

Murray
A NOTED MURDER TRIAL.

THE

EASTMILN TRAGEDY:

AN ACCOUNT OF THE

TRIAL OF KATHERINE NAIRN

AND

PATRICK OGILVIE

FOR THE

MURDER OF THOMAS OGILVIE,

LAIRD OF EASTMILN, GLENISLA.

1764-65.

PRICE—THREEPENCE.

ALYTH: THOS. M. MURRAY.



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*An Account of the Trial of Katherine
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THE UNIVERSITY OF
SCOTLAND

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The Eastmilk Tragedy ;

OR,

The Trial of Kate Nairn and Patrick Ogilvie.

Bring in the evidence.

Thou robed man of justice take thy place,
And thou, his yoke-fellow of equity,
Bench by his side—you are of the commission,
Sit you too.

—*King Lear.*

INTRODUCTORY REMARKS.

IN placing the following narrative before the public, the writer deems a few explanatory remarks necessary. The trial of Kate Nairn and Patrick Ogilvie for the murder of Thomas Ogilvie, the former's husband and the latter's brother, by poison, was certainly one of the most remarkable criminal trials of the eighteenth century. At that period the nature and effects of poison were very little known to the medical fraternity, as will be clearly shown by the evidence of the physicians and surgeons adduced in this case. Given a certainty of undetection there is that in most natures that would not hesitate at murder—it is only the result of their crime being found out that deters them. At a period prior to this the Marchioness of Brinvilliers, and her almost equally guilty paramour St Croix, reached the very pinnacle of infamy through a course of wholesale poisoning. A few years before the date of our narrative hundreds of persons were poisoned on the Continent by a decoction known as *aqua tufania*, and a letter was addressed by Addison to the Commissioners of Customs requesting them to take measures for guarding against its introduction into

Britain. The culprits engaged in the making and sale of that poison pretended a religious purpose—they desired to keep the world in ease and quiet by furnishing husbands with the means of getting rid of troublesome wives, fathers of unruly sons, a man of his enemy, and so forth. Notwithstanding this, the British, or at least Scotch, medical practitioners remained woefully ignorant of the nature and effects of poison.

The Ogilvies of Eastmilk and the Nairns of Dunsinnan were families of rank and dignity, especially the latter. The best legal advice that could be obtained was brought to bear in the prisoners' behalf, the Nairns greatly exerting themselves to save their kinswoman from the scaffold that loomed up before her. In this extraordinary case sixty-four witnesses were summoned for the prosecution, of whom twenty-one were examined; and no less than 108 for the defence, of whom only ten were examined. The hearing of the evidence occupied the space of forty-three hours without the Court once rising—from 7 A.M. on the 12th August to 3 A.M. on the 14th August, the jury only returning their verdict by 4 P.M. of the latter day.

As this case is yet a frequent subject of controversy, some holding that the parties accused were innocent, some that they were guilty, the writer has now endeavoured to place before the public a full and true statement of the unhappy incident, thus enabling them to form an opinion for themselves. That it is beyond his power to fully establish their guilt or innocence of the crime of murder charged he is only too well aware. He cannot claim the expenditure of any great literary talent in the following chapters, his work being more one of compilation and annotation. He has, however, been at great pains to arrive at a correct record of the matter in hand, and has to thank several authorities for the information he has

drawn from them. Especially is he indebted to a little book—now very rare, indeed—published in 1765, or immediately after the trial, entitled “The Trial of Katherine Nairn and Patrick Ogilvie for the crimes of Incest and Murder.” The incestuous part of the evidence has had, however, to be dropped, as it is not fit for present-day publication. The narrative has not suffered from this, no material fact being otherwise suppressed; in fact we rather think it improved as it is now rendered fit for reading in any society, which the old “Triall” was not. The attention of the Court of Justiciary was absorbed in this case for six days, and the reader who closely follows the ensuing chapters will get no inconsiderable light thrown upon the procedure of the old Scotch criminal trials.

CHAPTER I.—THE MURDER.

In the year 1764 the estate of Eastmilm, in the parish of Glenisla and county of Forfar, was owned by Thomas Ogilvie, a man then upwards of forty years of age. The Laird of Eastmilm was a bachelor, and for a considerable period prior to the commencement of our narrative had been in a rather delicate state of health. In dress he was far from particular; in fact, it may be said he was eccentric. A coarse plaiding jacket formed his upper garment, while upon his breast he wore a striped woollen nightcap, the lower end of which reached near his breeches. The household of Eastmilm consisted of the Laird himself, his mother, Isobel M'Kenzie, and two female servants, Elizabeth Starrock and Anne Sampson. Other members of the Ogilvie family were—Patrick, a lieutenant in the 89th Regiment of Foot, immediate younger brother to Thomas; Alexander, residing in Edinburgh; and a sister married to Andre Stewart, a merchant in Alyth.

A very quiet, humdrum life was that of the Ogilvie family, and one which in the ordinary

routine of human life might have been expected to continue so to the close. Old Mrs Ogilvie was a decent, respectable lady, revered and looked up to no less by her son's tenantry than by all who knew her; while the Laird was a homely, kind-hearted man, who mixed with affability and freedom among all classes of the rural population in the district in which he resided. But a combination of events, from widely different sources, were destined to change this uneventful life into one of bickering and strife, culminating in one of the most remarkable criminal trials of the Eighteenth Century.

Towards the latter part of 1764 Thomas Ogilvie became acquainted with Katherine Nairn, daughter of Sir Robert Nairn, Bart. of Dunsinnan, Perthshire. Kate Nairn, it would appear, was possessed of at least a fair share of good looks, and all accounts agree in ascribing to her an extraordinary degree of levity. She was then in the heyday of youth, her nineteenth year being uncompleted; and, strange though it may appear, the staid and sober Laird of Eastmiln fell desperately in love with this giddy girl, who, in point of years, might easily have been his daughter. Stranger still does it seem that among all the gay and gallant suitors which the fair daughter of the Baronet of Dunsinnan must have possessed, the favoured one was the sickly, uncouthly-dressed Thomas Ogilvie. The love, infatuation, or call it what you will, existing between Thomas Ogilvie and Kate Nairn was only of a few months' duration when the former proffered his hand in marriage, and was accepted. The attachment sprung up and ripened against the will and expostulations of the relatives of both parties, who tried to break up so ill-assorted a match. Their endeavours were, however, futile, for on the 30th January, 1764, Thomas Ogilvie and Kate Nairn became husband and wife. Thomas brought his wife to reside at

Eastmiln along with his mother, and thereafter discarded his plaiding jacket, nightcap, and a broad leather belt that he had previously worn. Having got a wife, it behoved the Laird to get another servant, and this he got in the person of Katherine Campbell, washerwoman or laundrymaid, sent or recommended by Mrs Spalding of Glenkilry, sister to Mrs Ogilvy, in whose employ she had previously been.

About the time of the marriage a very important addition was made to the inhabitants of Eastmiln House in the person of Lieutenant Patrick Ogilvie, 89th Regiment of Foot, or old Gordon Highlanders. The 89th had for some time previously been stationed in the East Indies, and the Lieutenant's health becoming impaired in that uncongenial clime, he had applied for and received permission to return home. At Eastmiln he was heartily welcomed by his mother and brother, and, as subsequent events will prove, by young Mrs Ogilvie also.

Upon the 1st of March another very important personage came to reside at Eastmiln. This was Anne Clark, cousin-german to Thomas Ogilvie. About the same time that the latter-named gentleman married, his youngest brother, Alexander, entered into a very impolitic union with the daughter of a common porter named Rattray. This marriage, so derogatory to the rank and honour of the Ogilvies, incurred the greatest displeasure of the Laird and the Lieutenant, who took every means to let Alexander know the disgrace which he had brought upon their family. Anne Clark at this time resided in Edinburgh, where it does not appear that she was remarkable for her virtue and morality, and her Alexander Ogilvie gained over to his cause. Alexander does not seem to have been one of the most high-souled of men, in fact we may presume that self was largely evident in his composition. He

did not relish the idea of losing his interests at Eastmilm, and with the view of retaining or regaining these he prevailed upon Anne Clark to make a sojourn there. How Miss Clark was to effect this is not very clear; one party assert by a friendly reconciliation, another by means of a very different nature, but certain it is that Anne Clark arrived at Eastmilm, where, being a cousin of the family by the mother's side, she was received and treated as a gentlewoman.

Affairs did not now continue long in their previous uneventful state. The dashing Lieutenant proved a much more congenial companion to Kate Nairn than did her staid, sober-minded Goodman. They were much in each others society, and it was reported that familiarities unbecoming a married woman, or even virtuous parties, passed between them. It is doubtful if the easy-minded, unsuspecting Thomas Ogilvie would have noticed anything unbecoming in the conduct of his wife and brother; but sharp female eyes were on the outlook, and equally sharp female tongues eager to retail gossip. The Laird did not therefore long remain ignorant of the improper conduct of his wife and brother, and between him and the former bickerings and heart-burnings now began. Between the Lieutenant and him a hostile feeling sprung up, and on the 23d of May, in a violent quarrel between the brothers, Thomas ordered Patrick away from the house. Shortly after this the climax was reached. On the 6th of June Thomas Ogilvie was seized with violent internal pains and vomitings, and by midnight breathed his last.

Lieutenant Ogilvie now returned to Eastmilm and took control of the whole estate. Arrangements were made for the interment taking place on the 11th June, and for the time affairs went smoothly. Ugly rumours were, however afloat, and before the burial could take place the

authorities, acting under information supplied by Alexander Ogilvie, stepped in and postponed the interment until the body of the deceased Laird should be examined by medical men. This function was performed by Drs Meik, Alyth; Ramsay, Coupar Angus; and Ogilvie, Forfar. The result of their examination tended to prove that Thomas Ogilvie had died from poison administered or taken. Patrick Ogilvie and Kate Nairn were thereafter arrested by George Campbell, Sheriff-Substitute, and John Ure, Sheriff-Clerk of Forfarshire, who at the same time searched the premises for evidence of guilt. They were first conveyed to the County Prison at Forfar, where they were separately examined on the 14th and 15th June, emitting a respective declaration on each occasion.

The heinous nature of the crime laid to the prisoners' charge—the double one of incest and murder—the high social standing of the parties concerned, no less than the somewhat weak construction of Forfar Prison, rendered it prudent to convey the prisoners to a place of greater security, the old Tolbooth of Edinburgh being selected as such. How the male prisoner was conveyed to Edinburgh is not recorded, but the arrival of Kate Nairn in the Metropolis is thus narrated in one of Chambers' publications:—"She was brought from the North country into Leith harbour in an open boat, and as fame had preceded her, thousands of people flocked to the shore to see her. She has been described to us as standing erect in the boat, dressed in a riding habit, and having a switch in her hand, with which she amused herself. Her whole bearing betrayed so much levity, or was so different from what had been expected, that the mob raised a general howl of indignation, and were on the point of stoning her to death, when she was with difficulty rescued from their hands by the public authorities." On the 22nd June, Patrick Ogilvie

was brought and examined by James Balfour, Sheriff-Substitute of Edinburgh, but, doubtless acting on the advice of counsel, he refused to answer any but one or two trifling questions. Two days later Kate Nairn was subjected to a like examination by the same authority, but absolutely refused to answer any question put, neither would she adhibit her signature to the formal paper produced by the Sheriff-Substitute.

The reins of power at Eastmilk now fell into the hands of Alexander Ogilvie. By the authority of his brother, the Lieutenant, he sold, or roused, the whole stock, &c., on the Home Farm of Eastmilk, and pocketed the proceeds. The Crown authorities seized the persons of Anne Clark and the female servants of the deceased Thomas Ogilvie, and carried them to Edinburgh Castle, where they were kept prisoners in all but name to await the trial. This procedure was certainly rather stringent, but by the means employed they effectually prevented these witnesses being tampered with, and besides could make sure of finding them when wanted, which they might not have done had they been left at Eastmilk. Counsel for both parties were constantly to be found in the district adjoining Eastmilk, each exerting himself to the utmost to prove the guilt or innocence of the prisoners; while the excitement throughout the country at large ran to an almost unprecedented height.

CHAPTER II. —THE INDICTMENT.

ON the 5th of August, 1765, the case was opened before Sir Gilbert Elliot, Bart. of Minto, Lord Justice Clerk ; Alexander Boswell of Auchinleck, Andrew Pringle of Alcmoor, Henry Home of Kames, James Fergusson of Pitfour, and George Brown of Coalston, Commissioners of Justiciary. The counsel for the prosecution and defence numbered five respectively, and included the brightest legal luminaries of the day. For the prosecution appeared Thomas Millar, Esq. of Barskimming, His Majesty's Advocate ; James Montgomery, His Majesty's Solicitor ; Sir David Dalrymple ; Mr Patrick Murray, and Mr David Kennedy, Advocates. For the defence appeared Messrs Alexander Lockhart, David Graham, David Rae, Andrew Crosbie, and Henry Dundas, Advocates.

The Lord Justice Clerk and Commissioners of Justiciary having taken their seats the proceedings commenced by the reading of the indictment, which, with the omission of certain passages referring to incest, ran as follows :—

Katherine Nairn, widow of the deceased Thomas Ogilvie of Eastmiln, in the county of Forfar, and Patrick Ogilvie, Lieutenant of the 89th Regiment of Foot, brother-german of the said deceased Thomas Ogilvie, both now prisoners in the Tolbooth of Edinburgh, Panels :

Indicted and Accused at the instance of Thomas Millar of Barskimming, Esq., His Majesty's Advocate for His Majesty's interest, for the crimes of Incest and Murder, in manner mentioned in the

criminal indictment thereanent. . . . Bearing that by the holy law of God, and by the law of this, and every other well-governed realm, all wilful homicide or murder, especially when perpetrated by poison, and above all when such murder is committed under trust or upon a person to whom fidelity and affection are due by the most sacred ties, is a crime of the most heinous and atrocious nature, and severely punishable. Yet true it is and of verity that the said Katherine Nairn and Patrick Ogilvie, shaking off all fear of God and regard to the laws, have presumed to commit, and are guilty, actors, art and part, of both, or one or other, of the said heinous crimes, aggravated as aforesaid. In so far as the said Katherine Nairn having been married to the said deceased Thomas Ogilvie in the month of January last, in this present year 1765, and the said Patrick Ogilvie having about that time returned from abroad, and taken up his residence at the House of Eastmiln, belonging to the said deceased Thomas Ogilvie, his brother, in the Parish of Glenisla, and County of Forfar, the said Katherine Nairn did soon after her marriage alienate her affections from her husband, and fell into a course of indecent familiarities with Patrick Ogilvie, which soon became the subject of observation and regret to her unhappy husband and to her friends and family. Notwithstanding repeated admonitions given to Katherine Nairn and Patrick Ogilvie, by Thomas Ogilvie and other relations, to abstain from such indecent familiarities, they obstinately persisted therein, . . . ; and their indecent conduct, having at last become the subject of observation and just censure, not only to the said deceased Thomas Ogilvie and his family, but to the neighbourhood, Patrick Ogilvie was on that account dismissed by Thomas Ogilvie from his house on or about the 23d day of May last. Katherine Nairn did upon that occasion and there-

after express her resentment against her husband by the most outrageous behaviour. Before Patrick Ogilvie left the house, or soon after, he and Katherine Nairn did treacherously and wilfully conspire to murder Thomas Ogilvie by poison. Upon different occasions Katherine Nairn signified this, her wicked purpose, to Anne Clark, daughter of the deceased Allan Clark, officer of Excise, who then lived in family with her; and informed her that Patrick Ogilvie had undertaken to provide the poison, which she did not then believe either of them capable of, and endeavoured to divert Katherine Nairn from such wicked thoughts. Instigated by the temptations of the devil, and of their own wicked hearts, Katherine Nairn and Patrick Ogilvie persisted in their wicked conspiracy, and from the time the latter was dismissed from his brother's house he and Katherine Nairn carried on a secret correspondence by letters, without date and unsigned, but of the handwriting of the said Katherine Nairn, which will be produced in evidence against them, and will be lodged in the hands of the Clerk of the High Court of Justiciary, before which they are to be tried, that they may see the same. For accomplishing the murder so concerted betwixt them, as aforesaid, Patrick Ogilvie did about the latter end of May last repair to the Burgh of Brechin, in the county aforesaid, and there bought and received from James Carnegie, surgeon in that burgh, a small phial glass of laudanum, which he pretended was for his own health, and about half-an-ounce or more of arsenic, pulverized, and put up in three or four different doses in separate paper covers, pretending that he had occasion for that poison in order to kill some dogs which destroyed the game in that part of the country where he resided. Patrick Ogilvie brought the said poison to Alyth, within a few miles of Eastmiln, where he arrived upon, or about, Monday the 3d day of June last

at the house of Andrew Stewart, merchant there, his brother-in-law. Upon the day following he did there receive a letter from Katherine Nairn, which by her orders was delivered to him in private by Elizabeth Sturrock, her servant, to which he returned an answer that same day with the said Elizabeth Sturrock by a letter with instructions to deliver it privately to Katherine Nairn, which was done accordingly. Upon the day following, being the 5th of June, Andrew Stewart having had occasion to go to the House of Eastmiln, he, the said Patrick Ogilvie, did send with him two small phial glasses, one of which he said contained laudanum, and a paper with directions about the manner of using it. Also a packet which he said contained salts, and a letter closed with a wafer, and likewise sealed with wax, addressed to Katherine Nairn at Eastmiln; and he informed Andrew Stewart that these were medicines for the use of Katherine Nairn herself, and desired him to deliver them and the letter privately into her own hands. Katherine Nairn, having been previously advised by Patrick Ogilvie that he was to send the poison by the hands of Andrew Stewart, watched his arrival at the house of Eastmiln, and upon his coming there conducted him into a private room, and received from him the above particulars, which she presently locked in a drawer along with the letter, without reading the same. In this manner, or by some other conveyance to the Prosecutor unknown, the arsenic bought by Patrick Ogilvie as aforesaid was conveyed by him to, and received by, Katherine Nairn, at the House of Eastmiln.

Andrew Stewart, having some time after his arrival there discovered to Anne Clark that he had brought some medicines from Patrick Ogilvie, which he had delivered to Katherine Nairn, Anne Clark did thereupon disclose to Andrew Stewart, and to Isobel M'Kenzie, the mother of Thomas

Ogilvie, her apprehensions of danger to the said Thomas Ogilvie's life. All these persons, or some of them, did that night advise and caution Thomas Ogilvie to take no meat or drink from his wife, except what he saw others taking. Some time that same night Katherine Nairn said to Andrew Stewart she wished her husband was dead. Thomas Ogilvie did that night sup with his wife and the other persons above-named in his ordinary state of health, and went to bed at the usual time of night, having been abroad the preceding day.

Next morning, the 6th of June, or one or other of the days in the beginning of that month, breakfast was set in the parlour earlier than usual, and Thomas Ogilvie not having then got out of bed, Katherine Nairn filled out the first of the tea in a bowl which she said she was going to carry up to the Laird, meaning her husband, and accordingly left the parlour with the said bowl in her hand. Instead of carrying it straight to her husband she went into a closet adjoining his bedroom, where she remained for some time, and there wickedly and feloniously mixed the arsenic which she had received as aforesaid, or some other deadly poison, into the bowl of tea which she afterwards carried to her husband and pressed him to drink the same, which he accordingly did. Soon after he rose from bed, went abroad, conversed with some of his tenants and servants, and then appeared to be in his ordinary state of health. Before he got back to the house, and within the space of an hour, or thereby, after he had drunk the said bowl of tea, he was seized with a violent retching and vomiting, and having got into the kitchen he continued there for some time in great distress, upon which he was helped up to his own room, and laid in bed, where he remained retching, vomiting, and purging with such violence that he sometimes appeared convulsed, and in the intervals of his distress said to his friends and others about

him that he had been poisoned by the bowl of tea which he had got from his wife. Having called for water to drink, which was brought up to the room by Anne Sampson, his servant-maid, in the same bowl, or one like to that out of which he had drunk the tea, he said, "Damn that bowl, for I have got my death out of it already," and ordered her to bring up the water in the tea-kettle, for he would drink out of nothing else. Having continued in the situation described for several hours, his tongue swelled and his mouth became so parched and dry that he could scarcely speak. During his illness, though from the beginning very alarming, Katherine Nairn not only endeavoured to hinder his friends and neighbours to have access to him, but when she was pressed by Andrew Stewart to send for a surgeon, she obstinately resisted that proposal till near sunset, when her husband, appearing to be then very low and near his end, she sent a servant on horseback to bring Peter Meik, surgeon at Alyth, who accordingly came with all despatch. Before his arrival Thomas Ogilvie was dead, having died in the night between the 6th and 7th days of June last, or upon one or other of the days or nights in the beginning of that month. From the symptoms of his disorder, and the whole circumstances of the case above recited, it evidently appears that he died of the poison which was mixed and given to him by Katherine Nairn in the bowl of tea, as above mentioned. Some days thereafter when it was proposed to inspect the dead body, she, Katherine Nairn, appeared like one distracted and cried out, "What will I do?"

Patrick Ogilvie, being advised of the death of his brother, to whom he is heir, immediately came to Eastmiln, took up his residence there, and gave the necessary orders for the interment. Katherine Nairn and Patrick Ogilvie having been apprehended there and conveyed to the Prison of Forfar

by George Campbell, Esq., Sheriff-Substitute of that County, as guilty of the murder of Thomas Ogilvie, and examined by the said Sheriff-Substitute upon the 14th and 15th of June last, did each emit two several declarations, which were subscribed by each of them and by the Sheriff-Substitute ; which declarations are to be used in evidence against them upon their trial, and shall be lodged in the hands of the Clerk of the Court of Justiciary that they may have access to see the same.

Another examination of the said Patrick Ogilvie, taken before James Balfour, Esq., Sheriff-Substitute of the County of Edinburgh, upon the 22nd of June last, and subscribed by him and the said James Balfour ; and also an examination of the said Katherine Nairn, taken before the said James Balfour, upon the 24th day of the said month of June last, and subscribed by him, will likewise be produced in evidence against them in the course of their trial, and will in like manner be lodged in the hands of the Clerk of the Court of Justiciary that they may have access to see the same.

At the time and place aforesaid Thomas Ogilvie was murdered, or died, by poison, wilfully administered to him, and of which murder, or poisoning, Katherine Nairn and Patrick Ogilvie, and each of them, or one or other of them, are guilty, actors, or art and part. All which, or part thereof, or that they were guilty of the crime above charged against them, if found proven by the verdict of an assize before the Lords Justice General, Justice Clerk, and Commissioners of Justiciary, they, and each of them, ought to be punished with the pains of the law, to the terror of others from committing the like in time coming.

THOMAS MILLAR.

CHAPTER III.—DUNDAS'S SPEECH IN BEHALF OF KATE NAIRN.

The indictment having been read, Henry Dundas replied in behalf of Kate Nairn, in a speech of the most brilliant and flowing oratory.

"In 1764," he began, "the now deceased Thomas Ogilvie of Eastmiln, a gentleman rather advanced in years, of a tender constitution, and possessed of a very small fortune, made his addresses to this unfortunate woman (then scarce nineteen years of age) in proposals of marriage, which, contrary to the opinions of her friends, by reason of the smallness of his fortune, she accepted from principles of pure love and affection. The marriage being accordingly celebrated in the beginning of January last, 1765, was dissolved by Mr Ogilvie's death upon the 6th of June last, when the affections she had conceived for her husband can scarce be supposed to have had time to cool or subside.

"Notwithstanding which it is now her very singular misfortune to be indicted and accused at the instance of His Majesty's Advocate, upon the information of Alexander Ogilvie, her husband's youngest brother, as guilty of the two most enormous crimes known in the law:—1st, the crime of incest, which she is charged to have committed with Lieutenant Patrick Ogilvie, her husband's immediate younger brother; 2ndly, the crime of murder, committed upon the person of her said husband by poison administered to him.

Her parentage, age, sex, character, and behaviour in that stage of life previous to her marriage, when female passions are most powerful and predominant,

which she flatters herself will be attested by persons of the greatest honour and probity, render it highly incredible that any person, not hardened and inured to every species of wickedness, lost and abandoned to every principle of virtue, should at once plunge into crime of so deep a dye.

“ Conscious of her innocence, she wishes nothing more ardently than a fair and impartial trial, as the only means of reparation that can be made to her injured character, so much traduced, and which, in the event, she is hopeful will appear to be the result of the most inveterate rancour, hatred, and deadly malice, conceived against her by one of her own sex—a person of most flagitious life and abandoned character; and who, she is now told, is the principal evidence meant to be used against her.

“ Since her imprisonment no endeavours have been spared to impress the public with sentiments of her guilt by publication of many false, malicious, and wicked reports, industriously propagated to the prejudice of her general character. But she rejoices in the appeal she will soon be able to make to the world, to her judges and jury, to vindicate her from the charge of these horrid crimes with which she now stands arraigned. At the same time, as she cannot know what false evidence may be produced against her, self-preservation requires that she should not pass over any material objection to the form of this indictment. . . .”

[Then follows an objection to that part of the indictment which charges her guilty of intrigue with her husband's brother, “ in January, February, March, April, May, and June, and before the 12th day of the last month;” in other words, from the day of her marriage to the day of her husband's interment.]

Dundas continuing said: “ The disadvantages to which she must necessarily be exposed in mak-

ing her defences against so general a charge are too obvious to need illustration, and therefore she does humbly insist that this branch of the indictment cannot be sustained or admitted to proof. But if, contrary to expectation, the same shall be sustained, she proposes by undeniable evidence to traverse and redargue, *i.e.*, refute, every material circumstance charged in the indictment, as well with regard to this as the other crime with which she is accused. Without departing from any other defences which may occur to her counsel, the great lines of those facts which she proposes to prove will be these following:—

“1. That she accepted of Mr Ogilvie out of pure love and affection. That Mr Ogilvie, before his marriage was, and continued thereafter so long as he lived, to be of a tender constitution. That he had repeated and violent attacks of internal disorders, cholic pains, convulsions in his bowels, &c., inasmuch that he was not only looked upon as being in a dangerous way, but having had some violent attacks recently before his actual death, he gave himself up for lost; and both the day and the night before he actually died he had such violent returns of these disorders that he thought himself dying, and resolved to have sent for a physician at many miles distance.

“2. That the panel herself, soon after her marriage, did likewise fall into a bad state of health, costive in her body, and restless in the night, which obliged her frequently to take small doses of salts and laudanum.

“3. That Lieutenant Patrick Ogilvie, her husband's younger brother—the supposed associate in the crimes charged—having returned from the East Indies, broken and shattered in his constitution, much about the time of the panel's marriage, came to pay his first visit to his brother, and for some time had his principal residence in his brother's house, whereby, and by means of his

near relation, he distinguished a becoming friendship and intimacy with the panel, his sister-in-law.

“4. That the panel, having inadvertently allowed herself to run short of the salts and laudanum she used to take, and having occasionally mentioned this in the hearing of Lieutenant Ogilvie, he told her that, as these were medicines which he himself had been advised to use, he had brought home in his chest a small quantity of laudanum and a parcel of salts of the very best quality. That if she pleased he would send her a small phial of the laudanum, and a few doses of the salts, as soon as his chest, in which they were, should arrive from Dundee. She accepted of the offer, and did accordingly some time after receive from him, by the hands of Andrew Stewart, brother-in-law to Eastmiln, who came to Eastmiln on an occasional visit, a small phial of laudanum and two doses of salts, which are supposed to be the particulars alluded to in this indictment as the doses of poison said to be secretly conveyed to the panel.

“5. That Alexander Ogilvie, the younger brother of her husband had, about the beginning of this year, 1765, intermarried with a woman of the lowest rank, the daughter of a common porter in Edinburgh, which gave great offence to his two brothers; and the panel does not doubt but she might upon occasion thereof have expressed her sense and feeling of the reproach thereby brought upon their family. Of which the said Alexander Ogilvie having got intelligence, this, joined with the disappointment in the expectation he had conceived of the succession to his brother's estate, he from thenceforward entertained a most groundless resentment against the panel—the innocent cause of that disappointment—and took every occasion to publish the most scandalous falsehoods calculated to create a misunderstanding between her and her husband.

“6. That for some time before the said Alexander Ogilvie’s marriage he had cohabited in a most unbecoming manner with Anne Clark, a cousin-german of the family—a woman of the most infamous character, and who, for a course of years, had lived as a common servant-maid in one of the most notorious stews, or lewd houses, in Edinburgh, and other houses of bad fame, till at length she took up her residence with the said Alexander Ogilvie.

“7. Anne Clark’s relation to Mr Ogilvie’s family furnished Alexander Ogilvie with a pretence of sending her over to Eastmiln to pass some weeks there, and to endeavour by every possible means to bring about a reconciliation between Mr Ogilvie and his brother Alexander. In this view she attached herself to the panel, thinking by her means to have some influence with Mr Ogilvie; but at length, finding that both were equally averse to have any further correspondence with Alexander or his wife, she fell to work in another way. She quarreled with the panel; made her court to Mr Ogilvie, and first by dark insinuations, thereafter more explicitly, endeavoured to instil into Mr Ogilvie’s mind suspicions of the panel’s virtue, and of a criminal intimacy between his brother, the Lieutenant, and her. That they had even gone the length of forming a scheme to deprive him of his life by poison, or otherwise, and these, her pretended suspicions, she communicated to the good old lady, Mr Ogilvie’s mother; the tendency of all which was to operate a misunderstanding and separation between Mr Ogilvie and the panel.

“8. This diabolical contrivance happened unluckily in point of time to coincide with some differences that had arisen between Mr Ogilvie and his brother, the Lieutenant, in settling accounts about money matters, which, having at length produced high words, and put both

brothers in a passion, Lieutenant Ogilvie declared he would stay no longer in a house where he had been so used. He was preparing to leave it directly when Mr Ogilvie, giving way to his passion, gave the parting blow by acquainting the Lieutenant of the information he had received of his familiarity with the panel, his sister-in-law. Lieutenant Ogilvie, justly enraged, having peremptorily insisted to know his author, Anne Clark came at last to be suspected as the author and propagator of this wicked and malicious story, and what afterwards happened too fully justified the suspicion.

“9. Lieutenant Ogilvie immediately left the house. Mr Ogilvie soon cooled and became sensible of the folly of his proceedings, and of the injury he had done both to his wife and brother, as so abrupt a separation could not fail to put them in the mouth of the world. He therefore wrote to his brother the Lieutenant, pressing him most anxiously to return to the family. The panel, as far as decency would permit, joined in the same request.

“10. At this unlucky period was Mr Ogilvie seized with a return of one of these violent disorders in his bowels and stomach. He had been almost dead the day before; relapsed at night complained much; thought himself dying; continued ill all night; but finding himself easier, arose in the morning as usual. Again turning he had returned to bed, where he took a bowl of warm tea and biscuit, after which he made another effort, got up, put on his clothes, went abroad to take the air, relapsed, fell a vomiting, threw up a deal of bile, and expired about twelve that night.

11. The panel's behaviour upon that melancholy occasion was decent and becoming, expressive of the real sorrow and grief she felt. The tale that is told of her having administered the poison in a

bowl of tea that morning will be disproved in the strongest manner. She had none to administer; and every circumstance, as it is expected to come out on proof, will show that she had it not in her power so to have done had she intended it, and that *de facto* none was administered.

“12. Mr Ogilvie’s corpse remained uninterred until the 11th. It was viewed by physicians and surgeons of character and skill: the appearances were nothing but what are usual in natural distempers proceeding from various internal causes. A dissection of the body would easily have shown whether there had been poison in the case or not, and it was the duty of Alexander Ogilvie, the informer, who had come to the house and stopped interment for one day upon this very suspicion, to have caused the body to be laid open. This was not done; whereby the infallible means were lost of detecting the crime, if any was committed, and this unhappy panel was deprived of the only infallible means of proving her innocence.

“These are the great lines of principal facts which the panel proposes to prove; many others to the same tendency will it is expected come out in leading the proof. She flatters herself that these with an intelligent jury will be effectual to detect the falsehood of this accusation, and to vindicate the character and innocence of an unfortunate young woman, whose present state, several months gone with child, renders her a very improper subject to undergo a trial of this nature; which, from the accumulation of two capital crimes in one indictment, and the great number of witnesses given out in list, besides those to be adduced for her exculpation must draw out to an immoderate length.

CHAPTER IV.—CROSBIE'S SPEECH IN BEHALF
OF LIEUTENANT OGILVIE.

OBJECTIONS TO INDICTMENT DISALLOWED.

ANNE CLARK SEPARATED FROM OTHER WITNESSES.

Immediately after Dundas, her counsel, had finished on behalf of the female prisoner, Mr Andrew Crosbie, in behalf of the Lieutenant, represented that the said Lieutenant Patrick Ogilvie, having obtained a commission in the Army, he behaved in the execution thereof in a proper and inoffensive manner, and being ordered, along with his Regiment to the East Indies, he remained there till his health obliged him to return home, when he came to the House of Eastmiln, where his brother resided, who was then about to be married to Katherine Nairn, the other panel, and where he continued for some time with an inoffensive character, suitable to that which he had maintained in the Regiment in which he had served, of which there are many officers ready to attest to the character he held.

“ About the time that Patrick Ogilvie returned home, and about the same time that the defunct Thomas Ogilvie of Eastmiln was married to Katherine Nairn, Alexander Ogilvie, the third and youngest brother of the family, married the daughter of one Rattray, a porter, a person greatly inferior in rank to himself. His relations and immediate connections highly disapproved of the match, and alienated themselves from him on that account. This marriage happened about the time that the deceased Thomas Ogilvie was married to the panel, Katherine Nairn.

“ There was one, Anne Clark, who was related to the family of Eastmiln by the mother’s side. This woman had resided for several years as a servant in a house of dissolute reputation in Edinburgh, and which, as a house of bad fame, had been regularly visited by the constables. Some months, at least weeks, however, before the marriage of Alexander Ogilvie she had cohabited with him in the same house, and after his marriage she had lived in his father-in-law’s house. In consequence of which, it may be presumed, a very particular intimacy had arisen between her and the said Alexander Ogilvie.

“ The friends of the family of Eastmiln had taken umbrage at the marriage of Alexander Ogilvie with the daughter of a common porter, and he thought it necessary, therefore, to send some person to interpose as a mediator with that family, and the person he made choice of was Anne Clark, who was immediately despatched to the House of Eastmiln. She was received without suspicion as a member of the family, and in that character, without any enquiry into her former life and conversation she was treated as an equal and a gentlewoman.

“ Such was the pretext for sending Anne Clark to the House of Eastmiln ; but something deeper seems to have been intended. The deceased Thomas Ogilvie of Eastmiln had for many years been subject to consumptive symptoms. He had also been afflicted with ulcers in his bowels, which had been discovered about five years previous to his death, ever after which he had been in a valetudinary state, and there was reason to apprehend that he would not be long lived. The relations of Mrs Ogilvie in particular had shown some apprehensions that by his premature death the provisions in her favour might be rendered ineffectual. The panel, Patrick Ogilvie, was also in a bad state of health. He had been obliged to

return from the East Indies, where he had been in service with his Regiment, on account of his valetudinary habit. From the situation which the two elder brothers were then in there is the greatest reason to believe that Alexander Ogilvie had entertained the most sanguine hopes of succession to the estate, which, by the marriage of Thomas, and the return of Patrick for the recovery of his health, seemed likely to be disappointed.

“ That issue should not be procreated between Thomas Ogilvie and Katherine Nairn, his wife, and that Patrick Ogilvie should be obliged to betake himself to those inhospitable climes which he had left, and whose inclemencies had well-nigh already put an end to his life, seemed desirable objects in the eyes of Alexander Ogilvie. To promote dissention, therefore, between Thomas Ogilvie and his wife, and to alienate the mind of Patrick Ogilvie from his country, seems to have been the purpose for which Anne Clark was despatched from Edinburgh. As a relation of the family she was received with implicit confidence at Eastmilk, particularly by the panels, who were little aware what a snare was prepared for their anguaged confidence.

“ Miss Clark had but a short time resided at the House of Eastmilk when she made it her business to sow dissention and animosity among all the members of the family. She endeavoured to inspire Mr Ogilvie with jealousy towards his wife, and distrust towards his brother, and she was but too successful in her endeavours. Mr Ogilvie, a sickly man, and too susceptible of such impressions, was soon misled by the artful Miss Clark into a belief of what, if he had trusted to his own judgment, he could never have supposed.

“ The period which was chosen to insinuate these jealousies was remarkable. The panel, Lieutenant Patrick Ogilvie, had some differences with his elder brother concerning his patrimony,

for a dispute had arisen about the balance of a bond of provision owing to Patrick Ogilvie. Miss Clark laid hold of that opportunity to propagate her malicious allegences, and in the heat of a conversation which arose concerning the balance of this bond of provision, and what Thomas had done with it after he took it up from the custodier, deceased first insinuated his apprehension of an improper intercourse between the two panels.

“To minds already heated by a dispute concerning money matters this incident served to add greater warmth. The two brothers parted with some animosity, Patrick declaring his intention never to return to the House of Eastmiln. His intention was, after visiting his friends in this country (as he had now tolerably recovered his health) to return to his military service in the East Indies ; hoping by this means to avoid both the jealousy of his brother and the envy of his other relations. Though often solicited thereafter to return to his brother’s house he always kept at a distance after the day on which he discovered the first symptoms of jealousy.

“Mrs Ogilvie, the other panel, had for some time before this complained of bad health, and particularly of want of sleep. On account of her complaints it had been customary for her to take salts and laudanum as medicines. In the hearing of the panel she had desired to have some of these medicines, and as he, while at sea, had been in the habit of taking both on account of his bad state of health, and in a short time expected one of his sea-chests to arrive, in which he had a quantity of both, proffered to send her some laudanum and salts as soon as the trunk, or chest, they were in should arrive in this country. She told him she would be obliged to him for them, as they were so ill to be had of a proper kind in that remote district

“After the panel had left the House of Eastmiln in the manner above mentioned his trunk, or chest,

came to hand. It was brought from Dundee by Andrew Stewart, merchant in Alyth, to his house, and was in his presence in the public shop opened by the panel, who has reason to believe that the said Andrew Stewart observed both the salts and laudanum that were therein. But the quantity of laudanum proving very small, as a great part of it had been used during the voyage, the panel found himself under the necessity of purchasing a small quantity more, in order to send as much as was requisite to Mrs Ogilvie. He did accordingly buy a small quantity of laudanum for this purpose, which, together with what he already had, he put into a phial, and with two doses of salts, which in presence of Andrew Stewart he took out of the chest or trunk aforesaid, put up and sent by the said Andrew Stewart, who was going on a visit to see Eastmiln and Mrs Ogilvie.

“What symptoms attended the deceased Mr Ogilvie’s last illness the panel, not having been at the House of Eastmiln, cannot from his personal knowledge pretend to say. As far as he has been able to inform himself, however, he cannot discover that there is the least evidence that he died by poison. Nor did he on any occasion pretend to hinder a dissection of the body, or any other means of discovering whether the defunct had died by poison or not. On the contrary he urged and insisted that such a trial should be made, and having sent for a surgeon to inspect and open the body, the person whom he had despatched express for that purpose was privately stopped by Alexander Ogilvie, the younger brother, who is the person on whose signed information he was originally committed to prison.

“Such are the material facts which the panel apprehends he is called upon to explain in vindication of his good fame, and to these facts he subjoins the following defence in terms of the statute :—

“1. That the libel contains a *cumulatio actionem in criminalibus*, which is reprobated in law.

“2. That so far as relates to the incest the libel is utterly vague and inconclusive, being destitute of all circumstances of time, or place, or other requisites that can enable the panel to make a pointed defence, and therefore ought not to pass to the knowledge of an assize.

“3. The libel so far as respects the crime of poisoning is utterly irrelevant *quoad* this panel.

After Crosbie had finished, Lockhart for Katherine Nairn, and Rae for Patrick Ogilvie, lodged an objection to the latitude in time as given in the indictment, declaring that part thereof was irrelevant, and supported the objections raised in the speeches of Dundas and Crosbie.

To these objections Sir David Dalrymple for the Prosecutor answered that *cumulatio actionum criminalium* is established in the practice of the Justiciary Court, and in this case is particularly necessary and proper. That it is established in the practice of the Justiciary Court is evident from the following examples selected from many of the same nature which occur in the Books of Adjournal. Here the learned counsel quoted fifteen instances of indictments for the most debasing, degrading, and horrid crimes, which we refrain from mentioning, extending from 1580 to 1706, in all of which *cumulatio* was allowed.

In continuation Sir David Dalrymple said, “As the *cumulatio actionum criminalium* is fully established by practice, so in this case it is peculiarly proper and necessary, the two crimes charged being intimately connected, and it being proposed in general to prove both by the same witnesses. To make separate trials for each crime would be oppressive to the witnesses, the jury, and the parties. It is true that accusations for different crimes may be thrown into one libel in such a manner as to prove oppressive. Whenever this is

attempted the Court will interpose ; but not in order to prevent the trial of different crimes in one libel where nothing oppressive is meant, and where the expediency of the *cumulatio actionum* is obvious.

“ As to what is said that the charge for the lessor crime is unintelligible and vague, it is answered that it is laid in terms the most unexceptionable, in the express words of an Act of Parliament, and surely the Legislature must be presumed capable of conveying by words a just idea of the crime which it meant to punish. With regard to the objection raised against the latitude of dates it is answered that in all criminal indictments a latitude of this kind is allowed in practice ; for witnesses may be distinct as to the circumstances of the crime charged, and yet not be certain as to a day, or even a month. Indictments generally comprehend the term of three months. In the case the King’s Advocate against Oliphant, 4th February, 1736, a libel for a single criminal act, bearing two months in one year, and two in another, was held sufficiently articulated, and in that form was remitted to the knowledge of an assize. When an indictment contains the charge of a crime which in its own nature is capable of frequent repetition, a still greater latitude is allowed. Thus in the case of Forbes, 1758, tried for corrupting young girls, an indictment was remitted to the knowledge of an assize, although it bore that the crime was committed in some one, or other, of the months from May, 1757, to April, 1758, inclusive. If the panel, Mrs Ogilvie, was not married till the 30th January, 1765, the charge preceeding that date will cease of course, and if both panels be found guilty of the said crime only after the death of Eastmiln, although perhaps not then capital, it will, nevertheless, be punishable in law ; the jury will therefore find accordingly, and the Court will adapt

the punishment to the offence.

“As to what is said that the murder by poisoning is not properly laid against Lieutenant Ogilvie it is answered that the contrary appears from the tenor of the indictment. Although this was not the case, yet he is charged as guilty, art and part, which is in law a relevant indictment, and as such must be remitted to the knowledge of an assize.”

The judges, having heard the arguments for and against the relevancy of the indictment, the Lord Justice Clerk declared that they repelled the whole objections raised to the form of indictment, but allowed accused to prove all facts and circumstances that might tend to their exculpation, or the alleviation of their guilt, and remitted them, with the indictment as found relevant, to the knowledge of an assize.

The case was thereupon adjourned for a week, until the 12th of August, “at seven o'clock in the morning, and ordain parties, assizers, witnesses, and all concerned, then to attend, each under the pains of law, and the panels in the meantime to be carried back to prison.”

Next day, the 6th of August, a petition from the prisoners was laid before the judges, humbly showing that the petitioners had pleaded not guilty to the grievous accusations against them, and were confident that in the course of the trial their innocence would be fully vindicated to the satisfaction of the Court and jury.

That as the petitioners did assert, and had good reason to believe, that as the prosecution took its rise from malice and most false and injurious calumnies, raised and propagated by persons, who from most unjust views, have been desirous of ruining the petitioners, it was therefore highly necessary and just that the petitioners, who were then to undergo that solemn trial for their lives, should be secured as far as possible from every kind of influence and undue practice that might, or could,

be used upon witnesses to be adduced in that cause.

That among other misfortunes under which the petitioners laboured they had been accused by report of endeavours to secrete material witnesses in that matter. Though conscious of their innocence in that, as well as in other respects, yet several of the witnesses have on that, or some other account, been secured as prisoners in the Castle of Edinburgh. That among these witnesses was Anne Clark, designated daughter of the deceased Allan Clark, officer of Excise, who is now confined in the same room with two, or more, maid-servants, who were in the house of Eastmilm at the time of Thomas Ogilvie's death, and who would be most material witnesses in that cause.

That the petitioners would make it appear by most incontestable evidence that the said Anne Clark was not only a person of the worst character and disposition, such as rendered her improper and inhabile to be received as a witness; but also that she had entertained and expressed deadly malice and hatred against both the petitioners. In pursuance thereof she had been the author and propagator of false and malicious stories which had given rise to the present prosecution. In fine, that she was in a combination to ruin the pane's, and as far as she could to deprive them of their lives as well as their reputation.

That it would occur to their Lordships that the petitioners were exposed to imminent danger by the said Anne Clark's being constantly confined in the same room with other material witnesses, whose sex, situation, and inexperience—though otherwise honest and well-inclined—might expose them to be influenced and prejudiced by the malicious endeavours of that artful woman. For these reasons the petitioners were confident that their Lordships would forthwith give orders for separating the said Anne Clark from the said other witnesses. Therefore praying that it might please

their Lordships forthwith to grant warrant to the Deputy Governor of the Castle of Edinburgh, or any other proper officer, to remove the person of the said Anne Clark from the room in which she was presently confined, or otherwise to separate her from the said maid-servants, and to keep her separate from them, or any other witnesses to be adduced against the petitioners in the present prosecution.

(Signed) HENRY DUNDAS.

(") DAVID RAE.

The above petition having been placed in the hands of His Majesty's Advocate, the following Note was subjoined by him, and it was passed on to the judges :—

“ EDINBURGH, 6th August, 1765.

“ I, Thomas Miller, Esqr., His Majesty's Advocate, consent that the prayer of the within Petition be granted, but upon this express condition, that no person whatever be admitted, or have access to, any of the said three witnesses, except in presence of one or other of the officers of the Court of Justiciary which their Lordships shall think proper to appoint.

(Signed) “ THOMAS MILLAR.”

Their Lordships' decision ran as follows :—The Lord Justice Clerk and Commissioners of Justiciary, having seen and considered the foregoing Petition, with the consent of of His Majesty's Advocate subjoined thereto, recommend to the Depute Governor of the Castle of Edinburgh, or other proper officers, to cause remove the said Anne Clark from the room where she and the other two women before-named are presently staying, into some other room in the said Castle, until Monday next, the twelfth day of August current ; and also that no person get access to any of the said three women except in presence of Robert Auld, writer, and Andrew Murison, macer of this Court, or either of them.

(Signed) “ GILB. ELLIOT, J. P. D.”

CHAPTER V.—THE CASE FOR THE CROWN. THE EVIDENCE OF ANNE CLARK.

ON the 12th August, 1765, the actual trial began. As the prisoners were of a high social standing, the jury cited were selected from a similar sphere. Out of the forty-five jurors cited the following fifteen were selected and sworn without any objection being raised by the defending counsel:—Sir James Clark of Penicuik; John Howieson, Braehead; John Christie, Baberton; Adam Cunningham, Bonnytoun; Alexander Sheriff, Craigleith; David Dundas, younger, Newhalls; Sir George Suttie of Balgonie; Charles Hay, Hopes; William Ramsay, Preston; John Borthwick, Cruikston; Thomas Brown, Braid; Gavin Hamilton, bookseller, Edinburgh; John Forest, sen., George Chalmers, and Archibald Wallace, merchants, Edinburgh.

The first witnesses called were David Rattray, John Lamar, James Barnet, and John Gilloch, all designated of "the parish of Glenylla," three of whom were, according to the old record, "purged of malice and partial counsel, sworn, and interrogate," and one, Barnet, was dismissed as under age, being only fifteen. The evidence of these witnesses we will, however, pass over, as it refers only to the charge of incest, and is therefore unfit for publication.

Katherine Campbell, late servant to the deceased Thomas Ogilvie of Eastmiln, was next called, against whom defending counsel objected. (1.) That she ought not to be received as a witness, no execution being returned against her twenty-four

hours before the diet of compearance, conform to to the forms of Court established. (2.) That she bears illwill and malice against the panel, Mrs Ogilvie, having been dismissed her service for theft, on which occasion she expressed resentment in strong terms, and swore revenge, which is offered to be proved *instantanter*.

Both these objections were, however, repelled, the former on account of the witness having removed to a distant part of Scotland, and therefore could not be cited by the messenger as soon as the other witnesses, although her name appeared on the list along with theirs. To the latter objection it was stated that the witness would be purged of malice in the initials of her oath in common form, but that that the Court would reserve the right to reject any special expressions of malice. Upon pronouncing this interlocutor Alexander Lockhart protested for remeid of law, and declared that any interrogatories he should put afterwards to this or other witnesses during the trial, should not be deemed a passing from this protestation.

THE EVIDENCE.

Katherine Campbell, being a Highland woman, could speak the English language but very imperfectly, and her evidence had therefore to be taken through the medium of sworn interpreters. She stated that about twenty days after Thomas Ogilvie's marriage with Kate Nairn she was sent by the Lady Glenkilrie, her (Kate Nairn's) sister, to serve as washerwoman at Eastmiln. In that service she remained about ten weeks. While there a sister of Laird's was married in his house, after which the whole family went to Dunsinnan, and when they returned, all of them, with the exception of Eastmiln and his mother, expressed dissatisfaction with her, but on what account was never stated. She considered Anne Clark stirred up her mistress against her. She never got any wages

but a pair of shoes, and when she asked her wages she was told by Mrs Ogilvie in presence of Anne Clark, Lieutenant Ogilvie, and the deceased Eastmiln, that she was well off in getting leave to go without wages. Eastmiln followed her, and desired her to return, which she did, and stayed for a day, but next morning Mrs Ogilvie again turned her off. The rest of witness's evidence went to prove that a very improper intimacy had existed between the Lieutenant and his brother's wife.

Anne Clark, the leading witness for the prosecution was now called, and against her the obstructing policy of the defending counsel again manifested itself. Henry Dundas objected to her in the following terms :—(1.) That she is a person of infamous character, being held to be a notorious liar and dissembler, a disturber of the peace of families and a sower of dissention. (2) That she has not only been held and reputed such as above described, but it will be clearly proved that she lived and resided for no less than three-and-a-half years in a noted lewd house within the city of Edinburgh as a common prostitute, notwithstanding that at the same time the said house was frequently visited by the constables as a house of bad fame, and that frequent disturbances happened therein to the great offence and scandal of the neighbourhood. (3.) The said Anne Clark did, in confederacy with Alexander Ogilvie, publish and propagate false, scandalous, and malicious aspersions upon the characters of the panels, relative to the matters libelled, and did endeavour to make dissentions and differences between Mrs Ogilvie and her deceased husband. (4.) The said Anne Clark does, and has, entertained and expressed on sundry occasions, before and since the decease of Thomas Ogilvie, malice and inveterate ill-will against both the panels, and has threatened repeatedly to do all she could to

bereave them of their lives.

Sir David Dalrymple, in behalf of His Majesty's Advocate, answered, "All and every one of these objections ought to be repelled for the following reasons :—With respect to the first it is obviously irrelevant. No such thing is allowed in the practice of the Justiciary Court as a general proof of character. Indeed, were it allowed criminal trials in Scotland would soon become inextricable, for were the character of each witness thus to be enquired into, there would be as many separate trials as witnesses produced. Besides, were this new form to be introduced witnesses would be deterred from appearing upon citation given. Instead of being called to give evidence, they would in effect be called to stand an enquiry upon the whole conduct of their lives. If they were to appear and undergo such a scrutiny they would come much worse prepared for their defence than the parties themselves, even when tried for the greatest crimes, for the parties know what is charged against them, and by what evidence it is proposed to prove such a charge. They are therefore enabled to prepare for their defence, but witnesses would neither know what might be charged against them, nor by what evidence it was proposed to prove such charges; they would therefore be incapable of preparing for their defence. Indeed, by the form established in Scotland, the Public Prosecutor himself has no means of confuting such a charge brought against a witness. He may be possessed, as he actually is in the present case, of certificates from credible persons to prove the character of the witness to be unblemished, but he is not at liberty to produce them, because he must confine himself to the examination of the witnesses whose names are given out with the libel, and to the evidence therein mentioned.

"With respect to the second objection

that the witness is a common prostitute, &c., it cannot be received in this case. The crimes charged are occult crimes, said to have been committed *intra familiam*, and they can only be proved by witnesses who resided in the family, be their character what it will. The witness against whom the objection is raised resided in the family at the period when the crimes charged are said to have been committed. She was a near relation of the family of Eastmilk, was received and entertained as such, and had daily intercourse with the panels. If such necessary witnesses were to be rejected it follows that the crimes charged could not be proved at all. Against the last witness, Katherine Campbell, it was objected that she had been turned out of the family for some small thefts, and had vowed revenge, and entertained malice against Mrs Ogilvie. Against this witness it is objected that she is of an abandoned character and a common prostitute. Like objections might be moved against every other person of the family called as witnesses, and thus it would follow that in the house of Eastmilk the greatest crimes might be committed with certain impunity, because there were in the family no witnesses of irreproachable character who might give evidence of such crimes.

“ With respect to the third objection, it is no less irrelevant. If the witness did spread such reports as are mentioned in the objection from her proper knowledge, or just suspicion of the truth of the matters libelled, she did nothing unlawful; and until the closing of the evidence it cannot be known whether the reports, if spread by her, were true or false. It is therefore premature in the panels to offer to prove the falsehood of reports while the enquiry subsists whether the facts reported were true. . .

“ With respect to the fourth objection, of deadly malice. It is a charge in itself most improbable

that a witness would deliberately resolve to perjure herself out of malice. The panels ought to condescend, not only to the particular expressions used, but also on the cause of such deadly malice. Were a general proof of malice expressed in words to be permitted, then it would be in the power of every witness favouring the panel to incapacitate himself from bearing evidence to facts which might be hurtful to the panel, and hence it is the practice of the Court that not only the expressions importing malice be proved, but that the probable cause of such deadly malice be also proved.

The Lord Justice Clerk and Commissioners of Justiciary, having repelled the foregoing objections, Anne Clark, a woman of thirty years of age, commenced giving her evidence, a task that occupied the period of eight hours. She deponed that she was cousin-german to the deceased Mr Ogilvie of Eastmiln, and went there upon the first day of March last. Her reasons for going there were not only to see Eastmiln and Mrs Ogilvie, (who were then recently married), and Lieutenant Ogilvie, who was then come from abroad, but also to endeavour to make peace between that family and their brother, Alexander, who had entered into a very mean marriage, much below the rank of his family. After she had been some little time at Eastmiln she came to be informed that Mrs Ogilvie was censured for being too intimate with the Lieutenant. She informed Mrs Ogilvie of what she had heard, and desired her to guard her conduct and abstain from the Lieutenant's company. . . . She afterwards heard from the deceased, Eastmiln, that his mother had said to him that Mrs Ogilvie was troublesome to the Lieutenant. On occasion of this information there was ill-blood and high words between the two brothers, and at length Eastmiln ordered his brother out of his house. This happened on a Thursday, and the Lieutenant left about three

o'clock in the afternoon of that day. Upon his leaving Mrs Ogilvie went up to the room he had occupied, threw herself upon a bed, and began crying bitterly. When her husband went up to her she ordered him out of the room, upon which he told her that her conduct was improper, and that she would ruin her reputation by intermeddling in the differences between him and his brother. When the Lieutenant went off as above-mentioned, and Mrs Ogilvie was in the above disposition, Eastmiln, as he had frequently upon former occasions, when he and his wife differed about the Lieutenant, expressed his design to go and leave his own house. The deponent, who at that time saw little prospect of harmony between them, proposed to Mrs Ogilvie that she should agree to this scheme, which she then seemed very well pleased with, but on the following day both seemed to have changed their minds.

About a fortnight or three weeks after she (Anne Clark) came to Eastmiln the two panels and the deceased Mr Ogilvie, having gone to pay a visit at Glenkilrie, they all returned, as she thought, in very bad humour. Mrs Ogilvie, was particularly so; expressed dissatisfaction with her husband, and said if she had a dose she would give it him. Witness did not think Mrs Ogilvie serious in what she said. Thereafter, but she cannot precisely specify the times, Mrs Ogilvie did frequently signify to deponent that she was resolved to poison her husband, and that she intended to get poison from Mr Robertson, a merchant in Perth, or Mrs Eagle, who keeps a seed shop in Edinburgh, upon pretence of poisoning rats. Seeing Mrs Ogilvie was now intent upon that project witness endeavoured to divert her from it by gaining time, and signified that if she applied to these people for the poison she would be brought to an untimely end, but that she (Anne Clark) would go to Edinburgh and get

a brother of hers, who lived there, to buy it. Mrs Ogilvie approved of the proposal, but complained that witness was long in putting it in execution, and therefore proposed to her to speak of it to Lieutenant Ogilvie, at he could get it more expeditiously ; but this deponent refused to do.

Upon the day the Lieutenant was put from the house Mrs Ogilvie told witness that, with much difficulty, she had prevailed upon him to furnish her with poison. Upon Wednesday, the day immediately before Eastmiln's death, Mrs Ogilvie told her that she had received a letter the day before from the Lieutenant, which was brought to her hand by Elizabeth Sturrock, and in this letter he had acquainted her that he had got the poison the length of Alyth, but did not choose to trust Elizabeth Sturrock with it, but that he would send it with Andrew Stewart, his brother-in-law, next day, so that she expected it there that night. Upon this occasion witness told Mrs Ogilvie that she never believed it would come to this, and exhorted her most earnestly to abandon the proposal saying that it would not only bring her to misery both in this world and in the next, but would bring disgrace upon the family she was come of, and upon that into which she was married. Prisoner replied that the conversation was disagreeable to her, as witness knew, and that she was determined to put her resolution into execution whatever might be the event. The reasons she gave for coming to this strange resolution, and for rejecting all proposals made for living in friendship with her husband, were that she did not love her husband, and never could love him, and that he had used the Lieutenant badly upon her account. She also said how happily could they live at Eastmiln if there were none there but the Lieutenant, she and deponent. On one occasion, witness in remonstrating against these wicked proposals, told Mrs

Ogilvie that although her husband were dead she and the Lieutenant could never be wed. Mrs Ogilvie answered that they could go and live in one of the countries where he had been.

On the Wednesday night aforesaid, immediately preceeding Eastmiln's death, Mrs Ogilvie and witness went out together, she having expressed her impatience for Andrew Stewart's arrival. They did not meet Andrew Stewart, but when they returned to the house found him sitting with old lady Eastmiln, he having come by another way. Mrs Ogilvie immediately took him upstairs, where he stayed with her for about half-an-hour, and then came down alone. Deponent asked him if he had brought anything with him. He at first answered that he had not, but, upon being pressed, he said he had brought some drugs for Mrs Ogilvie, in two phial glasses. Witness said they were black drugs, but, Mrs Ogilvie having come downstairs, she did not get an opportunity of explaining to Andrew Stewart what she meant by calling them so. Mrs Ogilvie and Andrew Stewart having afterwards gone out towards the Kirkton, and left witness and her aunt, lady Eastmiln, by themselves, she told her aunt that she believed what Andrew Stewart brought was poison, for Mrs Ogilvie told her he was to bring poison. After acquainting the old lady as above, she asked if she should inform the deceased Mr Ogilvie of the particulars. The old lady replied that it would be useless, for his wife would persuade him that it was but laudanum for her own use. A better way would be that both she and deponent should caution Eastmiln against taking anything from his wife in private. After this she went to the Kirkton, with the view of being advised by the minister as to what course it was best to pursue in such a case, but had the misfortune to miss him, he not being at home, and the door being locked but the key left in it. East-

miln and his wife and Andrew Stewart were all in the Kirkton at that time, in the house of Fergus Fergusson, a tenant of Eastmiln's, who keeps a public house. Having come away from the Kirkton, Mrs Ogilvie and Andrew Stewart walked on about a pistol shot ahead of Eastmiln, whom witness joined. She signified to him that it would be very proper and necessary for him to leave his house, for she believed his life was in danger, but did not tell him the danger she suspected was from his own wife. Deceased said he could not leave home at that time; and when she signified that there was danger in delay, he replied that he understood what she meant, but he was determined he would take nothing that she gave him, and thus put it out of her power. Her aunt that same night, both before and after supper, told her that she had likewise cautioned Eastmiln to take nothing from his wife.

That same evening witness told Andrew Stewart that she believed it was poison he had brought, and gave her reasons for thinking so; and he appeared to give credit to what she said. After Eastmiln and his wife had gone upstairs to bed, Andrew Stewart, old Mrs Ogilvie, and witness had a long conversation about what means should be employed to frustrate Mrs Ogilvie's design. She particularly remembers that Andrew Stewart proposed that as he knew the drawer wherein the things he had brought were put, means should be used in the night-time to get Mrs Ogilvie's keys to open the drawer, and take out the things. If that did not answer a tradesman could be got next day, or as soon as they could get an opportunity, to open the back of the chest of drawers, and so get into the desired drawer. He also said he brought a letter from the Lieutenant to Mrs Ogilvie, to whom he was instructed to deliver it privately, along with the drugs, which he had accordingly done. Witness never insinuated to Eastmiln any

suspicious she had of his life being in danger until the night above mentioned, which was the one immediately preceeding his death. She, however, frequently told the old lady, his mother, of the danger she apprehended Eastmiln was in from the disposition manifested towards him by his wife; and the old lady said she likewise was suspicious, because she thought her daughter-in-law would stick at nothing. She did not explain to the old lady her knowledge about the poison until after the Lieutenant was turned away from Eastmiln, but she then advised her to warn her son of his danger.

From the time deponent went to his house in March last Eastmiln appeared to be in great distress of mind on account of the differences between him and his wife. She did not hear him complain of any bodily indisposition, excepting sometimes of a pain in his breast, which she thinks happened twice, but he never kept his bed one day, or even an hour longer than usual. The day immediately before his death there had been a quarrel between him and his wife. Mrs Ogilvie had given witness some cambric to make into ruffles for the Lieutenant, who, she said, had sent the cambric to her, whereas Eastmiln said a chapman had that day come to the house and craved him for the price of it, and he had refused to pay it. After this quarrel Eastmiln went out in bad humour, and witness thinks without his breakfast. She heard that he spent the day among his tenants over the hill. He returned in the evening, said he was not well, and went to bed without supper. Eastmiln had not at this time, or at any other time, so far as she knows, any violent vomitings, purgings, or convulsions; and as far as she knows nobody else ever heard of him being so affected.

Next morning Mrs Ogilvie made the tea somewhat earlier than usual, and when witness came into the breakfast room she heard Mrs Ogilvie say

that the Laird and Elizabeth Sturrock were well off that morning, for they had got the first of the tea. Before this deponent had been sitting with her face to the window and her back to the table, and had not taken any notice of what Mrs Ogilvie had been doing, but upon hearing her express herself as above turned round and asked, "What! has the Laird got tea?" and Mrs Ogilvie replied that he had. She does not know the reason why Mr Ogilvie did not come down to breakfast that morning. She is of opinion that she said to the old lady that she was frightened about the tea the Laird had got, but said nothing about it to Andrew Stewart; this she wishes to be understood applies to the time immediately before the Laird was taken ill.

Mrs Ogilvie went out of the room twice or thrice during the time they were at breakfast, and at length came in and said that the Laird was very ill. Witness overheard a report among the servants that he was troubled with purging and vomiting. The old lady desired her to go up and see Eastmiln, which she did about half-an-hour after breakfast. She continued a very short while in the room, for Mr Ogilvie appeared to be in a dying condition. She came away crying, and Mrs Ogilvie meeting her asked if she were daft, Deponent answered in way of surprise or derision. "O aye! and Mr Ogilvie is dying." After she had come downstairs and stayed an hour or so, the old lady desired her to go upstairs to her son, Eastmiln, and keep him from these two women, whom she understood to be Mrs Ogilvie and Elizabeth Sturrock, who were then sitting with him. Witness accordingly went upstairs, before mid-day as she thinks, and continued with him till his death, which happened between eleven o'clock and twelve o'clock that night. Eastmiln, as she has above expressed, was seized with a purging and vomiting. After she went upstairs he had for

some time some purging, but not nearly so violent as she had been informed it was before. He had a most severe vomiting, and called always for a cold drink. He drank great quantities of cold water. She once gave him water mixed with milk, but he complained of that, and insisted to have pure cold water. He afterwards drank some small ale, but upon his brother-in-law, Glenkilry, coming in the evening, when it was almost dark, he dissuaded him from taking more. She tried him once with a glass of wine and some sugar in it, which he drank, and for about an hour after taking it vomited none. She got the glass of wine from Mrs Ogilvie. Eastmiln immediately after taking water or ale threw them up again, but after taking the glass of wine there was an intermission, and though he drank both water and ale after that he kept them longer than before. He complained of a "burning at the heart," as he called it, and of excessive pain in the calves of his legs, said they would rend, and desired witness to bind them up, which she accordingly did. There was a severe heaving at his breast, and he ordered the windows to be kept open to give him breath. He was constantly in motion, moving his head, legs, and arms. She observed in the afternoon he did not speak plain, which she supposed was owing to his tongue having swelled, but she did not see his tongue. About an hour, or an hour-and-a-half, before his death he had an intermission of the vomiting, but at length he was attacked with a most severe press of it, after which he fell back upon deponent, who was sitting behind him in the bed supporting him, and expired.

Witness heard Eastmiln before his death say to James Millam, his tenant in the mill, who was attending him, that it was either "strong poison," or "rank poison," that was killing him. Before one o'clock she heard old lady Eastmiln say to Thomas that he had broken his promise to her in

taking anything from his wife. He answered, "It is too late now, mother ; but she forced it on me." On this occasion there was none present but old Mrs Ogilvie and deponent. She knows nothing about sending for a surgeon to attend Eastmiln, further than that she herself sent Anne Robertson, one of the servants, to tell Andrew Stewart, who she understood had then gone off to Alyth for Mr Meik, surgeon there. This happened on the forenoon of the day on which Eastmiln died. She thinks that before she sent off Aune Robertson she heard some conversation about sending for a surgeon between Andrew Stewart and the old lady

After Eastmiln's death, James Millam told her, that he had got orders from Mrs Ogilvie to take a horse and go and acquaint the Lieutenant of his brother's death, but thereafter it was arranged that as Glenkilry, in whose house the Lieutenant then stayed, was going home from Eastmiln he should acquaint the Lieutenant, who arrived there next morning about six o'clock. The day on which Eastmiln died Mrs Ogilvie stayed with him for a short time in the forenoon. Thereafter she frequently proposed to come back to him if witness was dismissed, but deceased would not agree to this ; and she came no more near him. The morning after Thomas Ogilvie's death, she told the Lieutenant she knew the whole affair of the poison, and asked him how he could have sent it to Mrs Ogilvie. He appeared to be under great concern and confusion, and said that suppose he sent it he did not think she (Kate Nairn) had so barbarous a heart as give it. Three missive letters, marked by the witness's and Lord Examiner's signatures, being shown to her, she declares that the letter beginning "Dr. Captain," which is not subscribed and has no date, and another letter which begins "Dr. Sr.," and is dated "Glenkilry, Wednesday," and signed "Ketty Nairn," are both very like Mrs Ogilvie's handwriting ; the first she is positive

is so. The third letter, which bears date at "Glenkilry," and is addressed to "Thomas Ogilvie, Esq., of Eastmiln," she is unable to identify the handwriting of. She did not, either on the day of Eastmiln's death, or the day after, acquaint anybody by letters, or otherwise, of her suspicions and belief that Eastmiln died by poison.

Cross-examined by defending counsel, Anne Clark declared that she once had a conversation with one, Mr Dougall, a surgeon, upon the nature of laudanum, which Mr Dougall had been speaking of the day that Lieutenant Ogilvie was put from Eastmiln. That gentleman told her he took it for the gout. She asked if it was not dangerous, to which he replied that there had been instances of fatal effects, but if it were cautiously taken there was no danger. She asked how much might be taken with safety, which he told her, but she did not ask how much would prove fatal. She cannot say from her own knowledge whether Eastmiln was abroad or not on the morning of the day on which he died. She heard it reported by others, particularly by Anne Sampson, that he had been out that morning after getting a bowl of tea, and that he was seized with a vomiting before he got in again. There was once a dose of salts sent from Edinburgh to Eastmiln for Mrs Ogilvie's use, but she never heard of any more coming into the family. There was nobody present when the old lady desired witness to go upstairs to attend Eastmiln, and "keep those two women from him." Alexander Ogilvie, one of Eastmiln's brothers, came to Eastmiln upon the Tuesday forenoon after his death. Witness once asked deceased when he was dying, if he did not choose to have his wife with him. His answer was, "Miss Clark, I choose a drink." The matter Eastmiln vomited was much of the colour of squeezed eggs, or greenish yellow.

Further cross-examined, witness stated that Alexander Ogilvie came to Eastmiln upon the

Monday, eight days after she came there ; she came on a Friday, and he stayed there till his sister was married. She never heard any report of indecent familiarities between the panels till she came to Eastmilm as aforesaid. She never had any difference with any of the family while she stayed there. She never heard Thomas Ogilvy had employed James Millam to turn her away from the house, or borrowed money from him to give her to go away. After deceased's death she got a message from Mrs Ogilvie, by Martha Ogilvie, Eastmilm's sister, to dismiss from the house. The conversation she had with the Lieutenant about his sending the poison to the other panel was at the burn side, eastwards from Eastmilm. She does not know if Mrs Ogilvie took any salts after her husband's death. She was informed that the drawers into which the things that Andrew Stewart brought were put stood in the Lieutenant's room. After the panels were committed to prison at Forfar, she went back to Eastmilm, and stayed for a few nights. At this time Alexander Ogilvie had a roup of the cattle at Eastmilm. When Mrs Ogilvy was carried away prisoner, Alexander Ogilvy took up some small keys of hers and asked if he would take care of them. Alexander had the keys in his hand when he asked the above question. He then locked all the rooms in the house, except the low room, into a drawer in which he put the keys, locked it, and took the key with him.

CHAPTER VI. —THE CASE FOR THE CROWN,
CONTINUED—EVIDENCE OF ELIZABETH STURROCK.

ELIZABETH STURROCK, late servant to the deceased Thomas Ogilvie of Eastmiln, aged 27, and unmarried, deponed: That about the end of last harvest she entered service to the deceased, and continued in his service until his death. About Candlemas last the said Thomas Ogilvie was married to Kate Nairn, and about the same time Lieutenant Ogilvie came to reside at Eastmiln, where he continued till about a fortnight before his brother's death. During the Lieutenant's residence at Eastmiln she had occasion to observe too great a familiarity between him and Mrs Ogilvie, which proceeded even to indecencies.

. She believes that on this account the Lieutenant was put away from Eastmiln by his brother. Her reason for thinking so is that about the time the Lieutenant went away, as she was going to her bed in the kitchen, she overheard the late Eastmiln, when he was going to bed with his wife in the room above, say to her that she was too familiar with the Lieutenant, and that they were as sure to be together as the bell was to ring on Sunday. Anne Sampson was in the kitchen at the same time, and she believes heard what passed between Eastmiln and his wife.

After Lieutenant Ogilvie left Eastmiln witness observed Mrs Ogilvie in tears and crying, upon which occasion she said she was sorry that the Lieutenant had left the house. Upon the night he left Mrs Ogilvie gave witness a letter to carry to him at Little Fortar, about three miles distant.

She did not know what the contents of the letter were, but Mrs Ogilvie desired her to tell the Lieutenant that she had been bad since he went away, and that her husband was not heeding her. That letter she delivered to the Lieutenant at the riverside near Little Fortar, who in return bade her tell Mrs Ogilvie that he was very well, that she should keep up a good heart, and that he was going to Baron Reid's.

Mrs Ogilvie afterwards gave her another letter to carry to the Lieutenant at Glenkilry, with instructions to delivered it privately, which she accordingly did, receiving an answer in writing, which she also delivered privately as desired. On another occasion, being the Tuesday immediately before Eastmiln's death, Mrs Ogilvie sent her with another letter to the Lieutenant, who was then at Alyth, with orders to deliver it privately. She delivered the letter accordingly, then went and did some other business in the town of Alyth, returned to the Lieutenant, and received from him an answer to the last mentioned letter, which he desired her to take care of and deliver privately. At the same time he told her he had a bundle of linens lying at a house near Eastmiln, and a letter with them, and desired her to call for them and take them to Eastmiln with her. She, however, returned straight to Eastmiln with the Lieutenant's answer, and Mrs Ogilvie not being then at home, she went and fetched the bundle of linens and the other letter, all of which she delivered to Mrs Ogilvie at the same time. The answer she received last from the Lieutenant was a large, thick letter, bigger than a sheet of paper, but she did not think there was anything in it but paper.

Eastmiln appeared to be in his ordinary health upon the Tuesday before he died. He usually had very good health, she never having known him to be in bad health while in his service. On the Wednesday before his death he was also in good health.

On the morning of the Thursday upon which he died witness knew little about him, as she was confined to bed by sickness, except that she heard he had been taken ill. Mrs Ogilvie came into the kitchen where she was lying, and told her in a whisper that she had given the Laird his breakfast, and desired witness to say that she had also got hers, although she had then got none. Some time thereafter Mrs Ogilvie sent Anne Sampson with some tea to her in a bowl, which she drank. She usually got tea in the morning when she was indisposed.

After witness got out of bed on the said Thursday morning, and before she got the tea as aforesaid, she observed the late Eastmiln come in at the outer door, and come forward to the kitchen, where she was. He was then very ill and vomited much. She believes the rest of the family were at this time at breakfast, for Mrs Ogilvie came into the kitchen for some cream to tea. Seeing her husband so ill she desired him to go upstairs to his bed, which he did, deponent helping him to go up, and also to throw off his clothes. After he had been a little while in bed he said he thought himself some easier, but shortly afterwards turned very ill again, commenced vomiting and purging, and complained of pain in every part of his body; said his heart was broken or riven, and tossed very much. During his illness he called frequently for cold water, and drank often of it. Between ten and eleven o'clock that forenoon old Lady Eastmiln, Andrew Stewart, and witness were in the room together attending deceased, who on that occasion said, "I am poisoned, and that woman has done it." By "that woman," witness understood Eastmiln meant his wife. The old lady seemed so to understand it also, and reproved her son for saying so. Eastmiln replied, "It is true, and my death lies at her door." On the above mentioned day she came pretty often upstairs to

see her husband in the forenoon, but she did not come near him at all in the afternoon. In the afternoon Miss Anne Clark, who sat close by Eastmiln, desired her to go down and tell Mrs Ogilvie to come up, but deceased said "No, no ! I do not want her." Despite this protest Anne Clark again told witness to go down and bid her come up. She accordingly went down and told Mrs Ogilvie, who refused to go, saying she did not like to see dying people.

During her husband's illness Mrs Ogilvie desired that the people in the neighbourhood who came to see him should not get access to his room for fear of disturbing him. Witness went and brought the precentor in the afternoon, or rather about mid-day, who went and prayed by Eastmiln. Mrs Ogilvie, who sent her for the precentor, went upstairs with him to deceased's room. Mrs Ogilvie was not very dull, nor showed great marks of grief for her husband's death till his brother, Alexander Ogilvie, the doctor, came to the house upon the Tuesday thereafter. Mrs Ogilvie desired witness to tell Alexander to come and speak with her, and upon his refusing to do so she commenced crying and wringing her hands, throwing herself back upon the bed, and saying "What can be the meaning of this ?" Alexander Ogilvie stopped the burial, and sent for Dr Ogilvie of Forfar, Dr Ramsay, and Dr Meik of Alyth to inspect the dead body of his brother. At this time Mrs Ogilvie behaved very ill, weeping and crying, and wringing her hands, but witness does not know the cause of this behaviour. Lieutenant Ogilvie at the time of his brother's death lived at Glenkilry's house, and that gentleman having been at Eastmiln when Thomas Ogilvie died, went home and told the Lieutenant to go to Eastmiln. The Lieutenant came next morning ; and witness, seeing him approach the house, told Mrs Ogilvie, who went out after desiring her to tell him to speak with her

in the stable. Witness went accordingly and delivered the message to the Lieutenant, who was then walking with Dr Meik, but who went to the stable as desired.

After the deceased Thomas Ogilvie's death, and after Mrs Ogilvie heard the Sheriff of Forfar was coming to examine them at Eastmilm, she desired witness to say to the Sheriff that she had seen Mrs Ogilvie mix up the bowl of tea which she had given her husband on the morning of the day on which he died, that she had drunk some of it before Eastmilm tasted it, and that she likewise drank off what he left of it ; also that she was in the closet with Mrs Ogilvie when she mixed up the bowl of tea, and that she gave her husband some short-bread with it. Mrs Ogilvie told witness that if she would say as thus directed she would stand by her, and no harm should befall her. Witness should go with her everywhere that she went, and as long as she (Mrs Ogilvie) had a halfpenny she should have half of it. Mrs Ogilvie spoke to her in this manner several times. The Lieutenant was present upon these occasions, heard what Mrs Ogilvie desired her to say, and desired her to say so himself.

In cross-examination she stated that the persons who got access to the room in which Thomas Ogilvie lay, exclusive of the household, were Mr Spalding of Glenkilry, William and Anne Froster, James Millam, and David Watson. Three of these were brought in by witness without the knowledge of Mrs Ogilvie. She was forbid by Mrs Ogilvie to give food to the persons that had been sent for the medical men to examine the body of the deceased Thomas Ogilvie. On the morning after Eastmilm's death, Anne Sampson told Mrs Stewart, deceased's sister, in witness's presence, that the bowl out of which Eastmilm was said to have drunk the poison the day before was below a press in the kitchen. She took out the bowl, and

observed something greasy in the bottom of it. Intending to try if there was anything poisonous in the grease, she put some broth into it, and gave it to a dog, who ate it up, but was nothing worse of it. She made this experiment of her own accord, and not on the desire or suggestion of any other person whatever. Anne Sampson told her that she had filled the said bowl with water, and offered it to Eastmilk on the day on which he died, but he refused to drink out of it, damning the bowl, and saying he had already got his death out of it. While she was in deceased's service she never heard of his being troubled with vomitings, purgings, or colics, before the day on which he died, and she never knew of his being indisposed, except by slight colds. When the Lieutenant went to the stable where Mrs Ogilvie was, as already deponed, he did not remain there above four or five minutes. Some time before her husband's death Mrs Ogilvie took a dose of salts, witness getting part of them. She never knew of Mrs Ogilvie taking salts but that time.

When witness was first brought to town she was lodged for about the space of twenty days in the house of one Mr Gardiner, at the head of the Cowgate, by Mr Murison, the macer. From thence she was carried to the Castle of Edinburgh, where she has remained ever since. Anne Clark, Anne Sampson, and Katherine Campbell were lodged in the same room till Thursday or Friday last, when Anne Clark was put into another room in the Castle, where she remained a day and a night, and was thereafter put into the room with witness and the other persons above-mentioned. While she and they were in Mr Gardiner's house and in the Castle, they had some, though not much, conversation upon the subject of this trial, but in these conversations all of them declared that they considered it their duty to tell nothing but the truth.

CHAPTER VII.—THE CASE FOR THE CROWN (CONTINUED). EVIDENCE OF ANNE SAMPSON, &C.

ANNE SAMPSON, late servant to the deceased Thomas Ogilvie, aged nineteen, deponed that she entered the service of the Eastmilln family a year past at last Whitsunday term. After being some time absent, she returned a few days before Miss Clark came to the house. She had on more than one occasion observed too great an intimacy between Mrs Ogilvy and the Lieutenant. . . . The Lieutenant left the house about a fortnight before his brother's death, and before that time, witness being in the kitchen along with her fellow-servants Elizabeth Sturrock and Annie Robertson, all heard the Laird and Lady talking in the room above. The conversation began by Mrs Ogilvie scolding her husband, upon which the Laird bade her hold her tongue, for that she and the Lieutenant were as common as the bell that rings on Sabbath. The morning on which the Lieutenant left the house witness saw Mrs Ogilvie weeping. This was before he went away.

Witness considered that Eastmiln was a healthy man, and before the day on which he died she never heard him complain, except of an occasional headache, and on the night before he died he was in his ordinary health as far as she knew. The night before her master's death she saw Andrew Stewart in the house of Eastmiln, and was told by Elizabeth Sturrock and Miss Clark on the night thereafter that he had retired with Mrs Ogilvie into a private room. On the morning of the day on which her master died breakfast was ready

between eight and nine, a little sooner than usual. She saw her mistress make up a bowl of tea in presence of her mother-in-law and Miss Clark, Andrew Stewart not being up. She followed her mistress upstairs, wanting some beef out of the beef-stand, and saw her go into a closet adjoining her master's room. She followed her into the closet, demanding the beef, but her mistress angrily bade her go downstairs, as she was not ready yet, and that she (Anne Sampson) was always wanting something. Thomas Ogilvie was at that time in bed, and when in the closet she saw Mrs Ogilvie stirring about the tea with her face towards the door, but did not see her put anything into it, and went down to the kitchen when ordered. At that time she saw Alexander Lindsay, a servant lad in the house, standing upon the stairhead, near the closet door.

Thomas Ogilvie got up between nine and ten, and went first to the stables to see his horses fed, then to the Shilling-hill, where he conversed with some of his tenants. On returning towards the house she saw him vomiting, and still more so when he came into the kitchen. While there Mrs Ogilvie entered, and ordered Elizabeth Sturrock to help him upstairs, following herself. Sometime thereafter she was ordered to take up some water for her master to drink, which she did in the same bowl that he got his tea in from Mrs Ogilvie, witness having first rinsed it with water. She went upstairs with the bowl into her master's room, where he lay in bed. Upon seeing the bowl he cried "Damn that bowl, for I have got my death in it already," and bade her take it downstairs out of his sight. She afterwards carried up water to him in the tea kettle, which he drank. Her reason for rinsing the bowl was because it appeared to be greasy and white. She knew the bowl to be the same as above, because Mrs Ogilvie after giving deceased his tea, came downstairs

with it, and set it down in the kitchen, on the foreside of the press. After rinsing the bowl as aforesaid the grease did not wholly come out of it. The day on which her master died she was sent away by Mr Ogilvy about mid-day to clip some sheep about two miles off. Mrs Ogilvie frequently went to see her husband in the forenoon, but not once in the afternoon, and when witness was going upstairs to see him between twelve and one o'clock she was turned back by her mistress.

In cross-examination witness stated that when Mrs Ogilvie made up the bowl of tea in the breakfast-room she saw her put in milk and sugar, but whether she put in honey witness could not remember, nor whether she saw any honey upon the table. The family seldom breakfasted without honey, but on the day referred to she rather thinks there was none, for she believes that at that time there was none in the house. Before she carried up the fresh water for her master to drink she rinsed the bowl with water, not with broth out of the pot. Next day the bowl was rinsed with broth and given to a dog. Witness did so by the directions of Elizabeth Sturrock, but she gave no reason for doing so. She took the bowl to carry water to her master because it was at hand, and she had no idea at that time of her master being poisoned, nor until the day after his death. After she saw her mistress make up the bowl of tea in the breakfasting-room she went into the kitchen and made up the fire before she followed her mistress to the closet as above deponed. Questioned as to the time she returned from the sheep-clipping, witness stated that it would be about nine o'clock at night. "How did you depone that Mrs Ogilvie did not once visit her husband in the afternoon?" "Because I was told so by the other servants, who added that the master did not want Mrs Ogilvie up for fear of doing her harm."

Andrew Stewart, merchant in Alyth, deponed that upon the evening before Thomas Ogilvie died he was at the house of Eastmiln, and upon his arrival there was told by deceased that he had forbid his brother, the Lieutenant, the house, on account of suspicions he had that his wife was too intimate with him, and likewise mentioned some differences he had with his brother concerning money matters. On the Monday before Eastmiln died Lieutenant Ogilvie came to witness's house in Alyth on one of his brother's horses. The day thereafter Elizabeth Sturrock also came to his house, and bought some goods for the family of Eastmiln. He does not know that she brought any letter for the Lieutenant, nor does he know if the Lieutenant gave her any letter for Mrs Ogilvie. That day he informed the Lieutenant that he was to go to Eastmiln next day. On the day thereafter he accordingly went to Eastmiln, and before his departure Lieutenant Ogilvie delivered to him a small phial glass containing something liquid, which he said was laudanum, and also a small paper packet, which he said contained salts. The morning before, he saw the Lieutenant working among some salts, which were in a chest belonging him. The phial glass was round, but witness knew that there was another phial glass in his house which was square. He is positive that one phial glass was delivered to him by the Lieutenant, and cannot say with certainty that he might not have received two, but rather thinks he only got one. When these particulars were given him he was desired to deliver them privately into Mrs Ogilvie's own hand. He did not see the packet made up, nor did he open it to see what it contained. On the foresaid packet there was a letter addressed to Mrs Ogilvie of Eastmiln, which was sealed with wax and a wafer, while round the packet was a loose paper of directions in what manner to use the laudanum.

When witness came to Eastmilm on the Wednesday afternoon, he was taken into a room where old Lady Eastmiln was, but immediately thereafter Mrs Ogilvie, and Miss Clark came into the room. At the desire of Mrs Ogilvie he followed her upstairs, where she asked him if he had brought anything to her from the Lieutenant. He thereupon delivered to her the several particulars above mentioned, which she immediately put into a drawer in the room. She did not read the letter at that time, but put the whole together into the drawer. Soon thereafter Miss Clark asked him what he had brought from the Lieutenant to Mrs Ogilvie, or if he had brought anything with him. He at first said he had brought nothing, but upon Miss Clark pressing him with great earnestness he at last informed her of the particulars he had brought. Upon this Miss Clark said she was afraid Mrs Ogilvie meant to poison her husband. Afterwards Miss Clark, in presence of witness, and the old lady, desired Eastmilm not to take anything out of his wife's hand except at table. He answered that he would not. The old lady joined with Miss Clark in this request, and witness was at that time very much displeased with both, as he had no suspicion that Mrs Ogilvie had any designs against the life of her husband. That same night he heard Mrs Ogilvie say that she lived a most unhappy life with her husband, and wished him dead, or if that could not be she wished herself dead.

Witness supped with Eastmilm and the rest of the family that night. He then appeared to be in his ordinary state of health, but a little earlier on the same night, while at the Kirkton, he told witness and the rest of the company that he had fainted on the hill, and for that reason could drink no ale. Upon this they called for a dram, which he took, and thereafter seemed hearty and in good spirits. That night witness said he in-

tended going away from Eastmiln early next day, and thus occasioned them breakfasting earlier than usual. Eastmiln did not breakfast along with the family, the only persons present being the Mrs Ogilvies, elder and younger, Miss Clark, and witness. He saw Mrs Ogilvie making a bowl of tea by filling it out of the teapot, and putting sugar and milk in it. She said in presence of the company that she was to give it to her husband, who was then in bed, and he saw her go out of the room with the bowl in her hand. About an hour and a half after they had begun breakfast they were told that Eastmiln had been suddenly taken ill, upon which Miss Clark ran up to the room in which he was, and soon thereafter returned weeping, and told them that Eastmiln had got a bad breakfast. Witness immediately went upstairs, where he found deceased vomiting and purging violently. He heard him say that he was all wrong within, and that he had got what would do his turn. Deceased called very much for drink; they offered him milk but he would take nothing but water, and complained that he was burning within.

Witness proposed to Mrs Ogilvie that a surgeon should be called, but to this she would not agree, saying that he would get better. Upon again renewing this proposal she said she would not for any money that a surgeon should be called, as the consequence would be to give her a bad name from what Miss Clark had said of her. Witness thereupon told Mrs Ogilvie that Mr Meik, surgeon in Alyth, whom he had recommended, was a discreet person, that he would come and tell none but her what he thought of her husband. Witness thereupon left her, she having agreed that Dr Meik should come. He thereafter set out on his journey, but had not got far from the house when one of girls, whose name he thinks was Robertson, came up to him and desired that Mr Meik might be sent with all haste.

After supper, on the night before Mr Ogilvie died, he had a conversation with Miss Clark concerning the suspicions she had of Mrs Ogilvie's intentions against her husband, in which he proposed that they should either take Mrs Ogilvie's keys out of her pocket, or break open her drawers at the back in order that they might satisfy themselves if the particulars brought by him were poison or not, and that this was the only method by which mischief might be prevented. Miss Clark did not seem to agree to either of these proposals, and he had at that time no suspicion that there was any foundation for her fears, and he was confirmed in this opinion by his having been told by the old lady that there was now more kindness between her son and daughter-in-law than usual. His wife had frequently told him before the death of Eastmiln that he was a tender man, but he never heard of his having been troubled with violent vomitings or purgings before the day on which he died. Deceased had the appearance of a tender man, and witness has heard his wife say that he would never live to an old age. At the conversation at Kirkton above referred to he heard Eastmiln say that he had been ill of a cough and sore breast and for some time past he had been thinking of writing to Dr Ogilvie of Forfar to send him some medicine. Witness laughed at at him for talking in that manner, and bade him take a dram. The drawers into which Mrs Ogilvie put the particulars delivered to her stood in the room in which he slept that night. When Alexander Ogilvie stopped the interment of his brother's remains witness advised Lieutenant Ogilvie to make his escape if guilty, to which he answered that God and his own conscience knew that he was innocent. The two panels lived at Eastmiln from the time of Thomas Ogilvie's burial until they were apprehended. Witness heard reported that Mrs Ogilvie had been blooded one or

two days before Eastmilk's death and that she had been ill and taking drugs for some time previous. When Lieutenant Ogilvie delivered the particulars above-mentioned to witness he desired him to put them into Mrs Ogilvie's own hand, but did not mention the words "privately" or "by herself," and his reason for denying at first to Anne Clark that he had brought any parcel from the Lieutenant was because he considered Miss Clark as a person given to raise dissention in families and because he had been desired by the Lieutenant to put the particulars into Mrs Ogilvie's own hand.

James Carnegie, surgeon in Brechin, stated that in the end of May last he got a message from Lieutenant Ogilvie, with whom he is acquainted, desiring him to meet him in Colin Smith's, vintner in Brechin. Witness having gone there found him in company with one Lieutenant Campbell of the same regiment, and one Mr Dickson. The Lieutenant took him aside, told him that he was troubled with gapes, and wanted to buy some laudanum from him, and at the same time wanted some arsenic in order to destroy some dogs that spoiled the game. Witness told him he was uncertain whether he could furnish him with these things or not, but that he would look when he went home. He found he had some of both, and put up a small phial glass of laudanum, and between half an ounce and an ounce of arsenic, both of which he delivered next day to the Lieutenant, after having again dined with him and Lieutenant Campbell in Smith's. Lieutenant Ogilvie took him into another room, away from Lieutenant Campbell, when he was to receive the laudanum and arsenic. The price of both was one shilling. The arsenic was pulverised, and Lieutenant Ogilvie having asked how to prepare it witness gave him directions.

Witness had sold of the same arsenic formerly to people for poisoning rats, and heard that it had

the desired effect. He was in the habit of taking receipts from any low people to whom he sold it, but never from gentlemen; and as he knew Lieutenant Ogilvie, and had a good opinion of him, he did not ask a receipt from him, although, when the Lieutenant spoke about it first he said, "we usually take a receipt for arsenic." The Lieutenant answered "See first that you have it," at the same time signifying his willingness to give a receipt. Witness got the arsenic from a druggist in Dundee, but how long ago he cannot say, there being a small demand for arsenic at any time. He wrapped it up in the form of a pennyworth of snuff, under three paper covers. The arsenic he sold as above was white arsenic. He cannot take upon him to say from looking at arsenic whether it be arsenic or not, nor can he say from the taste, for he never tasted arsenic, but he bought that as arsenic, had the name marked upon the package, and heard from those he sold it too that it had killed rats. He heard of Mr Ogilvie of Eastmilm's death after the time he sold the arsenic to the Lieutenant.

Lieutenant George Campbell, of the 89th Regiment, stated that he had known Lieutenant Ogilvie for five years. In the beginning of June last he called for witness at Finavon, and desired him to go along with him to Brechin, because he wanted to see his old landlord, William Finlay, winter there. They accordingly went to Brechin, and put up at Colin Smith's, where panel called for James Carnegie, but had no conversation with him at that time apart from witness. He invited Mr Carnegie to dinner on the following day, on which he and accused intended going fishing. Mr Carnegie accordingly came to dinner, and Lieutenant Ogilvie and he, after having dined, went into another room and had some private conversation for a few minutes. Lieutenant Ogilvie accompanied witness to Finavon that

night, it being a Friday, stayed with him Saturday and Sunday, and left on Monday. On the Saturday after his departure he heard of Mr Ogilvie of Eastmiln's death.

Patrick Dickson, merchant in Brechin, deponed that when Mr Ogilvie was in prison in Forfar witness went to visit him, and was desired by him to go to James Carnegie and warn him not to be imposed upon by any person. He accordingly went and conversed with Mr Carnegie, who informed him that he had sold the Lieutenant some laudanum and arsenic, for both of which he received one shilling. Witness returned to Forfar and told accused what Mr Carnegie had said. Prisoner appeared to be under some concern, and seemed desirous of speaking with Mr Carnegie. He neither confessed or denied buying the arsenic, but had on the previous visit acknowledged purchasing the laudanum only. Accused wished him to send Mr Carnegie to him, but witness told him that he had business on hand which would prevent his doing so. The Lieutenant then desired him to tell the Sheriff that he wanted to see him, as he wished to amend something in his declaration with regard to the laudanum which he had received from Mr Carnegie.

CHAPTER VIII.—THE CASE FOR THE CROWN (CONTINUED)—MEDICAL EVIDENCE, LETTERS, &C.

PETER MEIK, surgeon in Alyth, testified that when Mr Ogilvie of Eastmilm died, he was sent for to attend him. He was informed that deceased was dead about two hours before his arrival. Immediately after his arrival he was taken upstairs by a servant to Mrs Ogilvie's room, where she was sitting alone apparently in great grief and concern for her husband's death, and desired him that whatever he might think he discovered to be the cause of her husband's death he would conceal it from the world. Lieutenant Ogilvie also appeared to be greatly grieved and concerned by his brother's death. Five or six days afterwards he was called upon to inspect the body of Eastmilm, and upon inspecting it he discovered the nails, and a part of the breast, discoloured, the tongue swollen beyond its natural size, and cleaving to the roof of the mouth, but no part of it was beyond the lips, though it protruded from between the teeth. He has observed the symptoms of the nails and breast occurring after a natural death, but never that of the tongue at the same time, though he has observed the tongue swollen without the other symptoms. He is not so much acquainted with the effects of poison as to form a judgment whether that was the cause in this case, but was led to make that conjecture from the notice given him by Andrew Stewart, who told him that the defunct was supposed to be poisoned, and from the caution given him by Mrs Ogilvie to conceal anything that might discover the manner of her

husband's death. Alexander Ogilvie, deceased's youngest brother, told witness that he was sent for to open his brother's body, and Gilbert Ramsay, surgeon in Coupar Angus, being also there, they agreed to open the body; but as Alexander would not allow them, except in the presence of Doctor Ogilvie of Forfar, who was sent for, and as Mr Ramsay could not stay until he arrived, it was abandoned. Neither of the panels made any objections to the opening of the body. Alexander desired them to take a superficial view of his brother's remains, which they did, and discovered the symptoms aforesaid.

Gilbert Ramsay, surgeon in Coupar Angus, deponed that he was sent for to Eastmiln, about five or six days after the Laird's death, and was desired by Alexander Ogilvie to inspect the body, along with the preceding witness. Upon examining it they observed the nails and part of the breast discoloured, and the tongue swollen. He has observed the first two symptoms happen after a natural death in consequence of putrefaction, but has not observed the last symptom. These symptoms are owing to something very acid, and caused witness to suspect that he died of poison. The lips were very little swelled, but more discoloured than if after a natural death. He heard of suspicions of poisoning before he came there.

In cross-examination witness stated that he had observed the tongue swelled even after a natural death, but not to the extent it was in this case. If he saw a dead body with these symptoms, though he had got no notice of any suspicion of poisoning, he would suspect it from these appearances. Questioned if all these symptoms might not occur after a bilious colic, witness said that the great swelling in the tongue and discolouration of the lips would not happen. Interrogated if all the usual symptoms of poison were manifested in this case, he replied that he could not answer that

question with any certainty, never having seen the body of any other person who died by poison. The usual symptoms that occur in poisoning by arsenic are vomiting, purging, a great swelling in the tongue, and a blackness in the breast. There was no appearance of ulcers in this case, either in the tongue or lips. He proposed opening the body, but was opposed by Alexander Ogilvie on account of the non-arrival of Dr Ogilvie of Forfar, but as far as he is aware the proposal was not opposed by either of the prisoners. He believes everything in the body after having been so long dead would be in such a state of putrefaction that he doubts if the poison would have been certainly discovered though the body had been opened.

Dr John Ogilvie, physician in Forfar, declared that he heard that the late Eastmiln died upon the sixth of June last, and a few days after that he was desired by the Sheriff-Substitute of Forfarshire to go to Eastmiln and inspect the corpse of deceased. He forthwith obeyed these orders, and arrived at Eastmiln about noon on the 12th of June. Upon his arrival Alexander Ogilvie desired him to go and inspect the body, which was then lying in an outhouse. He found the body in grave clothes, and in a coffin. Having inspected it, he found that the face, the arms, and several other parts of the body were black and livid; the nails were remarkably black; the tongue was locked fast by the jaws, so that he could only observe a small part of it, which projected beyond the teeth, which part, being the tip of the tongue, he observed to be white and rough, and of very unusual appearance. The breast was white, and the lips pretty much of a natural colour. From the appearances above described he could draw no conclusion as to the cause of death, as almost all these appearances might have arisen from the putrid state the body was then in. The only symptom that appeared extraordinary to him was the appearance of the

tongue. He had some inclination to have opened the body, and if the two surgeons who, he heard, had left Eastmilk that morning, had been there, he believes he might have done so. As, however, they were gone, as he thought the body too much putrified to be opened with safety to the operator, and as he was likewise of opinion that in such a state of putrefaction no certain signs could have been discovered of the cause of death by opening the body, he decided not to do so. The appearance of the tongue as above described was not such as happens in common deaths, but such as occurs from convulsions or other strong causes. Lieutenant Ogilvie neither desired nor forbade him to inspect the corpse, but was with him when he inspected it.

Robert Smith, surgeon in Edinburgh, stated that he had once occasion to attend a patient—a woman near Ormiston—who had got arsenic and died of it. He saw the woman about two hours after she had taken the arsenic, in some pottage as she told him. He found her seized with a violent vomiting and purging. She complained of a burning heat in her stomach and bowels, had great thirst, and drank frequently of milk and water. After staying some time with her he went away, and on returning a few hours afterwards was informed the before-mentioned symptoms had continued, viz., vomiting, purging, pain, and thirst. She soon afterwards died, having lived, as witness thinks, about nine hours after she took the arsenic. Next day he inspected the dead body of the woman, and could discover nothing externally upon the corpse different from the appearances after a natural death. Upon opening the body, however, he discovered the stomach and inwards to be red and inflamed, the former appearing to be gangrened, and in parts of it he discovered arsenic. A person may be seized with vomiting, purging, internal pain and thirst without having received

arsenic, as these symptoms may occur in a bilious colic and other cases.

Alexander Lindsay, late servant to the deceased Thomas Ogilvie of Eastmiln, stated that he came to be a servant at Eastmiln about six o'clock on the morning of the day on which Mr Ogilvie died. About nine o'clock that morning he saw Mrs Ogilvie standing in a closet upstairs between the two bedrooms. He was going up to the garret to take down a wheel. The door of the closet was open, but he did not go in. He did not observe anything that Mrs Ogilvie was doing, nor if she had anything in her hand. When he went up to the garret she called to him not to walk over the closet for fear of shaking down something. When in the garret he saw Anne Sampson standing at the stairhead, near the closet where Mrs Ogilvie was.

James Millam, tacksman of the Eastmiln of Glenisla, deponed that on the day on which Thomas Ogilvie died he was sometimes in the room with him, particularly about two o'clock in the afternoon, when he asked the late Eastmiln how he was. Deceased answered that he was very ill; and, on witness asking what he thought was the matter with him, Eastmiln answered "I am gone, James, with no less than rank poison."

George Spalding, of Glenkilrie, said that he was married to a sister of Mrs Ogilvie's, and has had frequent occasions of seeing Mrs Ogilvie's handwriting. A letter without subscription, beginning "Dr. Captain," and endorsed on the back by the subscriptions of George Spalding and George Campbell being shown him, he declares that he thinks the said letter is of the handwriting of Mrs Ogilvie, but cannot be quite positive, as he has seen her write sometimes better and sometimes worse, according as her pen was.

James M'Kenzie, Session-Clerk of Glenisla, stated that sometime after the late Thomas

Ogilvie's death he was in the house of Eastmilm, where Alexander Ogilvie likewise was. He saw Alexander Ogilvie have some papers in his hand, one of which he said he was to send to Forfar, as it might be evidence against Mrs Ogilvie. Witness looked at that paper, and saw that it was in the form of a letter without a signature, but he did not read it, nor hear it read. A letter—the same as shown last witness—being exhibited to him he stated that he could not say positively whether or not it was the letter shown him by Alexander Ogilvie, but thinks it is like it.

George Campbell, Sheriff-Substitute of Forfarshire, deponed, upon looking at two declarations exhibited to him, that they were emitted before him by Mrs Ogilvie, and other two by Patrick Ogilvie. All these were emitted freely, and faithfully taken down from their own mouths, and subscribed by them before him. As Sheriff-Substitute of the County of Forfar he went to Eastmilm upon the first of July last, in order to search for papers or letters belonging to any of the panels. He found in a trunk, or drawer, he cannot say which, the letter now shown him, marked by his hand and that of John Ure, his clerk, on the day aforesaid. Another letter being shown him, without date or signature of the writer, and with a docquet on the back signed George Spalding, and another docquet below signed Anne Clark and Alexander Boswal, he declares that, to the best of his memory, he received the said letter in one written by Alexander Ogilvie to him. A third letter being exhibited to him signed Ketty Nairn, with a docquet on the back signed Anne Clark and Alexander Boswal, he declared that he found the said letter in one of the repositories at Eastmilm when he made the search above mentioned.

John Ure, Sheriff-Clerk of Forfarshire, stated that the four declations now shown him—two by

Miss Ogilvie and two by Patrick Ogilvie—were all freely emitted before the preceeding witness in his presence, and all signed by him, by the Sheriff-Substitute, and by the panels.

The three letters and four declarations were then read to the Court and jury, and were of the following tenor:—

FIRST LETTER.

Dr. Captain,

I was sorrie I missed you this day. I sat at the water-side a long time this forenoon; I thought you would have comed up here. If you had as much mind of me as I have of you, you would have comed up, tho' you had but stayed out-by, as [but] there was no use for that; there is more rooms in the house than one. God knows the heart that I have this day, and instead of being better it is worse, and not in my power to help it. You are not minding the thing that I said to you or [before] you went out here, and what I wrote for. Meat I have not tasted since yesterday dinner, nor won't or you come here; tho' I should never eat any it lies at your door. Your brother would give anything you would come; for God's sake come.

SECOND LETTER.

Dr. Sr.,

I received yours just now. I am very glad to hear that you went safe home; nothing could give me greater pleasure than to hear of your being well. Mrs Spaden [Spalding] was safely delivert of a daughter last night, and is in a very good way; Mr Spaden thought it needless to write you as I have wrote you. As for that you write me about any body clatt'ring nincens, you need not be afraid of that about anything, for I am determind not to mind anything. We shall send to you when Willie and Chairlie comes up, but in the meantime I think you may send on Sunday to see and let us here [hear] how you are. The pain [pen] will not

write for me ; I have no more time to write, but
my best respects to your mother is all from,

Dr. Sr.,

Yours while

KETTY NAIRN.

THIRD LETTER.

Glenkilry, Wednesday.

Dr. Sr.,

I received yours, and as you propose
coming this day eight days, Mr Spalding thinks it
proper that he runs an express to Edinburgh, to
my Uncle, which I think very right, and till you
heare the consequence thereof, I think you better
not trust any writer, which you shall hear the
moment the express comes back. As I see you
mean nothing but what is genteel, you may expect
nothing else at my hand, and till we see you heare
is all with compliments to you and feamily.

Dr. Sr.,

Your most humble servt.,

KETTY NAIRN.

Glenkilry, Jan. 4, 1765.

Addressed on the back to Thomas Ogilvie, Esq., of
Eastmiln.

CHAPTER IX.—THE CASE FOR THE CROWN (CON-
CLUDED)—DECLARATION OF PANELS.

FIRST declaration by Katherine Nairn. Forfar, 14, June, 1765. In presence of George Campbell, Sheriff-Substitute :

Compeared Katherine Nairn, daughter of the deceased Sir Thomas Nairn* of Dunsinnan, Baronet, and relict of the deceased Thomas Ogilvie of Eastmiln, who being examined declares, That Lieutenant Patrick Ogilvie was at Eastmiln when she was married to his brother, and continued there as his proper residence till within these three or four weeks, when he left the same, as his brother and he did not agree. The evening Patrick Ogilvie left Eastmiln declarant wrote him a letter, which she sent by Elizabeth Sturrock, one of the maid servants, to Little Fortar, as she was going there, or at least a gun-shot from Little Fortar, for some whisky from one Robert Easson. She did not write any letter to the said Patrick Ogilvie when at Glenkilrie, nor to be sent to him to one John Spalding's, nor to Glenkilrie. On the Tuesday before her husband's death she was sending Elizabeth Sturrock to Alyth with some yarn, when she wrote a letter, by her to deliver to Patrick Ogilvie, relative to some of his shirts she had been mending for him. The letter was directed to the care of Andrew Stewart. She got no return by Elizabeth Sturrock, but next day she got one by the said Andrew Stewart, who came to

* In this document the name of Mrs Ogilvie's father is given as Sir Thomas Nairn, while the author of "Historic Scenes in Edinburghshire" gives it as Sir Robert Nairn.—*Author.*

Eastmiln on the afternoon of the day before her husband died. Besides the letter, Andrew Stewart brought her two doses of salts, and a small phial glass with a little laudanum. The letter contained but a quarter of a sheet of paper, and was mostly directions about the salts, and how much of the laudanum to take, but whether it was open or sealed she does not remember. Before Patrick Ogilvie left his brother's house she asked him, any time he was at Alyth, to buy for her, and send to Eastmiln, two doses of salts and a little laudanum, as she slept very ill. When Andrew Stewart delivered the letter she read the same, being only a direction as above, and after laid the salts and laudanum into a drawer till she should use the same. She took one of the doses of salts on the Friday after her husband's death, and the other on the Saturday. On the Sunday and Monday nights she took laudanum, and as she did not use the whole of it, she delivered back the glass and the remainder to the said Patrick Ogilvie, on his return to Eastmiln after his brother's death. On Thursday morning, the 6th of June, her husband being distressed the night before, and many days preceding, that morning he complained of a shortness of breath, and through the night he had been distressed with it, she therefore gave him his tea in bed. When the rest of the family were at their tea she filled up a bowlful for her husband, which, with a bit of hard biscuit from Dundee, she carried straight from the low room to her husband's room and gave him. She took the biscuit out of a basket standing on a bye-table in the room beside the family when sitting at breakfast. She did not go into any closet with the tea before giving it to her husband. She never heard from her husband, or any person else, that he blamed the tea for his illness. Elizabeth Sturrock got so much of the tea as Mr Ogilvie left, as he did not drink it out, and also got another bowl of tea

after, out of her own hands. And this she declares to be truth.

(Signed) KETTY OGILVIE.
 („) GEO. CAMPBELL.
 („) JOHN URE, Clk.

Second declaration by Katherine Nairn. Forfar, 15th June, 1765. Compeared the said Katherine Nairn, alias Ogilvie, who, being re-examined—declares that before the Lieutenant left Eastmilm she heard him say that he had some salts and laudanum in a chest that he brought from the East Indies, and that she said she would be obliged to him for a little of the salts and laudanum, as she had much need thereof.

(Signed) KETTY OGILVIE.
 („) GEORGE CAMPBELL.
 („) JOHN URE, Clk.

First declaration by Patrick Ogilvie. Forfar, 14th June, 1765. By George Campbell, Esqr., Sheriff-Substitute of Forfarshire. Compeared Lieutenant Patrick Ogilvie of the 89th Regiment of Foot, who, being examined, declares—That so far as he remembers he came to this country from abroad in January last. His principal residence was at Eastmilm of Glenisla, his brother's house, which he left about three weeks ago. The reason he left there was on account of some dryness between his brother and him, occasioned by some surmises or reports in the country; but, though these had not happened, he was determined not to stay longer in his brother's house. Since leaving the same he has had no fixed place of residence, but has been going about seeing his friends and old acquaintances. The evening he left Eastmilm he went to Mr Shaw's house at Little Forfar, and when walking by the water side there with George Shaw, Elizabeth Sturrock, a servant of his brother's, gave him a letter from Mrs Ogilvie desiring him to return to his brother's house. He sent a verbal message that he was not to return at

that time, as he intended going the length of Baron Reid's on a visit. Next day, when at Little Fortar, he received another letter, from his brother, by James Millam, the contents of which were to the same purpose as Mrs Ogilvie's, which James Millam knew. Some days after, when at Glenkilrie, he received another letter from the said Mrs Ogilvie, but who was the bearer of it he does not remember ; nor does he remember if he wrote any answer to that letter. He was in Alyth on the Tuesday before his brother's death, where he received a third letter from Mrs Ogilvie, by the aforesaid Elizabeth Sturrock, but to which he returned no answer in writing. On the said Tuesday evening he gave to Andrew Stewart, merchant in Alyth, his brother-in-law, a small open note by way of wrapper, or direction, round a small phial glass, in which were some drops of laudanum, and in the wrapper two doses of salts, folded close by the glass. The writing on the note, or wrapper, properly contained directions for Mrs Ogilvie how to use the laudanum, and as far as he remembers was to take fourteen or fifteen drops at a time. All this he told to Andrew Stewart, also that it was for Mrs Ogilvie's own proper use, and to deliver it to nobody else, but did not desire him to do it privately, or to let nobody see him deliver it. Neither did he deliver a sealed letter to Andrew Stewart at that time for Mrs Ogilvie. The said laudanum and salts he brought from the East Indies with him, as a remainder of what he used when his health was bad there, and on his passage home, having used the same by his surgeon's directions both by land and sea. And this he declares to be truth.

(Signed)	PAT. OGILVIE.
(")	GEO. CAMPBELL.
(")	PATRICK ORR, Clk.
(")	JOHN URE, Witness.

Second declaration by Patriek Ogilvie. Forfar,

15th June, 1765. Compeared the said Lieutenant Patrick Ogilvie, who being re-examined declares— That it consists with his knowledge that of the laudanum he sent as mentioned in his last declaration there was not above thirty drops of it used, so far as he can recollect, from the quantity he sent, and what remained in the phial glass the day after his brother's death. When the declarant came to Eastmiln, Mrs Ogilvie returned him the glass and the remainder of the laudanum therein, which he produced, and which was immediately sealed up with declarant's own seal, and lodged in the Sheriff Clerk's office. When he delivered the the glass to Andrew Stewart he shook the same to him and showed him, betwixt him and the light, the quantity therein, who upon looking at the same just now must be sensible that there is no more out thereof than about the quantity of thirty drops as above. Mrs Ogilvie told him she had used about that quantity, and also made use of the salts. Within these two weeks he was in the town of Brechin, and in company of James Carnegie, surgeon of that place, but received from him no laudanum, or any other medicine whatever. When he was at Eastmiln, in the course of a conversation with Mrs Ogilvie, he happened to say that he had some salts and laudanum that he used when in the East Indies, in his chest at Dundee, which would very soon be in Alyth, and she desired to have some of both, as it might give her rest when uneasy and could not procure sleep.

(Signed)	PAT. OGILVIE.
(„)	GEO. CAMPBELL.
(„)	PATRICK ORR, Clk.
(„)	JOHN URE, Witness.

Mr James Balfour of Pilrig, Sheriff-Substitute of the Shire of Edinburgh, being interrogate and two declarations or examinations being exhibited to him, deponed—That at the desire of the Lord Advocate he, upon the 22nd of June last, went to

the Laigh Council House of Edinburgh, where Patrick Ogilvie was brought before him for examination, and that the declaration now shown him, and signed by him and the said Patrick Ogilvie, is what was emitted by the panel before him at that time. On the Monday thereafter deponent, at my Lord Advocate's desire, went to the Tolbooth of Edinburgh in order to examine Katherine Ogilvie, the other panel. The paper now exhibited to him and signed by him before William Dunbar and John Stewart, writers in Edinburgh, witnesses, subscribing thereto, contains a faithful narrative of what passed on that occasion.

William Dunbar, writer in Edinburgh, testified that the examination of Patrick Ogilvie, mentioned in the deposition of the preceding witness, was emitted in his presence, and he saw the said panel and Sheriff-Substitute subscribe the same. Another paper being shown him containing what passed on the examination of Mrs Ogilvie, he declared that the said paper contained a faithful account of what passed on that occasion, and that he was a signing witness to the said James Balfour's subscription thereto annexed.

The two papers above deponed to were then read to the court and jury, their tenor being as follows :—

Edinburgh, 22nd June, 1765.—In presence of Mr James Balfour of Pilrig, Sheriff-Substitute of the Shire of Edinburgh, compeared Patrick Ogilvie, late of Colonel Morris's Regiment, and being interrogate whether he sent any salts to Mrs Ogilvie of Eastmiln, his sister, or any medicine, or anything wrapped up in a paper? Refuses to answer.

Whether he was in use to take laudanum and purging salts in one and the same day for his health? Answers that he was not.

Whether he had in his possession a bottle of

laudanum during his voyage home from the East Indies?

How many drops he was in use to take at a dose?

How laudanum acted on his bowels?

What was the bulk of each dose of salts he took?

Whether he sent a bottle to the said Mrs Ogilvie by the hands of Andrew Stewart? and whether he told Andrew Stewart that there were salts along with the bottle?

What was the nature of the surmises and reports which occasioned a dryness between him and Eastmiln, his brother?

What were the contents of any letters sent to him by the said Mrs Ogilvie after the declarant had left his brother's house this summer? and what were the contents of the answers he made to them?

When he first heard of his brother's illness and from whom?

Whether he had any conversation with his mother, or any of the family, or in the family, as to the nature of his brother's distemper, or cause of his death?

Whether he slept in the house of Eastmiln after his brother's death? for how many nights? in what room? and who slept in the room with him?

In what room the said Mrs Ogilvie slept during the nights between the death and burial of her husband?

Whether he did ever send for any medicines from one Dougal, a surgeon in Kirriemuir? or did he hear anybody send for any medicines from him?

Whether he has had any conversation with any of his brother's servants concerning the circumstances which happened on the day of his brother's death?

Whether while he was in the prison of Forfar he sent any messages by word, or writing, to the said Mrs Ogilvie?

Whether he is acquainted with one Mr Carnegie, a surgeon in Brechin? or whether he ever bought any medicines, or poison, from the said Mr Carnegie?

Each and all of these questions prisoner refused to answer.

Whether he recollects what time his deceased brother was married? Answers he does not recollect just now.

Whether declarant was present at the marriage? Answers that he was.

Whether he was acquainted with the said Mrs Ogilvie before her marriage with his brother? Answers that he was not.

Whether he absolutely refuses to answer the above questions which it is said that he refuses, or declines, to answer? or whether he only declines to answer them at present? Answers that he absolutely refuses to answer them to-night; but he does not know whether he may hereafter answer some of them or not.

Whether he inclines to give any reason for this refusal? Answers that he does not think it necessary to give any reason.

This declaration was emitted in presence of William Dunbar and William Campbell, writers in Edinburgh.

(Signed) J. BALFOUR.

(„) PAT. OGILVIE.

Edinburgh, 24th June, 1765.—In presence of Mr James Balfour of Pilrig, advocate, Sheriff-Substitute of this Sherifffdom of Edinburgh, compeared Mrs Katherine Nairn, widow of the deceased Thomas Ogilvie of Eastmiln. A copy of two several declarations emitted by her upon the 14th June instant, before George Campbell, Esq., Sheriff-Substitute of Forfar, and subscribed of this date by the said Mr James Balfour, being read over to her she was asked if there was anything in the said declarations which she now desired to

correct or alter? She refused to answer this or any other question put to her, having been so advised by her friends and counsel.

The following questions were, notwithstanding, separately put:—

In what drawer, and in what room of the house, did she put the medicines and letter which were delivered to her by Andrew Stewart the day before her husband's death?

Did she read the letter? What were the contents? Has she the letter, or how did she dispose of it?

By whose advice did she order the above medicines to be sent to her?

What was her ailment? Did she mention such ailment to any in the family? Did she mention her ailment to Lieutenant Ogilvie? If she did, how came she to take his advice about her health?

Did she sleep with her husband the night before his death? When did she first see and speak to him next morning, the 6th of June? Was she in use to give him tea in bed? Did he desire tea that morning? Did anybody see her make the tea and fill the bowl for her husband? Did she carry up the tea from the place where it was made straight to his room? Did he refuse or show any unwillingness to take it? Did she give any of the tea of which her husband had drank to any other person?

Did anybody propose sending for a surgeon when her husband was taken ill? Did she oppose the surgeon being sent for? And what was her reason for so doing?

Where did she sleep from the time of her husband's death till the time of her committal to the prison of Forfar? Where did Lieutenant Ogilvie sleep during that time?

How many letters did she write to Lieutenant Ogilvie from the time he was dismissed from her husband's family? If she sent any letters, mention

how many, by whom sent, to what places sent, what were the contents, and what answers she received? Does she know what became of those letters and answers?

To each and all of these questions she refuses to give an answer, and further refuses to exhibit her subscription hereto.

(Signed) J. A. BALFOUR.

(Signed) WILLIAM DUNBAR, Witness.

„ JOHN STEWART, „

His Majesty's Advocate declared he had now concluded his proof.

CHAPTER X.—THE CASE FOR THE PANELS.

GEORGE SPALDING of Glenkilrie stated that in February last year he wrote a letter to Lady Nairn, pressing her ladyship that infestment should be taken in favour of Mrs Ogilvie of Eastmiln, upon her contract of marriage, because her husband appeared to be in a bad state of health. For some years past Eastmiln appeared to him to be in an indifferent state of health, complaining often of a heart cholic, or a pain in his stomach, attended with a short cough, which was not continual, but which seldom left him. He wore a plaiden jacket, and a belt round his middle, much broader than ever he saw another wear, with lappets of leather hanging down his haunches. Upon his marriage he took off these "happings." Before he got the said broad belt he wore a striped woollen night-cap upon his breast, the lower end of which reached near his breeches; he never observed him wear it after he got the belt. About six years ago he was told that Mr Ogilvie of Eastmiln had an ulcerous fever. Witness saw him frequently after that, but never saw him look so well as formerly. Old Lady Eastmiln told him that her son Thomas was about forty years of age when he died. Eastmiln was married on the thirtieth day of January last. When he was complaining of the said pain in his stomach in witness's house, witness has frequently given him a dram to comfort him. A little before his marriage deceased was taken ill of the said disease in deponent's house, got hot ale and whisky with a scrape of nutmeg in it, and was put to bed without any supper. He does not

know how old Mrs Ogilvie, the panel, is, but he believes her to be about twenty-one.

James Millam, tacksman of the Eastmilm of Glenisla, formerly sworn on the part of the prosecutor, but now examined on behalf of the panels, deponed that the day after Lieutenant Ogilvie left Eastmilm, his brother employed witness to carry a letter to him, which letter he heard read, but has forgot the contents, except that it contained a request for the Lieutenant to return to Eastmilm. On this occasion he was informed by Thomas Ogilvie that his mother had told him of indecent familiarities passing between the Lieutenant and his wife, but he did not believe in them. Witness delivered the letter according to his instructions, and received an answer from the Lieutenant, which he read to him (witness), and in which he declined returning to the house of Eastmilm on account of the reports that were raised against him. Reports were circulating in the country of indecent familiarities between the two panels. He does not know what gave rise to these reports, but for his part he never saw any indecencies between them. His house is within a penny-stone cast of the house of Eastmilm, and he has been frequently in that house. He was very well acquainted with deceased, and if anything concerned him he would have imparted it to witness as soon as to any other.

Four days before his death Eastmilm complained to witness of a gravel and cholic, and said he could not live if he got not the better of it. On the evening of the Tuesday before his death he went into witness's house saying he was cold, and ordered some shilling-seeds to be put on the fire for warming him. He complained of being ill, refused to eat, said he would have no other supper but the fire, and that he was fading as fast as dew off the grass. The night was not cold. The night before he died he was again in witness's house and

said he was no better.

The day after Thomas Ogilvie died witness saw the Lieutenant sitting on a bed-side in the house of Eastmiln, with his mother on one side of him, and Dr Meik on the other, and he could not be pacified. Mrs Ogilvie was in another room, and he did not see her. The Lieutenant, in the situation above described, was weeping bitterly. He does not know whether there was any quarrel between Mrs Ogilvie and Anne Clark before Eastmiln's death, but Eastmiln complained to him that he could not get peaceable possession of his own house for Anne Clark. He wished her away, and got from witness a ten-shilling note to pay the expense of her journey. Upon the Monday after deceased's death Anne Clark left the house of Eastmiln. He saw her get money from Mrs Ogilvie immediately before her departure. When the mournings came home upon the occasion of Eastmiln's death, Anne Clark complained to him for want of a mourning apron, adding that she should make it dear to them as though it was a gown, meaning the panels, as he understood. His reason for understanding so was that it was the Lieutenant who sent for the mournings. The day Eastmiln died he was sent for to see him; he came about twelve o'clock, at which time there was no person with him but Anne Clark. Upon this occasion he stayed but a very short time, returning about an hour thereafter, and several other times, until Glenkilrie came. He saw several other persons in the room besides Glenkilrie, but he does not remember their names.

In cross-examination witness stated that in the letter he got from Eastmiln to deliver to his brother, the Lieutenant, he now recollects a passage in it importing that Eastmiln was to go to Edinburgh to stay there a fortnight, perhaps a month or six weeks. The said letter was enclosed by the Lieutenant in the one which he wrote in

return, and which witness put in his pocket without looking at the address. Upon arriving at Eastmilk he offered the letter to Thomas Ogilvie, but he, without opening it, bade him give it to his wife, because it was directed to her, which he accordingly did. On being questioned how it came that when the Lieutenant's letter was read over to him he did not know that it was addressed to a woman, he replied that he took no notice of that, but only of the Lieutenant's refusal to return home because of the reports raised against him. Before the day on which Eastmilk died witness never heard that Eastmilk was troubled with any violent vomitings or purgings. He never heard deceased complain of bad health before his marriage, but has heard him often complain after it. He was as intimate with Eastmilk before as after his marriage. On the Monday after panels were put in Forfar jail, Alexander Ogilvie roused the stocking upon the farm of Eastmilk that belonged to his deceased brother. He gave it to be understood that he did this by authority of a letter from the Lieutenant, his brother. He received the ready money got at the roup, and bills taken were payable to him at Martinmas next.

Jean Wallace, servant to George Spalding, deponed that she was servant to the deceased Eastmilk's family for three years, and left about six years ago. The last year she was in his service Thomas Ogilvie had an ulcer, and was attended by Dr Ogilvie. Since that time she has had little occasion of seeing him, and did not hear him make any complaints of his health, but from his appearance she did not think he was in good health. While he suffered from the ulcer he was confined for about six weeks, during which she frequently sat all night with him.

Thomas Jack, in Kirkton of Glenisla, stated that about ten o'clock on the day on which Eastmilk died he told witness that he had been out the day

before visiting some of his tenants. He was then very ill, and had been obliged to rest three times, but was better that morning. He had been a mile or a mile-and-a-half from home the day before.

Elizabeth Fergusson, spouse to John Bresack, portioner of Inverharity, deponed that the day before Thomas Ogilvie died she saw him in her own house, which is about three miles from Eastmiln. He was on foot. He told her he was not very well, that he had been taken ill when going home some time before, and had not got the better of it, or was not much better yet.

John Paterson, of Clachnoekater, Glenisla, stated that he saw Eastmiln the day before he died, about a mile from his own house. He was going to see some of his tenants' buildings. He complained that he was sick, said his bowels were sore, and that he had not been so ill for six years. He lay down and slept upon the ground. Witness's sister was with him at this time.

Margaret Paterson, sister of the preceding witness, corroborated his statements.

Margaret Reid, spouse to Fergus Fergusson, Kirkton of Glenisla, deponed that she saw the deceased Thomas Ogilvie in her house, which is about a quarter of a mile distant from Eastmiln, the day before he died. He told her he was not well, and it behoved him to get Dr Ogilvie to give him something to do him good. He was on foot, and had come off the hill.

Dr James Scott, physician in Edinburgh, declared that he had made sundry experiments with arsenic. He knows it will not dissolve in warm water, and that the common arsenic that is to be met with in the shops, although pretty finely pounded, falls to the bottom of a vessel with water almost instantaneously, and that it never puts on a greasy appearance. In cross-examination witness stated that if arsenic be put into a bowl of tea, with milk and sugar, and stirred round, the arsenic

would be suspended as long as kill a person who drank it ; and if there was honey in the bowl the arsenic would be still longer suspended.

George Campbell of Carsegownie, Sheriff-Substitute of Forfarshire, stated that some time after the late Thomas Ogilvie's death he went to the house of Eastmilm to make a search for anything that might appear there to clear up the cause of deceased's death. Not having the keys of the drawers of the house, he broke up several of them, particularly the drawers of what was said to be the late Eastmilm's cabinet. In one of these drawers he found a brownish white powder wrapped up in two or three small parcels. Not knowing what the powder was, he carried it away with him, and afterwards showed it to James Carnegie, surgeon in Brechin, asking him what kind of powder he took it to be, and if he thought it to be arsenic. James Carnegie, after looking attentively upon the powder, declared that he did not know arsenic but by its effects, and could not say upon sight whether that powder was or was not arsenic. Alexander Ogilvie was not present either when he made the search of the house of Eastmilm or when he showed the powder to James Carnegie. Part of the powder being produced was shown to Dr Cullen, physician, and Mr James Russel, surgeon, both of Edinburgh, who tried it before the Court and declared it to be saltpetre.

The Procurators for the panels now renounced all further probation, and the Court, after enclosing the jury, adjourned until four o'clock at noon, having sat from seven o'clock on the morning of the 12th to between one and two o'clock on the morning of the 14th.

CHAPTER XI.—THE VERDICT.

EXTRAORDINARY CHARGE AGAINST THE COURT AND JURY.

THE Court having again opened on the 14th August, the jury returned the following verdict :—The assize having enclosed, made choise of Sir George Suttie of Balgonie, Baronet, to be their Chancellor, and Alexander Sheriff of Craigleith to be their Clerk ; and having considered the criminal indictment raised and pursued at the interest of Thomas Miller of Barskimming, Esq., His Majesty's Advocate, for His Majesty's interest, against Katherine Nairn, widow of the deceased Thomas Ogilvie of Eastmiln, in the County of Forfar, and Patrick Ogilvie, lieutenant of the eighty-ninth Regiment of Foot, brother german to the said deceased Thomas Ogilvie, panels, with the Lords Justice Clerk and Commissioners of Justiciary, their interlocutor pronounced upon the relevancy thereof, together with the depositions of the witnesses adduced by the Prosecutor for proving the same, and the depositions of the witnesses adduced by the panels in exculpation, they, by a great plurality of voices, find the panels guilty of Incest as libelled during the life of the now deceased Thomas Ogilvie of Eastmiln. They further find, by a great plurality of voices, the said panel, Katherine Nairn, guilty of Murder, by poisoning the said Thomas Ogilvie, her husband, and the said Lieutenant Patrick Ogilvie, panel, guilty Art and Part thereof. In witness whereof the said

Chancellor and Clerk have subscribed their presents upon this page, place and date aforesaid, in their name, and by their appointment.

(Signed) G. SUTTIE, Ch.
(") A. SHERIFF, Clk.

Immediately upon reading of the above His Majesty's Advocate judicially appeared in Court, and craved that the Lords might proceed to pronounce sentence *condemnator* upon the verdict.

Mr Alexander Lockhart, as procurator for both panels, then rose, and represented that during the short space of time that he and the other counsel for the panels have had to recollect the proceedings in the course of this trial, and upon hearing the verdict itself as now read in Court, sundry particulars have occurred to them which they are humbly to insist upon as jointly and severally relevant why no judgment can pass upon the panels on this verdict. In support of some of these there will be occasion to refer to the records of the proceedings themselves, which till now have been in the hands of the jury, and as it is their earnest desire to state these in the most proper and becoming manner, he therefore moved the Court, in behalf of both panels, that they be allowed a reasonable time to prepare, state, and support the particulars, of the heads of which they shall furnish a note to His Majesty's Advocate this very night.

In reply to this plea the Prosecution answered that the record of the trial has been open and subject to the consideration of the counsel for the panels during the whole course of the trial. If any objection is to be taken against the course of procedure during the trial it is necessary that such objection should be taken and tried before the jury is discharged. But, as the counsel for the panels have moved no objection or plea in arrest of judgment, and have only moved for a delay in order that they may have further time to find out and

move such plea, he insists that this is no plea, and therefore craved judgment upon the verdict, unless the counsel for the prisoners shall state a special and legal plea why judgment should not pass.

The Court, however, decided to hear the plea of the defending counsel ; ordered a minute of debate to be made up, and adjourned the further hearing of the case until the next day at 11 a.m.

When the Court again opened the defending counsel represented—That no judgment ought to pass on this verdict, in respect as anything found against the panels is void and null, the proceedings in the course of the trial having been most informal and irregular. Between the hours of three and four on the afternoon of the 12th inst., the jury arose from their seats, and dispersed into different corners of the house, some of them even going out of the room where the Court sat. They continued so dispersed, eating, drinking and conversing in private with different persons, particularly with the counsel for the Prosecutor, for the space of half-an-hour and better, a witness being then under examination, part of her deposition having been reduced into writing before they had so dispersed. At last the Clerk, at the desire of one of the judges, called over the list of assize, when they again assembled and took their seats. During the time the jury were dispersed one or more persons conversed with the witness under examination, the said witness being Anne Clark, against whom objections had been raised by the panels, but overruled, and a protest for remeid of law taken thereon. This it is apprehended was an actual adjournment of the trial ; at least it had all the bad effects of an adjournment, an opportunity being given to converse with the jurymen in private, to solicit them, and to offer evidence which the panels and their counsel had no opportunity to see or hear, an event which the law of this country has been particularly careful to avoid. It has

considered the preventing of such occurrences, and given absolute security against them. A fundamental point in a trial by jury appears in the Act 1587, chap. 91, whereby: "Our Sovereine Lord, considering the wrangs alledged sustained by diverse noblemen and others, lieges of this realme, being accused of treasen, be sollesiting, boasting, and menacing of the assize, after they were enclosed, the accusers and other persones, their favourers, having liberty to pass to the said assize, and to produce to them sic writs and witnesses and uther probation as they pleased to verify the crime outwith the presence of the partys accused; quhairby the just defence of their lives, lands and honours was taken away. Therefore our said Sovereine Lord, with advice and consent of the Estates of this present Parliament, has statuted, declared and ordained that in all times coming the hail accusation, reasoning, writes, witnesses, and uther probation, and instruction whatsomever of the crime sall be alledged, reasoned, and deduced to the assize in presence of the party accused, in face of judgement and no otherways."

From which statute it is plain the Legislature meant effectually to guard against every opportunity of making any impression upon the minds of jurymen, except what what was said and done in open Court, and in presence of the panels. All the salutary effects of this statute must be eluded if opportunity is given for the counsel for the Prosecutor, or others, to solicit, to practise upon, or argue with the jurymen, during the course of the trial, in private by permitting them to leave their seats, disperse through the house, and converse privately with whatever person they think proper.

In like manner about four of the clock, on the morning of Tuesday the 13th inst., the jury dispersed again in the same manner, and in their absence part of the deposition of Elizabeth Sturrock was taken down. About the same time the Court

likewise broke up—no quorum of the judges continuing on the bench—the Lord Kaims only remaining there; the rest retiring and conversing in private with sundry of the jury and others. Upon that occasion likewise the jury ate, drank, and conversed in private with different persons, and in particular with the counsel for the Prosecutor, whereby the trial was again interrupted. No roll was called, nor was it in any way ascertained that they re-assembled, the Lord Kaims only calling out “Gentlemen of the jury, are you all there?” and the Depute Clerk of Justiciary answering “I see fifteen,” but no answer was returned by the jurymen themselves. In this case the Court was most unquestionably adjourned, as no quorum of the judges remained sitting on the Bench, and though no act of adjournment appears on the record, yet it is humbly apprehended that instead of mending matters that renders them worse, for an adjournment *via facti* is unquestionably as much an adjournment as one made by an order of Court, having all its bad consequences and many more.

It is an adjudged point that after a jury is charged with a panel, the Court cannot be adjourned till the jury is enclosed. This was solemnly determined in the case of Janet Ronald, who was tried in May, 1763, at the Circuit Court of Perth, for the crime of giving poison to her sister. In which case, after the proof was concluded, and while His Majesty's Advocate was addressing the jury, one of the jurymen happened suddenly to be taken ill, and appeared incapable of doing his duty for a time. For that reason the Court was adjourned till next morning, when that jurymen being recovered, the jury again assembled, were enclosed, and returned a verdict against the prisoner, finding her guilty art and part of the crime libelled. It was moved in arrest of judgment that the Court having adjourned before

enclosing the jury, the jurymen dispersed, and an opportunity having been given to solicit, and practise on them in private, the verdict was void and null, and no sentence could follow in consequence thereof. The matter, on account of its importance, was referred to the Court of Justiciary at Edinburgh, where it was solemnly decided, in presence of the whole judges, after informations had been given in on this point, and recorded in the Books of Adjournal, the Court being of opinion that this adjournment vitiated the whole proceedings, did not pronounce any sentence on this verdict, but assoilized the panel and dismissed her from the bar. The adjournment of the Court in the present case ought to have the same effect, to vitiate all the subsequent proceedings, and to procure an absolviter to the panels, since every bad consequence that can be figured or imagined to result from an adjournment by act of the Court must result also from an adjournment *via facti*.

About three o'clock on the afternoon of Tuesday, the 13th inst., the jury again dispersed, and conversed in private with sundry individuals in different parts of the house, and continued dispersed for the space of half-an-hour and upwards, after which they again returned to their seats. In all these various adjournments and dispersings of the jury, it was out of the power of the panels, of their counsel, to prevent them being actually dispersed, no motion having been made publicly for leave to disperse, and the panels and their counsel being intent upon the business that was going on, that attention being first interrupted by the noise the jurymen made when actually dispersing. It is vain in the present case for His Majesty's Advocate to plead the necessity of the jury being refreshed. They were refreshed on several other occasions besides those above mentioned, at which times the refreshments were always given them in their seats. It is apprehended that such

ought always to be the case, as it is a material point that the quality and quantity of the refreshments they take, particularly the wine and other strong liquors, should be regulated by the Court, under whose inspection everything of that nature should be given. By jurymen dispersing and drinking liquors in what quantity and of what quality they please, in private, and while removed from the inspection of the Court, there is a hazard of their becoming intoxicated, which may be of the most dangerous consequences to the security of those who are tried, and consequently to the lives and liberties of the subjects of this country in general.

The bad effects of all these several adjournments were severally felt by the panels in this case. They served to protract the trial, and what impressions were communicated to the jurymen when dispersed, or what quantities of liquor they swallowed, are circumstances that cannot be known to the panels or their counsel. After the last time the jurymen were dispersed, and when the evidence on the part of the panels began to be adduced, several of the jury began to show a very great impatience, and insisted that evidence which the panels thought material for them should be cut short. Some of them particularly disputed the relevancy and propriety of the questions put by the counsel for the panels with great heat, so much so, that some of the judges and other jurymen were obliged to interpose in order that the exculpatory proof might go on. The counsel for the panels were obliged to pass from many witnesses in order to procure attention from those assizers. Hence, though thirty-three hours were spent in hearing calmly the proof adduced for the Prosecutor, yet the proof for the panels, after being heard by those jurymen with great impatience, was put an end to in about three hours. By this means the whole proof

relative to the conduct of Alexander Ogilvie, which the panels insisted much upon in their defence, was prevented, some of the jurymen saying that they had nothing to do with Alexander.

At one period of the trial one of the jury retired from his place, and continued absent a considerable time, yet the proof went on, he paying no attention thereto, nor was he capable of doing so at the time, therefore he could no more judge of what was then said or done than if he had been twenty miles away. On sundry occasions jurymen retired without leave asked, or given, and went out of the room where the Court was sitting. It is vain of His Majesty's Advocate to plead necessity in such cases, for there is a remedy known and commonly practised when these necessities oblige the jurymen to withdraw, viz., leave is asked of the Court, which orders a macer to attend the jurymen, so that no person may have any private intercourse with him during the time he withdraws, and the trial is stopped till he returns.

Besides all these informalities committed during the course of procedure the record is very defective, though the defects cannot at present be particularly pointed out, as the counsel for the panels have not yet had an opportunity of inspecting it. However, they condescend on the following defects:—Sundry admissions made by His Majesty's Advocate in point of evidence favourable for the panels are not taken down, so that the record passed to the knowledge of the assize without bearing these admissions. One of these admissions was passing from the crime of incest during a part of the time libelled; another was relative to the conduct of Alexander Ogilvie. The protests for remeid of law taken for the panels at different parts of the trial are not engrossed in the record, though that was specially insisted on at the time, and precedents pleaded on and produced.

Neither is the condescendence relative to the malice of Anne Clark, which was made for the panels, but found not relevant by the Court, mentioned in the record. This is the more material that the omission of this condescendence was used as an argument with the jury for the credit of Anne Clark's testimony. It will be remembered that when the counsel for the Prosecutor had concluded his proof, he gave notice to the Court that as the counsel for the panels had charged malice against Anne Clark, one of the most material witnesses for the Prosecutor, and meant to adduce witnesses for proving that malice, judged it necessary on his part to adduce some witnesses in order to obviate that objection, and to show that this witness was so far from bearing malice against the panels that after she had been once precognosed, she had withdrawn and secreted her person when a warrant by this Court was out against her, in order to avoid her being brought as a witness in this cause.

The verdict appears to be informal, and the counsel for the panels apprehend it will be found a special one when applied to the interlocutor of relevancy. It does not bear that the jury considered the writs produced, but only the depositions of the witnesses, though writings were produced both by the Prosecutor and panels. These writs were the declarations of the panels when examined; the questions put to them by the Sheriff of Edinburgh, which they are said to have refused to answer; Anne Clark's letter to the Lord Advocate; a letter from Lord George Beauclerk; a letter from Colonel Morris, in whose regiment the panel Patrick Ogilvie served, attesting his good character*; and the alleged letters from one of the panels. The verdict has therefore proceeded on a partial consideration of the evidence.

Note.—These letters were not proved, and did not enter the record.—*Author.*

The inattention of the jury to the whole evidence appears from another particular, viz., their finding the panels guilty of incest as libelled, which includes the whole month of January, though it is in proof that the late Thomas Ogilvie was not married till the 30th day of that month. If time were allowed to the counsel for the panels to consider the verdict and inspect the records, and prepare arguments in support of the statements they have now laid down, they apprehend there is good cause why judgment should not pass on this verdict. They have set forth these objections in obedience to the Court's desiring them to condescend, and crave that more time may be allowed them to state these objections more fully, or any other which may occur, and that liberty be given them to inspect the record, and have copies of the verdict, which has been refused them by the Clerk. This demand they apprehend is the more reasonable that they have only had a recess of fourteen hours from the time that the jury was enclosed, after enduring the fatigues of a trial which lasted for forty-three hours, so that they are not in a condition at present to argue their objections so properly as they would be were a little more time allowed them. All and each of the facts set forth they offer to prove, and crave that a proof may be allowed accordingly.

CHAPTER XII.—THE CHARGE DISALLOWED.
SENTENCE OF DEATH PASSED UPON PAT. OGILVIE.

To the foregoing accusation His Majesty's Advocate and Solicitor-General answered, That the conduct of the defence for the panels in this trial has been extraordinary from first to last, as appears from the defences compared with the proof in exculpation. After a trial of forty-three hours continuance, before a jury of the most respectable character, and after a verdict returned, finding the panels guilty, an attempt is now made to disappoint public justice by a plea in arrest of judgment, unknown in the law, unsupported by any precedent, and in itself irrelevant and frivolous.

This plea has been introduced with a declamation upon the liberty of the subject, and of the importance of preserving a jury trial. Yet the plea itself tends, if it has any meaning, to prove that no trial of capital crime in this country can be taken by a jury, because the length of such trials must in most cases make it necessary for jurymen to refresh themselves, and occasionally retire. If these things cannot be permitted by the Court, the necessary consequence is that no such trial can proceed by jury, and in order to bring such criminals to justice a new form of trial must be invented. When a plea so groundless and frivolous is for the first time taken up, in behalf of two panels, whose rank and situation in life enable them to bring many learned counsel to argue and give countenance to such a plea in their behalf, standing as they do, convicted by their

country of the most atrocious and dangerous crimes, it becomes the dignity of the Court to hear fully, and then give such a judgment as will show that the law knows no distinction of persons. The criminal law of this country, upon which the security of the Government and the safety of the people depends, must have its course with equal effect against the greatest as well as the meanest.

This trial has been conducted with more attention and favour for the defence of the panels than any trial that has occurred in the memory of any of the members of the Court. The strictest orders were given that no juryman should retire without leave of the Court and being attended by a macer, which was punctually executed throughout the whole course of the trial. When it became necessary for the jury to refresh themselves from time to time, for greater despatch, and to prevent confusion they left their bench and were refreshed at a table immediately below, under the eye of the Court. The insinuation that some of the jury may have taken too much liquor is false and injurious, to the knowledge of the Court, was not so much as insinuated in the debate when the jury was present, and is now for the first time thrown into this minute. One of the jurymen, being indisposed, rose and walked some time behind his seat, but heard the whole of the evidence. No criminal trial where such refreshment of the jury has been necessary was ever carried on in a manner so exceptional as the present. The tendency of the panels' plea is to show that no criminal has been legally condemned in Scotland in any case where the trial has continued for such a time as to require refreshment to the jury, or the retiring of any of the jurymen.

During the time the jury were refreshing themselves the first day, Anne Clark was under examination, which lasted eight hours. She, however, remained in her place, under the immediate

eye of the court till her examination was resumed upon the return of the jury to their places. No person spoke to her except the macer of the court when he gave her some bread and wine. During the whole course of the trial, upon notice given that any of the jurymen retired, proceedings stopped till his return, so that though from necessity the court did for some short intervals stop proceedings in the proof, yet there was no adjournment, and this appears from the record, which the panels cannot disprove. The court remained full, without one moment's interval, during the whole course of the trial. All facts stated in the plea offered for the panels passed in presence of the Court, and as it is not pretended that any wrong was done, or exception taken in behalf of the panels to any part of the procedure during the trial, far less after the jury was enclosed, no proof can be allowed of the facts upon which the plea is founded; the Court must therefore take them upon their own knowledge.

The late case of Janet Ronald has no relation to the present case; for there the Court was adjourned and the jury dismissed after they were charged with the panel, which was found contrary to law. The insinuation thrown out against the jury, that they were impatient to hear the evidence for the panels, is likewise false and injurious, to the knowledge of the Court. After the Prosecutor concluded his evidence, which he abridged as much as possible, the counsel for the panels proceeded to open their defence by a proof that after the accused were committed to prison the cattle at the house of Eastmilm were sold by Alexander Ogilvie. Upon its appearing clearly from their own evidence that this roup proceeded from an order of Patriek Ogilvie it was observed by one of the jury that this fact did not appear to be material to the issue, and as they found themselves much exhausted by fatigue and want of rest, they would

not be able to attend to such evidence as might be material for the panels' defence. This being submitted to the consideration of the defending counsel, they declared that they gave up that article of their proof.

The protest taken by the panels for remeid of law is extant in process, and forms part of the record of this trial. The objection to the evidence of Anne Clark, founded upon malice, was clearly disproved before the jury. She was so far from harbouring malice against the panels that, on the contrary, after she was precognosed before the Sheriff she withdrew herself from the place of her abode, and concealed herself in different places about this city under a false name, in order to prevent her being adduced as an evidence in this trial. Although His Majesty's Advocate, perceiving the danger of protracting this trial to an unnecessary length, did not insist to have this part of the evidence taken down, yet it appeared so strong to the panel's own counsel that when they came to state the grounds of their allegation of malice, and to adduce their witnesses in support thereof, the Judge Examiner gave his opinion that the condescendence as stated by them was not relevant, and they did not insist for the opinion of the Court, which was plainly giving up and passing from this objection of malice, or any proof thereof.

The verdict is accurate and formal in all respects. There is no necessity that the verdict should mention the evidence upon which the jury proceeded. All the written evidence adduced before the jury was in behalf of the Prosecutor, and no written evidence whatever was proved, or adduced, before the jury in behalf of the panels. If it can be supposed that the jury did not take under their consideration this part of the Proccurator's evidence it was so far favourable for the panels. It is referred to their Lordships' knowledge that in most trials

before this court the declarations of the panels and other written evidence are referred to in the libel and produced before the jury, and many verdicts have been returned, upon which execution passed, wherein no mention is made of their having considered such written evidence. It is in their power to take that evidence under their consideration or not as they please.

No admission was made by His Majesty's Advocate that is not properly entered upon record. He passed from the incest charged to have been committed after the 6th June, in presence of the court and jury, and the verdict properly applies to the libel as so restricted. The counsel for the prisoners had access to the record during the whole course of the trial, and since that time. It is improper to move the court for arrest of judgment till they have further time to consider the record in order to discover what objections they can there find in support of their plea. In respect of all of which judgment ought to be pronounced.

After hearing the foregoing debate the Lords issued the following interlocutor :—

The Lord Justice Clerk and Commissioners of Justiciary having considered the foregoing debate, and knowing that the whole of this trial from first to last was carried on under the eye and in presence of the Court, and that the whole of it was conducted with as much regularity and accuracy as ever was done in any trial before this Court, they find the reasons pleaded in arrest of judgment not relevant, and repel the same. They also repel the objections made to the form, or substance of the verdict.

(Signed) GILB. ELLIOT, I.P.D.

The counsel for Kate Nairn—Alexander Lockhart and Henry Dundas—had yet another card to play. No sooner were the objections previously stated repelled than they represented that as the female prisoner was pregnant no judgment could

pass upon the verdict till after her delivery. No proof was offered in support of this plea, but their Lordships deferred judgment until next day, the 16th of August, when they would hear the report of Mrs Johnstone, Mrs Hamilton, Mrs Duncan, and Mrs Hill, known midwives, upon the point in question, and directed that in the meantime they be cited to appear.

No further plea having been issued in Patrick Ogilvie's behalf, the following sentence was forthwith pronounced against him :—The Lord Justice-Clerk and Commissioners of Justiciary having considered the foregoing Verdict of Assize, dated and returned the fourteenth day of August current, against Katherine Nairn, widow of the deceased Thomas of Eastmiln, in the county of Forfar, and Patrick Ogilvie, lieutenant in the eighty-ninth regiment of foot, brother-german to the said deceased Thomas Ogilvie, whereby, by a great plurality of voices, the said Katherine Nairn and Patrick Ogilvie are found guilty of incest as libelled during the life of the now deceased Thomas Ogilvie of Eastmiln; and the said Katherine Nairn guilty of murder by poisoning the said Thomas Ogilvie, her husband; and the said lieutenant Patrick Ogilvie guilty art and part thereof. In respect of the said verdict, they, by the mouth of Isaac Gibbs, dempster of Court, decern and adjudge the said Patrick Ogilvie to be carried back from the bar to the Tolbooth of Edinburgh, therein to remain, to be fed upon bread and water only, in terms of the Act of Parliament in the twenty-fifth year of the reign of his late Majesty, King George the Second, entitled, "An Act for preventing the horrid crime of murder," until Wednesday, the twenty-fifth day of September next to come, and upon that day to be taken furth of the said Tolbooth and carried to the common place of execution in the Grassmarket, and then and there, betwixt the hours of two and

four of the clock after noon of the said day to be hanged by the neck, by the hands of the common hangman, upon a gibbet, until he be dead, and his body thereafter to be delivered to Dr Alexander Munro, Professor of Anatomy in Edinburgh, to be by him publicly dissected and anatomized, in terms of the said Act ; and ordain all his movable goods and gear to be escheat and inbrought to His Majesty's use, which is pronounced for doom.

(Signed) GILB. ELLIOT.
" ALEX. BOSWELL.
" AND. PRINGLE.
" JAMES FERGUSON.
" GEO. BROWN.

CHAPTER XIII.—PATRICK OGILVIE EXECUTED.
ESCAPE OF KATE NAIRN.

CONCLUDING REMARKS.

Two of the four midwives cited—Mrs Johnstone and Mrs Duncan—only appeared on the 16th August, the other two giving satisfactory reasons for their non-appearance. The Court therefore ordered other three to be cited, viz., Mrs Richardson, Mrs Sheills, and Mrs Petrie, all of whom appeared almost immediately before the Court. After examining the panel they declared upon oath that they could not positively affirm whether she was *enciente* or not, and the Court had again to defer the pronouncing of sentence, but ordered the five midwives to appear before them on the third Monday of November, by which time it was expected that they could give a decisive reply. On the above date they again assembled before the Court, and after again examining the prisoner, unanimously stated that she was undoubtedly pregnant, upon hearing which their Lordships agreed to delay sentence until she should be delivered.

Meanwhile with Patrick Ogilvie the time dragged slowly on in prison. What the wretched man's thoughts were during the—to him—long period between the 15th August and the 25th September, can only be guessed. The sentence passed upon him was ignominious, degrading, and to one of sensitive temperament, of refined cruelty. "To be fed upon bread and water only," then to appear before the rabble of the metropolis upon the public scaffold, exposed to every coarse jest and jeer, and

his mortal remains afterwards to be "publicly dissected and anatomized"—the thought of these indignities were infinitely worse than death. Yet were he guilty of aiding and abetting the murder of his brother, who can say that his punishment was unmerited? In his regiment Lieutenant Ogilvie had been a pre-eminently popular officer. The Gordon Highlanders were, as we have seen, in the East Indies when he left them on leave of absence, but they returned home almost immediately afterwards, and were now stationed at Edinburgh Castle. Large numbers of these believed their popular officer innocent, and numbers more looked upon him as the hero in an unfortunate love affair, all uniting in declaring the sentence imposed on him excessive, harsh, and unmerited.

The fatal 25th drew nigh; the gibbet reared itself in all its gaunt hideousness in the Grass-market, where so many guilty mortals—and doubtless a fair percentage of innocent ones also—have suffered the extreme penalty of the law. As the day fixed for the execution became an event of the near future, the authorities began to fear that a rescue might be attempted. With the violence, fury, and preconcerted action of an Edinburgh mob they were only too well acquainted. It was not, however, the mob they were apprehensive of on the present occasion, but the well-trained, disciplined, armed men of the 89th regiment. Deeming prevention better than cure they communicated their fears to the Governor of the Castle, and when the day fixed for the execution of their favourite officer arrived, the Gordons found themselves shut up in the fortress until he had satisfied the demands of an outraged law.

In the Tolbooth Kate Nairn awaited her confinement, attended by a midwife named Mrs Cairns, who by the way continued to practice her calling

as late as 1805. The prisoner's state of mind must have been far from enviable; shut up in a prison cell, she must have thought of the past events, and when her guilty paramour was dragged forth to execution, her thoughts must have been turned to the similar fate awaiting her in the near future. We may, however, be pardoned for supposing that Mrs Cairns helped in no small measure to banish these gloomy thoughts: It is a well-known fact that the old Tolbooth of Edinburgh was incapable of retaining prisoners of any distinction, and Kate Nairn was undoubtedly one of these.

About the time of her confinement, Mrs Cairns became afflicted with a tremendous toothache, went out and in to the jail with her head enveloped in shawls and flannel, and groaned as if in excessive pain, sometimes speaking in monosyllables to the jailors and sometimes not. One hand she placed on her mouth, and with the other grasped the large quantity of wraps about her head and shoulders. Two days after her patient's accouchement, and when the janitory officials had become so habituated to her appearance as not to heed her exits and entrances, Kate Nairn one evening came down in her stead, her head wrapped all round with shawls, uttering the usual groans, and holding down her face upon her hands as if with agony, in the precise way customary with the midwife. The inner door-keeper, who it is supposed, was not unaware of the prisoner's escape, gave her a thump upon the back as she passed out, calling her a howling old Jezebel, and wishing she would never come back to annoy his ears, and those of the other inmates, in such an intolerable way. Kate Nairn accordingly passed outside the prison gates without her identity once being suspected, and it was only when Mrs Cairns was found in her cell, completely recovered of her severe toothache, that her escape was discovered.

There can be little doubt that Kate Nairn owed

her escape to the influence of her wealthy relatives, for money could then open and shut prison doors at will, and it is far from probable that Mrs Cairns would have dared what she did without the knowledge of some very considerable recompense.

With the method of prisoner's escape all accounts agree, but after getting fairly outside the prison gates considerable diversity of opinion exists regarding her subsequent actions. One account bears that she immediately left the town in a coach to which she was handed by a friend stationed on purpose. The coachman, it is said, had orders from her relations, in the event of a pursuit, to drive into the sea and drown her—a fate which, however dreadful, was considered preferable to the ignominy of a public execution. If such were the means adopted—which we very much doubt—no pursuit was given, and she consequently escaped a watery grave.

Another account states that she went up the Lawnmarket to the Castlehill, where lived her uncle, or cousin (these different relationships are given by different authorities) Mr William Nairn, advocate, afterwards a judge by the title of Lord Dunsinnan, from whom she expected to receive protection. Being ignorant of the town, she mistook the proper house, and, what was certainly remarkable, applied at that of the Crown Agent, who was assuredly the last man in the world that could have done her any service. As good luck would have it she was not recognised by the servant, who civilly directed her to her relative's house, where it is said, she remained many weeks. A slightly different version is that she proceeded up the Lawnmarket to St James's Court, where she knocked at Lord Alva's door, mistaking it for that of her father's* agent. She was recognised by her ladyship's page, who had seen her in

* In Kate Nairn's first declaration her father is spoken of as "deceased."—*Author.*

court, but she contrived to reach her relative's house, who effectually concealed her in his cellar in Parliament Square. An attic in St Mary's Wynd has also been pointed out as the place of her concealment. In the disguise of an officer she was conducted by one of Mr William Nairn's clerks to Dover, where she sailed for the Continent. Her future life was reported to have been virtuous and fortunate. She was married to a French gentleman, was the mother of a large and respectable family, and died at an advanced age.

To the reader who has followed me thus far a few concluding remarks may not be out of place. It is even yet asserted by some that the evidence produced at the trial was insufficient for any jury to return a verdict of guilty upon. With regard to the charge of murder this may not be altogether without some foundation. No one *saw* Katherine Nairn put poison into the bowl of tea which she gave to her husband, or even proved that she had poison in her possession. Yet it was conclusively proved that Lieutenant Ogilvie bought arsenic, and that a suspicious packet was conveyed from him to Mrs Ogilvie. He denied buying poison, but his reason for so doing is evident. Had he admitted purchasing arsenic he would have been called upon to state how he used it. We cannot for a moment doubt whether his or James Carnegie's statement was the correct one. Again, when Kate Nairn went upstairs with the bowl of tea, she went into a closet before going into her husband's room. She denied going into the closet, but it was proved by Anne Sampson and Alexander Lindsay that she did so. What was she doing in there? We don't pretend to vindicate the character of Anne Clark, but, from other witnesses besides her, it was incontestably proved that Kate Nairn and Thomas Ogilvie lived a very unhappy life. Again, witness the female prisoner's nefarious proposal to Elizabeth Sturrock, a pro-

posal which was seconded by the Lieutenant. Many other points of the evidence tend to show guilt on the accused's part. We cannot, however, but wonder how old Mrs Ogilvie of Eastmiln and Alexander Ogilvie were not examined, and how the latter's name did not even appear on the list of witnesses cited.

The evidence led on behalf of the accused was weak in the extreme, and principally confined to proving that Thomas Ogilvie had been in bad health for some time previous to his decease. They could not, however, prove that he had been previously afflicted with the symptoms manifested during his last illness. We cannot doubt but the most material witnesses for the defence were examined ; that being so, the testimony of the host of uncalled witnesses must have been trifling in the extreme. The extraordinary amount of technical objections raised by the defending counsel are also facts significant in themselves.

With regard to the charge of incest—the proof of which I have withheld as unfit for publication—there is not the slightest doubt about the accused's guilt. It was conclusively proved by almost all the members of the household of Eastmiln. In an Act passed in the first Parliament of James VI. of Scotland, in 1567, and which was then in force, it was enacted that those found guilty of the “abominable cryme of incest shall be punishable to the death.” Thus, although insufficient evidence had been adduced to prove murder, both prisoners incurred the extreme penalty of the law for the crime of incest.

In an article on the above subject which recently appeared in a contemporary, the writer stated that he had read the whole record of the trial, and assured his readers that no evidence was led on which a jury of the present day would return a verdict of guilty, giving in support of his assertion Dundas's speech in reply to the indictment and

Kate Nairn's declarations, saying that the first-mentioned was a fair statement of the case. While admitting that he is entitled to his opinion, we prefer that the reading public have an opportunity of judging for themselves. In the foregoing chapters I have endeavoured to avoid all one-sidedness, and given the whole proceedings of the trial as borne out in the records of the Court of Justiciary—incestuous evidence alone excepted. I am afraid that at times the narrative may have become a little tedious, but, if so, I must plead my endeavours to let the reader arrive at a right understanding of the case as my excuse. All who have read "The Eastmilk Tragedy" will now have received a pretty full insight into the procedure of an old Scotch criminal trial, and will, moreover, be enabled to judge for themselves of the guilt or innocence of the parties accused; for my own part I fail to see how a verdict of "Not Guilty" could have been returned.

THE END.



