witches of Fife: Witch-Hunting in a Scottish Shire, 1560-1710* (East Linton, 2001).

² C. Karlsen, *The Devil in the Shape of a Woman* (New York, 1987), 50-1.

³ See below, p. 254.

⁴ NAS, Haddington burgh court register, B30/10/13, fos. 24r.-26v.

stokkis, wherby thinking to dispatch your self'. She refused to mount a defence at her trial, saying she desired nobody to speak for her except God in heaven. In addition to her other crimes, she confessed to having had sex with the Devil in the form of a black man and in the form of the wind—not uncommon forms for the Devil to take.¹

As Michael Macdonald and Terence Murphy have noted in their study of suicide in early modern England, the act was punished most severely in the period 1500-1660. It was also at this time that the role of the Devil in popular interpretations of suicide reached its peak in England.² Given that much of this was linked to a shared post-Reformation Protestant culture, it seems reasonable to assume that these attitudes were shared in Scotland. Suicide was seen as one of the few sins which was directly inspired by the Devil; witchcraft was another.³ So perhaps it seemed logical to assume that one of these special crimes could lead to the other. This may have been what happened in Anna's case, as she does not fit the usual career pattern of an accused witch.

Ordinarily witches built up a reputation over a period of years in which their actions were labelled as constituting witchcraft—a process described by Christina Lerner.⁴ Yet in Anna's dittay there is no list of wronged neighbours, nor a history of malefice outside of her own family. It is stated in the general clause of her dittay (the item which gives the formulaic accusations of witchcraft) that she consulted 'divers witches how to undo and wrak therof neighbors in their bodies, guds, and geir and bereaving them of their lyves' yet no specific examples were given. It is notable that the general clause also contained accusations of speaking with the dead and soothsaying. Nowhere else was Anna accused of these and no evidence was given for these accusations; she herself denied most of the points of the general clause.⁵

Another unusual feature of the case is the timing of Anna's reception of the Devil's mark. Usually witches were said to receive the Devil's mark at the outset of their careers when they renounced their baptisms, but with Anna this happened only a week before her arrest and coincided with her suicide attempts.⁶ It is tempting to suppose that Anna

¹ C. Lerner, *Enemies of God: the Witch-Hunt in Scotland* (London, 1981), 147.

² M. Macdonald & T. Murphy, *Sleepless Souls: Suicide in Early Modern England*, (Oxford, 1990), 75, 59.

³ *Ibid.*

⁴ Lerner, *Enemies of God*, 99-100.

⁵ See the remarks of the chancellor of the assize on their verdict against her.

⁶ Take, for example, William Crichton in Dunfermline in 1648 who made his pact with the Devil 24 years before his arrest: Lerner, *Enemies of God*, 100.

had no reputation for witchcraft up to this time. Perhaps at the most she had a reputation for consulting some shady characters in her desperation to procure an abortifacient for her daughter. It was her daughter's death, from a botched home abortion using wine and salt, that Anna claimed had pushed her over the edge and triggered her suicide attempts. It may be that given the association between suicide and direct demonic inspiration that Anna's repeated suicide attempts led to an instant assumption of demonic involvement and to her being interrogated from the first as a suspected witch.

Her confession not only to procuring the abortion but also to murdering her first husband by poisoning him with foxglove leaves would have doubly confirmed the impression of her captors that to have committed such crimes she must have been diabolically inspired. Anna's first husband was a cattle-drover whom she had married 28 years previously in England (this indicates that Anna was at least middle aged). She apparently dispatched him so that she could marry her lover William Johnstone, a miller in Haddington. So she was not only an attempted self-murderer, but also an adulteress and the unnatural murderer of her husband, daughter and unborn grandchild. Adding witchcraft to her 'set' of the most appalling crimes a seventeenth-century woman could commit seems somehow almost appropriate. No doubt it fitted in well with the assumptions of her contemporaries.

It is unsurprising that the clerk of the privy council recorded this case in so much detail. Noting down suicides as instances of God's judgement on sinners was a common habit of Protestant piety.¹ Anna was certainly, by her own admission, quite out of the ordinary league of sinful behaviour. The discovery of her crimes due to her suicidal behaviour would have been interpreted as the workings of God's providence and just judgement upon her. John Stearne, an English witch-hunter, noted that the death in jail of a man accused of making a covenant with the Devil and who had attempted suicide in similar circumstances was a 'just judgement of God'.² Anna's confession would have both horrified and fascinated her contemporaries. Yet despite the particular horror of her crimes—especially the murder of her husband—she was not burnt alive but strangled first and then burned. This was perhaps as close to mercy as her contemporaries could allow.

Anna's case raises the question of her mental state and how issues of mental disturbance and insanity entered into witchcraft prosecution. She

¹ Macdonald & Murphy, *Sleepless Souls*, 33.

² *Ibid.*

was not the only witchcraft suspect in this sample to show evidence of mental disturbance. Another unusual case was that of Marion Mure from Leith.

Marion was a self-confessed witch who handed herself over to the bailies of Leith demanding to be tried.¹ The bailies, despite the supplication of the minister, William Wishart, refused to try her without warrant from the privy council. The council interviewed her in the presence of Wishart and Dr Jolly (also spelled Gellie). Jolly was one of the physicians ordained by the Lords to draw up the articles for a projected Royal College of Physicians which did not come into being at that time.² He explained that she had symptoms of 'hypochondriack distractioun'. He had prescribed treatment for her but she had not had the prescription made up. Despite this evidence of mental illness, she was put to an assize and executed. Her evidence was also taken seriously against others. She was to be confronted with two women, Helen Hamilton and Marion Lumsden, whom she appears to have accused as witches.³

In neither Marion's nor Anna's case was mental disturbance considered to be a mitigating factor which prevented them being tried and executed. However these issues were probably not irrelevant. The Lords were evidently interested enough to hear from Dr Jolly but his testimony did not lead them to refuse to grant a commission for Marion's trial. The bailies were reluctant to try her, but the local minister was determined to go ahead. Anna, despite having effectively pleaded guilty by confessing, was given the opportunity to mount a defence—but refused it. Again the fact that she was strangled rather than burnt alive does suggest some small measure of sympathy for her plight (although this could be because she was penitent and confessed). It is possible that opinion at the time was split as to whether such mental states could be mitigating factors or not.

Compare the attitude of the privy council in these cases to its attitude at the height of the post-Restoration witch-hunt when it issued the commission for trial of Isabel Elder and Isabel Simson on 7 May 1662. Previous commissions issued in that hunt stressed voluntary confessions

¹ *RPC*, 2nd ser., iv, pp. xl, 405-6, 423, 426-7, 435.

² *Ibid.*, 69.

³ *Ibid.*, 436-7. Helen Hamilton was illegally tortured, again apparently by an over-zealous minister, David Forrester, and the baron bailie of Broughton, Sir George Towers of Innerleith. The Lords punished both men for this abuse of their respective offices. The baron of regality, Robert Ker, earl of Roxburgh, was ordered to appoint judges for her trial.

and the absence of torture. This commission however went further, in order to proceed with executing the witch, it must be found that 'At the tyme of their confessions they were of right judgement, nowayes distracted or under any earnest desyre to die'. That would have conclusively ruled out Anna from execution as a witch (although given the nature of her other crimes, she might well have been executed anyway). It might well have ruled out trying Marion for her life, as she was probably suffering from serious depression. This was the first of eleven commissions granted at that sitting with the same qualifications.¹

It is interesting to note in passing that the council added further qualifications to commissions at later sittings. The next batch on 12 June 1661 added the condition that the accused must be 'of compleat age'.² At the batch after that, 10 July 1662 (which included the famous case of Isobel Gowdie) there were even more restrictions. To all of the above is added 'and that they reiterat and renew ther former confessions judicially'.³ So in 1662 the privy council clamped down not only on torture, but on trying accused witches who might in any way be pressurised or of unsound mind. However these restrictions were probably not enough to save many lives; such conditions could be interpreted very differently at a local level where older views probably pertained.

What were these older views? Anna was 'trublit in conscience' and this view probably helped to seal her fate. Despair was not the province of the insane or mentally ill in early modern societies. It could be a quite respectable religious emotion—even when it included repeated suicidal impulses. Macdonald and Murphy consider that 'Puritans in effect institutionalized suicidal moods, presenting them as the emotional symbol of the liminal stage between the sinful life and regeneration'.⁴ This was the terrors phase of Calvinist conversion, a stage that could produce phenomena very similar to those seen in witchcraft cases. When despairing of salvation and not yet convinced that they were part of the elect, Scottish Calvinists were prone to seeing the Devil and to suicidal temptations.

They reported their encounters with Satan in similar terms to confessing witches. Donald MacGrigor's daughter, a Presbyterian child visionary of the 1680s, heard a cry like an owl, and then saw witches

¹ *RPC*, 3rd ser., i, 206.

² *Ibid.*, 221.

³ *Ibid.*, 243.

⁴ Macdonald & Murphy, *Sleepless Souls*, 65.

and the Devil. The Devil later appeared to her in the shape of a black man and an ox.¹ Jonet Fraser, a Cameronian visionary of the same period, saw the Devil over the space of eight years in the form of a bee, a black man and a bony hand.² Both these visionaries were female; however it should be noted that they were not accused of having had carnal copulation with the prince of darkness. Their close encounters of a satanic kind were seen as part of a phase from which they were delivered by obtaining assurance of election and the rapturous spiritual experiences which accompanied this. Amongst the godly, such encounters of Satan overcome were proof of holiness and not the reverse.

The godly also suffered from quite crushing despair as in the famous case of Bessie Clarkson, a contemporary of Marion and Anna. She had three and a half years' trouble of mind and would have preferred (ironically) to be 'burnt quick' (alive) to be sure of salvation.³ A later covenanting field preacher John Walwood claimed in a sermon to know a godly man who had had 'terror of soul for seventeen years'.⁴ Apparently this was acceptable so long as the person involved won through in the end. Robert Wodrow, the early eighteenth-century historian and minister, recorded a number of cases of suicidal temptations amongst the pious. He noted how Mrs Campbell 'a good Christian, and minister's wife, despatched herself with a bridle under despair', and 'two other ministers wives were gone distracted'.⁵ He also counselled other ministers and a schoolmaster who had suicidal impulses.⁶ Suicidal tendencies amongst the godly may even have been common enough to mitigate some of the horror surrounding suicide. In Kirkcaldy, Wodrow reported that there had been a case of a very godly woman who hanged herself after hearing a sermon, but the minister was

¹ Edinburgh University Library, 'Admiranda et Notanda', DC.8.110, fos. 3r+v.

² NAS, Lord Polwarth (Scotts of Harden) Jonet Fraser's vision, GD157/1880 fo. 1r. Christian Shaw, the possessed adolescent in the famous Paisley witchcraft cases of the 1690s, also saw the Devil in these shapes: A. Gardener, *The Renfrewshire Witches* (Paisley, 1877), 109-10.

³ W. Livingston, *The conflict in the conscience of a deare Christian named Bessie Clarkson, which she lay under three years and a half with the conference which passed between her and her pastor at diverse times, newly corrected and amended* (Edinburgh, 1632), 12, 1.

⁴ Mr John Walwood, sermon on 1 Peter IV, v18, bound with Patrick Gillespie, *Rulers' sins—the causes of national judgements* (Edinburgh 1718).

⁵ R. Wodrow, *Analecta, or Materials for a History of Remarkable Providences, Mostly Relating to Scottish Ministers and Christians*, 4 vols. (Maitland Club, 1842-3), ii, 53.

⁶ Wodrow, *Analecta*, ii, 314; iv, 279.

so convinced that she was saved that he had her buried in the churchyard, despite the stigma attached to 'self-murder'.¹

Despair was quite all right, as long as it was religious despair which manifested itself in obvious piety and attendance at prayer groups. Such despair was not a sign of spiritual disease but on the contrary, a sign of spiritual health or awakening. Such a struggle was to be expected. John Forbes of Corse speaking of conversion wrote 'we come not to this calm but after a tempest of misery through sin and weightiness therof' having been 'laden and wearie under the burden ... That man deceiveth himself', said Forbes, 'who imagineth victory without a fight.'²

Such despair could lead to salvation even for a criminal who had to be executed, even for a husband murderer, as in the famous case of Lady Jean Livingston in 1600. Despite murdering her husband she had the *crème de la crème* of Edinburgh's godly society, including minister Robert Bruce, joining her in prayer after her remarkable conversion almost on the eve of her execution. Part of her conversion experience was that she could 'perceive nou the working of the spirits ... the on contrary to the other ... the spirit of the Devil and the spirit of the Lord, albeit coming into her life at the 11 hour'.³ Her despair over her murder of her husband and her own imminent execution were replaced by heavenly raptures with 'unspeakable joy'. The minister who attended her was so moved that he wrote down everything he could. She still had to be executed, but at least she went to her death convinced that she had a place in heaven. Despair was replaced by rapture, certainty of hell by certainty of heaven.

How different were the fates of Marion and Anna. Just as Marion had literally refused to take her medicine, ignoring Dr Jolly's prescription, so the real crime of the two women was that *spiritually* they had also failed to take their medicine. Instead of despair proving to be a liminal state for them on the road to conversion and eternal glory, they testified that they had succumbed to demonic pacts. Thus they had seemingly failed to choose eternal life and had instead perversely chosen the ultimate dead-end: Hell. This offence was all the more horrible because Heaven, in its Calvinist form, was being held out to

¹ Ibid., iv, 119.

² NAS, John Forbes of Corse diary, CH/12/8/6, 58.

³ NLS, Narrative of Lady Jean Livingston, Wod.Oct.XV, f.15v.

them every Sabbath in their local church. For ministers, such women were in some ways a visible slap in the face to their ministry.¹

In seventeenth-century Scotland despair was considered to be a normal religious emotion, and not a mark of insanity. It was a gate-keeper. It could lead to either heaven and enjoying God forever or to Satanic pact and eternal damnation. Despair was a very common phase of the conversion experience of the seventeenth century and demonic or suicidal temptations were an almost normal complication of it. Perhaps the reason it was necessary to punish the despairing so emphatically was *pour encourager les autres*. When people experienced despair, they should in the Church's eyes make the right choice: to resist temptation and intensify their piety until the threat was overcome. Faced with the reality of burning large numbers of the mentally disturbed, later generations of Scottish privy councillors increasingly doubted the wisdom of this approach.

¹ Perhaps this is one reason why we have found at least two clerical gentlemen in this study disgracing their profession amongst the ranks of sadistic amateur torturers. Or perhaps they thought that in the light of their victims' probable sufferings for all eternity in Hell, what they were doing to them was really hardly worth worrying about.

Adv. MS 31.3.10

fo. 5v. Charles & forasmeeke as Gawin Forsyth in Locherwod,¹ now prisoner in the tolbutth of Dumfries hes beene this long tyme bygane suspect and delate guiltie of the detestable and abominable crymes of sodomie, witchecraft, sorcerie, inchantment, using of charmes and uthers devilish practises offensive to God, scandalous to the trew religioun and hurtfull to diverse our good subjects as the depositions shawne to the lords of our privie counsall beirs upon quhom necessar it is that justice be ministrat conforme to the lawes of our realme for quhilk pupose we have made and constitute and be the tennour heiroyf makes and constitutes our lovitts Sir John Charters of Amisfield, sheriff principall of our sheriffdome of Dumfreis, Sir Robert Greir of Lag,² and his deputes and the provost and Baillies of Dumfreis or anie tua of thame, the saids laird of Amisfield and Lag being ane of the twa our justices & givand & court and in the same court or courts the said Gawin to call be dittay to accuse and him to the knowlege of an assize to putt and as he sall be fund culpable or innocent of the said crymes of sodomie or witchecraft to caus justice to be ministrat upon him conforme to the lawes of our realme assysis & clerks & generallie & sworne & and givin under our signet at Halyrudhous the 16 day of December and of our reigne the sext yeere 1630 Subscribitur Geo: Cancell,³ Monteth,⁴ Hadintoun,⁵ Wintoun,⁶ Linlithgow,⁷ Seafort,⁸ Carnegie,⁹ Traquaire.¹⁰

fo. 9r. Christian Riache in Stornoway,¹¹ 'long tyme bygane suspect and delate guiltie of the detestable cryme of witchcraft sorcerie, inchantments and uthers devilish practises offensive to God, scandalous to the trew religioun and hurtfull to diverse our good subjects as her confessions and depositions showne to our privie counsell beir upon

¹ Locharwoods.

² Sir Robert Greir of Lag.

³ George Hay, Viscount Dupplin, chancellor.

⁴ William Graham, 7th earl of Menteith, justice general.

⁵ Thomas Hamilton, 1st earl of Haddington.

⁶ George Seton, 3rd earl of Winton.

⁷ Alexander Livingstone, 2nd earl of Linlithgow.

⁸ Colin Mackenzie, 1st earl of Seafort.

⁹ David, Lord Carnegie, later 1st earl of Southesk.

¹⁰ John Stewart, 1st earl of Traquair.

¹¹ Perhaps part of the Mackenzies' 'grite trouble and chargis ... in planting and civilising' of Lewis: see the council's letter, 23 Dec. 1630, *RPC*, 2nd ser., iv, 106-7.

quhom necessar it is that justice be ministrat conforme to the lawes of our realme for quhilk pupose we have made and constitute Andro Mackenzie of Milbois¹ baillie of the Lews, Murdo Mackenzie of Shalder,² Alexander Mackenzie, John Mackenzie of Holmekill³ and Lorne Mackenzie of Brace⁴ or any three of thame, our justices in that part to the effect under writtin, givand the courts and sutes and in the saids courts the said Christiane to call be dittay to accuse and her to the knowledge of ane assise to putt and as she shall be found culpable or innocent of the said cryme of witchcraft to cause justice to be ministrat upon her conforme to the lawes of our realme. Assys & clerks & generrallie & sworne. Given under our signet at Halyrudhous, the 20 day of Januarie and of our raigne the sext yeere 1631. Subscribitur Geo. Cancell, Monteth, Hadinton, Seafort, Lauderdaill,⁵ Dunkelden,⁶ Meluile,⁷ Sir John Scot.⁸

fo. 13v. Marioun Simsone in Boghall within the parish of Maybole, 'long tyme bygane suspect'; commission to 'our baillie principall of Carrick and his deputes',⁹ 'to take the said Marioun wherever she may be' and put her to an assize. 8 Mar. 1631, Geo. Cancell, Galloway,¹⁰ Traquair, Dunkelden, Arch. Achesoun,¹¹ Scotstarvet, S. G. Elphinstoun.¹²

fo. 14r. Malie Cowper in Futtie¹³ within the freedome of our burgh of Aberdene, Marioun Rodgie and Andro Aitkine indwellers in Aberdene, 'long tyme bygane suspect and delate' inchantmentes and using of charms also mentioned. Commission to 'our provest and bailleis of our burgh of Aberdein our justices in that part' to put her to an assize. 17

¹ Mealbost/Melbost.

² Siadair/Shader.

³ Perhaps Eilean Chaluim-Cille in South Lochs.

⁴ Probably Griaies/Gress.

⁵ John Maitland, 1st earl of Lauderdale.

⁶ Alexander Lindsay, bishop of Dunkeld.

⁷ Robert, 2nd Lord Melville of Monimail.

⁸ Sir John Scot of Scotstarvet.

⁹ Probably John Kennedy, 6th earl of Cassillis, or his depute.

¹⁰ Andrew Lamb, bishop of Galloway (d. 1635).

¹¹ Sir Archibald Acheson of Glencairmie, extraordinary lord of session and secretary for Scotland.

¹² Sir George Elphinstone of Blythswood, lord justice clerk.

¹³ Footdee, a fishing village near Aberdene. For details of this case see *RPC*, 2nd ser., iv, 13, 38-9. This case, involving an alleged boat sinking, followed upon the confessions of Marion Hardie before the bishop, provost and bailies of Aberdene.

Mar. 1631, Geo. Cancell., Hadinton, Lauderdaill, Traquair, S. Thomas Hope,¹ S. G. Elphinston.

fo. 17r. Malie Couper in Futtie within the freedome of our burgh of Aberdene, Marioun Rodgie and Andro Aitkine indwellers in Aberdene, 'long tyme bygane suspect and delate' inchantments and using of charms also mentioned. Commission to 'our sheriff of Aberdein,² and his deputes and our provest and bailleis of our burgh of Aberdein or any thrie of them our sheriff or ane of his deputes being always ane' to put her to an assize. 20 Apr. 1631, Geo. Cancell, Wintoun, Lauderdaill, Gordoun,³ Air,⁴ Pa. B. Ros,⁵ Jhone Isles,⁶ Carnegie.

fo. 22r. Marie McGillimichell, sister to umquhill Christiane Riache burnt for witchcraft has been 'long tyme bygane suspect and delate' and using of charms. Commission to Murdoche Mackenzie uncle to the Earl of Seafort[h], Alexander Mackenzie of Achiltie⁷ and Murdo Mackenzie chamberlane of the Lewes⁸ our justices in that part to put her to an assize but to 'report the process of her convictioun to the lords of our privie counsell to the effect they may give order for pronouncing dome againis her accordinglie' 20 Apr. 1631, Geo. Cancell, Lauderdaill, Gordoun, Air, B. Rosse, Jhone Isles, Carnegie, Hamilton,⁹ S. G. Elphinstoun.

fo. 23r. Christiane Patersone¹⁰ now prisoner in the tolbutth of Hadintoun for the detestable cryme of witchcraft quhariof she hes bene suspect thir mony yeiris bigane and monie pregnant cleir and evident dittaes ar gevin in aganis hir ... maks and constitutes our lovitts [[Sir John S..b ... of Hirdinstoun]] the provest and bailleis of Hadintoun, Patrik Abirmethie of Nitherdaill and George Pringle chamberlane to the erle of Hadintoun or anie twa or three of thame the said provest being one oure justices in

¹ Sir Thomas Hope, lord advocate.

² Sir George Johnstone of that ilk.

³ George, Lord Gordon, later Viscount Aboyne and 2nd marquis of Huntly.

⁴ William Crichton, Viscount Ayr, later 1st earl of Dumfries.

⁵ Patrick Lindsay, bishop of Ross, later archbishop of Glasgow (1633).

⁶ John Leslie of Glaslough, bishop of the Isles (tr. 1633 to Raphoe).

⁷ Probably Achilty in Contin parish, Ross-shire.

⁸ Lewis.

⁹ James Hamilton, later 1st duke of Hamilton.

¹⁰ For details, see *RPC*, 2nd ser., iv, pp. xli, 334-5. She was the wife of George Carmichael in Hermiston. The commission reported back to the council after it had found her guilty of several points and was directed to pass sentence of death upon her.

that pair¹ and givand & court or courts and in the same court or courts the said Cristiane Patersone to call & And if she sall happen to be fund culpable of tha said cryme that thay report the proces of the convictioun to our counsell to the end that after consideratioune therof that may give there opinion anent the pronunceing of dome agains hir. 26 July 1631, Geo. Cancell, Hadintoun, Wyntoun, Perth,¹ Galloway, Sterling,² Dunkeld, Pa. Bishop of Ross.

fo. 25r. Jonnet Elder and Barbara Young within the presbytery of Achterardor³ 'for witchecraft for taking thame and putting them to ane assise'. Commission to Jhone Halden of Gleneagles,⁴ Sir William Murray of Abercorne,⁵ Sir James Drummond of [Mach]anie, William Sterline⁶ of Ardo and Bt Grahame of Panheillis⁷ Perth 22 Sept. [1631].⁸

fo. 28v. James Lyell in Kingstoun hes latelie committed the odious and detestable cryme of [bestiality] by lying with ane meir, for the quihilk he is made prisoner within the Tolbuith of Hadintoun ... makes and constitutes our sheriff of Hadintoun⁹ and his deputs Mr Patrick Lethington of Saltcoats, Sir Robert Hepbrune¹⁰ of Barefute and James Hopper of Boarhous¹¹ or any twa of thame our said sheriff or ane of his deputs being one our justices in that part to the effect underwritten' to put him to an assize. 6 Oct. 1631, Stratherne,¹² Air, Stirlin, B. Isles, Traquair, S. Thomas Hope, S. G. Elphinston.

¹ John Drummond, 2nd earl of Perth.

² Sir William Alexander, 1st earl of Stirling.

³ Auchterarder. See *RPC*, 2nd ser., iv, 625, item 75. The commissioners' names were written on the back of the act of council pertaining to the valuation of the estate of the Earl of Bothwell, but no indication was given that the commission was to try witches.

⁴ John Haldane of Gleneagles.

⁵ Abercairny.

⁶ Stirling.

⁷ Robert Graham of Panholes.

⁸ The names of the counsellors signing the commission are not given but are presumably the same as those signing the commission above: John Spottiswood, archbishop of St Andrews, Sir William Graham, earl of Strathearn (see below, p. 245), Sir William Alexander, earl of Stirling, Patrick Lindsay, bishop of Ross, John Leslie, bishop of the Isles, Traquair and Hamilton.

⁹ Probably at this point John Auchinmoutie of Gosford: *RPC*, 2nd ser., iv, 27.

¹⁰ Hepburn.

¹¹ Bourhouses.

¹² William Graham, earl of Strathearn, formerly 7th earl of Menteith.

fo. 29r. Issobell Cerswell, Mareon Jhonestoun spous to Williame Gray, Marie Simsoun, widow, Elizabeth Moresoun spous to Robert Patersoun, Katherine Simsoun spous to Thomas Scot all in Innerkip,¹ Jhone Scot in Bartfourloch, Gabriel Gray and Henrie Wodrow in Innerkip, have been 'long tyme bygane suspect and delate' and using of charms, her depositions subscribed by Archbishop of Glasgow.² Commission to the sheriff of Renfrew and his deputes to put her to an assize. 3 Nov. 1631, Hadinton, Wintoun, Linlithgow, Lauderdaill, Hamiltoun, S. Thomas Hope, S. G. Elphinston.

fo. 29v. 'Forasmeikle as it is understand to the lords of our privie counsell that in the depositions and confessions of certane persouns guiltie of witchcraft the persouns underwritin ar declared to be partakers with thame in the said devilish cryme they ar to say Katherine Miller spous to John King miller at Ardgowan, Alesoun Woddro spous to Hectour Creswell in Clochnoure, Issobell Kelso spous to David Lindsey in Bankefitt, Effie Lindsey spous to Alexander Slanan in Dunrod, Geillis Guill spous to Robert Warden in Divert, Katherine Lyell spous to William Reid in Corse, Katherine Patersoun spous to Johne Scot in Breitfunnock, William Wat in Achinmarch, Katherine Scot spous to Johne Simsoun in Carshogill, Katherine Simsoun spous to George Reg in Brenstoun and Elspet McCan spous to James Grey in Garrock messenger it is therfor that they be apprehendit and examined tucheing the said cryme'.³ Commission to our Sheriff of Renfrew 'and his deputs conjunctlie and severallie to pas searche seeke and take the

¹ West Renfrewshire. There were substantial abuses of justice involved in the Renfrewshire cases. Both John Hamilton, minister of Inverkip and William Cochrane sheriff-depute of Renfrew (later earl of Dundonald) appear to have acted illegally and overzealously. Hamilton appears to have employed illegal and brutal methods of torture such as bow strings and boots, as well as the usual watching and warding and pricking. See *RPC*, 2nd ser., iv, 473. Compare the case of Katherine Christie in Dysart: *Ibid.*, iv, 58-9. Cochrane was a cousin of Robert Blair (Cochrane's father changed his name from Blair to Cochrane on marriage). Both Cochrane and Hamilton graduated from Glasgow where Blair had taught as a regent. Blair left in 1622 which means that although it is unlikely that he taught his kinsman he probably taught the minister who went on to become chaplain to the covenanting army at Duns Law, and to become first a Protester and secondly an outed presbyterian minister. Blair's first wife was Beatrix Hamilton—wife of Robert Hamilton, merchant—possibly he was related to the ministerial part of the partnership too?

² James Law, archbishop of Glasgow.

³ These places are also in Inverkip parish, suggesting that William Cochrane and John Hamilton's zealous ways had been at work here too. The high number of married women named also suggests an unusual panic situation.

persouns abovewrittin delate guiltie of the cryme of witchcraft wherever they may be apprehendit to keepe and detaine thame in sic firmance and captivitie ay and quhill they be tryed and examined of the said cryme be the said sheriff and his deputs and to report their depositions to the said lords of our privie counsell to the effect forder order may be given for their tryell and punissement as accords and all things necessar for their apprehension and examinatioun to doe'. Halyrudhous, 3 November 1631, Hadinton, Winton, Linlithgow, Lauderdaile, Hamiltoun, Sir G. Elphinstoun, Sir Thomas Hope.

fo. 32r. Johne Renick in Raffil¹ 'hes beene this long tyme bygane suspect and delate guiltie of using of charmes and abusing of the people ... as his depositions and confessions showne to the lords of our privie counsell beirs'. Commission to Sir Johne Chairters of Amisfield and Robert Maxwell of Dinwoddie, our Stewart of Annerdaill conjunctlie and severallie our justices in that part' to put him to an assize 'provyding that the punishment extend not to lyfe nor member'. Halyrudhous, 20 December 1631, Cancell, Wigtoun,² Lauderdaill, Dumblane,³ Melvill, Hamiltoun, James Baillie.⁴

fo. 33v. Marioun Mure, relict of umquhill George Broun in Leith⁵ 'has been this long tyme bygane ane witche hes renuned her baptisme and tane from the devill the name of Katherine as her depositions under the hand of Mr William Struthers one of the ministers of Edinburgh and Mr William Wishert minister at Leith and the Baillies of Leith showne to the Lordis of our privie counsell beirs'. Commission to William Rid and George Baillie, baillies of Leith and justices in that part to put her to an assize. 19 Jan. 1632, Hadinton, Wintoun, Galloway, Dunkeld,⁶ Dunblane, Hamiltoun, S. Thomas Hope.

fo. 34r. This commission renewed upon the 24 of Januarie to Mr Dav[id] Prymrose, Mr Alexander Person and Mr Jo[h]n Sandelands advocate and the bailleis of Leith or anie twa of the said advocats with the bailleis.

¹ Raffels, near Mouswald.

² John Fleming, 2nd earl of Wigtown.

³ Adam Bellenden, bishop of Dunblane (tr. 1635 to Aberdeen).

⁴ Sir James Baillie of Lochend, receiver of rents.

⁵ See *RPC*, 2nd ser., iv, pp. xl, 405-6, 423, 426-7, 435.

⁶ Alexander Lindsay, bishop of Dunkeld.

fo. 34r. Margaret Widdrow in Finlastoun Cunninghame 'has been this long tyme bygane ane witche hes renuned her baptisme and tane the name of May frome the devill hes hed diverse meitings with him and by his directioun committed manie devilish practises as her depositions marked be the Archbishop of Glasgow ... beirs'. Commission to Patrick Maxwell of Newark, Jo[h]n Porterfield of that ilk and Jo[h]n Birsbane of Roslan or any twa of them our justices in that part' to put her to an assize. 29 Jan. 1632, Geo. Cancell. Hadintoun, Dunkelden, Areskine,¹ Traquair.

fo. 34r. The lyk commission grantit to Sir Johne Gordoun of Embo, knight baronet, Robert Gray of Creich, Alexander Gordoun in Sellache, Hew Gordoun of Barbilton and Thomas Murray, provest of Dornoch or anie twa of thame againis Agnes Dow nein Angus in Thomas in Clyne² for the said cryme of witchecraft.

fo. 34r. Another commission of the dait the 25 of Januarie grantit to the Lord Sempill,³ Mr William Cochrane sheriff deput, Bryce Sempill of Cathcart, or anie twa of thame againis Masie Fellowsdail at the mill of Greenock, Effie Lindsey spous to Alexander Slannan in Dunrod, Issobell Kelso spous to David Lindsey in Ardgowan, Alesoun Widdrow spous to Hector Creswell parochiner of Innerkip, Katherine Tom wedow there and Jeane Crawford spous to Patrik Crawford in Cartdyk for the said cryme of witchecraft, Geo. Cancell., Hadintoun, Dunkelden, Areskine, Traquair.

fo. 35v. Jonet Rankin within the parish of Houston, Katharine Simsoun, Geillis Guill and William Wat parochiners of Innerkip, Marioun Widdrow parochiner of Houston and Bessie Jaffray parochiner of Erskine 'long tyme past suspect and delate', confessions seen and considered by the Archbishop of Glasgow 'with his declaration that he funds thame guiltie of witchecraft'. Commission to Lord Sempill sheriff principall of our sherrifdom of Renfrew, Bryce Sempill of Cathcart and Mr William Cochrane sheriff depute of our said sherrifdom or any two of them to put her to an assize. 29 March 1632, Hadington, Linlithgow, Perth, Lauderdale, Melville, Sir Thomas Hope, Scotstarvit, James Baillie.

¹ John, Lord Erskine, later 3rd earl of Mar.

² Near Brora.

³ Hew, Lord Sempill. These cases are further instances of the Renfrewshire witch-hunt.

fo. 37r. Jonet Smith in Killillen¹ and Margaret Hall, also there 'long tyme past suspect and delate' depositions seen and considered by the Archbishop of Glasgow. Commission same as above. 13 April 1632, Geo. Chancellor, Stratherne, Haddington, Marischal,² Winton, Linlithgow, Lord Lorne,³ Traquair.

fo. 37v. Issobell Durie in Pentland, now prisoner in the steeple of Lasswade 'hes been this long tyme bygane ane witche renuned her baptisme giving herself over to be the devill's servant', depositions seen and considered by the Archbishop of St Andrews. Commission to Wauchop of Carkomrie⁴ and Mr Patrick Edmistoun of Schank our justices in that part to put them to an assize. 12 June 1632, Geo. Chancellor, Stratherne, Haddington, Winton, Erskine, Carnegie, Scotstarvit.

fo. 39v. Katherine M[c]ever alias McCennirische, Christiane Cattache and Marioun Davidsoun in the parish of Tain,⁵ Helene Nein ean Tugrie, Helene Nein Iwer, Margaret Nein William Vc Eaine in the parish of Rosskeen, Marioun Nein Vc Thosin Suyell, Agnes Nein Binggen there Christiane Nein Eane Vc Rorie in Langweill Agnes Nein William Vc William in Drumlairie Katharine Nein Vc Gillichreist in the brayes of Dallanachtoun, Christiane Nein Vc Gillandreis in Muthill, Katharine Reoche in Drumgillie and Marioun Nein Gillimichell in Ellertoune delate for 'charming enchantments and others devilish practises offensive to God scandalous to the trew religioun and hurtfull to diverse our good subjects'. Commission to David Ross of Pitcaline, Hew Ross of Achnaclouche and the provost and baillies of []⁶ or 'anie three of thame' the provost being always one to put them to an assize 'provyding the punischment to be inflicted upon thame strike nether againis life nor member' 5 July 1632, Geo. Chancellor, Haddington, Winton, Roxburgh,⁷ Buccleuch,⁸ Annandale,⁹ Archibald Acheson.

¹ Near Houston, by Paisley.

² William Keith, 6th Earl Marischal.

³ Archibald Campbell, later marquis of Argyll.

⁴ Possibly a mistake for Adam Wauchope of Caikmure, near Dalkeith.

⁵ There were witchcraft trials in Tain in 1630: *RPC*, 2nd ser., iv, 13.

⁶ Blanks in the MS are indicated throughout by empty square brackets.

⁷ Robert Kerr, 1st earl of Roxburgh.

⁸ Walter Scott, 1st earl of Buccleuch.

⁹ John Murray, 1st earl of Annandale.

fo. 41r. Issobell Hall, indweller in Jedburgh 'long tyme bygane suspect and delate' depositions seen and considered by the Bishop of Caithness. Commission to the sheriff of Roxburgh¹ and his deputes William Douglas of Bonjedburgh and the provost and baillies of Jedburgh or any three of them the sheriff being one to put her to an assize. 26 July 1632, Geo. Chancellor, Hadinton, Winton, Roxburgh, Buccleuch, Erskine and Melville.

fo. 47v. John Mcinkaird in [] 'long tyme bygane suspect and delate'. Commission to Alexander Menzies of Weme [Weem], Sir William Stewart of Garmetullie,² Robert Stewart of Balliachan³ and Mr James Stewart of Ladywell comissar of Dunkelden or anie twa of thaim 'our justices in that part'. Edinburgh, 13 December 1632, Hadintoun, Wintoun, and Dunkelden, Dumblane, Iles, Arch. Achesoun, Sir Thomas Hoip.

fo. 49r. Marioun Hill in Clynetredwall⁴ 'long tyme bygane ane practiser of witchecraft ... as her depositions and confessiouns perused by the reverend father in god Jhone Bishop of Caithnes and shown to the lords of our privie counsell beiris'. Commission to Oliver Gordon of Drimmoy, Alexander Gordon of Sallare, Hew Gordoun of Ballalone⁵, Gilbert Grey of []ochinar, Walter Murray of Pitgurdie and [] Murray of Pitcrossie 'Or anie three of thaim our justices in that part' to put her to an assize. Halyrudhous, 15 November 1632, Stratherne, Hadintoun, Annandaill, Laudardaill, Dunkelden, Arch. Achesoun, Sir Thomas Hop[e].

fo. 54r. Jonet Tailyeour in Cambus, Jonet Mathie in Stirling 'long tyme bygane suspect and delate' depositions seen and considered by the Archbishop of St Andrews. Commission to the Sheriff of Stirling and his deputes and the provost and baillies of Stirling or any [] of them to put them to an assize. 19 March 1633. Stratherne, Lauderdale, Erskine, Dumblane, Isles, Archibald Achesoune, Sir Thomas Hope.

¹ Apparently Sir William Douglas of Cavers.

² Grandtully.

³ Ballechin.

⁴ Kintradwell.

⁵ Possibly Belloan, Inverness-shire.

fo. 52r. William Baird in Holl within the baronie of Wester Kilsythe 'long tyme bygane suspect and delate ... as depositiouns tane heirupoun seene and advised be umquhill James archbishop of Glasgow and showin to the lords of our privie counsell beiris'. Commission to William Livingstone of Kilsyth to 'pass searche seeke and take the said William Baird wherever he may be apprehendit and to keepe and detene him in sure firmance and captivitie ay and quhill justice be ministrat upon him'. Halyrudhous 19 February 1633. Stratherne, Hadintoun, B. Dumblane, Iles, Melville, Arch. Achesoun, Sir Thomas Hop[e].

fo. 53r. Katharine Ewin in the parish of Glenmuck¹ 'long tyme bygane suspect and delate', depositions shown to lords of privy council. Commission to sheriff of Aberdeen and his deputes and to the provost and baillies of Aberdeen to 'pass searche seeke and take the said Katharine'. Halyrudhous, 26 February 1633. Stratherne, Lauderdaill, Areskine, Dumblane, Iles, Arch. Achesoun, Sir Thomas Hop[e].

fo. 55r. Helen Keir in Sauchie 'long tyme bygane suspect and delate' depositions shown to Lords. Commission to Sheriff of Stirling and his deputes and Sir Robert Bruce of Clackmannan or any two of them to put her to an assize. 24 April 1633. Haddington, Mar,² Winton, Linlithgow, Wigtown, Lauderdale, Isles, Melville.

fo. 57r. Jonet Baxter vagabond has 'been this long tyme bygane ane charmer ... apprehended for this cryme'. Commission to the Baillie of the regalitie of St Andrews and his deputes [] Wardlaw of Trone and Sir John Prestoun of Valleyfield or any two of them the the baillie or any of his deputes being one of the two to put her to an assize for charming, 'provyding alwayes the punishment strike not upon life nor member'. 15 May 1633. Geo. Chancellor, Melville, Haddington, Glasgow,³ Winton, Lauderdale, Air, Archibald Acheson.

fo. 57r. Margaret Fraser, vagabond 'ane detestable witche ... long tyme bygane ane deluder of the people and ordinar practiser of unlawfull cures by unlawfull meanes and compact with the devill as ane testificat under the hand of the Bishop of Aberdein and the ministers of our burgh of Aberdein togidder with the depositione and examinations of the said

¹ Glenmuick, Deeside.

² This is John, Lord Erskine, mentioned above p. 247.

³ Patrick Lindsay, archbishop of Glasgow, formerly bishop of Ross.

Margaret under the handis of the saids ministers shawin to the lords of our privie counsell beiris. Necessar it is therefore for purging of the land of such wicked persounes that justice be ministrat upon the said Margaret conforme to the lawes' Commission to the Sheriff of Aberdeen and his deputes and the provost and baillies or any two or three of them to put her to an assize. 20 May 1633, Geo. Chancellor, Morton,¹ Haddington, Glasgow, Lauderdale, Ayr, Traquair, J. Hay.²

fo. 57v. Fingwall nein Tealgar, Margaret Nein Doul Wriack and Helene Nein Doul Wriack 'long tyme past suspect and delate' depositions seen and perused by John Bishop of the eyles (Isles). Commission to Robert Inneis of Ensqone? John Nicolson and Alexander Hird Baillies of Chanonry [Fortrose], Ranald Bayne provost of Dingwall, John Kaird baillie there and Ranald Bayne of Balfries or any two of them to put them to an assize. 29 May 1633, Geo. Chancellor, Mortoun Hadintoun, Glasgow, Marischal, Winton, Linlithgow.

fo. 59r. Williame Weems, Seaman, Eyemouth 'long tyme bygane suspect and delate'. Commission to Sir Patrick Home of Aiton,³ Sir John Home of Blacader, John Home of Rentoun⁴ and Mr Alexander Lawder of Grinscharden Or any two of them to put him to an assize. 31 July 1633, Geo. Chancellor, Haddington, Glasgow, Annandale, Melville, Napier,⁵ Archibald Acheson, J. Hay.

fo. 61r. Jonet Oig in Balbuster⁶ within the parish of Wick, Agnes Sutherland spous to Henrie Bayne in Reishell⁷ Jhone Mcalaster Waten⁸ and Alaster Smith there 'long tyme bygane suspect and delate', also Murdoch Dow indweller in Forseward⁹ hes committed the abominable crime of incest with Marioun Mcky alias Ineanthomas vc ean and Margaret Mcky her sister as the depositionis and confessiouns seene and perused be the bishop of Caithnes within whose diocie the saids persounes dwelleth showin to the lords of our privie counsell beiris'.

¹ William Douglas, 6th earl of Morton.

² Sir John Hay of Barro, lord clerk register.

³ Ayton.

⁴ Possibly a mistake for Newton, near Hawick.

⁵ Archibald, 1st Lord Napier.

⁶ Bilbster.

⁷ Reiss.

⁸ Watten.

⁹ Forse near Wick.

Commission to Sir James Sinclar of Murkill,¹ Sheriff principal of Caithnes, William Innes shireff depute Angus Mcky of Bighous, Johne Sinclar of Ratter, Mr Johne Sinclar of Ulbster, Johne Cuninghame in Lowiskand and Jhone Innes of Thursetter or anie thrie to put them to an assize. Halyrudhous, 31 July 1633 Chancellor, Hadintoun, Glasgow, Hadintoun, Melvill, Naper, Arch. Achesoun, J. Hay.

fo. 64r. Katherine Nein Dan Gillechallum in Clynteredeluel² 'long tyme bygane suspect and delate'. Depositions seen and perused by the Bishop of Caithness. Commission to John Earl of Sutherland, Hew Gordon of Ballalone, Alexander Gordon of Golspitour Robert Murray of Spainyedaill, Robert Gray of Creich, Walter Murray of Pitgarner and Alexander Sutherland of Gormsavie Or any three of them to put her to an assize. 25 Sept. 1633, Haddington, Perth, Galloway, Annandale, Lauderdaile, Southesk,³ Melville.

fo. 64v. William Cock and Alesoun Dick his spous now prisoners in the tolbutth of Kirkaldie 'long tyme bygane suspect and delate' depositionis seene and perused be the Archbishop of St Andrewes and shawin to the lords of our privie counsell beiris'. Commission to Sir George Hamilton of Blackburne, James Clerke of Balbirnie, David Broun of Fynmont and baillies of our burgh of Kirkcaldie or anie three of thame one of the baillies of the said burgh being one, to put them to an assize. Edinburgh, 8 November 1633. Geo. Cancellor, Hadintoun, Wintoun, Perth, Annendaill, Lauderdaill, B. Arg[yll],⁴ Arch. Achesoun.

fo. 65r. Agnes Wilsoun relict of umquhill Johne Craig, Katherine Wilsoun spous to William Meines, Alesoun Wilsoun spous to Stevin Brodie, Agnes Alinschaw relict of umquill David Thomesoun and Elspitt Wilsoun within the parish of Eyemouth 'long tyme bygane suspect and delate' depositions and confessions seen and perused by the Archbishop of St Andrews. Commission to Sir John Home of Blaccader, John Home of Rentoun, John Ramsay of Edingstoun and Patrick Home of Westerstoun or any two of them to put them to an assize. 26 November 1633, Geo. Chancellor, Haddington, Winton, Annandale, Dumfries, Southesk, Traquair.

¹ Murkle near Thurso.

² Kintradwell.

³ David Carnegie, 1st earl of Southesk, formerly Lord Carnegie.

⁴ Andrew Boyd, bishop of Argyll.

fo. 68v. Issobell Sinclair in Haymonth¹ and Henry Hoggart creillman in Aiton² 'long tyme bygane suspect and delate ... depositions seen and perused by the Archbishop of Glasgow'. Commission to Sir John Home of Blaccader, John Ramsay of Edingstoun, Patrick Home of Westerstoun and Mr Alexander Lawder of Grinshrend[?] or any two of them. To put them to an assize. 14 January 1634, Geo. Chancellor, Haddington, Winton, Glasgow, Southesk, clerk register and advocate.³

fo. 71v. Angus McGillpatrick alias Kealdach in Bellon within the parish of Culmallie⁴ 'suspected and dilated guiltie' as the 'depositions seen and perused be the Bishop of Caithnes' and shown to the Privy Council bear. Commission to Robert Murray of Stranziedell, Walter Murray of Pitgundie, Hew Gordon of Bellon, Robert Gray of Creich, Alexander Gordon of Gelspitour and Alexander Smyland of Camsalbie or any three of them our justices in that part to put him to an assize 'Assyse needfull for that effect ilk person under the paine of fourtie punds'. Edinburgh, 19 February 1634, Morton, Hadinton, Glasgow, Wintoun, Perth, Annandaill, Elphinstoun.

fo. 77r. Margaret Nein Phaill in Clyne, Issobell Brokak in Culmalie and Margaret nein dan mhic Coull spous to Donald Bayne in Golspiemoir 'long tyme bygane suspect and delate' as the 'depositions seen and perused be the reverend father in God and shawin to the lords of our privie counsell beiris'. Commission to John Gordoun of Embo knight baronet, Hew Gordoun of Bellon,⁵ Robert Gray of Skibo, Robert Murray of Spanydaill, Walter Murray Pitgrundie, Robert Gray of Creich, Alexander Gordoun of Golspitour and Alexander Sutherland of Campsby 'or anie three of thame' to put them to an assize. Edinburgh, 7 May 1634, Hadintoun, Wintoun, Annandaill, Binning,⁶ Master of Elphinstoun,⁷ Sir Thomas Hop, James Baillie.

fo. 102r&v. Charles R. etc. forasmeikle as Anna Tait, alias Hononni, spous to William Jonston miller in Haddington being thrie several times

¹ Probably Eyemouth.

² Aytoun.

³ Sir John Hay, lord clerk register; Sir Thomas Hope, lord advocate.

⁴ Kilmalie in Dornoch Presbytery.

⁵ Possibly Belloan, Inverness-shire.

⁶ Thomas Hamilton, Lord Binning, later 2nd earl of Haddington.

⁷ Alexander, master of Elphinstone, later 5th Lord Elphinstone.

deprehendit putting violent hands in herself at her awne hous, she wes for that cause, upon the 18th of December, taken and committed to warde within the tolbutth of the said burgh where being demandit and exanimed [sic] why she patt handis to herself she answered that the intolerable trouble of her mynd, quhilk she conceived for the murder of her first husband callit John Coltart nolt driver, and of the murder of her daughter moved her thairto. confessing planelie that about 28 yeeres ago, she being married to the said John, ane aged man, and that before the mariage she had soundrie tymes comitted fornication with the said William Jonstoun, her present husband, and that within the tyme of the mariage she had lykeways comitted adulterie with him, and to be quyt of her first husband she consulted with the divell for the distruction of her said first husband, and that the divell haveing directed her to make a drink of oxtrie leaves, she did the same, and gave it to her husband to drinke who within thrie houres departed this lyffe, and concerning her daughter she confessed that she being with childe and she having a purpose to murder the infant in the motheris bellie, at last she consulted with the divell who gave her direction to buy wyne and to mix it with salt and give it to her daughter to drink quhilk she having drunken she shortlie therafter departed this lyffe and she farder confessed that upon the 8th of December instant; she had carnal copulation to the divell in her awne bed, and that upon the 11th of December the divell came to her bedside, gripped her be the hair of her head and did nip her cheike, whereof the mark may be seen as her depositions and confession under the hands of the minister and baillies of Haddington shawin to our counsell beiris. Wherefore, necessar it is that justice be ministrat upon her conforme to the lawis of our realme for quhilk purpose we have made the provost and baillies of our burgh of Hadinton or any twa or mae of them our justices in that part to the effect undirwritten Givand etc. Courts etc. And in the same the said Anna to call be dittay to accuse and to the knowledge of ane assisse to put and as she sall be fund culpable or innocent to cause justice be ministrat upon her conform to the to the lawis of our realme Assyse and Clerks etc. Sworne etc. Given at Edinburgh 30 December 1634 Sic Subscribitur Hadinton, Glasgow, Lauderdaill, Dumfries, Da. Edenb.¹ Binning, Naper, Hay.

fo. 105v. Bessie Johnston, 'sometyme in Huntliewood and now in Gordon² examined upon pregnant presumptions of witchcraft she hes

¹ David Lindsay, bishop of Edinburgh.

² Berwickshire.

frielle confessed her conversing with the divell her entering in paction with him, her renunceing of God and baptisme and giveing herself over saull and bodie to the divell. Item she hes confessed the killing of a woman in Dalkeith callit Margaret Moffat with foxtrie leaves¹ and hes confessed manie other divelish practises justlie deserving tryell and punischment as per depositions shawin to our Counsell beires.' Commission to Sir Alexander Nisbet of that ilk, James Cockburne of Rysa, Mr Olipher Sinclair, Shireff depute of Berwick or anie twa of tham to put her to an assize. Edinburgh, 26 February 1635. St Andrews (Chancellor),² Winton, Wigtown, Southesk, Napier.

fo. 120r. Margaret Rudge in May, Jonnet Foulis spous to William Gillick in May and Elspett Lyell in Gills 'dilated and suspect giltie'. Depositions seen and perused by John Bishop of Caithness and shown to the council. Commission to Sir James Sinclair, sheriff principall of Caithness, William James sheriff depute, Jhone James of Thursetter, Alexander Cogill of the ilk and Alexander Sutherland of Fenché or anie three of thame the Maister of Berriedaill being present to an assize. Edinburgh, 30 Sept. 1635, St Andrews Cancell. Hadintoun, Traquair, Lorne, Da. Edinburgh¹, J. Hay, Ja. Carmichael.³

fo. 132v. Margaret Ferguson in Keirs⁴ 'long time bygane suspect and delate guiltie ... dittayes given in agains her seen and perused by the most reverend father in god and our trustie counsellor Patrick Archbishop of Glasgow' and shown to the privy council. Commission to Sir Robert Greir of Lag, Sir John Charters of Amisfield, our sheriff of Dumfries and his deputes and the provost and Baillies of Dumfries or any three of them to put to an assize. Edinburgh, 22 March 1636, St Andrews, Glasgow, Hadintoun, Mar, Kinghorne,⁵ Southesk, Alexander [earl of Galloway?],⁶ Sir Thomas Hope. (Note—the commission below is a renewal of a commission against excommunicate papists in the shire of Dumfries, Lag and Charters are also on it.)

fo. 133v. Agnes Nein Donnald Kir in the parish of [] 'long time bygane suspect and delate guiltie' depositions 'seen and perused by by

¹ See also Isobel Haldane, Perth.

² John Spottiswood, archbishop of St Andrews.

³ Sir James Carmichael, lord justice clerk.

⁴ Keir.

⁵ John Lyon, 2nd earl of Kinghorn.

⁶ Alexander Stewart, 1st earl of Galloway.

the most reverend father in god and our trustie counsellor Jhone Bishop of Murray' and shown to the council. Commission to our sheriff of Inverness and his deutes and the provost and baillies of Inverness and Huchon Ros of Kilraock or anie tua of thame' to put her to an assize. Edinburgh, 31 March 1636, St Andrews, Glasgow, Hadintoun, Mar, Wintoun, Kinghorne, Southesk.

fo. 133v. Alesoun Ore in Innerkip 'long time bygane suspect and delate guiltie' depositions 'seen and perused by by the right reverend father in god and our wellbeloved counsellor Patrick Archbishop of Glasgow' and shown to the privy council. Commission to Bryce Sempill of Cathcart, sheriff and baillie principal of our sheriffdom of Renfrew and baillerie of Paisley and his deutes conjunctlie and severallie' to put her to an assize. Edinburgh, 31 March 1636, St Andrews, Glasgow, Hadintoun, Mar, Wintoun, Kinghorne, Southesk.

fo. 134r. Annie Bayne in Hallowdaile,¹ Donald McCheaniche in Strathie, Breadoche Oiseithe in [] William Thornar and Marie Neill McConeill his spouse 'long time bygane suspect and delate guiltie', depositions shown to the privy council. Commission to Master of Berriedaill, John McKy of Burrel, William Innes of Sandsyde, John Innes his sone and David Monro commisar of Caithnes or anie three of them to put them to an assize. Edinburgh, 31 March 1636, St Andrews, Glasgow, Hadintoun, Mar, Wintoun, Kinghorne, Southesk.

fo. 137r. Marion Patersone spous to David Simson cordiner in Dunbar, Margaret Lyell, spous to John Durie, wright, Erschin Carfra, Patrick Dyet, Margaret Duddingston his spous, and Agnes Bathcut all within the presbyterie of Dunbar 'suspect and delate guiltie'. Commission to Sir Archibald Douglas of Quhittinghame, Sir James Nicholsons of Kyllbrandspeth, James Hoppar of Bowrhous, Andrew Quhyte of Markill and the baillies of Dunbar or anie tua of thame' to examine thame upon the saids crimes and to receive and leade probatioun by witnesses or other wayes agains thame and to report the same to the saids Lords to the effect further order and direction may be given anent the persons as accords and if they find anie pregnant and cleere presumtiouns of the guiltines of the saids persons to committ thame to waird therein to remane till further order be given concerning thame'.

¹ Halladale.

Edinburgh, 16 June 1636, St Andrews, Traquair, Hadintoun, Da. Edinburgh, Roxburgh.

fo. 137v. John Rae in [] 'long time bygane suspect and delate guiltie', accusations seen by the Archbishop of Glasgow and shown to the privy council. Commission to the Sheriff of Dumfries and his deutes, Sir Robert Greir of Lag and Sir John Charters of Amisfield, the provost and baillies of Dumfries the said sheriff and Laird of Lag and Amisfield being always one to put him to an assize. Edinburgh, 22 July 1636, St Andrews, Glasgow, Hadintoun, Kinghorne, Roxburgh, Lauderdaill, Lorne.

fo. 140v. Marion Patersone spous to David Simson cordiner in Dunbar, Margaret Lyell, spous to John Durie, wright, 'long time bygane suspect and delate guiltie'. Commission to [] Douglas of Spot, the laird of Whittinghame, Sir James Nicholsons of Kyllbrandspeth, James Hopper of Bowrhous, Andrew Quhyte of Markill and the baillies of Dunbar or anie thrie of tham to put them to an assize. Edinburgh, 28 July 1636, St Andrews, Glasgow, Hadintoun, Winton, Jo. B. of Morray,¹ John Rossen,² Walter Brechnen.³

fo. 145v. Margaret Dow in Cultrage 'long time bygane suspect and delate guiltie', depositions shown to the privy council. Commission to John Monro of Linlaw, Ranald Bayne, provost of Dingwall, Robert Monro of Teamewar, Robert Gray portioner of Swordell,⁴ and Fergus Monro of Teamerd or anie twa of thame to put her to an assize. Edinburgh, 10 September 1636, St Andrews, Traquair, Hadinton, Mar, Perth, Roxburgh, Lauderdaill and Southesk.

fo. 146r. Magdalen Horn spous to Harie Dundas indweller in Thurso 'long time bygane suspect and delate guiltie', depositions shown to the privy council. Commission to Sir James Sinclair of Markill sheriff principall of Caithnes, John Sinclair of Dunbeth, William James of Handsale and [] Sinclair of Scrabster or anie twa of thame to put her to

¹ John Guthrie of Guthrie, bishop of Moray.

² John Maxwell, bishop of Ross.

³ Walter Whitford, bishop of Brechin.

⁴ Swordale.

an assize. Edinburgh, 8 September 1636, St Andrews, Hadintoun, Mar, Winton, Perth, Lauderdaill, Angus.¹

fo. 150r. Jonet McCubine in Glencarne 'delate and suspect guiltie', depositions 'seen and perused by the most reverend father in god Patrick Archbishop of Glasgow' and shown to the privy council. Commission to our sheriff of Dumfries and his deputes, Sir Robert Greir of Lag and Sir John Charters of Amisfield, and the provist and baillies of Dumfries or anie thrie of thame to put her to an assize. Edinburgh, 8 December 1636, St Andrews, Traquair, Glasgow, Winton, Dumfries,² Napier, Southesk, Binning.

fo. 151r. Margaret Nicoll, Jonet Jack and Margaret Livie within the parish of [...] long time bygane suspect and delate guiltie'. Commission to 'our sheriff of Banff and justices in that part' Edinburgh, 24 January 1637, Traquair, Glasgow, Wintoun, Angus, Binning, Thomas Galloway,³ to put them to an assize.

fo. 156v. Margaret Ros in [] 'long time bygane suspect and delate guiltie', depositions shown to the privy council. Commission to John Munro of Lunlaw, Hugh Ros of Towne, Walter Ross of Mainshe, and Andro Macculloch burgess of Tayne or anie twa of thame to put her to an assize. Edinburgh, 1 April 1637, St Andrews, Traquair, Mar, Dumfries, Southesk, Napier, Elphinston,⁴ Jo. Hamilton.⁵

fo. 160r. Donald McAndro moir, webster, 'delate guiltie ... depositions seene and perused be our trustie counsellor Jhone Bishop of Murray' and shown to the council. Commission to Mr Alexander McKeinzie of Culowy, Duncan Forbes of Culloden, Duncane Bayne of Logie, Mr James Campbell commisar of Inverness, and the provost of Inverness or anie thrie of thame. Edinburgh, 20 October 1637, Traquair, Wigtown, Lauderdale, Angus, A. M. of Elphinstoun, Sir W. Elphinstoun.⁶

fo. 187v. John Crods 'delate guiltie' as his 'confessions and depositions tane against him seene and perused by the presbiterie of Duncce and

¹ Archibald Douglas, earl of Angus, son of the 1st marquis of Douglas.

² William Crichton, 1st earl of Dumfries, formerly Viscount Ayr.

³ Thomas Sydserrff, bishop of Galloway.

⁴ Probably Alexander, master of Elphinstone, rather than his 87 year old father.

⁵ Sir John Hamilton of Orbiston, lord justice clerk.

⁶ Sir William Elphinstone, lord of session.

shown to the lords bears for which he is prisoner in the tolbutth of Duns. Commission to 'our sheriff of Berwick and his deputs Sir William Cockburne of Langtoun, [] Home of Aittoun and James Cockburne of Ryslaw ... or anie two of thame our said sheriff being ane' to put him to an assize. Edinburgh, 17 February 1642, Loudon cancellarius,¹ Argile, Glencarne,² Findlater,³ Sinclair,⁴ Burghlie,⁵ Hamiltoun, Dundas of that ilk,⁶ Grahame of Morphie.⁷

fo. 189r. Jeane Barbour, in the paroch of Tunland⁸ is 'delate guiltie ... as the depositions tane hereupon seene and perused be the presbyterie of Kirkcudbright shawn to the Lords of our privie councill beirs. Commission to 'our trustie counsellors John Viscount Kenmure,⁹ Thomas Lord Kirkcudbright, Alexander Gordon of Earlston, Johne Gordoun of Cardoness, and the provost of Kirkcudbright or anie twa of thame to put her to an assize. Edinburgh, 23 April 1642, Loudon (Chancellor), Argyll,¹⁰ Eglinton,¹¹ Lauderdale, Sinclair, Balcarres,¹² Clerk Register, Advocate, Treasurer Deput, Justice Clerk.

fo. 189r. 'Commission ... to the baillie of Kyleshew and the laird of Gatgirth the provest and baillies of Air or anie twa of thame for taking and trying of Bessie Whyt in Balcassie delate of witchecraft and to report to the counsell'. Edinburgh, 23 April 1642, Loudon (Chancellor), Argyll, Eglinton, Cassilis,¹³ Lauderdale, Balcarres, Advocate, Treasurer Deput, Justice Clerk.

¹ John Campbell, 1st earl of Loudoun.

² William Cunningham, 9th earl of Glencairn.

³ James Ogilvy, 1st earl of Findlater.

⁴ John, 7th Lord Sinclair.

⁵ Robert, 2nd Lord Balfour of Burleigh.

⁶ Sir George Dundas of Dundas.

⁷ Sir Robert Graham of Morphie, commissioner to parliament 1639-41.

⁸ Tongland.

⁹ John Gordon, 2nd viscount Kenmure.

¹⁰ Archibald Campbell, earl, later marquis of Argyll, the Lord Lorne mentioned above.

¹¹ Alexander Montgomerie, 6th earl of Eglinton.

¹² Alexander Lindsay, 1st earl of Balcarres.

¹³ John Kennedy, 6th earl of Cassillis.

Appendix

The trial of Anna Tait for witchcraft
in Haddington Burgh Court,
6 January 1634

Curia justitaria SDN Tenta in fore [pre]toris burgi de Hadintoun per honorabiles vires magistrum Jacobum Cockburne prepositum, Robertum Learmonth, Joannem Cokburne et Joannem Sleich ballives dicti burgi per commissionem dicti SDN regis commissionaries deputates ad effectum infra scriptum per literas dicti SDN regis dedita trigesimo die mensis Decembris anno domini 1634 tenta sexto die mensis Januari 1634 curia affirmata.¹

The quhilk day after the production and publict reading of our soverane letters and commissione givin under his hienes's caschot court signet and subscriptione manuall of his majesties secreit counsell, to wit of the earles of Hadingtoun, Lauderdaill, Drumfries, my lord Binning, Glasgow, Naper, J. Hay, Da. Edenb.² of the dait at Edinburgh the threttie day of december inst makand and constituand the saids provest and baillies of our burgh of Hadintoun or any twa of them or mare our said soverane lords justices in that part to the effect underwritten given and grantand and comittand to them his hienes full power auctoritie and commission expres bidding and charge court or courtis of justiciarie within the tolbutth of the said burgh, to sett, begin, affixt, hald and continow sutts, to mak be callit absentis, to amerciat, amerciament, unlawes and escheats of the saids courts, to ask, lift and raise and for the same, if need beis, to poynd and distrenyie and in the samen court or courtis. Anna Tait alias hononnie, spous to William Johnstone myllar in Hadingtoun to call be dittay to accuse and hir to the knalege of ane assyse be put and as scho sall happin to be found culpable or innocent of the crime of witchcraft and murder of hir first husband callit Johne Cauldtert and of the murder of hir daughter, to caus justice be ministrat upon hir conforme to the lawis of this realme. Assyss needfull for this effect, ilk persone under the pane of forty

¹ 'A justice court of our sovereign lord held in the tollbooth of the said burgh of Haddington by honourable men, Mr John Cockburn, provost, Robert Learmonth, John Cockburn and John Sleich, bailies of the said burgh, by a commission of our said sovereign lord commissioner deputed to the effect written below, by letter of our said sovereign lord given on the 30th day of Dec. 1634 held on the 6 Jan. 1634. The court has been fenced.'

² See above, p. 254.

poundis to sumond, warne, and caus be sworne clerks, servands, dempsters and all utheris officers and memberis of court needfull to mak weat, substitute and and executione for quhom they sall be haldin to answer as the saidis letters of commision at mair lenth beiris. Be vertew quherof the saids justices maid and creat Mr George Grey toun clerk of Hadingtoun, Patrick Buchanan officer, Mr William Sinclair dempster and Johne Wilkie notar procurator fiscal in this court and all uther wretis to be halden be them in the said matter ay and quhyll they by discharget, quha being personallie present, acceptand the saidis offices upon them gave their aithes for dew and lawfull administration therof.

Curia burgi de Hadingtoun ac justitiaria SDN regis tenta in pretoris eiusdem per honorabiles vires magistrum Jacobum Cockburne prepositum, Robertus Learmont, Joannem Cockburne et Joannem Sleich ballives dicti burgi justiciaries in hac parte per commissionem dicti SDN regis ad effectum subscriptum specialite constitutes sexto die mensum Januarii anno domini 1634 curia affirmata.¹

[fo. 25v.] The quhilk day Anna Tait alias hownnonnie² spous to William Johnstoun myller of the said burgh being delait and apprehendit and wardit within the tolbuith of this burgh entrit on pannell within theves windo³ therof and wes accuset of hir life of the maist odious abhominable and and devilish cryme of sorcerie suithsaying and enchantment invocation of devills consulting with the deid and familiar evill spirits and practiseing of divers sort of witchcraft to the great dishonor of the trew and ever living God, at lenthis contened in hir indittay, and scho being requirat and desyrit any persones to spek for her, answerit nane but god in heavin. Therefore the said justices put hir to ane assise.

Assyssa

William Dagleis in Deem

Thomas Sanderson in Myrside

James Neusome in Quhittinghame

Robert Henderson there

¹ 'Court of the burgh of Haddington as justices of our Sovereign Lord held in the same tolbuith by honourable men Mr John Cockburn, provost, Robert Learmonth, John Cockburn and John Sleich, bailies of the said burgh, justices in that part by commission of our said sovereign lord the king to the effect underwritten, specially constituted 6 Jan. 1634. The court has been fenced.'

² Spelling of names varies greatly in this manuscript.

³ A criminal trial would usually say 'entrit on pannell within the tolbuith' here; 'theves windo' is a conjecture of the two words found here.

William Wardlaw in Nungait
 Thomas Scheill in Sandiesdane
 George Hewatt in the Abbey
 George Edington there
 Andrew Smaill there
 Thomas Smaill there
 Thomas Dun there
 James Sibbald there
 Patrick Dewar there
 John Quhyte in Hadingtoun
 James Haistie there
 Jurati et admissi¹

The samen day comperit personallie in judgement John Wilkie, notar, procurator fiscall for our Soverane Lord his hienes entres, and accusit the said Anna Tait alias Hunenni for the abhominable and devilishe crimes also productet for indittay as followis:

Anna Tait alias Hownonne, ye ar accusit and indyttit for the maist odius, abhominable and devilishe crymes of sorcerie, sothsaying, inchanting, invocations of devillis and consulting with the deid, and similar evill spirettis and for practiseing of divers uthers kynds of witchcraftis, and for consulting with divers witches how to undo and wrak therof neighbors in their bodies, guds, and geir and bereaving them of their lyves, to the great dishonor of the trew and everliving God your Creator, quhom ye have wickedly forsaken and renunceit your baptime and covenant maid with him and randerit yourself in saull and bodie to the service of the devill and maid ane devillish covenant with him quho is the common and deidly enemie of man's salvation, quhilk ye have done against the expres law of God and in high contempt therof and of the allowable lawis of this kingdome.²

In takin whereof, ye have bein this long tyme bygane bein so trublit in conscienc[e] for this your devilish practises and feare of schame, if the samen should come to light and be reveallit that ye have oft and sundrie tymes attemptit to kyll yourself, sometimes be hanging yourself in your curch,³ somtymes be uther unlawfull meanes, and laitlie since ye came within the same tolbuith: both by putting a knife in

¹ Sworn and admitted.

² No evidence was led that Anna spoke to the dead or carried out soothsaying, so this seems to be a standard form of accusation (perhaps this is the general clause mentioned below).

³ A woman's curch was her cap or head-dress.

your own throat, wherby to have cut the same, if ye had not being preventit, and since your handis were bound and your feit maid fast in the stocks, no uther meanes being left to accomplish your devilishe designes, ye knocked your heid to the wall and stokkis, wherby thinking to dispatch your self. Lykas ye have sundrie tymes since your coming into ward vowit to kill yourself, which ye wald nevir have done, nor attemptit, but for feare of any more schamfull death, as ye thot for your abommable and devilish practises, as ye have also confessed since your coming to the said ward and quhilk ye cannot deny.

Farder ye are indyttit and accusit for your often and divers tymes being in companie and societie with the devill quho as ye confessed sometimes appeared to yow in the liknes of a wind, sometimes a blak man, as followis. He appeared to you in the likenes of a man oftymes, and in speciall laitlie upon moninday the aucht day of december last bypast, quhen he cam to your awin bed in this towne and there had carnall copulatione with yow.

2. And lykwyse, he appeared to you in the likeness of a wind,¹ and speciallie upon Thursday the ellevint day of December last bygane quhen coming to yow as said is in the likeness of a winde he took yow by the hair of your heid drawing yow therby and nipping your left cheike wherof as yet ye bear the mark and quhilk ye cannot deny.

3. Ye have also confessit that ye and he appointit to meit at Ellerslie² within a schort tyme and yit ye sould not die quhill he mett with yow first quhilk ye cannot deny.

Lykwyse ye are indyttit and accusit for the cruel, detestable, unnaturall, ungodly and inhumane murther and downe putting be your foresaid devillish and abommable practises of your umquhill first husband John Caltheard, nolt driver, quhom ye ware married in Furd kirk in England³ about twentie and aught yeirs syne, for having committit fornication with William Johnston, your present husband, long before your mariage to the said John and therby contractit such a familiaritie with him, that not onlie in the tyme of the mariage with the said John ye wald not refraine from his companie, but committed adulterie with him

¹ Fairies were commonly associated with whirlwinds. See the case of Alison Peirson: R. Pitcairn (ed.), *Ancient Criminal Trials in Scotland*, 3 vols. (Maitland Club, 1833), i, 161-4.

² Either Ellerslie in Dumfries or Elderslie in Renfrewshire. This seems to be a western rather than a Lothian place name.

³ Possibly one of the many places named Ford in England.

[fo. 26r.]¹ whereby also be the lawis both of God and this realme ye deserve death, and to enjoy him the more friely ye conceived a devillish and abhominable malice and hatred against the said Johne, your lawfull husband, and resolved be any meanes to dispatch him and to that effect, ye consulted with the devill how ye might get the same easiliest effectuat. Quha adviset and consellet yow to mak a drink of foxtrie leives and sum uther divillish ingredientis best known to yow and him, the composeris therof, and gave it to the said umquhill Johne quhilk devillish counsell and advyse ye did maliciously obey, and composed the drink and gave it to your umquhill husband, quho within three houris efter he had drunken it, died be the same devillish and venemous drink, and this ye did for no uther caus nor occasion offered unto your said husband, but onlie becaus he was aged and was ane impediment to your free enjoying of your present husband, who then dwelt in Wynram (or Mynram) neir by the part where your umquhill husband and ye dwelt, quhilk ye have already confessit and cannot deny.

Siklyk ye are indyttit and accused for the cruel and abhominable and ungodlie and unnatural murder and dounputting of your umquhill daughter Elizabeth Johnstoun, procreat bewteen yow and the said William in the forsaid adulterous marriage, and of ane young infant in hir wombe for the said Elizabeth, being as ye confessit with child (whom to few bot yourself knawis naither will ye reveill the truth of it), and appearandlie loath to let it be known to quhom the child belongit, scho and ye socht all meanes to kill to murther the child in hir bellie, that it micht not come to licht quho was the father therof, or how it was gotten quhidder in adulterie or incest, or quhat uther unlawfull way and to that effect ye consultit with divers of your confederatis anent fra quhom, ye gat sundrie feall counsellis and be advyse, administrat feall drinks to your dochter but these not doing your turne and all uther menaes failling yow, ye ged to your old maister the devill and consulted and advysed with him how to get the samen effectuat, whom being as cruelly and maliciously set as yourself gave yow advyse to buy ane mutching of quhyt wyne, and mix a pint therof with salt and minster the same unto your dochter, and it would do your turne. Quhilk cruell and divillish counsell ye willinglie obeyit and fetcht the wyne mixt with the same with salt and gave it to your dochter to drink. By quhilk scho presentlie swelled and schortlie thereafter both scho and the child died. In

¹ The foliation here jumps to fo. 26. There is a note claiming that fo. 25 is missing but the text follows on without interruption, so the clerk must have misnumbered the folios.

taiken quherof, ye have confessit that the devill gave yow as much money in trew and reall turnors as coft the said mutching of wyne and coft the salt, and this onlie deed of all the devilish and abhominable actions hes most troublit yow, and bein the greatest caus of your desyre to murder yourself. By the quhilk deidis of advyseeing and devysing with the devill and uthers his ministrat servandis, consulting with them and ministring of poysonable and divellish drinks and cruell and unnaturall murderis of your husband, dochter and infant, yow are guilty both by the law of god and the lawis of this realm and aucht to die the death.

Chancellor James Neilsone Quhittinghame

The samen day the hail assyse all in ane voce be the mouth of James Neilsone chancellare therof fyndis the said Agnes (Anna) Tait alias hownnonnie guiltie, and fyllis hir of the forsaidis abhominable cruell and unnaturall and devillish crymes of sorcerie, suthsaying, inchantment invocatioun of the devill and consulting with the deid and familiar and evill spirits and practising of divers kynds of witchcraftis and anent the consulting and advysing with the devill and his servands in the murdering of her unquhill first husband Johne Coltheard.

Item of the murdering of hir unquhill eldest dochter, Elizabeth Johnstoun, with hir bairn in hir bellie and of hir keeping companie with the devill the aucht and ellevint dayes of December last, and of his appearing to hir the saidis tymes, first in a blak man and the secundo a wind, and of hir attempting to kill herself by hanging of herself first in curcht and thereafter to have cut her own throat, since she was put in waird. In respect of hir own confession confessing the hail dittay givin in aginst hir except the generall clause quherof also they find hir guilty, albeit for the maist part she denyes the same. Thairfor the saidis justices ordanit lyk as it was given for doome be the mouth of William Sinclar dempster that the said Agnes (Anna) Tait sould be tane, hir handis bund behind hir back conveyed be William Allot, lockman of Hadington to the ordinar place of execution, and wirried to the death at ane post and thereafter his bodie to be brunt in ashes, desuper act.

John Hay, earl of Tweeddale
'RELATIONE OF THE WRANGS DONE TO THE LADIE
YESTER, 1683'

edited by Maurice Lee, Jr

INTRODUCTION

In the winter of 1679 John Hay, second earl and future first marquis of Tweeddale, was a most unhappy man. His fortunes, both personal and political, had hit rock-bottom. He had just been compelled to settle his immense and long-standing debt to the duke and duchess of Buccleuch and Monmouth on what he regarded as very unfavourable terms.¹ Politically he had always been ambitious, sufficiently so to be one of the few Scottish earls to sit in the parliaments of the Protectorate.² His political career had lain in ruins for five years; all his efforts to recover had been unavailing. He was not the sort of man to blame himself for his misfortunes; so, in picking up his pen in that doleful winter he allowed all his accumulated bitterness to flow out against the unholy trinity he held responsible: the great duke of Lauderdale, secretary of state for Scotland and royal satrap in that kingdom for over a decade, his duchess (and second wife), the fascinating Elizabeth Murray, countess of Dysart in her own right, and the duke's brother Charles Maitland, Lord Halton, master of the mint and treasurer-depute, whom Tweeddale accurately regarded as little better than a common thief. What Tweeddale then wrote, with additions made after Lauderdale's death in 1682, comprises the following document.³

¹ The debt had been outstanding for about forty years. The original loan had been £40,000 Scots; in the final settlement, dated 6 Mar. 1679, Tweeddale agreed to pay £62,400. By the time of the final payment in 1690, he had paid over £71,000. National Archives of Scotland [NAS], GD 924/41, 924/43, 924/44. For the full story see M. Lee, Jr., *The Heiresses of Buccleuch* (East Linton, 1996).

² See P. Pinckney, 'The Scottish representation in the Cromwellian parliament of 1656', *Scottish Historical Review* [SHR], xlvi (1967), 95-114.

³ National Library of Scotland [NLS], MS 14547, fos. 1-8. There are 12 pages of

Tweeddale and Lauderdale were first cousins, grandsons on their mothers' side of James VI's lord chancellor, Alexander Seton, first earl of Dunfermline. After the Restoration Lauderdale kept his cousin at arm's length: he had to secure himself in the king's favour, and Tweeddale's Cromwellian past did not commend itself to King Charles. Political circumstance drove them together, and Tweeddale's acquiescence in the Buccleuch marriage contract, which seriously infringed on his wife's property rights for the benefit of the duke of Monmouth, caused Charles to look on him much more favourably.¹ Tweeddale's political fortunes improved; he and Lauderdale became much closer, both personally and politically. The marriage of Lauderdale's only child, his daughter Mary, to Tweeddale's son and heir Lord Yester in December 1666 described at the beginning of this document seemingly sealed the alliance. Six months later Lauderdale became all-powerful in Scotland, and Tweeddale became his most important colleague in Edinburgh—the secretary remained at court because personal contact was the key to influence and power with King Charles, who detested paperwork and conducted business orally whenever possible. Letters flew back and forth between London and Edinburgh, the earls addressing each other as 'dearest brother' and often concluding, on Lauderdale's side, with news of Mary's and Yester's growing family—they lived with Mary's mother Lady Lauderdale in her house at Highgate, while the secretary spent most of his days and nights at Whitehall, where he had lodgings.

Tweeddale's political future depended entirely on his keeping Lauderdale's political support, a fact of which he seems not to have been fully aware. The tone of both this document and his earlier autobiography² suggests that he believed that he stood well with the

text, filling three folded-over sheets and part of a fourth. Each folded sheet makes four pages measuring 11" x 7 3/8". The title given above is written on the back of the last sheet. This is a fair copy of a rough draft, NLS, MS 3134, no. 119, the nature of which will be explained below. There are two Victorian transcriptions of the rough draft: NLS, MS 3177, fos. 53-78, and MS 14546, entire.

¹ In 1663 Monmouth married Anna Scott, countess of Buccleuch, who enjoyed an enormous estate. If Anna died childless the estate would go to her aunt Jean Scott, countess of Tweeddale, according to Anna's father's entail. The marriage contract shattered the entail: Monmouth would inherit if Anna died childless. The legality of the contract was very doubtful. See M. Lee, Jr., 'The Buccleuch marriage contract: an unknown episode in Scottish politics,' *Albion* xxv (1993), 395-418, and, more generally, Lee, *Heiresses of Buccleuch*.

² See John Hay, earl of Tweeddale, 'Autobiography, 1626-1670', ed. M. Lee, Jr., *Miscellany XII* (Scottish History Society, 1994).

king. This was a misconception. Charles never fully trusted anyone who had served the republican regimes; Tweeddale would be discarded if he lost favour with Lauderdale. Charles's awful year in Scotland in 1650-51 had soured him on the country and most of its inhabitants, but he made an exception for those who had followed him on the forlorn foray that ended at Worcester and suffered for it. Lauderdale was one of these; he had been captured there and spent the next nine years in English prisons. Unhappily for Tweeddale, his relations with Lauderdale began to sour by 1671. In this account he puts the blame on Elizabeth Murray, whose designs on Lauderdale's estate required the rupture of relations between the two men. By 1679 the duchess was a convenient target. Her arrogance and avarice had made her widely unpopular, and Tweeddale could paint himself and his family as injured innocents.

The truth of the matter was far more complex. By 1671 political strains had begun to develop. For one thing, Tweeddale was constantly complaining about overwork. Even when Sir Robert Moray, the close friend of both men—and of the king—was in Edinburgh Tweeddale felt overburdened. In apologising for misdating a letter he wrote that 'you may apprehend me near dotage, for I am sure I shall not hold long out at this rate of business'.¹ With Moray in London he often felt overwhelmed.² Lauderdale became increasingly impatient with the incessant complaints. There were important substantive issues as well. The failure of the negotiations for an Anglo-Scottish union, for which he held Lauderdale in some part responsible, greatly disappointed Tweeddale, its leading Scottish advocate.³ More serious was the difference of opinion over the reimposition of the customs farm in 1671. All Tweeddale says in this account is that the decision to put an end to direct collection was mistimed; he neglects to say that he vigorously opposed the decision on principle, and blamed Lauderdale for it. He had other less lofty reasons for supporting direct collection: the principal collectors were his agents, not Lauderdale's. The possibility that Tweeddale might be trying to build an independent political interest of his own would not commend itself to Lauderdale. In February 1671 the secretary wrote

¹ 23 June 1668, Tweeddale to Lauderdale, British Library [BL], Add. MS 23129, fo. 175.

² See, for example, his long, self-pitying account, written on 1 Oct. 1668, of what was on his plate when he learned that the king wanted Moray, who had recently gone to London, to stay there for the time being. NLS, MS 7024, fo. 121.

³ N.D., but probably 1672, Yester's memorandum, NLS, MS 14547, fos. 141-2.

an angry letter to Tweeddale, saying that Tweeddale knew that the king had always favoured farming and was not satisfied with the results of direct collection.¹ It is hardly surprising that Lauderdale concluded that his brother Halton, who was absolutely dependent on him, would be a more reliable agent. In that same month of February 1671 Halton became treasurer-depute, an office Tweeddale had wanted for himself when it became vacant.²

In this document Tweeddale blames the future duchess for having persuaded her besotted admirer that Halton, whom he had previously held in contempt, was fit for important public responsibilities. This is unfair: the office of treasurer-depute had been earmarked for Halton for a long time, and Tweeddale knew it.³ Office is not responsibility, however; Halton's predecessor in the office, William Bellenden, first Lord Bellenden of Broughton, had not been particularly influential. But Halton was, and on the whole the influence was bad. The years between 1667 and 1671 had seen a remarkable improvement in Scottish financial administration. In June 1667 King Charles kicked the lord treasurer, John Leslie, seventh earl of Rothes, who was lax and not especially honest, upstairs into the vacant lord chancellorship. A treasury commission replaced him; he served as its president, but real power lay with Tweeddale and (when he was in Scotland) Moray.⁴ Tweeddale's self-congratulatory account in this document is, by and large, accurate, though he might have mentioned that the end of the Dutch war in 1667 was a great boon to the Scottish economy.⁵ And he was certainly in error in referring to the general contentment of a nation, given a religious problem of the dimensions that faced King Charles's government. Throughout this document Tweeddale is silent on the religious issue. There is a disapproving mention of the Highland Host, but Tweeddale apparently included it so that he could charge the duchess of Lauderdale with a failed attempt at extortion.

¹ 21 Feb. 1671, Lauderdale to Tweeddale, NLS, MS 7023, fo. 264.

² See 31 Jan. 1671, Elizabeth Murray to the countess of Tweeddale, printed in D. Cripps, *Elizabeth of the Sealed Knot* (Kineton, 1975), 93-4.

³ 19 Oct. 1668, Halton to Lauderdale, BL, Add. MS 23130, fo. 74. 17 Nov., Lauderdale to Tweeddale, 'Lauderdale Letters', ed. H.M. Paton, *Miscellany VI* (Scottish History Society, 1939), 168-9.

⁴ The other members were Treasurer-depute Bellenden, whom Halton replaced in 1671, William, Lord Cochrane, later 1st earl of Dundonald, and, in 1668, Alexander Bruce, 2nd earl of Kincardine.

⁵ The only modern account of Scottish financial history in this period is R. Lennox, 'Lauderdale and Scotland: A Study in Restoration Politics and Administration, 1660-1682' (Ph.D., Columbia University, 1977).

If Halton's corruption and mismanagement were bad, what happened to Tweeddale's children was worse, at least for them. Lauderdale in effect stole his daughter's very substantial inheritance—her mother was very wealthy—at the behest of his venal new wife. The story Tweeddale tells here of the bond and the backbond is almost unbelievable: the dishonesty and hypocrisy of Lauderdale, and the gullibility of the whole Tweeddale family, are absolutely astonishing. Even after Lauderdale had seized the jewels his deceased wife had left to her daughter in order to adorn his new wife at their wedding, the Tweeddals, though uneasy, expected nothing much to change: Lauderdale had promised, after all, that his remarriage would not diminish his affection for his daughter and grandchildren.¹ In spite of their persisting political coolness it was hard for Tweeddale to credit that his 'dearest brother' had turned against him. He wrote Lauderdale a congratulatory note in May 1672 when the secretary got his dukedom, which doubtless was a wedding present of sorts: he had married Elizabeth Murray the previous February.² What opened Tweeddale's eyes was Lauderdale's decision to take his daughter to court in order to deprive her not only of her inheritance from her mother but also of most of what she could expect from his estate when he died. Lauderdale knew that he could not lose: the judges were dependent on him for their offices, and as long as he enjoyed the king's favour they would vote for him. And so, indeed, it turned out. Mary and Yester had to renounce everything Mary might expect from her mother's estate, except her mother's London houses, and from her father's except the £7,000 sterling to which she was entitled by her marriage contract if she and her children were not his heirs.³

Not only did Lauderdale do all he could to disinherit his daughter, he also broke with his grandchildren, of whom he had apparently been so fond. Lady Tweeddale, with whom they now lived, was bitter and

¹ 3 Feb. 1672, Yester to Tweeddale, NLS, MS 14403, fos. 62b-63. Tweeddale scribbled his draft of a reply on the empty part of this letter. Yester had gone to London on the news of Lady Lauderdale's death. He behaved rather stupidly in his discussions with Lauderdale. Both his parents berated him; see their letters of 16 Jan. 1672, NLS, MS 14413, fos. 12-13, 22-3.

² 9 May 1672, Lauderdale to Tweeddale, Paton, 'Lauderdale Letters,' 239-40. In his letter to Yester of 30 Jan. 1672 Tweeddale asked him to find out if the king knew that he and Lauderdale were not getting along very well. NLS, MS 14413, fos. 24-5.

³ NLS, MS 14548, fos. 102-3.

uncomprehending. 'I may assure you,' she wrote her husband in London on 18 April 1674, as Lauderdale's stay in Scotland neared its end, 'they [the grandchildren] see that person so seldom that they can receive no prejudice by example if it come not by nature.' And a few weeks later, 'I am astonished to think from whence all this hatred can come'.¹

Lauderdale's legal proceedings against his daughter began in the summer of 1672. Tweeddale knew Lauderdale's power and was reluctant to break with him publicly. He called on their mutual friend Moray to help patch things up, but in vain: Moray himself was not in good odour with the duke by this time.² So in 1673 Tweeddale broke openly with Lauderdale and joined the duke of Hamilton as a leader of the opposition in the session of parliament that began in November of that year.³ Lauderdale was caught by surprise and had to adjourn the parliament before it accomplished much of anything. But his enemies could not dislodge him: he controlled the flow of information to the king, who accepted his version of the Scottish situation. Tweeddale's cause was not furthered by the king's knowledge of his family quarrel with Lauderdale and his association with Shaftesbury, whom Charles dismissed as lord chancellor in November 1673. Nor did Lauderdale appreciate Tweeddale's attempt to gain some measure of financial revenge by pointing out to the king that Lauderdale was being overpaid as royal commissioner, an 'unpardonable crime' in Lauderdale's view.⁴ Lauderdale's revenge was swift. By June 1674 Tweeddale was dismissed as a privy councillor, as treasury commissioner, and as extraordinary lord of session. In January 1675 he and Yester lost their commissions in the militia. Tweeddale's political career was, for the time being, over.

On 17 November 1673, by what Tweeddale believed was by no means coincidence, the duke and duchess of Monmouth formally

¹ NLS, MS 14402, fos. 119-20, 144.

² John Patrick, 'The origins of the opposition to Lauderdale in the Scottish parliament of 1673', *SHR* liii (1974), 16-17. Alexander Robertson, *The Life of Sir Robert Moray* (London, 1922), 146. When Moray died suddenly in the following year, after a dinner with Lord Chancellor Shaftesbury, Lauderdale's reaction was callous in the extreme. He was not troubled by Moray's death, he wrote to Kincardine, 'but one use I shall make of it: I shall be very unwilling to dine with the Lord Chancellor, seeing his meat digests very ill'. *Ibid.*, 146-7.

³ The account in Patrick, 'Opposition', 1-21, of the formation of the coalition is excellent.

⁴ See below, pp. 290-1.

reopened their claim to the full amount of the debt that Tweeddale had owed to the Buccleuch estate for more than twenty years. The sum total, with accumulated interest, they said, was over £86,000. By this action they were repudiating a settlement reached 'upon very frivolous and untrue suggestions' during their minority, in 1667, when Tweeddale was in high favour at court, by which Tweeddale had agreed to pay £15,600.¹ The king had approved that agreement, and had promised that the Monmouths would ratify it when they came of age. Now the young couple, aged 24 and 22, refused to ratify, and the king supported them: his promise, he said, had been given on the basis of wrongful information. Tweeddale struggled desperately for a long time. He took his case to court, but the judges, predictably, were against him.² He repeatedly petitioned the king; he appealed to his niece, Duchess Anna of Buccleuch, who hated him, even to Lauderdale, and all in vain.³ After five and a half years he had to accept the terms the Buccleuchs were willing to offer—and, as he admitted in his last desperate appeal to Lauderdale, he did not have the money to pay. Lauderdale turned a deaf ear. Small wonder that in the winter of 1679 Tweeddale was a bitter man.

Tweeddale's bitterness was mixed with perplexity, however. There were definite indications that Lauderdale's grip on power was weakening. By the spring of 1679 his two closest allies in the king's inner circle were gone, the duke of York into retirement abroad, Lord Treasurer Danby to the Tower. Once again Lauderdale's enemies were preparing to appeal to the king to dismiss him, with the disaster of the Highland Host as Exhibit A. Tweeddale's perplexity arose from the fact that the increasingly embattled secretary might be prepared to be helpful in mitigating the draconian settlement with Monmouth, especially as his private circumstances were changing—or rather, the duchess's were. In the summer of 1677 the Lauderdale had gone to Scotland and stayed about a year—the duke's last visit, as it turned out. The main purpose of the trip was to arrange the marriages of the

¹ NAS, GD 224/924/44. NLS, MS 14544, fo. 58. Sir W. Fraser, *The Scotts of Buccleuch*, 2 vols., (Edinburgh, 1878), i, 435. The debt was calculated in 1667 as being £81,660; Tweeddale's two counterclaims against the estate, one for a piece of property, the other for his wife's share of the estate of her deceased brother David Scott, were allowed in the amount of £66,060. As was his habit, Tweeddale had paid no part of the £15,600.

² His legal case is summarised in NLS, MS 14544, fos. 73, 76-9.

³ NAS, GD 224/924/44; NLS, MS 14403, fo. 248; MS 14544, fos. 82-3; NAS, GD 224/173/2, fo. 10a.

duchess's daughters. Young Richard Maitland, Halton's son and heir, had flatly refused to marry her eldest; the marquis of Atholl, who had gotten his marquise only a year before, was stalling over the arrangements for the marriage of his son and heir with her second daughter, and the duchess was angry. One consequence was that for the first time since his quarrel with Tweeddale, Lauderdale visited his grandchildren. All the politicians in Scotland took notice, and wondered what it meant. 'His cajolling Yester's children' and his other moves were 'all mistries', wrote the duke of Hamilton to the marquis of Queensberry in August 1677.¹ The mystery is not far to seek: Halton was being warned. He might not be his brother's heir after all.

In her usual decisive way the duchess found husbands for her girls, and very satisfactory husbands indeed—Lauderdale provided the dowries.² By the turn of the year the younger daughter was married to the earl of Moray's heir, and in March 1678 the elder married Lord Lorne, Argyll's heir, a future duke. Ironically, Richard Maitland married Lorne's sister the following July; family gatherings must have been somewhat difficult. The marriages had political consequences. Moray and Lauderdale became close allies, and it was Moray who succeeded the duke when he finally resigned as secretary in 1680. Atholl broke with Lauderdale over the Highland Host. And relations between the duchess and her brother-in-law were never the same again. 'The Duchess's malice as to his birthright is still increasing', wrote Rothes to Queensberry in May 1679.³ Mary Yester's children might yet inherit her father's estates.

Tweeddale did not know what to do. The signals were decidedly mixed: at the same time as he was visiting his grandchildren Lauderdale began a suit against Tweeddale over the teinds of Pinkie.⁴ Tweeddale did not go south in the spring of 1678 with Hamilton and some others, including Atholl, to complain about the Highland Host. He offered equivocal support to Lauderdale in the convention of estates that summer, but left before the final vote was taken in order to join his wife and daughter at the spa at Scarborough. He rode over to

¹ Historical Manuscripts Commission [HMC], *Report on the MSS of the Duke of Buccleuch and Queensberry*, eds. Sir W. Fraser & W. Scott, 2 vols. (London, 1897-1903), i, 222-3.

² NLS, MS 14549, fo. 279.

³ M. Napier, *Memorials and Letters Illustrative of the Life and Times of John Graham of Claverhouse, Viscount Dundee*, 3 vols., i, (Edinburgh, 1859), 264-7.

⁴ NLS, MS 14548, fo. 183. See below, p. 295, n.3.

meet the duke and duchess at Boroughbridge on their way back to court and offered to accompany them; they civilly declined. But when Tweeddale got to court he found the king very chilly: Charles had been informed, obviously by Lauderdale, that Tweeddale had opposed him at the convention.¹ Lady Tweeddale, who loathed and mistrusted Lauderdale, nevertheless urged her husband to send his petition in the Monmouth business to the king through Lauderdale: it might get a better hearing that way. She also urged him to contemplate the uses of bribery.² Lauderdale did nothing for him; he had to swallow the disastrous settlement with Monmouth.

The frustrated earl returned from London at Christmas 1678. Apart from having his portrait painted he had accomplished nothing.³ Not only had Lauderdale been unhelpful in the Monmouth business, his suit for the teinds of Pinkie had succeeded and his agent Sir William Sharp was now collecting them.⁴ He had refused thus far to do anything in Tweeddale's legal controversy with his half-brother William Hay of Drumelzier. He and Rothes jointly had the gift of Drumelzier's ward and marriage; had he been willing to give or sell it to Yester or one of Yester's children, the leverage thus acquired would have been helpful in persuading Drumelzier to make a reasonable settlement.⁵ When Tweeddale got home he learned of Lauderdale's enemies' proposed new attack on him, to be made in conjunction with an expected assault in the English parliament.⁶ So Tweeddale prepared to join them by drawing up an account of his relations with the duke. But he was keeping his options open. Amid the preliminary scribblings for this document is the draft of a letter to

¹ 2 Sept. 1678, Rothes to Queensberry, Napier, *Memorials*, i, 371-3. See below, pp. 297-98.

² 29 Oct., 5, 12 Nov. 1678, Lady Tweeddale to Tweeddale, NLS, MS 14402, fos. 215, 219, 222.

³ See the letter of 17 Sept. 1678 from his daughter the countess of Roxburgh, NLS, MS 7008, fo. 154. She wanted him to get a painter to come north to paint her mother: there were no decent painters in Scotland, she said.

⁴ NLS, MS 14549, fos. 141-2. They were worth about £600 a year, NLS, MS 14548, fo. 211.

⁵ The dispute had to do with the extent to which Drumelzier was responsible for the large debt the first earl of Tweeddale left on his death in 1654, and Tweeddale's stewardship of the lands Drumelzier inherited from his mother. The dispute got to court in 1676; Tweeddale calculated that he owed Drumelzier some £3,673. In the end, by a decret arbitral in 1681, he was adjudged to owe almost ten times that much: 50,000 merks. The documents in this tangled affair are in NLS, MS 14482. See especially fos. 93-4, 160-1.

⁶ 19 Dec. 1678, Patrick Murray to Yester, NLS, MS 14414, fos. 45-6.

Lauderdale, dated 15 February 1679, asking that he allow Tweeddale to buy up Drumelzier's wardship, or give it to one of his grandchildren.¹

Tweeddale had originally planned to give an account of his relations with Lauderdale from 1660 on, with emphasis on all the favours he had done for the duke, and the support he had given him in the past, in order to underline Lauderdale's ingratitude. There is also an astonishing paragraph about his and his wife's misgivings about their son's marriage to Mary Maitland: she was far older than Yester, and they feared that her physical defects would prevent her having children. But Lauderdale who, Tweeddale hints, was desperate to find Mary a husband, talked the young man around by holding out the prospect of a glittering future at court. It was ugly and wounding, and one hopes that Yester and Mary never saw it.² Because Tweeddale decided not to use it; instead, he began with the straightforward statement about the marriage in the first two paragraphs below. The first sentence of the text can be found among the scribbles, tucked up in the margin of a top corner of a page.

Exactly when Tweeddale began writing his first draft is not clear. It is in his hand, with excisions, corrections, and additions in the margin. One of these is in Yester's hand, and others are copies from suggestions Yester made.³ Whenever he began, he was still at work in March 1679; on page 300 below he refers to Yester's journey to London in that month. Tweeddale himself set out for London in mid-April,⁴ taking the draft with him. It was finished in June—Yester is stated to have been in London three months, and the spacing of the words 'attend 3 months' suggests that Tweeddale left a gap for the number 3. He concluded with the passage later excised, given in the footnote on page 299, calling Lauderdale unfit not only to govern but even to live in civil society.

Why did Tweeddale write it? The logical explanation is that he wanted Hamilton and the other enemies of the Lauderdale administration who were on their way to lay their complaints before the king to make use of it. That was the purpose of his trip to London, which, wrote Yester on 29 March, his father could profitably undertake now that 'the great obstacle', i.e., Danby, was out of the

¹ NLS, MS 3134, no. 120, pp. 7-8.

² *Ibid.*, pp. 1-4, 9-11.

³ *Ibid.* At least one of Yester's suggestions was not included.

⁴ NLS, MS 7008, fo. 213.

way. 'There is disposition enough', he wrote three days later, 'if rightly managed, as your Lordship can best do'.¹ But it is not clear whether or not Tweeddale showed the document to Hamilton. If he did, Hamilton refused to use it: he was going to attack Lauderdale's government, not his private character—unsuccessfully, as it turned out. Lauderdale hung on, even though his policies provoked an open rebellion in June. But Tweeddale may not have used it at all. Lauderdale was being friendly again, and Tweeddale desperately wanted his help in the Monmouth business, in which Hamilton had refused to meddle.² Wherever the truth may lie, Tweeddale ostentatiously took no sides when the confrontation between the two dukes took place on 8 July.³ He was not even in London: at the beginning of that month he betook himself to Bath, where he spent the rest of the summer.

Tweeddale's neutrality did him no good. There was no help to be had with respect to his debt to Monmouth.⁴ Yester had gone south to discuss the Drumelzier wardship with Lauderdale. The duke entertained him at supper and was very friendly, but claimed that he could do nothing: he had left the matter in the hands of his Scottish agents, Rothes had an interest, etc., etc. In the end Drumelzier was allowed to buy his wardship himself for £200 sterling—Tweeddale irritably commented that he himself had been prepared to offer £500—and the possibility of Tweeddale's using the wardship to make a better bargain with his half-brother vanished.⁵ On the surface Lauderdale remained friendly, though the duchess was not;⁶

¹ NLS, MS 14403, fos. 210, 212.

² 15 May 1678, Hamilton to Tweeddale, NLS, MS 7008, fo. 129. It was clear that Hamilton would not change: he and his friends were counting on Monmouth's political allies, notably Shaftesbury, in their campaign against Lauderdale.

³ For this confrontation see W.C. Mackenzie, *The Life and Times of John Maitland, Duke of Lauderdale* (London, 1923), 471-4.

⁴ What Tweeddale was asking was, not the overturning of the settlement, but that Charles, who had guaranteed the earlier, much more favourable, settlement of 1667, might feel obliged, morally if not legally, to grant him financial help. See, e.g., his petition to the king in June 1682, NLS, MS 14407, fo. 83. The judges, predictably, had ruled that Charles had no legal obligation. NLS, MS 14544, fo. 58. No help was forthcoming, even after Monmouth's attainder and execution. Tweeddale finally gave up, sold his Peeblesshire estates to the duke of Queensberry, and began to pay.

⁵ 4 Mar. 1679, Andrew Foster to Tweeddale, 22 Mar., Archibald Murray to Tweeddale, 23 Mar., Tweeddale to Yester, NLS, MS 7008, fos. 193, 201, MS 14413, fos. 78-9. Drumelzier was served heir on 27 July 1679. *Calendar of State Papers, Domestic, 1679-80*, 209.

⁶ On 23 Sept. 1679 she wrote to Moray that Tweeddale and Yester were

Tweeddale judged that his best move would be to cultivate the duke of York, whom Charles for tactical reasons having mostly to do with English politics sent to Scotland in October 1679.¹ Tweeddale's was a sound decision; he was eventually readmitted to the privy council, though he received no office. Lauderdale had a stroke in 1680 and his grip was at last broken; in October he resigned as secretary and the new administration began to investigate Halton's malfeasance as treasurer-depute and master of the mint.

Lauderdale's duchess found her advantage in her new circumstances. Her increasingly feeble husband would do whatever she wished in the disposition of his estate. Halton was isolated and in deep trouble. So she turned the screws on him. Halton had been his brother's heir ever since the duke broke with his daughter in 1672. Now the duchess got her husband to sign an instrument granting his titles and estate to Yester's and Mary's second son.² With this in hand the duchess proceeded to bargain with Yester and Tweeddale, but her terms were so harsh that they were rejected—in addition to those mentioned in the document below she stipulated that the estate was to remain in the hands of a group of trustees dominated by herself, with the heir getting only £500 sterling a year, until all the duke's debts, estimated at over £13,000 sterling, were paid.³ So Halton succeeded to his brother's earldom (not the dukedom) and the heavily encumbered estate, which the duchess had carefully stripped of all its best assets, including the Maitlands' ancestral estate at Lethington, which the duke left to her eldest son, Lord Huntingtower.

Lauderdale died on 24 August 1682. Tweeddale and Yester immediately began to plan their countermoves: the duchess and the new earl of Lauderdale, they thought, were vulnerable in many directions. By the terms of Mary's and Yester's marriage contract the duke's estate owed Mary £7,000 sterling, since she and her heirs had not succeeded to her father's property: this much was undisputed. In

irreconcilable with her 'because they have done so much wrong' to her: Cripps, *Elizabeth*, 231-2.

¹ See Tweeddale's fulsome letter to York, written on 11 Nov. 1679 from London, regretting his inability to wait on the duke on his entry into Scotland, NLS, MS 14407, fo. 60. Gilbert Burnet, *History of His Own Time*, 2 vols. (Oxford, 1833), ii, 242-3, says that the idea of York's going to Scotland originated with Tweeddale, who conveyed it to Charles through the earl of Peterborough. If that was the case, it is surprising that Tweeddale did not mention it in this document.

² NLS, MS 14548, fo. 225.

³ The terms are in NLS, MS 14549, fos. 152-3.

1648 Lauderdale had drawn up a bond promising Mary £10,000 sterling on his death; Mary now assigned this to Tweeddale so that he, as a creditor of the estate, could attach the duke's moveables, which had been left to the duchess.¹ There was the question of Mary's mother's very valuable jewels—Mary had renounced them, to be sure, but the validity of the renunciation could be challenged. In addition to all these legal moves—there were many others²—the Tweeddals could appeal to the crown to right the wrongs they had suffered.

So Tweeddale resurrected his draft of 1679. He and Yester worked it over, amending and adding to the text. They excised the last few lines calling for Lauderdale's removal from office, picked up the account with Tweeddale's fruitless journey to London in the spring of 1679, and carried the story to Lauderdale's death. The revised document was entitled 'Relatione of the Wrangs done to the Ladie Yester,' with the date 1683 scribbled below, and a fair copy was made. This is the document reproduced here, along with Mary's petition to the king for redress (Appendix, below), of which we have no draft. Both are in the same hand, a hand tantalisingly like Tweeddale's, only far neater and with many different, Anglicised spellings—for example, 'estate' instead of 'estait' at the beginning of the second paragraph, and 'take' instead of 'taik'. Tweeddale might have been his own copyist.³

The revisions and the petition were in preparation in the latter part of 1682. Tweeddale's second son, David Hay, was already in London, badgering York in the Monmouth business, and, with a young man's zeal—he was 26—making a thorough nuisance of himself; York's patience was admirable.⁴ In his letter of 12 October David refers to something to be shown to York about the wrongs that Mary and her

¹ *Ibid.*, fos. 168-9, 202. It was convenient to do this because Lauderdale owed Tweeddale £2,000 plus interest from another transaction; Tweeddale could thus pursue both actions simultaneously. *Ibid.*, fos. 162-3.

² The legal manoeuvring, which on some matters was still going on in the reign of George II, can be followed (if not always understood) in all its tedious length in NLS, MSS 14549 and 14550.

³ I am inclined to think that the two documents might be in the same hand. My friend Dr Louise Yeoman, of the National Library of Scotland's manuscripts division, disagrees: she is 'pretty sure', she writes me (23 Aug. 1996) that they are not. She may well be right. It is an interesting question, but of no great importance. Mary's petition to the king is in NLS, MSS 14549, ff. 166-7.

⁴ David's letters to his father, running from July 1682 to Apr. 1683, are in NLS, MS 14405, fos. 6-125. He occasionally awoke to the fact that he was being importunate: see his letter of 9 Sept. 1682, *ibid.*, fo. 32.

children had suffered at the hands of the duchess of Lauderdale, 'that wicked woman', David called her.¹ It seems likely that Yester presented the documents in the summer of 1683; in August Tweeddale drafted a letter to the duke thanking him for his expressions of sympathy for the trouble the family had had 'by the inhumane dealing of the Duke & Duchess of Lauderdale'.² Sympathy was all the family got, however. Their misfortunes were not on anybody's priority list other than their own, as they should have realised when Tweeddale got nothing from the largesse available to the crown from Lauderdale's death and Halton's fall.³ Yester did the best he could. He appealed for help to the earl of Middleton, now joint secretary of state with Moray,⁴ to Lords Halifax and Ormond, all of whom were Tweeddale's friends.⁵ He spoke repeatedly to York, who was kind, and polite, and firm. The king, he said, would not interfere in private disputes.⁶

So, as Yester declared when he reported York's final statement on 30 October 1683, they had to go to law, which they did, with mixed success. Their planned public assault on the duchess's character never materialised, perhaps because in 1686 they made a bargain with her: they would receive the duke's very valuable library, much of which had belonged to Mary's mother, in return for acquiescence in the duchess's possession of the family jewels.⁷ They never got Mary's £10,000 sterling: the judges held that that bond was superseded by her marriage contract.⁸ Eventually they did get a favourable ruling on the teinds of Pinkie.⁹ All this at the sacrifice of much time and money. Of

¹ *Ibid.*, fo. 50. The quoted phrase is in David's letter of 16 Sept., *ibid.*, fo. 36.

² NLS, MS 7026, fo. 5.

³ The tale of Tweeddale's hopes and disappointments can be followed in David Hay's letters, see above, p. 278, n.3.

⁴ In September 1682 Charles, 2nd earl of Middleton, became joint secretary of state, residing in London while Moray remained in Edinburgh.

⁵ George Savile, 1st earl of Halifax; James Butler, 1st duke of Ormond.

⁶ 9, 25, 30 Oct., 1 Nov. 1683, Yester to Tweeddale, NLS, MS 14403, fos. 216, 220-2.

⁷ NLS, MS 14549, fos. 206, 207, 274. 6 Feb. 1686, Yester to Tweeddale, NLS, MS 14403, fos. 255-6. Mary had signed a formal renunciation of the jewellery in 1672—see above, pp. 270, 278 and below, p. 308—but the family had obtained a legal opinion that Mary's children could challenge the renunciation on the ground that they were the rightful owners of the jewels and Mary merely a trustee. NLS, MS 14549, fos. 185-6. The library was pawned, and put up for sale in 1689. 12 Aug. 1689, John Evelyn to Samuel Pepys, *Diary and Correspondence of John Evelyn*, 4 vols., ed. W. Bray (London, 1859), iii, 309.

⁸ NLS, MS 14550, fos. 20, 42.

⁹ NLS, MS 14548, fos. 186, 191; MS 14550, fos. 45, 60. Before this settlement was

all the principals in this (on the whole) sordid business the one entitled to the most sympathy is Mary: she lost most of her inheritance. Her father, her stepmother, her father-in-law were all greedy; so was her husband, and he was stupid to boot. 'The Wrangs done to the Ladie Yester' is indeed the best title for the melancholy story related below.

Acknowledgements

I am grateful to the National Library of Scotland for their kind permission to publish this document, and to its excellent staff, particularly Dr Louise Yeoman, for all their help. I owe the Library an apology, herewith extended, for my failure to acknowledge their courtesy in permitting me to publish Tweeddale's *Autobiography* in the previous volume of *Miscellany*. Dr Julian Goodare has been a model of editorial patience and advice. And without the help of my good friend and collaborator Michelle Witte Patient, who understands computers, this document would never have made it to the printed page. What would I do without her?

M.L., Jr.

reached there was an interesting proposal, which went nowhere, that Tweeddale might exchange Pinkie for Lethington with the duchess, with the latter paying the difference in value between the two estates. NLS, MS 14548, fos. 201-2.

The Duck of Lawdderdale & the Earle of Tweeddale being cousins by their mothers, & their interests neighbouring in the country, contracted an intimate friendship after the Kings Ma[jes]ties happy restoration, which grew into an alliance between them in the year 1666, The Earle of Tweeddales son marrying the Earle of Lawderdales only daughter, which Mariage the King honored with his presence, and an year after he was pleased to be Godfather to the eldest sone therof.¹

By their Contract of Mariage the Earle of Lawderdales Estate (being some years before settled upon his daughter) was provided to the second sone of the mariage, who was to take the name and Arms of the Earle of Lawdderdale, and upon the day of the Mariage he was pleased to express his satisfaction therewith to the Earle of Tweeddale and others present, and upon severall occasions thereafter in these terms, that having been once father to a very hopfull boy whom he loved dearly he thought himself so happy now in a good sone that he should never have missing of him, nor cause with grief to remember him more.²

*Ther past little more then a year when the Earle of Lawdderdale renewing his old acquaintance with the Countess of Dysert which upon some disgusts between them was worn out for several years, their friendship in a short time made so great a progress that he was more frequently with her then with his family; both for some time before & after she became a widow,*³ whereby a Jealousie was contracted, & at length heightened to that degree, that his Lady was willing to retire herself into France, being encouraged therunto by Sir Alex[ander] Fraser the Kings phisitian pretending the wells of Burban⁴ would be good for her, though neither he nor shee could tell

¹ The marriage took place on 11 Dec. 1666. The eldest son, who succeeded his father as 3rd marquis, was named Charles, after the king.

² There is no mention of this son in J. Balfour Paul (ed.), *The Scots Peerage*, 9 vols. (Edinburgh, 1904-14), and, so the present earl of Lauderdale informs me, no knowledge of the existence of such a child in the family.

³ In the first draft the italicized passage reads as follows (spelling modernized): 'A few years were not passed over but the Earl of Lauderdale falling in conceit again with the Countess of Dysart, an old acquaintance of his, the amour was so far carried on that she becoming a widow he was more frequently at Ham than Highgate.'

Yester had suggested this change; NLS, MS 3134, no. 120. Lady Dysart's husband, Sir Lionel Tollemache, died in France in Jan. 1669.

⁴ Sir Alexander Fraser had been the king's physician for many years and, according to Samuel Pepys, was popular at court because of his skill at dealing with venereal

for what, which Absence makeing way for a greater liberty of commerce *they grew so intimat, that she presuming upon that ascendant she found she had over him, began to lay designs wherof she gave the first tokens being at supper in my Lord Lawderdales lodgings in whithall with the Countess of Tweeddale, who had come to London at his desire to cary home hir gooddaughter and grandchildren, where young Halton was, by commending that youth highly. From that time (as appears by what followed thereafter) intending a match¹ between her eldest daughter² & him, with the succession to the Earle of Lawderdales Estate, and had the confidence soon after to project a journey into Scotland without any other occasions or interest there, then what this design gave collour too, and so wrought with the Earle of Lawderdale, that he began to intertain thoughts of bringing in his brother Hatton into affairs, a person so insufficient & unfit even in his own oppinion formerly that he thought him not worthie to be brought into the Session nor the asking of a pension for (but by the Earle of Tweeddales intercession with himself, he was brought into the one³ and with the King, he got the other of two hundred lib) but by the Countess of Dyserts mediation and upon this design he becoms fitt for the greatest employments, and at length is introduced into the sole administration of the Government of Scotland under his brother, as he had it under the King, the Chancelor and Archbishop being made use of as assasors to him in matters of State, and the president of the Session in things that concerned that*

disease and unwanted foetuses. R. Latham & W. Matthews, eds., *The Diary of Samuel Pepys*, 11 vols., v (London, 1971), 275. (Entry of 19 Sept. 1664.) The wells were those of Bourbonne-les-bains, in the foothills of the Vosges; the waters, like those of Bath, were for both drinking and bathing. Fraser had been trained in France, and evidently believed in their therapeutic powers; he had recommended them to Lady Dysart's husband as well. Cripps, *Elizabeth*, 70-1, 74-5.

¹ In the first draft the italicized passage reads as follows (spelling modernized):

'a more intimate friendship was contracted between them, in so far that the Countess of Tweeddale, being come to London upon the Earl of Lauderdale's earnest desire, to carry home her gooddaughter and grandchildren, the Countess of Dysart being at dinner with her and the Earl of Lauderdale with his nephew young Halton, she asked the Countess of Tweeddale if Mr. Lauder (for that name young Halton then carried) was not a well favored & proper young man, so falling in conceit with him from that time designed a match'.

The young man in question, then aged eighteen, was Richard Maitland, later 4th earl of Lauderdale.

² Elizabeth Tollemache

³ In June 1669.

Court,¹ which power & interest hath been so arbitrarily exercised by him, as the liberties, lives, & fortunes of the whole Kingdome depended more upon him and were more at his disposall, then ever they have upon any Commissioner or favorite, yea almost any of our Kings: for these seven years past,² for he giving what measures he pleased to his brother, had what he demanded from his Ma[jes]tie and so determined of all matters of State & greatest concerns in Councell & Session, according to his own will & pleasure.

But to make way to this so great change of Hatton's Station it was necessarie first to break friendship with the Earle of Tweeddale and to misrepresent him to the Kings Ma[jes]tie, that he might turn him out of his imployments, which the Earle of Lawderdale was pleased to say he brought him into and that he would leave him as he found him. This was first discovered to be set on foot the time of the treaty of the Union in 1670: the Earle of Lawderdale using at that time ane order of Redemption of his Estate from his daughter & grandchildren & resigning it in the Kings hands in favours of any he should thereafter name, which was caryed most privatly & with all secrecy possible, yet was discovered by the deceast Earle of Lothian who saw the Resignation made in the bedchamber by Sir William Sharp and told the Earle of Tweeddale therof.³ Then did the Earle of Lawderdale begin to speak slightly of the Earle of Tweeddale when he was not present calling him in all companies scornefully his Tutor, Ane Officer (as is well known) he could never want but the Earle of Tweeddale had no cause nor occasion to pretend to (except in so far as he governed the Earle of Lawderdales privat Affairs as one of his commissioners principally intrusted by him)⁴ for Sir Rob[er]t Murray [i.e. Moray] or the Earle of Tweeddale being for the most part at

¹ John Leslie, 7th earl of Rothes, was lord chancellor, James Sharp archbishop of St Andrews, and Sir John Gilmour president of the court of session. Sir James Dalrymple of Stair succeeded Gilmour in Jan. 1671.

² This phrase helps to date the drafting of the document: Halton became treasurer depute in 1671.

³ Sir William Kerr of Ancram, 3rd earl of Lothian, was a close confidant of Tweeddale's, with whom Tweeddale had shared his misgivings about Yester's marriage to Mary Maitland. NLS, MS 3134, no. 120. He died in October 1675. Sir William Sharp, the archbishop's brother, was Lauderdale's Edinburgh man of business. Lauderdale rewarded him with a lucrative treasury post. According to a memorandum of 1682 this transaction was formally completed in Apr. 1672, after Lauderdale's second marriage. NLS, MS 14549, fos. 219-20.

⁴ The phrase 'better than ever they have been since' is in the original draft, and omitted here.

London by turns the whole publick affairs were communicat to the King by the Earle of Lawderdale either of them being present, and was always represented by the Councill or Commissioners of the Thresaurie from Scotland and so manadged for 4 or 5 years as that Kingdome was never more quiet, all persons in place & interest better pleased, pensions paied, the Kings bygone debts taken course with, his precepts answered as Merchants bills of Exchange upon sight, at one time 10000 lib sterl[ing] being given amongst those who had eminently suffered for their Loyaltie in the time of the late Rebellion, & at several times considerable soumes of money layed up in the Castle of Edenbrough, a great Magazen of Arms & amunition bought & laid up there, and the Garisone provided for ane year, the Kings houses & Castells that were in a conditione of repairing and not quit[e] ruined, kept in good repair, a strong Militia settled, and trusted in the best hands for Loyaltie and interest and the Nation generally so contented as nothing was to be desyred but the continuance of that peace and tranquillity they enjoyed, which began to change when not only the persons intrusted but Methods of Government were altered, Halton having bought the Thresaurer deputs place in the year 1671: brought a verball warrant to the Commissioners of the Thresaurie to farme the Customs & forain excyse, which were in Collection,¹ at a time unusual and at which they could not be farmed without prejudice to the farme it self, and obstructing the lifting of the arre[a]rs of the Collection and what was resting of the former farm as did appear at the issue, yet caried he the farme to such as he had a mynd should have it, who being put to offer the worth thereof by the former Collectors, bidding frankly for it contrair to his expectation, he was forced to procure them ane considerable ease and abatement upon most frivolous & unwarrantable pretences. Then it was that illegall gifts were given of Considerable branches of his Ma[jes]ties Revenue, such as the gift of the imposition upon Brandie to the Lord Elphingston, Haltons good-sonne, whereby it came to be as good as licenced upon privat transactions with him to the great prejudice of his Ma[jes]ties customs and forain Excise upon wines.² And of the imposition upon Tobacco to Sir John Nickelson for part of the publick

¹ I.e., being paid in directly to the government.

² John, 8th Lord Elphinstone, married Halton's daughter Isabel Maitland in 1670. He became a privy councillor in 1676. He had the right to seize smuggled brandy, the import of which was prohibited. In effect he sold import licenses.

debts as was pretended,¹ but considerable snips were to be given therof to severall persons not concerned in the relief of publick debts. The preemption of salt to the Earle of Kingkarden² in which it is like he had partners, as also to him the gift of the wairds [i.e. wards] that should fall within such a limited time, a gift never granted befor but to the Chancelor³ & the Duck of Lawderdale & the most injurious to the King and Kingdome that could be devised, in which respect the Earle of Lawderdale was once at the Earle of Tweeddales persuasion moved to lay down his first gift⁴ it being for an unlimited time, yet it is now believed he hath the benefite of the same thing lifted to his behoofe by Sir W[illia]m Purves⁵ who has ane Comission for that effect, which gifts made a great deall of clamour amongst the people, highly prejudiciall to his revenue, and the means of support of the gover[n]ment, but had no other answer, but that his Ma[jes]tie had disposed thereof of certain knowledge and that he would not alter his resolution, expressing some displeasure ag[ains]t persons who had been misrepresented to him as the first movers theirot. In end those gifts came inevitable to be a pairt of the grievances of the next ensuing Session of parliament.⁶

But a year befor ane occasion of great misunderstanding between the Earle of Lawderdale and the Earle of Tweeddale and his sone had fallen out, the Countess of Lawderdale the year & a half after she

¹ Sir John Nicolson of Lasswade was lieutenant-colonel of the Edinburgh militia, of which Lauderdale was colonel. He was granted the imposition ostensibly to repay debts owed to his grandfather Sir William Dick of Braid, who had loaned money to various aristocrats in the 1640s. Tobacco was taxed to cancel these debts, originally contracted in order to raise a rebellion against the king's father. In 1673 Nicolson organized a syndicate which acquired the farm of the customs duties. Lennox, 'Lauderdale and Scotland,' 317.

² I.e., the farm of the excise on domestic salt. Throughout the text Kincardine's name is spelled Kingkarden.

³ Rothes.

⁴ The phrase 'much sooner than he needed' was in the first draft, and subsequently deleted.

⁵ Sir William Purves of Abbeyhill, a lawyer, became His Majesty's Solicitor for life in 1662, thanks to the favour of Lauderdale and Sir John Gilmour. He was something of a financial expert. See the biographical sketch in Sir William Purves, *Revenue of the Scottish Crown, 1681*, ed. D. Murray Rose (Edinburgh, 1847), pp. v-xxvi.

⁶ In 1673 parliament ended the levies on salt and tobacco and the prohibition of the importing of brandy. *Acts of the Parliament of Scotland*, [APS], viii, 210-12. There is an interesting discussion of these issues in Sir George Mackenzie, *Memoirs of the Affairs of Scotland* (Edinburgh, 1821), 241-6. See also Patrick, 'Origins', 17-18.

went over to Paris dying very suddenly¹ when she seemed to be in perfect health and had resolved to return into Scotland, was nevertheless so mindfull of her true Interest that in the presence of Marshall Shomberg² & Mons[ieu]r Cloud Minis[te]r of Sharington³ shee declared her latter will & bequeathed to her daughter the Lady Yester her whole jewells and all that shee could dispose of as her share of her & her Lords movable Estate excepting only a few inconsiderable legacies, and would needs depositat her jewells in the Lady Boghalls hands to be delivered to her daughter notwithstanding Marashall Shomberg offered to secure and keep them untill her daughter should send for them.⁴ *Mean while the Earle of Lawderdale upon the Notice of My Ladys sickness sent over Mr. Vas upon pretext to see her but certainly having privat instructions in case of her death to secure all of her papers, jewells & other things she had by her as appeared by what followed, for immediatly upon his arriving to Paris, which was after My Ladys Death he went about it which he would never have done of himself if he had not been so instructed but would have waited for new orders, which came shortly after with Mr Forrester⁵ who immediatly upon the news of her death was dispatched. This they soon effected by the interest my L[or]d Lawderdale had then got at the French Court upon the new alliance made with the King⁶ though against the Laws & customs of that Kingdom where the Scots as naturalized have power of making testaments and right to succeed to both reall & personall Estats, and*

¹ On 6 Dec. 1671.

² Frederick Herman, duke of Schomberg, was a professional soldier, now in French service and the captain of the Scots guards. A Huguenot, he later took service with William III and was killed at the Boyne.

³ Jean Claude, minister of Charenton, a well-known Protestant controversialist.

⁴ An inventory of the countess's jewellery placed its value at over £13,000 sterling, a substantial sum. NLS, MS 14548, fo. 84. I have not been able positively to identify Lady Boghall. The last person so identifiable in the *Scots Peerage* is Janet Brisbane, widow of James Fleming of Boghall. She would have been very old in 1671.

⁵ Sir Andrew Forrester was Lauderdale's secretary and the keeper of the registers of his official correspondence. Mary Maitland identified Patrick Vaus as one of Lauderdale's servants in her petition for the reduction of the renunciation of her right to her mother's moveables which her father had compelled her to make. NLS, MS 14549, fo. 170. A Patrick Vaus appears in the register of the privy council in 1672 as keeper of the Edinburgh tolbooth; this was, perhaps, his reward—if it is the same man.

⁶ The Anglo-French alliance was effected by the secret treaty of Dover in May 1670.

by My Lord Dumbartons¹ moyen which they made use of by giving him thereafter My Ladys coach & horses for his service therein, (besides it is here to be remarked that at the same time Mr. Vas had orders for providing this Dutchess of Lawderdales wedding cloaths² by the advice of Madmosell de Four My L[or]d Dumbartons Miss) and so by threats & other means they prevailed with the Lady Boghall to deliver all up to them was intrusted to her,³ and the Lord Yester being then at London whither he had gone to see his goodfather & condole his goodmothers death, he [i.e. Lauderdale] never acquainted him with any thing thereof, but kept him hinging upon him untill his Mariage was over, giving him some generall hopes that he would do him all right when he came into Scotland, where he & his Lady came soon after. But the first message his daughter had from him (who had been brought to bed of her third some two or three dayes befor)⁴ was a Citation to appear befor the judge ordinary to hear it found & declared that she had no right nor title to any of those jewells or movables of her mothers, they being affected with debts above the

¹ George Douglas, who became earl of Dumbarton in 1675, was commander of a Scottish regiment in French service.

² In reporting these purchases Hay of Drumelzier, who was in Paris, commented in a letter to Yester that 'it seems my L. Lauderdale intends that somebody shall rejoice, mourn who pleases'. NLS, MS 14414, fo. 15.

³ In the first draft the italicized passage reads as follows (spelling modernized): 'Meanwhile the E. Lauderdale employs a servant, one Mr. Waus (who had been sent over upon pretext to see my Lady before she died, but really to provide what was fitting & most fashionable for his second Lady her wedding clothes by the advice of the E. of Dumbarton's mis[tress], which wedding followed 3 months after), & to use means at the Court of France for getting the jewels into his hands as Mr. Fo[rre]ster was also sent over for the same end after his Lady's death who by my Lord Dumbarton's interest at the French Court & under the pretext of a law of that country whereby strangers cannot dispose of their moveables, though the Scots nation be excepted as being naturalized and accordingly have succeeded to estate(s) there, both real & personal, yet by virtue thereof & the means used, the jewels were got from the Lady Boghall, not without the using of some threats & promises of good deed.'

The new version is in Lord Yester's hand. He had originally proposed a somewhat longer version which included his allegation that Lauderdale intercepted his letters to France and his displeasure at seeing his mother-in-law's goods 'set up in Ham and in the possession of this Duchess'. NLS, MS 3134, no. 120. Drumelzier from Paris kept urging Yester to send instructions; they came too late, after Lady Boghall had surrendered the jewels and papers. 14 Jan. 1672, Drumelzier to Yester, NLS, MS 14414, fos. 11-12.

⁴ William, who became a soldier, rising to the rank of brigadier-general. He died in 1723.

value, which debt was to be made out in this maner. The Earle of Lawderdale having possessed his goodson with ane oppinion that if he should dye befor his Lady she might & would dispose of her jewells as she best pleased her without regard to her daughter, and might be preyed upon for that end by strangers and people about her did propose the securing against this hazard by his giving the L[or]d Yester ane bond of ten thousand lib which might affect the jewells and her share of the moveables, and that he would take a back bond from him that the value of the jewells & moveables should be imployed for the pay[men]t of his debts and the relief of his Estate, which bond & back-bond should be drawn in Scotland, his Lady being then at London half a year befor her going into France as accordingly they were drawn by the Kings Advocat Sr John Nisbet¹ and that clause cast in Makeing the Lord Yester Countable to the Duke of Lawderdale or any persone he should name, which back bond he caused the Lord Yester write over with his own hand that it might be the more secret as the bond was written be [i.e. by] his, Which papers being signed, when it came to the delivery of them, when the Lord Yester gave him the backbond in presence of his Father at Yester he pretended the bond was not upon him having shifted his Cloaths that morning, but that he would deliver it, & so put off[f] from time to time, notwithstanding it was often demanded by the Lord Yester, and now served to good purpose to affect the moveables and make the Lord Yester countable to the Lord Halton whose name he had filled in [the] Backbond for the 10000 lib. wherof he had the bond in his own custodie although he denyed the same to the countess of Tweeddale when she pationatly concerned in the danger therof to her sone & family, asked therfor & prest him either to deliver the bond or to give back the backbond which was only delivered in trust & related thereto.² By which horrid abuse in keeping both papers, *and the great influence he had upon all the Courts as was most notorious to the*

¹ Sir John Nisbet was lord advocate from 1664 until Lauderdale forced him out in 1677: he had made an enemy of Halton. James Kirkton, *The Secret and True History of the Church of Scotland* (Edinburgh, 1817), 381, alleges that he lost his position 'because he refused to lend the Lady Lauderdale money'.

² According to Yester's own account Lauderdale first made his suggestion in Jan. 1670; the exchange of bonds that did not happen took place in Sept. at Yester House, as Lauderdale was about to leave for London. It took Yester about a year to become suspicious: he was not very bright. NLS, MS 14547, fos. 141-2. MS 14549, fo. 138, indicates that the amount in Lauderdale's bond was 200,000 merks, or £13,333 sterling, more than in the back bond.

*Kingdome, and the apprehension they had that he might take occasion from their refuseall to change the intail which they then thought had been entire though indeed it was not the order of redemption having been used befor.*¹ The Lord Yester and his Lady were forced to submit the wholl matter to himself and put an ample Renunciation & discharge of all they could claim through his or his Ladys decease in his hand, which his daughter was so unwilling to subscribe as it had almost cost [i.e. cost] her her life, neither hath she ever been so well nor comed abroad since.² Upon the delivery of this discharge to himself he promised *in presence of Sir George Locart & Sir John Cuninghame*³ that his daughter should have a considerable share of all, and that the Bond & Backbond should be destroyed, or at least the Bond delivered, as also valueing himself upon his overreaching the Earle of Tweeddale & his goodson by their exuberant trust of him, he bragged what great matters he would do of his own good will to the President of the Session & advocat,⁴ whom he had formerly consulted about the L[or]d Yesters contract of Mariage, Complaining that their interest of the Moveables was not discharged & the portion excepted in satisfaction thereof, which at the time was never demanded nor comened upon and was as far from the Earle of Lauderdale's minde & purpose to demand as it would have been from the Earle of Tweeddale's to grant. But the performance of this promise was by the present of an Amethyst of 5 lib value and of a night gown worth 10 lib from the Dutchess of Lawderdale whereof the first was thrown away into the fire and the last not received, and the Backbond was kept up still though demanded upon every occasion by the L[or]d Yester & his Mother as afores[ai]d. But at length the Dutchess finding that she might now be concerned if Hatton's name were filled up in the backbond, as in truth it was, because the debt did affect all her Lords movables, and the Match between her Daughter & his son was quit[e] broke off,⁵ upon a process intended by the L[or]d Yester for exhibiting the s[ai]d papers wherin the Duke was to give

¹ Yester added the italicized passage in the margin of the original draft.

² Her health could not have been altogether destroyed: she lived until 1702.

³ Tweeddale added the names in the margin of the original draft. Sir George Lockhart and Sir John Cunningham were very prominent members of the Edinburgh legal establishment. Lockhart had been lord advocate during the Protectorate and was regarded as the best pleader of his time.

⁴ Sir James Dalrymple of Stair and Sir John Nisbet respectively.

⁵ See above, introduction, pp. 272-3. The bond and backbond were destroyed at Holyrood on 7 Aug. 1677. NLS, MS 14549, fo. 138.

his oath, the bond & Backbond was burned by the Duke of Lawderdale in presence of the Lord Yester (who then observed that Haltons name was filled up in the blank of the Backbond) and Sir Geo[rge] Lokart & others.

After the first adjournment of the third session of Parliament in which the Duke of Lawderdale was Comis[sione]r in Decemb[er] 1674 [1673] the Earle of Tweeddale went to London with the Duke of Hamilton to vindicat himself from the misrepresentations he knew had been made of him to the King. When he came the length of Berwick he found his letters from his sone (who had gone to London some weeks befor in order to the selling of ane interest he had by his Lady from her mother and Grandmother,¹ *which the Duke of Lawderdale had kept possession of and lifted the rents at least for three terms though he had not the least pretence of Interest so to do,*² & whereof he did also keep up all the writings untill the seall was perfitted to have frustrat the bargain if possible) were intercepted & sent back to be shown to his Ma[jes]tie as if some great design or plot had been to be discovered therby because he had made use of white ink & ane wafer³ least [i.e. lest] the Duke of Lawderdale should break them up as he had two year befor broke up letters of the Earle of Tweeddales & his Ladys going to France to Drumelliar⁴ to learn what had become of the Countess of Lawderdales jewells, which letters he had the confidence to own the breaking up of and show them to the Earle, saying he had the Kings warrant therfor, being then his Commis[sione]r. But in these letters of the L[or]d Yesters there being only found some expressions concerning the Duke of Lawderdale, Halton begged them of the King that he might show them to the Duke, as he did to provoke him the more against his goodson. Upon the

¹ Lauderdale's deceased wife had owned houses in London, including the one in Highgate where she and Lauderdale had lived before their breakup. Lauderdale turned them over to the Yesters in September 1672, after illegally collecting nine months' rent, neglecting repairs, and digging up the best fruit trees on the Highgate property to embellish Ham House. Yester was in the process of selling the other properties, in Aldersgate, which he did in 1674. NLS, MS 14547, fos. 145-6, 196-7.

² The italicized phrase is in the margin of the draft, in Tweeddale's hand. Yester had suggested a longer addition, adding 'kept up the writs much longer so that the L.Y. could not enter into possession for above a year after his goodmother died, which was of great prejudice to him'. Tweeddale evidently decided this was unnecessary. NLS, MS 3134, no. 120.

³ A copying error: 'cyfer' in the original.

⁴ Drumelzier's letters to Yester in the wake of Lady Lauderdale's death are in NLS, MS 14414, fos. 1-17.

Duke of Hamilton and the Earle of Tweeddales arrivall, the hurt & prejudice of these things complained of in parliament was made [to] appear fully & clearly to his Ma[jes]tie, by whose command most of them were rectified, and a surrender made of the gifts. But the abuses of the Mint being Haltons concern though fully cleared were onlie remitted to the Counsell.¹ The Duke of Hamilton returning to the next meeting of the Parliament, the Earle of Tweeddale to avoyd further misrepresentation of him stayed behind at Court, where the King commanding him to take the oath and Test and attend his councill as formerly, where the King was pleased to countenance a motion of his there that the Com[missione]rs for regulating tread [i.e. trade] between the Kingdoms might meet, & proceed to a finall settlement of that affair and command the said com[missione]rs to meet accordingly as they did, and after severall meetings adjusted all the particulars & were ready to have made a report when the Duke of Lawderdale returned from Scotland. But because as he said it had been done without him, which was a presumption to[o] great for the Earle of Tweeddale to undertake, nothing more has been heard thereof to this day. And till his return the Earle of Tweeddale was constantly called to by the King when any thing that concerned the thesaurie of Scotland was under consideration, he being one of the Com[mission]ers. And particularly anent the allowance to be given to his Comissioner, which had formerly been 50 lib a day during the Sitting of Parlia[men]t, and 10 lib a day the time of adjour[n]ments, as had been allowed to the Earle of Rothes for three years & to himself neer five years wherupon ane order was sent for retrenching his allowance 40 lib. sterl[ing] a day, wherwith he being surprised, imagining that during his being in Scotland his allowance should not have been lessened because the 10 lib had been allowed him whilst he was in England, was ready to apprehend the Earle of Tweeddale had occasioned this retrenchment, and reckoned it as an unpardonable cryme which made him implacable unto him ever therafter, and though he should have knowen, that my L[or]d Midlton & my Lord Rothes, were payed after the same maner and that it was stretch [i.e. stretch] enough for him to have 10 lib whilst he was in England attending as Secretary, being a titular Com[missione]r only to prevent the coming in of any other, and that it was the Earle of Tweeddales duety according to his trust & the oath he lay under in his service to

¹ For Halton's malversations at the mint see below, p. 305, n. 2.

represent it to the King.¹

Any other affairs of Importance the King was pleased to communicat to the Earle of Tweeddale being a privie Councillor and one of the extraordinarie Lords of the Session, as particularly ane letter which had been sent up by the Duke of Lawderdale to be superscribed be [i.e. by] the King concerning the Law[y]ers in the bussiness of Appeal,² wherin there being expressions that the King did hesitat upon, and after hearing the Earles oppinion which was agreable to the Kings own sense therof, he was pleased himself to order the altering of some expressions, the Earle of Kingkardin who then waited for my L[or]d Lawderdale not being willing to offer any amendment thereto, & belike when the letter was returned to the Duke with some expressions altered he could be ready enough to believe the Earle of Tweeddale had ane hand therein. And though the Earle of Tweeddales behaviour had every other way been such, as the King could not apprehend matters to be so ill between them, having often said to the Earle that he would have all misunderstanding removed upon the Dukes return, which he had understood by Sir Rob[er]t Murray & others to have been in their privat particulars, wherein the Earle had never in the least complained himself, but on the contrarie did not so much as provyde for his own securitie against the malicious & unjust misrepresentations he [i.e. Lauderdale] was then making of him and was to make at his comeing, and the Earle appeals to the Kings own knowledge if ever he said worse of the Duke of Lawderdale to him then [i.e. than] that it was neither for his Maj[es]ties service nor good for him that he should continue his

¹ Rothes was commissioner from 1663 to 1667. Middleton, his predecessor, had served from 1660 to 1663. Lauderdale's *per diems* mounted up: between September 1669 and April 1674, the end of the last parliament of Lauderdale's commissionership, his agent Sir William Sharp reported collecting £45,020 sterling, an average of well over £9,000 a year. Lennox, 'Lauderdale and Scotland', 412.

² James Livingstone, 1st earl of Callander, had unsuccessfully sued Lauderdale's (and Tweeddale's) cousin Alexander Seton, 3rd earl of Dunfermline, in the court of session. Sir George Lockhart, his advocate, advised him to appeal the decision to parliament. The case had political overtones, as Callander was Hamilton's son-in-law. On 19 May 1674 the king, at Lauderdale's urging, wrote the letter referred to, prohibiting such appeals. Lockhart and some other lawyers, including Sir John Cunningham, argued that parliament had specifically authorized appeals provided that there was no suspension of the court's judgment while the appeal was heard. They were suspended for their pains. In 1689 the Claim of Right declared that such appeals were legal. There is a long account of this business in Mackenzie, *Memoirs*, 267-310; he prints the king's letter on pp. 269-72. See also R.S. Rait, *The Parliaments of Scotland* (Glasgow, 1924), 474-7.

Ma[jes]ties Com[missione]r longer then 5 years, it being impossible for any man to continue in that Station 5 months and not give just cause of complaint against him, wherof his Ma[jes]tie being fully perswaded he gave assurance his Comission should continue no longer then his return, which the dissolution of the parlia[men]t by proclamation put a period to. Whither the Duke knew any thing of this is not certain, but if he did it was ground enough to provoke his revenge to the outmost, and as he followed it upon his arrivall.

Prevailing the very first week he came, with his Ma[jes]tie, to turn out of his counsell¹ in Scotland the Earles of Roxbrough,² Queenberrie³ and Tweeddale, My Lord Yester, and Lieutenant General Drummond,⁴ and the Earle of Tweeddale out of the Commission of the Thesaurie there, and from the Session where he was one of the extraordinarie Lords: and soon after from his counsell of England, whereof he had been for 5 years preceding,⁵ without assigning any cause for so doing nor allowing the Earle ane hearing with the Duke of Lawderdale for vindicating himself which the Earle does not presume to complain of as from the King, but to make it appear how hotly the Duke of Lawderdale did prosecute his revenge, which appeared in one circumstance, when he pressed the King to remove him from the board whilst he was sitting in Councell at Hampton Court, a thing to[o] rough for so benigne a Prince to yeild to. Nor did the Dutchess of Lawderdale spare to threaten that her Lord would goe to furder extremities with the Earle, that is imprisonment or worse, as doubtless was assayed if they could so far have prevailed on his Ma[jes]ties goodness. A month or two after the Earles return to Scotland, he & his sone who was then in France were put out of the Comissions for the Militia⁶ wherof they had been Collonells for the County of East Lothian. And upon the Lord Yesters return from Italie

¹ The reshuffling of the privy council took place in May and June 1674. *Register of the Privy Council of Scotland [RPC]* 3rd ser., iv, 186-92.

² William Kerr, 2nd earl of Roxburgh. His son Robert, the 3rd earl, would marry Tweeddale's daughter Margaret in 1675.

³ William Douglas, 3rd earl, later marquis and duke of Queensberry. His second son would marry Tweeddale's daughter Jean in 1693. See below, p. 299, n.2.

⁴ William Drummond, a professional soldier, a Worcester Scot who escaped from his English jailers. After a decade of service in Russia he returned to Scotland in 1665, where he earned a reputation as a fierce persecutor of rebels and an advocate of a standing army.

⁵ Tweeddale had become a member of the English privy council in June 1669. NLS, MS 14488, fo. 15.

⁶ In Jan. 1675. *RPC*, 3rd ser., iv, 333.

two years thereafter, the first welcome he had from the Duke of Lawderdale his goodfather was a citation of him and his Lady and their children being then 5 boys & two girls¹ before the Lords of Session to hear & see it declared that his Estate and fortune had been law[ful]ly redeemed from them, and themselves ordained to make a full resignation² of all title & interest they had therto, which process was followed with that violence, injustice & cruelty by the Dukes Brother Halton that even lands which the Earle of Tweeddale had bought 24 years before from the Earle of Lawderdale and had settled upon his sons were demanded to be renounced, and some other small interest which the Earle of Lawderdale could pretend no right to, to be included, and very hardly & with great difficulty were they got left out, and though a very full & ample Renunciation was offered, nothing would satisfy but a renunciation of their own drawing containing impertinent & dangerous clauses whereby the L[or]d Yesters, his Ladys, & his Children's right to seven thousand lib sterl. of additional portion payable upon the Earles decease out of his Estate, if the Children should be secluded from the succession therto, had almost been cut off, nor would Halton ever yield to an exception of that right out of the renunciation though the Estate was really burdened with that 7000 lib sterl. by the contract of Marriage, and that neither in law nor conscience their interest ought not to have been renounced without reservation of that right, yet the Lords having given³ their decreit with a Claus of reserving as accords of the Law of no avall, the Lord Yester and his Lady was charged with horning & caption taken out against them with a design to have got him outlawed & to have got the gift of his Escheat next Exchequer day, by which all his rents & moveables should have been forfeited to the donators use & behoof, & if he had stood out year & day his liferent. He & his Lady was forced in this manner to submit that Renunciation, & to make up & supply their own & their childrens securities of the 7000 lib. sterl. were necessitated to use an Inhibition against the Duke of Lawderdale to fix the soum upon his Estate which otherways was in his power to have defrauded them off [i.e. of] and was threat[en]ed by knowing persons about him.

The process & suit of law which the Duke and Dutchess of Monmouth had raised against the Earle of Tweeddale was doubtless

¹ Two sons failed to survive childhood.

² For this renunciation see NLS, MS 14547, fos. 141-2, MS 14549, fos. 107, 113-15.

³ This word was omitted in the copying.

encouraged & fomented by the Dutchess of Lawderdale, and the Kings allowance therof upon very sinistrous & undue suggestions of the Duke of Lawderdales procured, and the most considerable pay[me]nt in the s[ai]d process which was confessed by the best Law[y]ers to be *in apicibus juris*¹ determined by ane single Vot[e], which was the Lord Pittrichies,² the Duke of Lawderdales near Relation, being the last Vot[e] ever he gave in that house, dying the day after, and brought to the house that day only in a chair for that effect, when he was not in a condition to understand sense, as he never was to understand law, much less the poynt in question. And Drumeliar the Earles halfe brother was encouraged to enter in a pursuit with the s[ai]d Earle, & supported to continue therein these 8 years past which was not put to ane end but with great loss & damadge.³ And when the Duke of Lawderdale was last in Scotland the winter before the west country expedition, the Duke of Lawderdale himself awakened ane pursuit ag[ains]t the s[ai]d Earle for the teinds of Pinkie, which all men thought to have been desyerted upon the Earles producing of Tacks from the Abbots of Dumfermling befor the Reformation, wherof there was 2 liferents therof to run long befor any right the Duke of Lawderdale could pretend to, and ane other Tack from Queen Anna with consent of the King after the Reformation ratifying the former tack of the Abbot whose right is by many very judicious men & good law[y]ers thought to have been better then the Duke of Lawderdales though he had got a dec[ree]t a[gains]t my Lord Oxenfoord for his teinds of Causlon⁴ the s[ai]d Viscount producing ane tack from Queen Anna, which dec[ree]t had been only suffered to pass by his tutors & Curators for their securitie, the bussiness being transacted & compounded between the Duke of Lawderdales Com[missione]rs & them, in which transaction the Earle of Tweeddale was prin[cipal]ly instrumentall, though not in following the process & dec[ree]t which he knew to be most rigorous & hard. Yet the Duke being in Scotland & countenancing the pursuit by his own presence at the bar, speaking to the judges in so loftie & insolent

¹ Of a highly technical nature; according to the strict letter of the law: i.e., unfair.

² Sir Richard Maitland of Pittrichie, in Aberdeenshire, who became a lord of session in 1671. He died on 22 Feb. 1677.

³ In the original draft this phrase reads 'these 5 years past which is not yet at an end'. The 5 was written over to become 8; *is* becomes *was*; *yet*, *put*; *at*, *to*; and the phrase 'but with great loss and damadge' is added. The suit was settled in 1681.

⁴ Robert Makgill, 2nd Viscount Oxfuird. His secondary title was Lord Makgill of Cousland, which was in the lordship of Musselburgh.

a strain as would have seemed to over-aw justice, the Lords upon the first hearing found the accepting of a Tack from Queen Anna by Chancelor Seaton the Earles grandfather was a passing from the Abbots tack though it repeated & ratified the same & so decerned for the Duke ag[ains]t the Earle of Tweeddale, freeing the Earle from the bygon duties because of his right not determined befor possession therupon.¹ And as the Duke was coming out of the house one of the Lords, namely Craigie, justice Clerk,² advised the Duke of Lawderdale to insist for bygains the next day, & said he had as good right therto as to time comeing, which in some sense was true, but not as he meant, wherupon the Duke desireing to be heard next day upon that pairt of their sentence which related to bygons & after a short debat, they retreated that pairt of their sentence which related to bygons, finding that his bona fides was taken away by his being one of the Duke of Lawderdales com[missione]rs when the dec[ree]t against Oxenford was obtained, so the Earle was made lyable to 1000 lib. sterl. to the Duke in pay[men]t, whereof the Duke made difficulty to allow a debt of his own, which the Earle had payed being cau[tione]r in the Band, alledging he had given that Casualtie to his Lady, & had farmed his Estait for pay[men]t of his debts, whereof that was one, intending by some device or other to had [i.e. have] the Earle pay the soume decerned & frustrat him of the pay[men]t of the other, if he had yeilded to his demands, having ane implacable malice to him, & ane inveterat design to ruine his goodsone, his grandchildren

¹ Pinkie lay within the lordship of Musselburgh, which in turn had been part of the temporalities of the abbey of Dunfermline. When those temporalities were annexed to the crown in 1587, Musselburgh was excepted, and granted to Lord Chancellor Maitland, Lauderdale's grandfather. The Dunfermline temporalities became part of the jointure of James VI's queen, Anna of Denmark, who successfully maneuvered to recover Musselburgh: it was not to revert to the Maitlands until after her death. Meanwhile Lauderdale's other grandfather, Lord Chancellor Alexander Seton (also Tweeddale's grandfather) became hereditary bailie of the temporalities, and also earl of Dunfermline. He rebuilt Pinkie House, which he acquired in 1597. This property passed to Tweeddale in 1659 on account of the debt owed to him by the spendthrift 2nd earl of Dunfermline, his uncle. The lordship of Musselburgh was confirmed to Lauderdale in a parliamentary grant of 1661; see *APS*, vii, 131-4. In his legal argument Tweeddale relied heavily on the fact that the abbots had granted a tack of the teinds to the holder of Pinkie, which, he believed, gave him a better claim than Viscount Oxfuird had to the teinds of Cousland, since his tack dated only from the days of Queen Anna. The judges decided otherwise, in part because, as Tweeddale admits, he had supported Lauderdale's claim against Oxfuird.

² Sir Thomas Wallace of Craigie, a lord of session since 1671, became justice clerk in 1675.

& familie, which passion & humor he discovered at severall times, once he said there should never any that came of the Earle of Tweeddale enjoy a groat that belonged to him. Speaking once with the Bishop of Glasgow¹ of his [i.e. the bishop's] goodson Rorie Makenzie one of the Clerks of the Session² who when he was an advocat joined with the rest in the matter of appealls, whereof the Bishop complaining to the Duke, he said he had a goodson whom he would change with the Bishops with all his heart. And when any thing came befor Councill & Sessione wherein the Earle of Tweeddale & Lord Yester was concerned it was treated *by his brother Hatton as if they had been Turks & pagans & so likewise by Petrichie*,³ as once ane suspensioe being offered ag[ains]t the Earle & the Clerk offered to read the reasons thereof, Petrichie said, ye need not, I shall pas[s] it ag[ains]t him without questioning what reason there is for it. The Earle of Tweeddale having petitioned the Councill to have the Earle of Dunfermlings⁴ writs visited which was deposited in the Clerk of Counsell's hands that some writs which belonged to him unquestionable might be taken out from amongst them, he having privat use therefor, and producing ane former act of Councill bearing Dumfermlings consent therto & appoynting the thing to be done 5 or 6 year befor, onlie some of the persons being dead who were appoynted to visit the same, desired others might be named in their place, My Lord Halton stormed that application should be made be [i.e. by] the Earle of Tweeddale for any thing, though never so just, and said it could not be granted, & though it had been ordered some years befor, Then was then and now is now, there is change of Market dayes, & when the Earle of Erroll broke the entaile of his Estate he had made to the Earle of Tweeddales second sone, which he was encouraged to do by the Dukes declared enmity against the Earle of Tweeddale & his familie, upon the passing of the new resigna[ti]on of his Estate in favours of the person that succeeded him, the Duke of Lawderdale being present in Exchequer sayes, let me see it for I think

¹ Alexander Burnet, properly archbishop.

² Roderick Mackenzie of Prestonhall, the younger brother of Sir George Mackenzie of Tarbet, married the archbishop's daughter Mary in 1674. He was an advocate like his brother, became a clerk of session in 1678, and ultimately a lord of session in 1703.

³ In the first draft the italicized phrase reads 'by his brother Halton & Pittrichie as if they had been Turks & Pagans'.

⁴ Charles Seton, 2nd earl of Dunfermline.

it is not to David Hay as was expected,¹ and for the space of 5 years being for most part in Scotland, he never enquired for his daughter nor Grandchildren nor did so much as send any to see them though within 14 miles of them, & sometimes 3 miles, but two of them was sent sometimes to wait upon him whereby he was moved last year² to come 3 miles to see his daughter & the little ones that could not come to him. And in return of this visit, the Earle of Tweeddale, who was then at the wells of Scarbrough, with his sone the Lord Yester came to Barrowbridge at 40 miles distance to salute the Duke in his way to London,³ where the Dutches and the Earle discoursing of the journey he intended to London to kiss the Kings hands after 5 years absence, haveing his affair with the Duke of Monmouth to represent, that if possible the Kings Ma[jes]tie to whom that bussines had been formerly submitted and who had given his award therein could be prevailed with to put a stop to the pursuit & command his sentence as finall to be made good to the Earle of Tweeddale & his Lady, the Dutchess did insinuat some dissatisfaction with the Earles journey but did not directly diswade it, yet the Duke and she as it seems being displeased that any of the least insinuation of there dislike should not have determined the Earles purposes looked upon him when he came to Windsor worse then ever, & as they had been for the halfe year preceeding in visiting terms, & then all that was past between them was told & made up to the Earle's disadvantage, the Duke upon some occasions acting him mimically, though himself be the person living whose cariage & deportment makes him most obnoxious that way. And when the Earle had endeavoured to state himself as well with the King as possible [sic] he could, his Ma[jes]tie proposing to him that a better understanding might be between the Duke & him, & as it seems endeavouring it with the Duke, did so provoke his rage and fury thereby that he fell upon his old way of misrepresenting him, & most injuriously & unjustly charged him with all the opposition he had mett with in the late Convention, and that at length he had left the convention & gone to the wells, notwithstanding the Earle had not in one vot[e] differed with what the Com[missione]r desired, but in two Elections, the one debated between Sir John Cuningham & Blair, &

¹ Gilbert Hay, 11th earl of Erroll, died early in 1674, leaving no direct heirs. He had entailed his estate and the earldom to Tweeddale's second son, David Hay, and changed his mind. He named as his successor his second cousin John Hay, who, like him, was a great-grandson of Andrew Hay, the 8th earl.

² He paid this visit shortly after he arrived in the summer of 1677.

³ In Aug. 1678.

the other between Sir Francis Scot & Philiphaugh the Dutchess her Cousine,¹ who being Sherif of the Shire, gave advertismment onlie to such as he knew would be for him, so packing the meeting, returned himself chosen, nor did the Earle speak in the Convention but to that Commission, & the levieing of money to be imposed by quartering & the souldiers Locality, & having both voted to the soum imposed & maner of levieing it nothing was wanting in the act but the Comissioners names in the severall Counties but lifting & regulating therof, & his stay was no longer necessary, the season of the wells wearing off, and his Lady & his daughter² haveing stayed a fortnight for him, so takeing his leave of the Com[missione]r he had his pass promised him and left a servant to bring it after him, but upon some displeasure given the Duke that afternoon in the Convention, & that he might involve the Earle in any complaint he should make theirop, he would not give the pass he promised, and though he said nothing therof at Barrowbridge to him, yet at Windsor makes use of his Credit with the King to misrepresent him, and so far as he could to obstruct his getting a good answer in his affair with the Duke of Monmouth, and sent him home without doeing any thing therein so that the Earle was forced to come to a Communing by the determination of the President of the Session to whom 300 lib sterl[ing] was referred by the Lord Melvill,³ & to give bond for three thousand lib & the whole 300 lib being all determined against him to deliver himself of that plea, which had so long continued & it was a greater charge to the Duke then the double of what he got and as much to the Earle beside the soum payed.

¹ There were thirteen disputed elections in this convention; see *APS*, viii, 215-18, 220. Tweeddale's opposition was unsuccessful: James Murray of Philiphaugh, the duchess's cousin, was confirmed for Selkirkshire, and William Blair of that Ilk for Ayrshire on a technicality—he was the only representative of the shire. Blair's unsuccessful challengers, Sir John Cunningham and Sir John Cochrane, were to sit for Ayrshire in the parliament of 1681. Lauder of Fountainhall describes Tweeddale's opposition to Philiphaugh as 'vehement'. Sir John Lauder of Fountainhall, *Historical Observes of Memorable Occurrents in Church and State*, eds. A. Urquhart & D. Laing, (Bannatyne Club, 1840), 270.

² Probably Jean, the younger daughter, who was not yet married. In 1693 she married William Douglas, earl of March, the second son of the first Duke of Queensberry. Part of her jointure were the lands of Neidpath, which had been her parents' first home after their marriage in 1644. Tweeddale had sold the estate to Queensberry in order to pay his debt to the duchess of Buccleuch. See *Scots Peerage*, vii, 145-6.

³ George, 4th lord Melville, later 1st earl of Melville, was the husband of the duchess of Buccleuch's half-sister and the manager of the duchess's affairs in Scotland.

And Drumeliars Waird and Marriage was discovered to be fallen within the time of the Duke of Lawderdale & Chancelors gift of the wairds befor mentioned,¹ and that therby there was an opportunity offered of composeing that difference & debate between the Earle of Tweeddale & him, wherein the Earle of Tweeddale mett with a very hard measure & the rigour of Law in a count & reckoning wherein the Lords hes [sic] decerned interest upon interest turned in a prin[cipa]l soume at three periods of time for rents not payed, and for many other things questionable decerned sever[e]ly against him, and the Lord Yester being desireous to be preferred to the composition of his waird being willing to give as much & more then should be offered be him [i.e. by Drumelzier], made ane journey to London the 7 of March 1679² expresly about it and getting some encouragement did attend 3 months but at last without hearing him though the contrare was promised, Drumelliar is preferred by the Lady Dutchess to whom the Duke pretends he had given the disposall of it, to avoyd the reproach of so unnaturall, and so inhumane a thing as the refusing of his goodsone so small a favour, which might have delivered him of some trouble in this count & reckoning & preferring a stranger upon equall terms.³

In the beginning of Aprill 1679 the Earle of Tweeddale went to London and finding his sone Yester who had been there ane

¹ Above, p. 295, and intro, pp. 274, 276. Drumelzier was born in Dec. 1649. His mother, from whom he inherited the Drumelzier estates, which had been part of her jointure from Tweeddale's father, died in 1665, when Drumelzier was fifteen, and thus technically the king's ward. Lauderdale and Rothes had received a gift of all the wardships that fell due at that point; hence Tweeddale's need to deal with Lauderdale.

² In the draft the date is added above the line of text.

³ At this point the original draft continues and concludes as follows (spelling modernized):

after which and the foregoing instances of the Duke of Lauderdale's injustice and inhumanity, barbarity, & cruelty against his nearest relations & the only visible & avowed succession of his own blood & bowels without any other provocation imaginable upon the part of the earl of Tweeddale or his son Lord Yester than as is here related, he cannot be thought worthy to live in civil society, much less to have so great trust of his Majesty & the sole government of one of his Kingdoms at his & his brother's disposal, which hath been much after the same manner treated & abused as by the effects thereof is deplorably seen & felt & if he be not made an example of the King's displeasure & the Kingdom's resentments at least he deserves it more than any man ever did.

Tweeddale excised these lines in 1682, and added what follows, on separate sheets of paper.

moneth befor in much better terms with the Duke of Lawderdale then ever he had been since their breach of friendship he was perswaded by him befor he had seen the King to goe & salute the Duke of Lawderdale and kiss the Kings hands by his address, and so much the rather that at that time there being ane change made in the Kings Councell in England, and the Duke of Monmouth in great favour, Lawderdale began to apprehend himself in some hazard of being layed aside,¹ which advance of the Earle of Tweeddales took so much with the Duke of Lawderdale as he invited him to come to his house at Ham & caressed the Lord Yester dayly more & more. But the Duke of Hamilton & the Earle of Kingkardin coming up in the beginning of May, and making ane strick friendship with the Duke of Monmouth and the Marquis of Atholl² privie seall prevailed with the King to give them ane hearing in their grievances & maladministration of the government of Scotland by my Lord Lawderdale and those that was employed by him, especially in the last great instance therof of raising ane Highland Host which with the standing forces and the Militia of some shires makeing up an Army of []³ foot & horse with ane train of artillery,⁴ & marching into the west country which was at that time quiet & peacable & had offered all securitie for their peacable cariage in time coming, nevertheless that design of quartering amongst them these forces, was caried on to vindicat the Duke of Lawderdale of anie accession to that treatie which his Dutchess had for ane furder indulgence with the gentrie of these Countries, and to chastise them for their not complying with her demand of 10000 lib sterl[ing] to procure them the s[ai]d indulgence.⁵ And in order to this

¹ Charles reshuffled his English privy council in Apr. 1679, in part as a consequence of the Whig victory in the parliamentary election the previous Feb. Shaftesbury and the other leaders of the opposition were included. Hence Lauderdale's concern: he and the fallen Lord Treasurer Danby had been political allies. There were rumours that Monmouth might replace Lauderdale as commissioner; at least, the duchess of Lauderdale thought so. NLS, MS 14403, fo. 273.

² John Murray, 1st marquis of Atholl.

³ Blank in MS.

⁴ The size of the army was about 8,000. See J.R. Elder, *The Highland Host* (Aberdeen, 1914), 45-6.

⁵ There is no way of knowing how much truth there is to this story, though it was believable enough for Tweeddale to hope to use it against the duchess in the lawsuits that followed Lauderdale's death. NLS, MS 14549, fos. 206, 288-9. Mackenzie, *Memoirs*, 322, says that the story was 'industriously spread, both at London and Edinburgh, of great sums of money promised to [the] duchess by the fanaticks'. There was also a report that some supporters of the policy of indulgence offered Lauderdale £15,000 sterling if one were granted and secured by act of

hearing Sir Geo[rge] Lockart & Sir Jo[hn] Cuninghame being sent for on the part of the said Lords and the President Stairs & the Register Glendoog & the Advocat Sir Geo[rge] Mackenzie the Lord Hatton & My Lord Tarbet¹ (then in great favour with the Duke of Lawderdale) was sent for on the other part. After whose coming up *large papers were given in to the Kings Majestie containing the particular heads of complaint of the mal-administration of the government, but in the mean time*² the President Stairs & my Lord Tarbet entered in ane Capitulation for themselves, the first with the Duke of Monmouth for his own preservation, & Tarbet with the whole party, having so far recovered himself in the Kings favour that he made no question of the Duke of Lawderdales being layed aside and his succeeding in the Secretaries office and yet stood his ground so well with the Duke by the Dutchess means who had brought him in, that the Duke entertained discourse with him, about his succeeding him in his place and expressed himself well satisfied therewith, if he should be layed aside.³ Mean while the Rebellion in Scotland falling out, the Duke of Monmouth was dispatched immediatly to disperse the same, and in [blank] days went to Scotland, suppressed it, and returned again.⁴ And the Lords with their advocats having had severall hearings upon their papers, and debates by the Law[y]ers on both sides befor the King at Windsor, the issue wherof was ane act of indemnity to both parties, dureing these transactions which continued all the moneth of June & most part of July, the Earle of Tweeddale did abstract himself from meddling with either partie & being unconcerned went in the begining

parliament. Lauderdale 'greedily embraced' the suggestion, but could not decide how to effectuate it. Sir John Lauder of Fountainhall, *Historical Notices of Scottish Affairs...*, 1661-1688, 2 vols., ed. D. Laing (Bannatyne Club, 1848), i, 177-8. The bishops had not supported Lauderdale's covert negotiations with the dissenters; these went nowhere. By Oct. 1677 Lauderdale was reduced to denying that any indulgence had been intended. For a brief summary see J. Buckroyd, *Church and State in Scotland, 1660-1681* (Edinburgh, 1980), 122-6.

¹ Sir Thomas Murray of Glendoick might be called the Murray family lawyer; he had handled Lady Lauderdale's father's affairs on his death: Cripps, *Elizabeth*, 72. He served as clerk register from 1677 to 1681. His successor was Sir George Mackenzie of Tarbet, later 1st earl of Cromarty. The advocate was Sir George Mackenzie of Rosehaugh, later known, somewhat unfairly, as Bloody Mackenzie.

² In the original draft the italicized phrase was added in the margin.

³ Tarbet's ploy failed. The earl of Moray was Lauderdale's successor as secretary; see above, introduction, p. 273, and below, p. 303.

⁴ Monmouth left London on 15 June, arrived in Edinburgh on the 18th, fought the decisive battle of Bothwell Bridge on the 22nd, was back in Edinburgh before the end of the month, and left for London on 6 July.

of July to the Bath, & returned not to London untill the 29 of August, the King being then sick of an ague at Windsor and his Royall Highness¹ returned from Flanders, the Duke of Monmouth layed aside, & that Caball ag[ains]t the Duke of Lawderdale broke & he once more saved & preserved by his Royall Highness in regard to whose interest and the advancement of his concern the Earle of Tweeddale conceived it his duety to live in better termes with the Duke of Lawderdale, notwithstanding that his sone the Lord Yester had met with ane dissapointment in that affair of Drumeliars Waird at the Duke of Lawderdales disposall and whereof he had the assurance of preference from the Dutchess, yet she upon second thoughts had preferred Drummeliar as aforesaid, being loath to contribute any thing to the makeing up of her husbands friendship with his goodsone. And the Duke of Lawderdale perceaving the Earle of Tweeddale to be well stated in his Royall Highness favour was willing likewise to comply, and upon the Earle of Tweeddales comeing to Windsor did make him ane full account of all that had passed since he went to the Bath, how he had dissapoynted & overcom all his enimies & dupt the Duke of Monmouth especially in his Comission to command the forces in Scotland, and invited the said Earle kindly to dine with him, and so continued interchanging visits both at Windsor and London untill his Royall Highness going into Scotland, who endeavoured befor he parted to have made up ane good understanding between the Duke of Hamilton & the rest of the Lords, & the Duke of Lawderdale, but all his endeavours with the Duke of Lawderdale were frustrat by the Dutchess, to whom his Royall Highness condescended so far as to make her ane visite to sollicite her to deal with her Lord, but could by no means prevaill with her, she being scarce able to restraine her passion, when spoke to of it, not regarding the King & his Royall Highness service to which that good understanding might have so much contributed.

His Royall Highness comeing into Scotland the latter end of Novem[ber] 1679 and staying there till Aprill² did in that time fully discover the mal-administrations of the Duke of Lawderdale and those he entrusted especially of his brother Hatton, and upon his return to London the Duke of Lawderdale discovering his countenance changed towards him, sends for the Earle of Murray, & resigns his place of Sole Secretarie in his favours, reserving the Signet to himself, which

¹ James, duke of York.

² He returned in Feb. 1680, not Apr.; he had been in Scotland for 12 weeks.

he had fermed to Sir Will[iam] Sharp.

Whereupon the Lord Hatton & his sons finding themselves disappointed of succeeding him in that employment, began to be more earnest that their succession to his Estate might be secured, and ent[e]ring into ane treaty with my Lady about it, gave her so great cause of displeasure that the winter following, in the month of []¹ she perswads the Duke of Lawderdale to make ane new Disposition and resignation of his Estate in favours of his grandchildren wherin there were severall provisions in her favours, Restrictions, Limitations & conditions to be performed by the L[or]d Yester, that rendered the succession most hurtfull to the Lord Yester & the Earle of Tweeddals Familie. And yet not content to clog it with these only, she by her Confident my Lord Glendoig, caused intimat to the Earle of Tweeddale that this was only done in order to a treaty with him & his sone, the Lord Yester, for which effect it was her desire that Sir Pat[rick] Murray² might be sent up to London, to commune with her about them. But the Earle of Tweeddale being perswaded that there was nothing less meant, then the setling of the succession of her Lords fortoun upon his Grandchild, but that she made use of that feint, only to make the better bargain with Hatton & his son, would not at all listen to any such treaty, nor medle therewith, yet allowing his son to make the best of it he could, who according to her desire sends up Sir Pat[rick] Murray to London (who though he had been engaged in all the affairs against the Duke, being highly provoked therto) yet upon this occasion is well received & highly caressed, both by her & her Duke, of whom she had now the government as of a child. And his bussiness being to hear only what she had to propose, in conclusion she demands, besides the conditions contained in the Disposition & Resigna[ti]on already made, that the Lord Yester might prevaill with his father to dispone to her the Lands of Pinkie in inheritance to be disposed of at her pleasure, upon the setling of Lawderdales estate without reversion, and the sending up of his Grandchild to wait upon him, whom he intended by his power & moyen with the King to

¹ Left blank in the MS. The action was taken in the summer of 1681; Yester drafted a couple of obsequious thank-you letters, dated 6 Aug., to the duke and duchess before he learned of the duchess's terms. NLS, MS 14414, fo. 49.

² Sir Patrick Murray was an old friend and confidant of Tweeddale's; he had been collector-general of customs and foreign excise between 1668 and 1670, when Tweeddale in effect headed the treasury commission. Lennox, 'Lauderdale and Scotland', 316, n. 46. Recently he had been involved in Tweeddale's negotiations over his debt to the Buccleuch estate.

advance to ane title of ane Marquis, that of a Duke being only his for life, wherby it appeared it was her design to have a considerable part of my Lord Lawderdales Estate settled upon her free of all debt, and the Lands of Pinkie out of the Earle of Tweeddales Estate and ane discharge of the 7000 lib sterl. which Lawderdale was oblidge to pay, being the remainder of 12000 lib which was his Daughter[']s] tocher, due (upon his diverting the succession from her) at his decease; and to settle upon the youth the least half of the Duke of Lawderdales Estate with considerable debt, & with ane great title whereof he could never bear the Rank. And beside all this she designed to have secured to her self the whole moveable & personall Estate belonging to her Duck to the value of 50000 lib sterling, which he had disposed to her in the year 1678. Sir Pat[rick] Murray judging these demands unreasonable had not the confidence to make any return therto, but recommending that affair to a better consideration and her furdher thoughts, returned without saying he would return any answer thereto from my Lord Yester.

In July 1682 The Duke of Lawderdale becoming more infirm & decayed was at length reduced to that condition that the Dutchess thought fit to send for my L[or]d Glendoig (then turned out of the Registers place) and my L[or]d Hercus¹ to settle her Lords affairs, & making use of the low condition that my Lord Hatton was brought to, being turned out of all his publick employments & made debtor to the King for his malversations about the Mint² by ane Comission apoynted for tryall therof, in ane greater soum then the worth &

¹ Sir Roger Hog (or Hodge) or Harcarse was appointed to the court of session in Oct. 1681. He owed his preferment to a criminal justiceship in 1678 to Lady Lauderdale. Lauder of Fountainhall, *Historical Notices*, i, 435. His and Glendoick's presence at Ham House was noted by Bishop John Paterson of Edinburgh, who as late as 8 Aug. was speculating that Halton would not get Lauderdale's estate because the duke was so averse to such a settlement. J. Dunn (ed.), *Letters ... addressed ... to George, Earl of Aberdeen, Lord High Chancellor of Scotland, 1681-1684* (Spalding Club, 1851), 39-41, 43.

² Halton was deprived of his offices in Aug. 1682—the king's order was signed on the very day of Lauderdale's death—and the inquiry began. The principal charges against Halton and his second-in-command, Sir John Falconer, were that more copper had been coined than was authorized, that the coinage had been adulterated, and that Halton had pocketed profits that belonged to the crown. Falconer, on hearing of the indictment, 'dyed suddenly of heartbreak...though some averred he hanged himself in his stable'. The hearings before the court of session began in Jan. 1683, and wound up on 20 Mar. Halton, now earl of Lauderdale, was found guilty and fined £72,000 sterling, a figure eventually reduced to £20,000. See Lauder of Fountainhall, *Historical Notices*, i, 355-7, 373, 376, 397-407, 438-40.

value of his Estate, she found him and his sone sufficiently disposed to lay themselves down at her feet, and take any conditions she was pleased to give them; then, perswading her Lord to go to the wells of Tunbridge, she dealt with him to setle his affairs befor he went, having the opportunity of Glendoigs & Hercus being there, who were ready to part for Scotland, perswading him that if he were not fully satisfied with what he did, upon his return from the wells he might alter the same at his pleasure. Thus taking the advantage of the infirmity & unconstancy of her husband, she prevailed with him at that time to dispone the better half of his Estate, lying in Mid & East Lothian to her self, whereof the Lands of Lidington & Baronie of Bolton being the best & first foundation of the familie are disposed to my L[or]d Huntingtour¹ as her Trustie, intending to setle the fie [i.e. fee] therof upon her daughter my Lady Lorn[e], so leaving only to my L[or]d Hatton & his son the superioritie & teind dueties of Musselb[or]ough, whereof the title was questionable, & the forfeited Estate of Swinton,² whereof the title was likewise questionable, and the Lands in Lawderdale, not extending in the whole to 20000 lib Scots be [i.e. by] year, with the debt of 20000 lib sterl., and made my L[or]d Hatton and his sone signe ane Ratification of all the deeds done in her favours, with ane obligation to relieve her of all Debts in England & Scotland excepting onlie book debts or debts upon accounts which would affect the moveables and were estimat to 7000 lib sterl., and to free her and *warrant the dispositions of lands made to her & my Lord Huntingtour, and the disposition of moveables made to her self, at all hands,*³ which ratification & ample band of warrandice were subscribed by Hattons sone when the Duke of

¹ Lionel Tollemache, lord Huntingtower, was Lady Lauderdale's eldest son by her first husband. He succeeded her as 3rd earl of Dysart on her death in 1698.

² John Swinton, a radical Covenanter, had served in Cromwell's government in Scotland and enjoyed the use of part of Lauderdale's then-forfeited estates. He in turn was forfeited in 1660, and Lauderdale was granted his estates. He became a Quaker and died in 1679.

³ In the first draft the italicized passage reads as follows (spelling modernized): 'relieve her of all other debt & burden heritable & moveable which could affect her as executrix or the lands disposed to her & my Lord Huntingtower.'

There are also some minor changes of wording in the remaining text which in no way change the meaning. The italicized passage begins the final page of the copy. The copyist, whether Tweeddale or another, had begun this page 'relieve her...', etc.; having copied almost eight lines he stopped, and, leaving a space on the page, made a draft of the new version, of which he then made a clean copy. This page is in NLS, MS 3134, no. 120.

Lawderdale signed the Resignation of the remnant of his Estate in favours of his brother & Nephew, upon the 12 of Aug. 1682, being the Saturday befor he went to Tunbridge.¹ And the band was sent that night by ane express to Scotland, to be subscribed by the Lord Hatton. And being signed by him, & returned, the Resignation was made in the Kings hands the selfsame day the Duke of Lawderdale dyed, who next day after he had signed the Resignation, being Sunday, he went to the Church of Petersham,² not altogether unsupported, and on munday being the 14 to Tunbridge, where trying the waters two or three times befor wednesday come seventh-night after, and finding them not to do well with him, in regard of his decay, & the weak condition he was in, he was perswaded on thursday morning the 24 to take of the salt of Epsom to bring away the waters he had drunk, which working accordingly upon the old infirm man gave him a flux of blood, so violent that it had almost brought away his bowells, but dispatched him befor night with great pain and torment.

¹ On 15 Aug. John Drummond of Lundin, the future earl of Melfort, wrote to the marquis of Queensberry from London that 'Lauderdale's estate is settled on his brother for good and all, as I am informed. So all his relations here are as merry, as other people think, if they got justice, they would have reason to be sad'. HMC, Buccleuch and Queensberry, ii, 109.

² St. Peter's church, Petersham, was the parish church of Ham House.

APPENDIX

To the King's most excellent Majesty, The Petition of Mary Lady Yester, and John Lord Yester, for themselves, and in behalf of their Children.

That the deceast Duke of Lawderdale my father having maryed my Mother one of the two daughters of the Earle of Home, and Coheir with her sister of that Family, did get, and had with her, besides ane great Portion and Tocher, considerable and great soumes of Money, by the decease of her brother, the Earle of Home, without Issue, and upon composition and Transaction with the Heir male of that Family, and by the decease of the Countess of Home her Mother, both money, jewels, plate and other movabls of great value, all which as coming from them were by the Contract of Mariage between my Mother and him, provided to the bairns of the Mariage, and there being diverse Children of that Mariage, both male & female, and I being the only Child surviving and representing my father, and it being the Naturall desire of rationall men, to be represented by their own Offspring, and their daughters, and their children, failling heirs Male of their own body, which is so just and favourable by the Law of God, given to his people, and the laws of other nations that the greatest of Estates and Interests, do descend to daughters and their issue, failling Male children.

And upon the considerations forsaid the Duke of Lawderdale had that tender affection and respect to the petitioner his only daughter and Chyld, that as he had often promised to my Grandmother the Countess of Home, and to my Mother the Lady Lawderdale, that I should represent, and succeed him in his Estate, so, long befor my Mariage he did infest me in the same. And by my Contract of Mariage with the Lord Yester which Your Majesty was pleased to assist and honour with your Royall presence, he did again setle his whole Estate upon me his Daughter, and the Heirs of the Mariage, and ten thousand lib Scots of yearly annuity out therof upon the Lord Yester my husband, during his life in case of his surviving me, in satisfaction of the Courtisie due to him by law; reserving and saving to himself, a power to redeem the same, upon the payment of a small soum; which is ane ordinary clause, and Caution in Contract of Mariage, not to impose upon & frustrat these who doe mary Daughters of Familys, but to be a tye upon Daughters & their husbands & Children to be

Duetifull.

God having blessed my husband and me with a numerous progeny of five sons and two daughters, it is well known what a fatherly affection the said Duke had to us, untill unfortunatly his friendship with the countess of Dysart, giving occasion of discontent to his Lady, She went to France, where dying, and by her will bequeathing, all her Jewells, and plate, and what els she had to me and my Children, the Duke of Lawderdale was by the said Countesses insinuations and perswasions, upon the prospect of their ensuing Mariage prevailed with, to use Moyes with the French King to seise upon all my Mothers papers, Jewells, and moveables, as belonging to a stranger (notwithstanding of the priviledge of the Scottish Nation in that Kingdom) and so he got all in his hands particularly these papers and bonds he had given to my Mother for securing his whole Estate to me their only Chyld, and put them in the hands of the Countess of Dysart, whom he maryed a few weeks after my Mothers Death.

After this Mariage the Duke of Lawderdale coming into Scotland in the Quality of Your Majesties Commissioner; the now Dutchess of Lawderdale did prevail with him, to sue me and my husband at Law to renunce our interest in his and my Mothers movables, plate, and Jewells, and compelled us to signe such a renunciation therof as she the said Dutchess had contrived upon a verball assurance, that he would do as much willingly as could have fallen to us by my mothers will and Testament. But the Dutchess having once got this Renunciation & by her cunning practices and pernicious Councells for promotting her covetous designs, first kept her husband from performing any part of his promise, and then that she might have all his Estate in her power, she projected a mariage betwixt his Nephew and her daughter, and caused him redeem the Estate from me and my second sone.

But she being in that Match disappointed, her next project was to get all to her self, and in a few years as the Duke grew aged, and infirm, she came to have the absolute disposall both of him and his fortune, and therby to treat and make what conditions she pleased theranent. And first she caused him dispone all his moveables and personall Estate to herself, then because the Mariage betwixt his nephew and her daughter had not taken effect, she caused him alter the Entaill of his Estate he made to his brother when that Match was designed; and again resign both it and his Titles in favoure of my second sone; and having done this she then offered to treat with my husband to secure that last settlement; But the Conditions proposed by

her, were so sordid and shameless, and so advantagious for her self without regard to the Dukes family or memory, that he would never hearken to them.

This not succeeding she turns her self again to his brother and Nephew, who were forced to yeild to any thing she demanded, least they should be dissapoynted and she take it all, and obtaine for her self, from her husband a disposition of the greatest, and best secured part of his Estate, and the oldest Inheritance and principall seat of his Family, and then causes him a few days befor his death make a new resignation in their favours of his Title, and what remained of his reall fortune, but That so burdened and upon such hard conditions, as cannot be performed, without ruining the family.

By which practices Your Majesty may evidently perceive the indirect Methods used by the Dutchess of Lawderdale to frustrat me, not only of the succession falling to me by the law of Nature, but also due to me by consent and Contract, and albeit my Contract of Mariage, gave him a right to redeem, yet he was fixedly resolved, and faithfully promised to his first Lady my Mother, never to alter that settlement saving in the case of Male issue of his own body; But resolutions and promises were not of proof and force sufficient, against her cunning avarice meeting with his declining age, by which she hath absolutly ruined his memory, and sett up ane emptie title obnoxious to all the debts and incumberances of the family. And albeit she was provided to a liferent, far above what any Lady in Scotland hath, yet she hath enhansed [engrossed] all his moveables in Scotland and England of a very great and considerable Value and all his free Estate; And the residue thereof designed for the Heir is hardly sufficient to defray the debts whoever succeed therto; And not satisfied with the ruin of the duke her husbands family, she hath done all she could to wrong and prejudice me, my husband, and Children by debarring my succession which of right appertained to me, and embazelling a considerable Estate, in jewells, plate, and other Chattells, which belonged to my Mother and Grandmother, and destroying severall bonds granted to me, and lying by my Mother for my security in that succession.

May it therfor please Your Sacred Majestie to take notice of these practices, not only as disgracefull and destructive to the Family which Your Majesty was pleased so much to honour, and advance, in the person of the Late Duke my father; But to the dangerous consequence and bad example of such methods, which tend to the ruine and destructione of Noble familys; That by immoderat and profuse

Donations such Ladys may not herafter have countenance and encouragment to prey upon the Infirmities of old age, and elicite from their husbands by collours of Law, exorbitant deeds and pretensions of rights to the ruine and destruction of Ancient Familys. And that Your Majesty being the fountain of authority and Justice whence help and remedies are always issuing and conveyed for redress and relief to any of Your subjects that are grieved and oppressed, and which with great confidence is implored and expected by your petitioners, who are the only Offspring and Representatives of your Late servant the Duke of Lawderdale, from your innate Good and Royall clemency, may be pleased to take such Course, that upon Your Majesties gracious interposing and Arbitration wherunto your petitioners are willing to submit their interests and Claims, your petitioners may be relieved, and such practices may be for the future discouraged and prevented, and that the World may see and history may record to posterity, how happy the people are, who live under the protection and government, of so Benigne and gracious a Sovereigne. And Your petitioners shall ever pray.

COLIN MACLAURIN'S JOURNAL OF THE 'FORTY-FIVE

edited by Bruce A. Hedman

INTRODUCTION

Colin Maclaurin (1698-1746) was Scotland's most brilliant mathematician in the eighteenth century. He occupied the chair of mathematics of the University of Edinburgh, and was an eyewitness to the events leading to that city's surrender to the Jacobite army in 1745. He compiled a journal of these events, which apparently was preserved in a file of evidence prepared for the trial of Lord Provost Archibald Stewart for treason after the rebellion. Maclaurin was a leader of the Hanoverian sympathizers who attempted to prepare Edinburgh to resist the Jacobites. This edition publishes for the first time the complete text of Maclaurin's *Journal of the 'Forty-five*.

Maclaurin's prolific publications anticipated much of the progress mathematics was to make in the next century.¹ However, due to his untimely death two of his most popular works appeared only posthumously. On his death bed Maclaurin dictated the final chapter of *An Account of Sir Isaac Newton's Philosophical Discoveries*. Then *A Treatise of Algebra*, which had been circulated for twenty years as a working manuscript among his students, became the most popular algebra text in Great Britain for the next fifty years. Both were edited by Patrick Murdoch and published in 1748. The royalties benefited Maclaurin's widow and five young children. Maclaurin's *Algebra* went into a sixth edition at London in 1796.

Perhaps such rich posthumous material sparked an interest among Maclaurin's biographers as to the circumstances of his early death. Patrick Murdoch prefaced the first edition of *An Account* (London, 1748) with a 'Life and Writings of the Author'. There he blamed Maclaurin's death, which occurred on 14 June 1746, on his over-exertions to prepare

¹ J.V. Grabiner, *The Origins of Cauchy's Rigorous Calculus* (Cambridge, Mass., 1981), 16-46.

Edinburgh to withstand a siege by Jacobite forces and on his subsequent flight to York in inclement weather. Alexander Carlyle, a former student of Maclaurin's, assisted him during this turmoil. He wrote of the conflict between Maclaurin and Edinburgh's lord provost over the city's defence.¹ Some letters of Maclaurin's during these months have survived.² But there is little primary source material available to Maclaurin's biographers from this period.

Much later there appeared in mathematical literature references to an unpublished manuscript written by Maclaurin about events in Edinburgh during September 1745. In 1919 Charles Tweedie published a private correspondence from Walter Bigger Blaikie, an Edinburgh publisher, who claimed to possess a manuscript by Maclaurin which he called 'Diary of the Siege'.³ In 1989 Erik Sageng published a few sentences extracted from this document.⁴ The purpose of this edition is to make available the entire text of Maclaurin's manuscript, which is in the possession of the National Library of Scotland, Edinburgh.

Provenance

The Rare Books and Manuscripts Department of the National Library of Scotland possesses a manuscript entitled 'Mr. McLaurin's Journall of what passed relating to the defence of Edinburgh from Monday September 2nd till Monday September 16, 1745'.⁵ It consists of five 8½ x 11 inch sheets, the cover sheet blank except for the above title, followed by four sheets written on both sides. The Library's *Catalogue of Manuscripts* records that MS 3142 was bequeathed to the Library in 1941 by Thomas Yule as part of the so-called 'Yule Collection'.⁶ A hand-written note on the table of contents of MS 3142 records that Thomas Yule loaned this collection to Walter B. Blaikie on 23 August 1912, which explains Tweedie's reference above.

The *Catalogue* records that Thomas Yule acquired the bulk of his collection from Alexander MacDonald (1791-1850) who was the Keeper

¹ Alexander Carlyle, *Anecdotes and Characters of the Times*, ed. J. Kinsley (Oxford, 1973), 58-9.

² S. Mills (ed.), *The Collected Letters of Colin Maclaurin* (Nantwich, 1982).

³ C. Tweedie, 'Notes on the life and works of Colin Maclaurin', *Mathematical Gazette*, ix (1919), 304.

⁴ E. Sageng, 'Colin Maclaurin and the Foundations of the Method of Fluxions' (Princeton University, Ph.D. thesis, 1989).

⁵ NLS, Jacobite Papers, MS 3142, fos. 44-8.

⁶ NLS, *Catalogue of Manuscripts Acquired Since 1925* (Edinburgh, 1966), 195.

of the Register of Deeds and Records in Edinburgh.¹ MacDonald was elected to the Society of Antiquaries of Scotland in 1824, and was curator of their Museum from 1837. Here we can only presume that MacDonald salvaged these documents, perhaps from the Record Office in Edinburgh.

Authorship

In spite of a century's gap in the recorded whereabouts of this document there can be little doubt concerning its authorship, based on internal evidence. It is written in Maclaurin's distinctively round hand, which accords with his known manuscripts. The cover sheet bears his signature in full, and the text, written in the third person, refers to him by initials 'Mr. M_L_n'. The activities set forth accord with what we know from Maclaurin's letters and other evidence.

Date

Precise dating of this manuscript is more difficult. It is written in the form of a day-by-day journal, beginning with an entry for 2 September 1745, and ending with a final entry on 16 September 1745. Yet, it has a neatness and uniformity of purpose which bespeak a single writing, not a daily diary. Obviously, its composition lay between 16 September 1745 and Maclaurin's death on 14 June 1746.

I suggest that its date is early, lying closer to the earlier bound. In this *Journal* Maclaurin twice refers to himself only by his initials 'Mr. M_L_n'. Four times he relates conversations between 'one of the Volunteers' and the lord provost or General Guest. Presumably this is a device to guard his own anonymity in conversations he was privy to. I suggest that Maclaurin wrote this account after the army of Charles Edward Stuart entered Edinburgh on 18 September and before Maclaurin fled to York twenty days later. Prince Charles gave the Volunteers who had organized against him twenty days either to make submission to his government or to flee the city. During this interval Maclaurin settled his wife and young children in Dalkeith and made himself ready to ride to York. This is the only period during which Maclaurin was in any peril from Jacobite reprisals and so in need of anonymity. The signed cover sheet could have been added later.

¹ Ibid, 189.

Purpose

The consistent theme running through these entries is the lord provost's hindrance of the Volunteers. The entry of 2 September complained that the lord provost 'ridiculed' proposals to defend the city. On 3 September he refused to deprive Jacobite sympathizers of arms. The entry of 6 September complained that the lord provost would neither allow the Volunteers to choose their own officers nor appoint them himself. He refused to lend his name to a call-up of volunteers to defend the city. On 7 September the lord provost refused to order work done on the walls without a time-consuming financial estimate. On 11 September the lord provost blocked requests for hand grenades from castle stores. On 15 September the lord provost delayed a vital order to load the cannon, then did not provide the necessary sentinels from the town guard. On 16 September the lord provost refused to order the removal of the cannon to the castle, so that they fell into Jacobite hands.

I suggest that Maclaurin wrote this *Journal* to chronicle how Provost Archibald Stewart thwarted the defence of Edinburgh. He may have wanted to leave this indictment behind him before he left Edinburgh. Had he written it in York, there would have been no need for the third person anonymity.

The Highland army of Charles Edward Stuart left Edinburgh for England on 31 October 1745. On 13 November 1745 the officers of State returned to Edinburgh, as did Maclaurin on 16 November. Archibald Stewart was charged with 'neglect of duty, misbehavior in public office, and violation of trust and duty', and sent to London that month for trial before a cabinet council.¹ He was remanded to appear before the High Court of Justiciary at Edinburgh on 23 January 1746 on a charge of high treason. Had Maclaurin's *Journal* been written in November 1745, or after, as a deposition against Stewart, it would not have been so guarded in the third person.

The *Catalogue* of the National Library of Scotland says of this collection of Jacobite papers, 'The majority of these papers relating to the '45 deal with the surrender of Edinburgh to Prince Charles Edward, and appear to belong to a file made up for the trial of Provost Archibald Stewart'.² Presumably, this chronicle of events Maclaurin left behind became incorporated as background material for the prosecution along

¹ James Grant, *Old and New Edinburgh: Its History, Its People, and its Places* (London, 1880), 321

² NLS, *Catalogue*, 195.

with signed depositions. This file may have been lodged in the 'Register' office in Edinburgh from where nearly a century later MacDonald rescued it from oblivion.

Editorial Method

Original spelling, capitalisation, and punctuation have been retained throughout.

Mr. McLaurin's Journall of what passed relating to the defense of Edinburgh from Monday, September 2nd till Monday September 16th.¹

September 2nd. The accounts from the North becoming more and more unfavorable, above Twenty gentlemen of known good affection to his Majesty and the Government met at Mrs. Clark's² who agreed to apply to the Lord Provost that he would give the order for putting the town in as good a state of defense as possible with all expedition. It was complained of in this meeting that the application which had been made a week before to his Lordship had not met with due encouragement but that the persons who waited on his Lordship and their zeal had been ridiculed and made the subject of insipid jokes. The company resolved that whatever discouragement they might meet with from those whose duty was to have animated them they should meet frequently and promote to the utmost of their power whatever might tend to the defense of the town. In the meantime they appointed two of their number B___e S___t and Mr. M___L___n³ to wait on the Provost next morning with a general instruction to beg he would see to the defense of the town and to offer their assistance and three particular instructions: 1) That he would order the making of molds for bullets, it having been found on Friday that all in the shops had been bought up of late by cadies who had been sent for them. 2) That the fluence of the north loch by which the water issues from it should be shut and secured, that it might fill up. 3) That they should propose this to his Lordship the making a Distinction between the Inhabitants of known good affection and such as were suspected when he came to entrust them with the Town's arms and take proper measures that the City should not be in danger from within as in 1715.⁴ Lord Provost

¹ For background about the defence of Edinburgh see I.G. Brown & H. Cheape, *Witness to Rebellion: John Maclean's Journal of the 'Forty-Five and the Penicuik Drawings* (East Linton, 1996).

² Possibly in Gray's Close. Cf. J. Gilhooley, *A Directory of Edinburgh in 1752* (Edinburgh, 1988), 12, 68.

³ The second of these names is clearly Maclaurin himself. The first can be tentatively identified as Walter Scot, resident bailie of Leith. The first part of the name, 'B___e', appears to be a title like Maclaurin's 'Mr', the most likely title being 'Bailie'. If so, Scot is the only bailie whose name fits. The current Edinburgh magistrates are listed in the *Scots Magazine*, Sept. 1744, p. 443.

⁴ In 1715 some Edinburghers with Jacobite sympathies broke through the sallyport of the Castle's western defenses, but were beaten back by the garrison. This prompted the construction in the 1720s and 1730s of the zig-zag artillery fortifications along the north and west sides of the Castle. Cf. C. Tabraham, *Edinburgh Castle* (Musselburgh, 1997),

gave a satisfactory answer to the first two of these, but as to the third he did not give the satisfaction desired, but after a good deal of reasoning he said that if the town came to be attacked he would so far make a distinction as to entrust the Town's arms with the most substantial burghers, and this was all that could be obtained from him. He said that if 1,000 men had a mind to get into this Town he could not see how they could hinder them. In answer to this the number of Trades lads in Edinburgh, of the Gentlemen who would associate to save the town, the unskillfulness the Highlanders had always shown in attacking stone walls, their want of artillery and being ill armed, with the assistance that would be got from the Dragoons in all probability were urged. It was insisted that our doing something was requisite to save the reputation of the town to thwart the enemy from coming this way and to raise a spirit in the country. To this he answered that to pretend to do when we could do little was to expose us to ridicule, other discouraging expressions were used but at the end he said he would be glad of advice from sensible burghers and have regard to it.

Little material passed till September 5 when the same company with some addition of other gentlemen met at the same place. And now the danger appearing more imminent they entered into an Association as Volunteers to serve for the defense of the place at the hazard of their lives and fortunes under the direction of the Lord Provost. This was signed by all present and by 100 before twelve the next day. They appointed some of their number to present this to the Lord Provost to desire that they might be allowed to choose their officers and that he would apply to General Guest for arms to them. They were likewise ordered to entreat that the parapet of the wall might be cleared which in many places had been stopped up with stone and lime to prevent smuggling, that stairs should be made for getting up to it at proper distances, that cannon should be got from the ships to be placed on the flanks and gates.

September 6. The Lord Provost declared now and always afterwards that he would insist on the privileges of his office and did not leave the nomination of the officers to the Volunteers but allowed them to make a list of 30 or 40 or more from which he would choose them. He walked with some of the Magistrates and Volunteers about a part of the wall, he said he could not see but if 2,000 had a mind to get into the town they must succeed. After looking at a part of the wall he desired Mr. M_L____n, one of the volunteers, to take the trouble to make a Plan of

it which he promised to do.

It was thought proper to draw up an Article of News concerning the Association to encourage others to join and rouse the lethargic spirit of the country. After it was written it was thought decent and dutiful to show it to the Provost the words that 'this proposal was accepted by the Lord Provost' were altered by him. He would have it that the Lord Provost 'acquiesced in this proposal.' This alteration was much regretted by those who were sincerely zealous in this cause being sensible that in so critical a time more than acquiescence was requisite in the magistrates to animate the burghers and foreseeing as it happened that the Trades would not be warm when the magistrates were so cool. The Volunteers however soon rose to 400. The expenses of the work proposed were much talked about and complained of at this time and afterwards.

September 7. The Plan of the wall was made ready and presented to the Council at 6 o'clock, the weak places were pointed out and what was most necessary to be done proposed. The Lord Provost desired that an estimate might be made of the expense. But it was answered that could not easily be done and would require time. It was proposed the flanks should be first taken care of as the time which the rebels would take to come to Edinburgh was uncertain. That the doing as much as we could did not hinder capitulating. That there was a double chance of relief either from Sir John Cope or the Dutch so that holding out one day or two might save the town. But that dispatch was necessary above all things and all the workmen that could be got ought to be employed.

September 8. The workmen cleared a part of the parapet, but the number was very small for this day and indeed for the whole week till Sept 15. Of this complaints were made every night but to little or no purpose. Sometimes there were only two dozen when there ought to have been as many hundreds, for now the rebels were at Perth. It was found that the parapet when cleared was too narrow in several places and that it was necessary to add to it by scaffolding. This was done in some places but so few men were employed that in others it was not executed.

Sept 9. The work went on but slowly some of the embrasures on the flanks, for the cannon and in the curtains for the musketeers were opened.

Sept 10. A scheme of what was most necessary to be done was drawn up by a Volunteer abovementioned and shown to General Guest and at his

desire to an old officer of the Dragoons being approved by him. It was presented to the Lord Provost. It was insisted that a high house which rakes a part of the wall near the Potteraw should be possessed by a party and communication made from the wall to the house to relieve or bring off the men as occasion might require. But this though much insisted on was not yielded till Sept 16th when Captain Murray¹ approved of it and then though it was begun there was no time to finish it.

Unhappily at this time the Election of the deacons so much employed the trades that few came to work on the wall and it never appeared that after repeated complaints proper authority was employed to oblige them to work in this time of greatest danger.

Sept 11. Some cannon were got from ships and it having been earnestly recommended to Lord Provost that some hand grenades should be got and the City Guard and Volunteers taught to use them a message was sent to the General and by him to the Castle but it was answered that they had not above 200 and could not spare them. Afterwards however one of the Volunteers surprised that there should be so few in such a garrison so well provided with stores made a visit to the castle and was told by the storekeeper that he had 5 times that number and was desired to tell the Provost that he had 200 at his service if he had a mind for them. The message was delivered but the grenades never appeared. We found 23 that had lain in a chest since 1715 in the Town's Armory, but they were never examined.

A ditch that had been ordered at Wallace's Tower had been carried on right for some time but was afterwards by some mistake or bad advice cast on the wrong side of the dike. This day this was stopped and a remedy proposed but not executed for want of time.

Sept 12. The work went on slowly.

Sept 13. The day of the election of the deacons there was very little done on the wall, the deacons could not be got. Some houses in St. Mary's Wynd that had large windows into the town were shown to some Magistrates and afterwards to the Provost but no orders were given about them. This day the carriages of the cannon were examined, and any

¹ Captain James Murray, presumably of the Edinburgh Regiment, is also mentioned in another manuscript among NLS, Jacobite Papers, MS 3142, entitled 'Mr. Grosett's Account of some Particulars which happened upon the Advance of the Rebels towards Edinburgh in September 1745', fos. 5, 6

necessary reparations ordered.

Sept 14th. Little work on the walls and scaffolding. The cannon were all proved and the shot got ready.

Sept 15. The Lord Provost brought Captain Murray to town to give his advice, and not till this day he ordered some works within the gates which were begun immediately. There was more men employed this day than ever before and everybody seemed to exert themselves. But the Lord Provost having never named the Field Officers to the Volunteers they were now nine Independent Companies and upon a motion to go out with Collonell Gardiner they unhappily divided in opinion which produced some heat among them. A most unlucky signal was pitched on to call them to their arms, the ringing of the Fire bell which never fails to raise a panic in Edinburgh. This happened in time of divine service, the churches dismissed in confusion and terror and this was the first appearance of fear in the place and this signal ought not to have been proposed or allowed by the magistrates in such a time of the Rebels not being far from us.

This day most of the cannon were carried to the Flanks and in this as much regard as possible was had to the weakest places so that there were three on St. Mary's Wynd which raked it. About six one of the Volunteers with the chief of the Bombadiers came to the Provost to have an order to load them, he kept them waiting until eight, and then desired another to sign the order for him. They began, though in the night. But after they came to the Bristol port they were obliged to wait from half an hour after ten till near one for want of a Centinelle to place on the loaded gun though they sent messages for Centinells to the Guard and Council. This put a stop on their progress that night. The guns were all loaded with small shot and as they flanked the curtains and gates it was the more dangerous to leave them without Centinells. During all that time while the rest of the wall was guarded and All Is Well was heard go round regularly there were no centinells on the Bristol port to the west port but one or two below.

Sept 16. The work went on cheerfully till four or five at night. A work was thrown up to defend the pass to Moutresay.¹ Some gates were built up. Some more cannon were got and carried to the Bastrons and Gates, we were told that only five gunners were got at one o'clock but were promised that pains should be taken to get more.

¹ Moultries Hill, the site of the present General Register House.

Betwixt two and three o'clock some burghers were said to be carrying about a petition to the Magistrates for subscriptions praying the Town should capitulate. The Alarm being great at the westport, the guns there were loaded and the other works pressed on so that they were almost finished when an account came that a meeting in the New Church had agreed to capitulate, One of the Volunteers called on the Provost to know what was to be done to the cannon, but was told that his Lordship had not time to speak to him. The call of All Is Well did not go round the wall this night as the former and the Town seemed to be quit of its defense. The volunteers delivered their arms into the Castle.

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 Presented to the Annual General Meeting
 by the Council, 9 December 2000

Council is pleased to note the publication in October of *George Buchanan: The Political Poetry*, edited by Arthur H Williamson and Paul J McGinnis (publication secretary, Ulrike Morét). This is notionally the Society's volume for 1995, and all paid-up members of the Society (those paid up in 1995) should have received a copy. Publication is expected very shortly of *Clan Campbell Letters, 1559-1583*, edited by Jane Dawson (publication secretary, John Finlay), the Society's volume for 1997, the final text of which is currently with the printers.

The next publication to appear will be *Religious Controversy in Scotland, 1625-1639*, the volume for 1998, edited by David Mullan, and the *Minutes of the Mid and East Lothian Miners' Association, 1894-1918*, the volume for 1999, edited by Ian MacDougall. The final text and disk of both is to hand, and the volumes should appear in the course of 2001. It is anticipated that the first of these will contain an up-to-date membership list, and a copy of the constitution of the Society.

Other publications on which work is currently proceeding are *Miscellany XIII*, including about eleven items from the thirteenth to the eighteenth centuries of which most are to hand or in an advanced state; *Scottish Planned Villages, 1740-1914*, edited by Douglas Lockhart; *Scotland and the Americas c. 1680-1939*, edited by Allan Macinnes, Linda Fryer and Marjory Harper; *The Black Book of Coldingham, 1298-1430*, edited by Joseph Donnelly; *The Scots and the French Army, 1548-1559: French Military and Financial Documents Concerning Scotland During the Reign of Henri II*, edited by Elizabeth Bonner; *The Diaries of General Patrick Gordon of Auchleuchries, 1635-1699*, edited by Paul Dukes and Graeme Herd; *Letters of Sir Donald MacDonald of Sleat, c. 1665-1718*, edited by Donald William Stewart; and *Fifteenth-century Aberdeen Guild Records*, edited by Elizabeth Gemmill. The possibility of producing a fifth volume of *Highland Papers* in the near future is also being actively considered.

We have also received a proposal from Dr Dauvit Broun to edit a new edition of the *Chronicle of Melrose* in two volumes. Dr Broun has further proposed that the Society consider publishing an occasional *Chronicle*

series of volumes, of which the *Melrose Chronicle* could be the first, as part of its regular run of publications. The series of *Highland Papers* published by the Society might be seen as a precedent for this, and Council has indicated its interest in such a project.

Preparations are continuing for a Society web-site. The possibility that the Scottish Archives Network (SCAN), which hopes to launch its own web-site towards the end of the year, may be willing to act as a host, is being actively explored.

Professor Archie Duncan's term of office as President of the Society is coming to an end. He gives his last Presidential address on 9th December. We wish to record our particular thanks to Professor Duncan for the stimulating and entertaining address he has delivered over the last four years, and for acting as President of the Society on two separate occasions. Council is pleased to put to the Annual General meeting its nomination of Dr Jenny Wormald to serve as President for the next four years.

In the course of the year the Honorary Treasurer, Dr Iain Hutchison, intimated that he wished to demit office. Council has accepted this resignation with regret, and wishes to record its thanks to Iain for the work he has done for the Society. Dr Alistair Durie has agreed to replace Iain as Treasurer with effect from 1st January 2001. Four members of Council retire by rotation this year – Dr Malcolm Bangor-Jones, James Robertson, Dr Michael Brown and Professor JW Cairns. To fill their places, Council recommends the election of Dr Graeme Morton, Dr Sonja Cameron and Dr John Young.

The membership of the Society now stands at 412 individual and 168 institutional members.

The Society's financial position remains satisfactory and it has been possible to hold the subscription at £15 (£18 for joint members) for another year.

WDH Sellar, Chairman
November 2000

Scottish History Society
REGISTERED SCOTTISH CHARITY NO. 005043

INCOME & EXPENDITURE FOR THE YEAR TO 30th SEPTEMBER 2000

1999		2000
<i>£</i>		<i>£</i>
7933.86	Subscriptions	7512.44
422.47	Income Tax on Covenants (estimated)	400.00
264.00	Sales of Past Publications	15.00
-95.00	Less: Insurance	0.00
-150.00	Honorarium	0.00
3597.69	Interest on Bank Premier Account	4250.32
146.49	Interest on Bank Current Account	70.16
12119.51	NET INCOME	12247.92
	Cost of Year's Publication	0.00
0.00	Printing	0.00
0.00	Typing and Photo-copying	0.00
0.00	Publication Secretaries' Expenses	0.00
0.00	Postage & Packing	0.00
-600.00	Publication Secretaries' Honorarium	-600.00
-499.91	AGM Expenses	-625.92
-250.00	Secretarial Expenses	-100.98
0.00	Other expenses	-250.00
19769.60	CURRENT ACCOUNT SURPLUS	10671.02
20.00	Bequests, Donations, etc.	80.00
10789.60	NET SURPLUS FOR YEAR	10751.02

BALANCE SHEET AS AT 30TH SEPTEMBER 2000

1999		2000
£		£
1.00	Stocks of Unsold Publications	1.00
1680.00	Income Tax Recoverable (estimate)	2080.00
1083.47	Other Debtors (receipts after date)	480.00
80662.45	Bank – Premier Account	90912.77
2050.16	Bank – Current Account	2604.33
-400.00	Creditors (payments after date)	-250.00
85077.08	NET CURRENT ASSETS	95828.10
	CAPITAL ACCOUNT	
74287.48	Balance at 1st October 1999	85077.08
10789.60	Surplus for Year	10751.02
85077.08	Balance at 30th September 2000	95828.10

BLACKFORD, 14 November 2000

I have audited the above financial statements in accordance with approved Auditing Standards and it is my opinion that the financial statements which have been prepared under the historical cost convention give a true and fair view of the state of the society's funds at 30th September 2000 and of the income and expenditure in the year to that date.

H.B. PEEBLES, CA, ACMA
Auditor



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