

Report of the trial of Mrs. Gilmour, for the alleged murder of her husband : with an appendix containing the medical reports, and other documents founded on at the trial, and an account of the proceedings before the President and courts of America, relative to her arrest and surrender to the British authorities, under the Ashburton Treaty. To which is prefixed, a notice of her life.

Contributors

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Alfred S. Taylor

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REPORT

OF THE TRIAL OF

MRS GILMOUR,

FOR THE

ALLEGED MURDER OF HER HUSBAND.

WITH AN APPENDIX,

CONTAINING

THE MEDICAL REPORTS,

AND OTHER DOCUMENTS FOUNDED ON AT THE TRIAL, AND AN

ACCOUNT OF THE PROCEEDINGS BEFORE THE PRESIDENT

AND COURTS OF AMERICA, RELATIVE TO HER

ARREST AND SURRENDER TO THE BRITISH

AUTHORITIES, UNDER THE

ASHBURTON TREATY.

TO WHICH IS PREFIXED,

A NOTICE OF HER LIFE.

EDINBURGH,

PRINTED AND PUBLISHED BY W. FORRESTER, 6 ST. ANDREW SQUARE.

And Sold by all Booksellers.

1844.

REPORT

ALICE GYMNOUR

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MEMOIR OF MRS GILMOUR.

CHRISTINA COCHRAN, OF GILMOUR, the subject of this important and interesting trial, is the eldest daughter and second child of Mr Alexander Cochran and Mrs Margaret Robertson his spouse. Mr Cochran is the proprietor of several farms at South or West Grange, in the parish of Dunlop and county of Ayr. Mrs Cochran is the daughter of a respectable farmer in the neighbouring parish of Beith. Mr Cochran was engaged, in early life, along with his father, in the business of buying and selling cheese, which, it is well known, is the staple produce of this part of the country. In that business his father amassed a considerable fortune, the bulk of which was left to his eldest son Alexander. The other members of his family were also well provided for. On the death of his father, about thirty years ago, Alexander took up his residence at the Grange, and has continued to farm his property ever since. Mrs Cochran was a remarkably well-looking person in her youth, and still retains no small portion of her good looks. Both she and her husband are persons of great respectability in their sphere, though her husband has the character of being somewhat stern and determined in his dealings. This feature in his character led to a great deal of misrepresentation as to the marriage of John Gilmour with his daughter. It was said that the marriage was forced by him, and Christina said something to that effect in her judicial declaration; but the force amounted to nothing more than the indication of opinion by a very determined man. There is no reason whatever for saying that he did anything more than indicate his opinion that John Gilmour was a suitable match for his daughter; and in this opinion he was joined by the whole of his family.

Christina was born at the Grange, on the 25th November 1818, and is consequently now in her twenty-sixth year. This is somewhat more than she stated in her declaration, though there is no reason to believe that she made an intentional mis-statement on the subject. The rudiments of her education was received at the excellent parish-school of Dunlop. That school was attended by the children of all the respectable farmers and inhabitants of the neighbourhood. The district is one of much classic interest, as all who are acquainted with the writings of Burns—particularly his correspondence with Mrs

Dunlop of Dunlop—must know. Her parents attended the Established Church, and Christina was educated with all the strictness of the Presbyterians—nowhere more strict or rigid than in this quarter. There was nothing striking in her progress at school, though she was in no ways backward. Her instructions were confined to the more ordinary branches of education; and in time she was removed to a boarding-school at Paisley, kept by a family of the name of Allan. She was also placed for sometime in a similar establishment at Glasgow. When at home, she took her share of the family work—it being the usual practice, in that part of Scotland, for the farmers, even of the best class, to bring up their daughters strictly in the character of persons familiarly engaged in the farm-work. In the same way, they are all generally taught the business of dress-making; and Christina was placed, for a short time, in the establishment of Misses Parker, respectable dress-makers in Paisley. Some notion may be formed of the homely way in which the family lived, from the fact that they never kept a female servant, the domestic duties being wholly discharged by the members of the family. Even at the time of Christina's marriage, there was no female assistant in the establishment. This presents a picture of rural life peculiar almost to the district, but certainly not more peculiar than praiseworthy—for the farmers and their families are a superior class of persons; and, in point of appearance even, and manners, will not suffer by contrast with the farmers of those districts where the habits of the people place the farmers, in all their domestic economy, on a par with the owners of the soil.

As Christina grew up she became a remarkably interesting person—as was described on the trial; of a very mild, gentle deportment, with no violence of any kind about her. She had a number of suitors, all of them, it may be said, of a superior condition either to the young man whom she preferred, or him to whom she was unhappily married. It was not unreasonable that her parents should have wished that she should be respectably married, and they do not seem to have been at all ambitious in their views. Mr John Anderson, the son of the proprietor of the farm of Broadley, though nearly ten years the senior of Christina was her earliest favourite. She had attended a school which was kept in a house belonging to his father, and there is no doubt that the attachment was mutual. Mr Anderson lived on the adjoining farm, in which, along with his father, he carried on the business of farming; and it was Mr Anderson's intention to have offered marriage, as soon as his circumstances would have enabled him to commence housekeeping. But, in this state of matters, Mr John Gilmour, also the son of a neighbouring tenant, a person of great worth, and universally respected, came forward and pressed his suit. Christina had never informed him how far her affections were bestowed on another; and that other was unfortunately unable to place his views in a favourable light. Gilmour was several

years younger than Anderson, and, in point of worldly circumstances quite his equal. He had, besides, the reputation of being a well educated young man—certain to make his way in the world. His attachment to Christina was passionate and irrepressible; in so much that, on one occasion when she resisted his addresses, he told her that if she refused he would certainly destroy himself. It is not strange that a young female should so comport herself, in such circumstances, as to make her lover believe that he was acceptable if not accepted. Gilmour continued to press his suit—the family viewed his attentions with great favour; but there is not the slightest reason to suppose that they employed compulsion of any kind in the business. At sometime or other, not clearly ascertained, she had given to Gilmour what was, or what he considered to be, a promise to marry him. Anderson was still continuing his visits, and on one of these, she informed him of the promise. At first Anderson was incredulous, but on being told that a promise had really been given he conjured her to abide by it. This was a result for which Christina was wholly unprepared, and there is too much reason to believe that, for a time, it altogether unsettled her mind. After the last interview which she had with Anderson, she became, in all respects, totally altered, and the family were obliged to watch her very closely. If it had been necessary to set up a case of temporary alienation, it is believed that ample materials existed at this period for showing that her reason had been affected.

But although an attempt was lately made in America to make out a case of insanity, the advisers of the accused in this country saw no reason for holding that there was ever such alienation of mind as would relieve her from legal responsibility, and they, therefore, resolved to discard every view but the infirmity of the evidence to establish the very serious charge.

Christina's conduct, however, at this time, is worthy of notice in the history of her case. Formerly the most lively and cheerful of women, she now became abstracted, and apparently unconscious of what was passing around. She wandered into the fields by night alone, and had to be sought for by her sisters. Formerly she was afraid to trust herself in the dark, now she delighted in roaming about alone at night. Her appetite for food became insatiable, and her mother was obliged to put her under restraint in this respect. On one occasion, her mother discovered her dropping out of the window, but she instantly withdrew on seeing her mother. At night she wandered about the house and came to her mother's bed-room, seeking relief—she knew not from what. Her state was such, that the marriage with Gilmour was twice put off. Yet, in the midst of this distraction, there were occasional gleams of merriment; and what seemed very remarkable, she seemed in good humour when John Gilmour visited; and, on two several occasions, she went with him

to Paisley and Glasgow, to purchase what country people call 'the braws', or the wedding dresses.

The parents very naturally thought that these unfavourable symptoms would wear off with the marriage, and were anxious it should take place. She held no communication with Anderson, and she herself fixed the marriage day. Gilmour had taken, and entered into a most excellent farm, with a very comfortable residence, from Mr Campbell of Blythswood. The marriage was suitable if not attractive. The day was fixed, and Mr Gilmour arrived at Grange in a carriage. The marriage ceremony was performed by the Rev. Mr Dickie, minister of the parish of Dunlop. That rev. gentleman saw nothing remarkable in the conduct of the parties at the marriage; and, on the 29th November, they went home to their residence at the Town of Inchinnan. The new married pair were accompanied by one of Mrs Gilmour's sisters, and one or other of these young ladies remained with them, almost without intermission, till the period of John Gilmour's death. The marriage ceremony and its concomitant circumstances had not the effect of extracting Mrs Gilmour from the unhappy state into which she had fallen; and she sat up by the fireside the whole of the first night after she came home. No entreaty could prevail on her to go to bed; but Mr Gilmour ascribed her conduct to the novelty of her situation.

Succeeding nights brought no change. This is a part of the Drama from which we would not willingly lift the veil. It is not to be denied that Mrs Gilmour had taken a course very much inconsistent with her duties as a wife, and of this she seems to have been painfully sensible. She had no enmity to her husband, and indeed nothing but kindly feeling towards him. She said she respected him, and would be his servant, and would serve him anxiously and faithfully, but would never be his wife. A very respectable neighbour and tenant on the same estate, of the name of Algie, asked the new married pair to visit them. To this request they assented; but the entertainment, as might be easily supposed, came badly off. Mrs Gilmour fell into a sort of stupor, and only recovered by a sort of epileptic start. Still the parties conducted themselves externally with every propriety. They were visited by the clergyman of the parish in the course of his ministerial duty, and Mrs Gilmour stated that the only occurrence, from the time of her betrothment, to her departure from the Town of Inchinnan, that was truly soothing, was the visit of this excellent gentleman. His visit occurred in the course of his professional duty, and he prayed with them. This incident made a deep impression on her mind, and she always spoke with much affection on the subject.

As the details of the trial will shew, Mr and Mrs G. visited her parents on the first day of the new year 1843, since which time the circumstances of her life will appear from the evidence given on the trial. There was no want of cordiality among the friends. Mr Gil-

mour visited his own and his wife's relations, but was certainly in bad health. There is good reason to believe that he purchased medicine in Paisley on his way homewards, but the fact is certainly not proved, the advisers of the pannel probably believing that the fact was not material, or that there was not legal evidence of it.

The melancholy detail of his increasing illness from this period down to the date of his death is sufficiently set forth in the evidence. The witnesses adduced, with perhaps one exception, told the facts with remarkable accuracy. There was one person in the crown list who was not called by either party who heard these remarkable expressions within an hour of Mr Gilmour's death, 'Oh! be kind to my widow.'

After the death of her husband, Mrs Gilmour remained at Town of Inchinnan for nearly two months. Old Mr Gilmour and his wife lived at that place for nearly the whole of this time. Her conduct was most becoming during the whole of this period. She stated to one of her friends, that though she had never loved John Gilmour, yet as she had been his wife she would now remain his widow.

It is true that she wrote several letters to Anderson, but, as far as can be ascertained, these were all the outpourings of a sorrowful heart, and had no reference to a renewal of their intercourse.

When the rumour arose that John Gilmour had died through poison, Mrs Gilmour was living quietly with her parents. It was a truly singular circumstance, that it had not originated or been propagated at an earlier period. The circumstance of the finding the bag with the arsenic was known to all the domestics, and she had made no secret of the unhappy nature of the marriage. The story was first told to her brother Thomas Cochran. It was received with perfect incredulity at the Grange, and Mrs Gilmour made no attempt to remove from the place where she was. On the contrary, she insisted, as the rumours became more rife that her father should take immediate steps for having the body exhumed; and her father accordingly communicated her wish to Mr Mathew Gilmour, senior, and who went, along with Mr Cochran, to see the Fiscal on the subject.

It is due to old Mr Gilmour and his spouse to mention, that these very worthy persons comported themselves with the utmost propriety in the circumstances. The father was in attendance on the son for days during his illness, and he was the last to open his ear to the complaint against his daughter-in-law. When he gave his evidence in Court, his demeanour was so quiet and respectful, and his sorrowful tone was so touching, that the presiding Judge was moved to tears by his evidence. The good man was himself deeply affected, and with difficulty repressed the emotions which the occasion called forth.

As matters assumed a serious aspect, old Mr Cochran resolved that his daughter should leave the country. His resolution was taken without consulting his daughter, who, he well knew, would be obedient to his will in every particular, and in whatever he indicated.

Mr Cochran put himself in communication with his younger brother, Mr Robert Cochran, of Chapel-house, and this gentleman immediately and entirely entered into the project. He removed her to the house of Mr John Clachan, in the parish of Fenwick, where she remained for three days, and where every attention was paid to her comfort. In this interval, Mr Robert Cochran discovered that a person of the name of Simpson was desirous of going to America, and only wanted the means. He was soon found out, and agreed to go. Christina was put under his charge, and met him at Mauchline in the end of April. They took a place for Carlisle, under the feigned name of Mr and Mrs Speirs.

Mrs Gilmour did not form any favourable opinion of her companion, and when they arrived at Liverpool she wished to get quit of him. Indeed, it was her anxiety to be free of this person that led to the knowledge of her being in that place, and gave the clue to her movements. When the warrant was granted and placed in the hands of Mr M'Kay, the very active superintendent of the rural police, he soon found out her refuge and Simpson's—all through her own exertions to escape from her companion, and to return to her parents.

However, they embarked in the brig *Excel* under the name of Mr and Mrs Spiers, but it soon became apparent that they were not man and wife. Simpson wished to make it appear that such was their relation; but Mrs G. refused to sleep in the same berth, or near where he passed his time. He complained of this conduct, with the view of keeping up the delusion that he was married to her; but nothing induced her to change her conduct, and she constantly kept aloof from him.

The passage out was not favourable, and Mr M'Kay was able to reach New York, by the steamer *Acadia*, a considerable time before them. Having obtained a warrant from the authorities of America, he procured a steamer and intercepted the *Excel* in her passage out. Mr M'Kay had had some slight knowledge of the person of Mrs Gilmour, and immediately recognised her. She made no concealment of her name or purpose, and instantly gave way to his warrant.

The consequence was, that, from her landing to her departure, she was a constant prisoner in America. The proceedings which took place in that country are fully given in the Appendix. But the statements in the evidence cannot be depended on. Mrs Gilmour entirely disclaimed them, and said that the people who acted for her must have been indebted to some unknown and irresponsible informer for the facts which were urged in her behalf. The plea of insanity was the dream of others, who took it up on her part. The sweetest sound she ever heard was that which told her she was to be returned to her native country. The American papers teem with nonsense on the subject, and shew how much untruth can be mixed up

with facts, in the course of a narrative which has as much romance as history in the whole of its progress. There is scarcely a single lineament of truth in the whole of the picture they have drawn.

It must be mentioned to the credit of Mr M'Kay, that, after the apprehension of Mrs Gilmour, and when she was delivered over to the British authorities, he cautioned her that she must not say one word on the subject of the alleged murder, for that he might be called as a witness to prove every thing she said. Accordingly, she was perfectly silent on the subject during the whole voyage homewards. One trusty female of the name of Cochran had been engaged to accompany her. To this person she spoke without any reserve, but not one syllable escaped her, admitting, even by implication, the smallest degree of guilt.

What has since taken place is fully disclosed in the Report of the Trial.

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TRIAL OF MRS. GILMOUR.

HIGH COURT OF JUSTICIARY.

Friday, 12th January 1844.

[FIRST DAY.]

THIS day the case of Mrs COCHRAN, or GILMOUR, for the alleged murder of her husband, JOHN GILMOUR, came on for trial before the High Court of Justiciary. From the circumstance of this being the first case that has occurred in this country under the Ashburton Treaty, and from the interest which it had already excited in the public mind, by the proceedings in the American Courts—independently altogether of the importance of the charge itself—the greatest anxiety was manifested as to the issue. At a very early hour the doors of the Court were beset by a dense crowd of persons, of both sexes, desirous of admittance; and, long before the proceedings commenced, the Court was crowded in every part.

Present—LORD JUSTICE CLERK.
LORD MONCRIEFF.
LORD WOOD.

Counsel for the Crown.

THE LORD ADVOCATE,
CHAS. NEAVES, Esq., Adv.-dep.
DAVID MILNE, Esq., Adv.-dep.
—
JAS. TYTLER, Esq., Crown Agent.

Counsel for the Pannel.

THOMAS MAITLAND, Esq.
ALEX. M'NEILL, Esq.
—
A. NAIRNE, Esq., Edinr. } Agts.
JOHN HART, Esq., Paisley. }

The Prisoner, dressed in widow's mourning, took her place at the bar.

Previous to entering upon the business, the LORD JUSTICE CLERK said, that in consequence of an application from the counsel on both sides in this case, he had to intimate, that, in the event of the trial not being brought to a conclusion to day, no part of it was to be published in any newspaper anywhere to-morrow, and before the conclusion of the trial. If this order were violated, parties would subject themselves to the punishment of the Court.

The LORD ADVOCATE—Moved that the medical gentlemen may be allowed to remain in Court, which course is not unusual, and may be attended with benefit to the pannel.

The LORD JUSTICE CLERK.—I cannot assent to this proposition. I have often seen the inconvenience of such a course. Medical men mix up moral considerations with those which are strictly professional. The celebrated John Hunter regretted that he had been allowed to remain in Court in a remarkable case; and Mr Abernethy declined to give evidence in such circumstances.

The Clerk of Court then proceeded to read

THE INDICTMENT.

CHRISTIAN or CHRISTINA COCHRAN or GILMOUR, present prisoner in the prison of Paisley, you are Indicted and Accused at the instance of DUNCAN M'NEILL, Esquire, Her Majesty's Advocate, for Her Majesty's interest: THAT ALBEIT, by the laws of this and of every other well governed realm, MURDER is a crime

of an heinous nature, and severely punishable : YET TRUE IT IS AND OF VERITY, that you the said Christian or Christina Cochran or Gilmour are guilty of the said crime, actor, or art and part : IN SO FAR AS, on

Repeated occasions, or on one or more occasions, between the 26th day of December 1842, and the 12th day of January 1843,

or in the course of the said months, or of November immediately preceding, or of February immediately following, the particular occasions or occasion being to the prosecutor unknown, within or near the dwelling-house at Town of Inchinnan, in the parish of Inchinnan and shire of Renfrew, then occupied by the now deceased John Gilmour, farmer, your husband, with whom you then and there resided, or within or near the dwelling-house at South Grange or West Grange, in the parish of Dunlop and shire of Ayr, then and now or lately occupied by Alexander Cochran, farmer, residing there, your father, at which you and your said husband, on or about the 2d and 3d days of January 1843, were together on a visit, or at some other place or places in the said shires to the prosecutor unknown, at which, on occasion of said visit, you and your said husband were, while on your way from Town of Inchinnan aforesaid, to South or West Grange aforesaid, or on your return thence to Town of Inchinnan aforesaid, you the said Christian or Christina Cochran or Gilmour did wickedly, maliciously, and feloniously, administer to, or cause to be taken by the said John Gilmour, in some articles or article of food or drink to the prosecutor unknown, or in some other manner to the prosecutor unknown, several or one or more quantities or quantity of arsenic, or other poison, to the prosecutor unknown : And the said John Gilmour having accordingly taken the said quantities or quantity of arsenic, or other poison, did immediately, or soon after taking the same, or part thereof, become seriously ill, and did suffer under violent and increased illness, and did linger in great pain until the 11th day of January 1843, or about that time, when

he died in consequence of the said quantities or quantity of arsenic or other poison having been so taken by him, and was thus murdered by you, the said Christian or Christina Cochran or Gilmour : And you the said Christian or Christina Cochran or Gilmour being conscious of your guilt in the premises, did abscond and flee from justice : And you the said Christian or Christina Cochran or Gilmour having been afterwards apprehended and taken before Alexander Campbell, Esquire, sheriff-substitute of Renfrewshire, did, in his presence at Paisley, on the

14th day of September 1843,

emit and subscribe a declaration : Which Declaration ; as also a Medical Report or Certificate, dated ' Paisley, 22nd ' April 1843,' and subscribed ' George Wylie, M.D., ' D. M'Kinlay, M.D. ;' as also a paper entitled on the back, ' Report on the analysis of the stomach and bowels, and their ' contents, of the late Mr John Gilmour, 1843,' dated ' Paisley, 16th May 1843,' and subscribed ' George Wylie, ' M.D., ' D. M'Kinlay, M.D. ;' as also a Medical Report or Certificate, dated ' Edinburgh, 20th November 1843,' and subscribed ' R. Christison, M.D. &c. ;' as also a Warrant by the Sheriff-substitute of Ayrshire, for exhumation of the body of the said John Gilmour, dated ' Ayr, 21st April ' 1843,' and subscribed ' And. Jameson,' having prefixed thereto the relative Petition of the Procurator-fiscal of Renfrewshire, and recommendation or deliverance of the Sheriff-substitute of Renfrewshire at Paisley ; as also the several articles contained in an inventory hereunto annexed, being to be used in evidence against you the said Christian or Christina Cochran or Gilmour, at your trial, will, for that purpose, be in due time lodged in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same : ALL WHICH, or part thereof, being found proven by the verdict of an Assize, or admitted by the judicial confession of you the said Christian or Christina Cochran or Gilmour, before the Lord Justice-General, Lord Justice-Clerk, and Lords Commissioners of

Justiciary, you, the said Christian or Christina Cochran or Gilmour OUGHT to be punished with the pains of law, to deter others from committing the like crimes, in all time coming.

CHARLES NEAVES, *A. D.*

INVENTORY OF ARTICLES REFERRED TO IN THE
FOREGOING INDICTMENT.

- I. A sealed earthenware jar with five labels attached, one of said labels being marked 'No. 1,' and bearing the signatures, 'George Wylie, M.D., D. M'Kinlay, 'M.D.' and initialed on the back, 'R. C.;' together with the contents of the said jar, being parts of the body of John Gilmour.
- II. A small glass bottle with a label attached, marked 'No. 4.' and bearing the signatures 'George Wylie, 'M.D., D.M'Kinlay, M.D.,' and initialed on the back 'R. C.'
- III. A label or piece of parchment bearing the figure and words '2. Piece of right lobe of liver,' and initialed 'R. C.'
- IV. A label or piece of parchment bearing the figure and words, '5. Æsophagus and posterior half of the stomach,' and initialed 'R. C.'
- V. A piece of paper attached to 3 and 4 of this inventory, having written thereon the words, 'Labels of articles 'taken by me from No. 1, for analysis,' and initialed 'R. C.'
- VI. An earthenware jar secured or sealed with three labels attached, one thereof marked 'No. 2,' and bearing the signatures 'George Wylie, M. D., D. M'Kinlay, 'M. D..' with the contents of the said jar, being parts of the body of John Gilmour.
- VII. A glass bottle sealed, with label attached, marked 'No. 3,' and bearing the signatures 'George Wylie, 'M. D., D. M'Kinlay, M. D.,' with the contents of the said bottle, being part of the contents of the intestines of John Gilmour.

- VIII. A sealed packet having written thereon the following words and figures, 'A box containing four glass tubes
' referred to in the report of chemical analysis of the
' stomach, bowels, and contents, of the late Mr John
' Gilmour, dated 16th May 1843, signed by G.
' Wylie and D. M'Kinlay,' with the contents of the
said packet, being a box and four glass tubes, with in-
crustations in the said tubes obtained from the stomach
and intestines and their contents of John Gilmour.'
- IX. A paper, intituled on the back 'Inventory of articles
' in case of Christian Cochran or Gilmour, transmitted,
' to the Crown-agent, 10th May 1843,' dated 'Paisley,
' 10th May 1843,' and subscribed 'George Wylie,
' M. D.'
- X. A paper, intituled on the back 'Inventory of the con-
' tents of a wooden box sent Crown-agent, 12th Oct,
' 1843, in case of Christina Cochran or Gilmour, 1843..
- XI. A small manuscript book commencing (at one end),
' 1834. Mortsafe nams.
' June 6. James Watt, 1 nomber.'
And having on one of the leaves thereof a docquet
dated 'Dunlop, 22d April 1843,' and subscribed
' Robert Peacock.'
- XII. A manuscript book, commencing, 'M^r. Alex^r. Wylie,
' Drug^t., D^r.
To Arch^d. Barr, Paisley,'
And having on the last leaf thereof a docquet dated
' Paisley, 15th Sept. 1843,' and subscribed 'Alex-
' ander Wylie.'
- CHARLES NEAVES, *A. D.*

The Indictment having been read—

The LORD JUSTICE CLERK.—Christina Cochran
or Gilmour, are you Guilty or Not Guilty ?

Prisoner answered in a low but firm voice—'Not
Guilty.'

The following Jury were then balloted :—

JAMES WALKER, Draper, Morton Street, Leith.

WILLIAM PRINGLE, residing in Albany Street, Edinburgh.

ANDREW TAYLOR, Grocer and Wine Merchant, St. Patrick Square, Edinburgh.

THOMAS ELDER, Wine Merchant, Fyfe Place, Edinburgh.

5. JAMES HENDERSON, Farmer, Samuelston, South Mains, Haddington.

DUGALD M'GREGOR, Fountainbridge, Edinburgh.

ARCHIBALD REDPATH, Corn Dealer, Dunbar.

WILLIAM DOUGLAS, Farmer, Currielea.

JOHN BOAG, Saddler, Hope Street, Edinburgh.

10. JOHN M'QUEEN, Warehouseman, Montague Street, Edinburgh.

ALEXANDER BROWN M'DONALD, Flesher, Maryfield, Edinburgh.

WILLIAM PATON, Victual Dealer, Bakers Place Edinburgh.

JOHN BROWN KERR, Umbrella Manufacturer, Tolbooth Wynd, Leith.

JOHN GIBSON, Manager, Newbattle Colliery, Newbattle.

15. ROBERT BROWN, Brass Founder, Buccleuch Place, Edinburgh.

The usual oaths having been administered to the jury, the Public Prosecutor adduced the following

EVIDENCE FOR THE CROWN.

ALEXANDER CAMPBELL, Sheriff-substitute of the county of Renfrew.—I know prisoner. A declaration, of date 14th September 1843, was taken before me, and was freely and voluntarily emitted before me as a Magistrate. I thought she was perfectly in her sound and sober senses. The usual admonitions to persons in custody were carefully given. I was applied to, in April 1843, as to exhuming the body of John Gilmour. I granted a recommendation, for this purpose, to adjoining Sheriff of Ayr, the burying-place being beyond my jurisdiction: it is dated 21st April 1843.

ROBERT RODGER.—I am Procurator-fiscal for the county of Renfrew at Paisley. Prisoner emitted a declaration in my presence, which I now identify. Prisoner was in her sound and sober senses. The usual admonitions were given her. On the 21st April

1843, I presented a petition for a warrant, in reference to this case, for exhuming the body of John Gilmour. I obtained a warrant from the Sheriff of Ayrshire, dated same day. The body was exhumed the following day, in presence of Dr Wylie, Dr M'Kinlay, Dr M'Kechnie, and a Mr Newman, who attended on the part of some of the relatives of the deceased John Gilmour.

MARY PATERSON, (Examined by Lord Advocate.)—I am servant to Mathew Gilmour, farmer at Town of Inchinnan. I knew John Gilmour, son of Mathew Gilmour: he is now dead. He was tenant of Town of Inchinnan for a short time before his death. I had been in the employment of Mathew Gilmour before his son John became tenant. I became John's servant when he became tenant, at the Whitsunday before he died. John was at the farm. He was married about Martinmas of that year, 1842. He lived about six weeks after his marriage. He died soon after New-year's-day—on a Wednesday. I am not sure whether it was the first Wednesday of the new year. Had been ill about a fortnight before his death. There lived in family with John Gilmour and his wife, after his marriage, Mrs Gilmour's sisters, sometimes one, sometimes another. I see Mrs Gilmonr at the bar. Mr and Mrs Gilmour slept in the low part of the house. They dined in the room beside the bedroom, and took all their meals there. They generally took porridge and a cup of tea to breakfast: Mrs Gilmour made the porridge: she mixed the tea. I don't remember if any body breakfasted with them. I breakfasted in the kitchen. Mrs Gilmour prepared the dinner. They took tea in the evening. She prepared all the food for them. I recollect going to visit my sister in Dunlop parish. This was on the Monday before new-year's-day, (26th Dec.) New-year's-day was on a Sunday. I returned on the Tuesday following, (27th Dec.) I got a message from Mrs Gilmour when I was going away on the Monday. She gave me twopence to fetch arsenic with. 'Did she say where you was to get it?' Yes: she said I was to call at a house in Paisley, and that they were to send a 'callant' (a boy) to get the arsenic. This house

was in Paisley, and Paisley was on my way to Dunlop. Paisley is distant four miles from town of Inchinnan. I did not call at the house, having forgot the name of it. I got the arsenic on Tuesday on my way back, in a druggist's shop in Paisley. It was in Dr Vessey's I got the arsenic. I pointed out the shop afterwards. 'Did you get any instructions from Mrs Gilmour what the arsenic was for, or what you were to say?' She told me she was going to poison rats. I told Dr Vessey what I was going to do with it. He asked me who it was for. I told him it was for Mrs Gilmour. He marked on it '*Arsenic, Poison.*' He asked my own name as well as that of Mrs Gilmour, and I told him. I gave the arsenic to Mrs Gilmour when I came home on Tuesday. I told her that Dr Vessey had asked who it was for, and that I had told him. She said nothing when I told her this. I saw her next day doing something with the parcel. I saw her burn that parcel in the fire of the boiler, in my presence. It was like the same parcel, but I do not know if it was exactly the same. She said she was frightened she could not use it right. She said it could be of no use to her. I remember of my master being unwell. This was before New-year's-day. It was on a Thursday night (29th December) he became unwell. He was ill on Friday, and continued ill. He throwed up (vomited.) He went from home on the Monday after the New year (2d January), accompanied by Mrs Gilmour. They were going to Dunlop to visit her father. They went in a gig. He was not well that morning. They returned on Tuesday the 3d in the afternoon from her father and his father's. He was unwell on the Tuesday night, and continued unwell always after that. A doctor came to him, one Dr M'Laws, from Renfrew. I cannot tell how far Renfrew is from Inchinnan. He came on Friday night, the 6th of January. John Muir and William Arthur, servants at Inchinnan, went for him. Muir was a labourer about the farm. Mr M'Laws did not return after that visit. Dr M'Kechnie, senior, from Paisley, came, I think, on Sunday the 8th. He returned another time, but I do not recollect the day. His sons came the day John Gilmour died, being Wednesday the 11th. I cannot tell the hour at which Mr M'Laws came, but it was

late. Mrs Gilmour was not at home when he came, or when he was sent for. She came before Mr M'Laws left. She had gone away about six o'clock at night. Alexander Muir went along with her when she went away. She did not tell me, when she went, where she was going. She told after she came, that she had been to see her uncle at Paisley, to see if he could get anything to do good to her husband. She said nothing that evening as to her going away beforehand. She had been away from home that morning. She went away before breakfast. Breakfast is taken about seven, or after it. I cannot tell what time she came back. I saw her shortly after breakfast. She was not at home when the servants were at their breakfast. She told me she was going down to Renfrew, as she had an errand there. She was wanting something to see if it would do any good to her husband. She did not tell when she came back where she had been. Her husband was at this time confined to bed. She went away another morning after this. I do not recollect what morning it was. I cannot say it was next morning. I cannot say what time she went, nor when she came back. She did not tell where she was going, and I do not know where she was. Her husband was in the room, but cannot say whether he was in bed. I did not see him that morning.

On the Thursday (29th), when he was first ill, one of Mrs Gilmour's sisters was living in the house. It was Mary. I did not see her take her victuals with them on Thursday or Friday. 'Do you remember how Mrs Gilmour was dressed on those mornings she went out?' She had on a white bonnet, a gown, and mantle. I did not see her have a bag when she went away. She, however, had a small silk bag or reticule in her possession, but I do not know whether she took it with her on these occasions. On one of these occasions she said, I was not needing to tell the servants she was going from home. This was on the Friday. I remember, on the Friday, John Muir found the black bag. I did not see him find it, but I saw him having it. I saw what was in it. Muir said there was poison in it, but I cannot read writing. It was a small paper parcel, and there was something written upon it. Muir read it at the time. There was a wee phial

in the bag. I cannot say whether there was any thing in the phial, and I did not see whether there was any thing written on it. John Muir gave me this bag, and I gave it to Mrs Gilmour that morning. The things were in it when I gave it to her. She made no remark when I gave it to her. I asked if this was her bag, and she took it. I did not mention where it was found. I am sure this was on a Friday before any doctor had come. M'Laws came that evening.

I saw my Master vomitng on Monday the 2nd, the day we kept our new-year's-day. I don't remember whether this was before or after breakfast. This was the only time I remember of seeing him vomiting. I have seen her carrying away what he vomited, but I cannot say what. I cannot say whether it was before the new-year's-day. There was one of her sisters (Mary) living in the house at the time. I think I saw Mary breakfasting in the kitchen by herself. I do not remember what was her breakfast. I do not know he complained of that. I was about the byre and the cows. This was my chief occupation. There was no woman-servant but me. It was Mrs Gilmour who attended her husband, and nobody else. It was Mrs Gilmour who carried the food in from the kitchen.

'Did she ever say any thing about her marraige?' Yes. 'What did she say about it?' She said she was not willing to take him. 'Did she say who she intended to take?' She said it was a John Anderson in Dunlop parish. I do not mind whether she said this more than once. She said it before her husband's death and after. She remained at farm of Inchinnan after her husband's death. She told me that her father wished her to marry John Gilmour; she told me this before he became ill, but I cannot say how long. It was before I went to visit my sister that she said this. After her husband's death she went to her father at Dunlop parish. I never saw her after she went to her father's. John Gilmour was about 30 years of age—he was in good health before the time I went to see my sister. He attended to the business of his farm. He was in good health, going about as a countryman. He was a sober man. Alexander Muir is a brother of John, and was a servant of Gilmour's. Mrs Gilmour saw Dr M'Laws after she

came home. I cannot be sure as to the time she came home.

Cross-examined by Mr Maitland.—I was told in Dr Vessey's that '*Arsenic Poison*' was marked on the parcel, I am sure it was the next day I saw the packet burned—in the afternoon. I was close by my mistress at the time. I saw the parcel in her hand. I cannot tell how the parcel was put up. I don't recollect whether it was tied. It was just like the same as when I gave it her. It was entirely destroyed by being thrown into the fire. It was a small parcel. I cannot say what it was as to size. I don't recollect what kind of paper it was in. It was the Friday before my master's death that the bag was found. That was the same morning I got the bag, and I am confident of this. There was nothing written on the phial. Something was said of turpentine that day—I cannot mind when; but it was that day. She said the turpentine was for her husband, 'to rub John.' She said this after she came back. She said she had got turpentine to rub her husband. It was after she got the bag she said the turpentine was got to rub John with. I think the parcel in the bag was such another as she had got before. I never saw anything unhappy in their conduct to each other, or which led me to believe that they were unhappy. I saw no attempt on the part of Mrs Gilmour to prevent others from getting to or seeing him. I saw John Muir in with him the night he went for the doctor. I was in the room the night when he died. I was in in the morning, and this was the first time I had been there during his illness. Old Mathew Gilmour came on Tuesday before he died, in the morning. He saw his son immediately: he was always in the room with him till he died. Andrew Gilmour, his cousin, was also there. He was in the room at his death. I was in the room a short time before he died. Andrew Gilmour came before the marriage; and was staying at Inchinnan when John Gilmour brought his wife home; and resided chiefly there till the time of his death. He is a boy at school. I have seen arsenic used in the house at Inchinnan. It was used by John Gilmour himself. He used it for killing rats; these were about the stable. I have myself actually seen him use it. It had the appearance of a

white powder. I think he kept it in his 'kist.' The kist was in the kitchen at the time when he used it. It was taken to the bedroom where he slept, before the marriage. When I went to Renfrew, Mrs Gilmour said I was not needing to tell the men about the house I was away. Her sister Margaret was living at Inchinnan, besides Mary. Elizabeth, her eldest sister, came with her when they were married, and remained a week. Mary came on Tuesday with Mathew Gilmour. There was always one or other of her sisters there, with the exception of three or four days—not more.

Re-examined.—I only bought arsenic once at Paisley. She gave me twopence for it, and I paid this sum.

By the Lord Justice Clerk.—John Muir went in on the Friday evening to see his master, before he went for the doctor. He went in of his own accord, and had not been sent for. I do not know whether Mrs Gilmour had left any orders to send for a doctor. I did not hear what passed betwixt John Muir and my master. The door was open, and the doctor's horse was at it when she returned. I was in the kitchen when she came in. I do not recollect if she said anything to her of the horse. I do not recollect if John Muir was in the kitchen. I did not hear any one tell her John Muir had gone for the doctor. She went straight into her husband's room. I do not recollect whether she came out with the doctor or not.

WILLIAM TENNANT.—I was formerly shopman to Dr Vessey in Paisley. He was a druggist, and is now dead. I was in his shop in the end of 1842 and beginning of 1843. I was in the shop when some arsenic was sold, a little before the new year, to a woman. Threepence worth was the quantity. It was said to be for Mrs Gilmour. I knew the place, Town of Inchinnan. I see Mary Paterson. I cannot say it was her, but it was to a person about that size and appearance. It was wrapped up in a paper. The words '*Arsenic, Poison*' were written on it. The woman who bought it from me did not give her name: I do not remember that it was asked. This was about the middle of December.

JOHN MUIR.—I am a labourer, and live at Kingston in the parish of Dunlop. I knew the late John Gilmour, and was sometimes employed by him. I was last employed by him on 2nd January 1843. I saw him in Paisley when I was on my way to his house. I saw Mrs Gilmour with him. She joined him on the street. They had a horse and gig. They did not say where they had been. They came next day to Inchinnan. On the day I first met him, he said he was not well. He said he did not know what was the matter with him. He told me he had vomited. He was quite sober, and I knew him to be a sober man. I saw him on Wednesday (4th January.) He said he was no better. It was in the stable I saw him. His face was 'a kind of swollen ways,' and his eyes were swelled, and a kind of watering about them from throwing. Nothing of this kind struck me when I saw him in Paisley. I saw him in his room on Thursday after, as I think. I went for a doctor. This was on a Friday before the Monday I had seen him on Friday, and he was in bed. There was nobody in the room but himself. Mrs Gilmour was not in the house. I went 'ben' of my own accord, because he was in the room alone and I wanted to see him. It was about half-past 8 when I went in. He complained of pain in his side; I cannot say whether it was the right or left side. I asked if he would like to see the doctor. He said yes, in the morning, if he was no better. He thought it was too late to go then. I told him I thought I would go that night. I asked him what doctor, and he said one Dr M'Laws of Renfrew, which is distant about two miles. It is nearer than Paisley. I took William Arthur, the ploughman with me. Gilmour said before I left, 'Jock, this is an unco thing.' I don't know what he meant by that. I went away for the doctor. I found the doctor in Inchinnan toll-house. He came with me to Inchinnan. I cannot exactly say the hour, but it would be betwixt 10 and 11 o'clock when he came back. Dr M'Laws saw, and bled him. Mrs Gilmour was not at home when we returned. She came home before the doctor left; just when the doctor had commenced bleeding. The doctor stopped a good while. He was to return next day; he said so, but he did not come. The doctor

was not quite sober. Another doctor came on Sunday. This was Doctor M'Kechnie, senior. Gilmour continued ill, getting worse. He died on Wednesday; I was not there when he died. I was away for his mother to Dunlop. During his illness, I saw him vomiting. On the day before I went for the doctor he was sitting at the kitchen fire. He was vomiting a kind of brownish stuff.

I found a black bag on Friday morning. I had been thrashing that morning before day-light. I found it after I went out from my breakfast. This would be betwixt 8 and 9, or 9 o'clock. It was day-light. I found the bag at the corner of the boiling-house. The dwelling-house and it join. There was a small phial and a parcel in a paper. The parcel was tied up with thread. I did not open it. There was marked on it '*Poison.*' There was nothing on it but poison. The phial was full. Nothing was written on it. I do not know what was in it. I smelled it. I did not know what it was. It was a sweet smell. It was not powder. It was like oil. It was not turpentine, which I know. It smelled like scent. I did not take the cork out. I gave the bag to Mary Paterson. I passed along that way when I came in to breakfast, and did not see the bag lying there. I went to buy something for Mr Gilmour on Sabbath. It was soda and tartaric acid I was to get. I bought it from Wylie, the druggist, in Renfrew, whom I have seen here to day. Mrs Gilmour sent for this. Mr and Mrs Gilmour told me the name of the thing. I brought it back and gave it to her. I heard him retching frequently when I was in the kitchen.

Cross-examined.—John Gilmour was whiles in bed and whiles out of it. I cannot say on what day he began to be constantly confined. It was on Friday that I saw him the first time. I saw him on Sunday in bed, when Mr and Mrs Gilmour told me to go for acid. I saw him on Monday. He sent for me on Monday. The Mistress told me to go in to him. He was going about when I was there. I was alone with him a few minites. He told me to give him a drink of porter or ale that was in a bottle. I did so. He told me to heat the bottom of it at the fire. I gave

him a tumbler of it. I saw him the night he died, but not in the interval. I have left the Gilmours entirely. When I got the soda and acid, the druggist said a liitle of it was good for the throwing. I told the druggist that my master had been throwing, and I repeated my instructions from the druggist to Mrs Gilmour.

By the Lord Justice Clerk.—‘What led you on Friday evening to ask your master if he would like to see a doctor?’ It was the finding of the bag. I did not mention to my master that I had found that bag.

MATHEW GILMOUR, senior.—I am father of the late John Gilmour. I am a farmer at Town of Inchinnan. I went there on Whitsunday after his death. He was married at Martinmas, and died on the 11th January. He was in good health when he married, I heard from him when he was through at Dunlop, at new-year’s-day, he had been unwell. He said he was all swelled about the chest, and threw up a good deal. I saw him throw, upon Monday and Tuesday morning. He complained of pain in his stomach. His face was all swelled. He came to our house on Tuesday, and then proceeded home. Mrs Gilmour was along with him. He was about two hours in our house on Tuesday: he came betwixt 10 and 11 o’clock: he had a fit of vomiting while he was there. I saw him next on the Saturday after this. I heard he was worse, and went to Town of Inchinnan in consequence. A son of mine, Mathew, came to me on Thursday, and said he was worse. It was betwixt 10 and 11 o’clock on Saturday I came. John was in bed. He was still complaining of throwing up, and pain in the breast and stomach, and constant thirst. Mrs Gilmour was sometimes attending him; and when she was not, there was nobody attended him but me. Sometimes she attended him when I was there. I stopped on Saturday till dark, and returned home. Dr. M’Laws had seen him the night before. John wished me to remain. I thought they would be alarmed at home if I did not return that night. I returned to Inchinnan on Tuesday. I got intelligence on Monday. I left word, that if he got no better I was to get word on Monday. I came about 10

o'clock on Tuesday forenoon. He was then still worse. He complained of pain and thirst very much, and was vomiting frequently. His wife sometimes attended him. I attended him when she did not. I understood Dr M'Kechnie had been with him on the Sunday. He died on Wednesday betwixt 6 and 7. He was bled on Wednesday by young Dr M'Kechnie. I was in the room at the time of his death. I was pretty constantly in the room after I arrived. I might be out for a few minutes, but not more. He was getting some soda dissolved in two tumblers, and they effervesced. These powders were laid down on the table in two papers. The powders were not divided but a portion of both was taken—a part of a tea-spoonful of each. I mixed them when Mrs Gilmour was not there; she mixed them when I was not there. I did not go to bed at all on the Tuesday night. I tasted one of these drinks once: it was an acid drink. He had a severe fit about an hour or so before death. He came out of the bed, and sat on a chair, but tumbled off the chair, and I got him into bed again. There was a nephew of mine, Andrew Gilmour, about the house. He is now fourteen past. He was in the room. I do not recollect of John Gilmour saying anything about opening him, or about anything he had got. I am a little dull of hearing for this number of years. I was sometimes at the door. I was at the funeral on Monday the 16th. There was a mortsafe put over the grave. I fixed the day of the funeral. Alexander Wylie, my brother-in-law, kept the key of the mortsafe. He was buried in the church-yard of Dunlop. The body was removed to Dunlop on the day of the funeral. I was not present when it was taken up again.

ANDREW GILMOUR.—I am nephew of the last witness. I do not know correctly how old I am. I was about the house when John Gilmour died. I was in the room at the time. I heard him say, the day he died, he wished to be opened. I do not know how long it was before his death. I do not know who he addressed this to. Sandy Muir and deceased's father were in the room at the time. He said, 'Oh! if you have given me anything, tell me before I die.' I

don't know who he said this to. I don't mind if Mrs Gilmour was in the room. I don't recollect him saying anything more. I remember this distinctly. I mentioned this after his death. This was when we were cracking through among one another about it. I do not know if Sandy Muir was one of the people who talked.

Cross-examined.—It was in the evening, or sometime in the night that he died, he used the expressions above stated. It was dark when I first went into his room that night. I cannot say how long it had been dark. I don't mind whether he spoke about the opening, or telling him if they had given him anything, was first said. I was whiles out and whiles in. I was not very often out. I don't recollect his saying anything as to them being good to his widow after his death. I don't recollect whether he said that or not.

By the Lord Justice-Clerk.—I was living in the house of Inchinnan when the body was taken away to be buried. Mrs Gilmour remained awhile, I think some weeks. She was away before I returned to my father's. Mrs Gilmour's mother was in the house awhile. I don't mind correctly whether Mathew Gilmour, junior, lived in the house; but he was whiles there. Old Mathew Gilmour came and lived at Inchinnan after funeral. He was down awhile before Mrs Gilmour went away.

ALEXANDER MUIR.—I was servant to John Gilmour at Town of Inchinnan. He died on a Wednesday. I remember Dr M'Laws seeing him, but do not recollect the night. On that day, in the evening, I went to Paisley with Mrs Gilmour. We went to her uncle, Robert Robertson. I see Mrs Gilmour at the bar. I cannot say what time of night, but it was after the horses had been suppered. We came back betwixt eleven and twelve. I understood from her her object: she said John Gilmour would not hear tell of a doctor coming, and as her uncle had had a heap of troubles, he would have some skill, and she wished he would come and see him. She asked me to accompany her. I do not know what passed at Mr Robertson's. I saw him. Dr M'Laws was in the house when we returned. Another doctor came. I do not

mind the day. I was in the room the day and time he died. His father Mathew Gilmour was there, Mrs Gilmour, and the boy Andrew Gilmour. I was there shortly before he died. I heard him express a wish to be opened. I do not know whether before or after death. I heard him say, "Oh that woman! if you have given me anything!" Said nothing about 'telling him.' He said nothing about 'before I die.' I mind of Mrs Gilmour's sister going back and forward. I cannot say whether Mrs Gilmour was in or not. I cannot say how long he lived after this. He was deranging a good deal. I did not understand him. He was in that wandering way when I went in. He was speaking loud sometimes—sometimes low. I do not mind whether these expressions were used loudly or low. I think they were the only expressions that he used.

Cross-examined.—I do not recollect that I heard John Gilmour say anything about being kind to his widow. I was in his service sometime before his wife came home. I have seen him have arsenic different times. He used it for poisoning rats. I do not know where he kept it. I assisted him in laying down the arsenic.

By the Lord Justice Clerk.—It was before his wife came home that I saw him using arsenic for poisoning the rats. I did not see him doing the same after his wife came home. I cannot say whether the premises were disturbed with rats after his wife came home. The fact that he had arsenic for poisoning rats, was well known in the house. I don't know whether it was talked of after the wife came home. I did not see him take out the arsenic from any place. I lived and slept in the house. John Muir slept in the house. There was no mystery about the use of the arsenic. He said he got it from one Mr Paton, a smith at Broomlands, near Inchinnan. I do not know whether he got it oftener than once. It was used only in the offices. The offices are a part of the same range of buildings with the house.

ROBERT ROBERTSON.—I reside in Paisley. I am an uncle of Mrs Gilmour. I recollect of her calling on me on a Friday evening early in January, before

Mr Gilmour died. It was betwixt eight and ten. A servant man was with her. I had not seen her for three or four years before. She remained a considerable time with me. I was in the parlour, and she was there. The man was shewn into the kitchen. When she was ushered in, I was writing. Mrs Robertson mentioned her name. I did not recognise her at the very first. I said I scarcely knew her. I said she was not far from us now. She said it was against her will that she was there. She said she would rather have preferred one Anderson. She said her husband was unwell, and had been so since from Thursday-eight-days. I asked her if any doctor had seen him. She said no. She said the family of Gilmours were averse to seeing doctors. I understood that he, as well as the rest, was averse to seeing doctors. I proposed to send Dr M'Kechnie. She wished me to come down and see Mr Gilmour before I sent Dr M'Kechnie, and to see what he, Mr Gilmour, would say. I went down on the Saturday. I found him in bed. It was betwixt three and four. His father was just going away at the time. Mr Gilmour was there. I remained an hour at least. I was a considerable part of the time with Mr Gilmour. He was vomiting green and yellow matter; it had the appearance of bile. He complained of a pain in the right side. He told me that Dr M'Laws had been there on the previous evening, and had bled him. I proposed to send Dr M'Kechnie to him. He said that Dr M'Laws had been tipsy. He said he would rather not see Dr M'Kechnie that day, I having proposed to send him on my return. I understood that Mrs Gilmour said she would send up if he was worse. He said nothing more about doctors after this. I thought he did not mind about changing M'Laws; by which I mean that he did not wish to see him till he should see if he was better.

A message was sent next morning by a servant-man, expressing a wish to send a doctor, and I sent Dr M'Kechnie; this would be about 9 o'clock on Sunday morning. I was requested to go down also. I considered him distressed on Saturday. There was nothing in particular about his face. I had seen him sometime before. I had seen him at the Cross on the

Thursday before. The doctor was with him when I went there on Sunday. He arrived when I was there. He prescribed—ordered a blister. He arrived when I was there. Gilmour said very little while the doctor was there. I slept there all Sunday night, and left on Monday a little after 9. I rose a little after 3. Mrs Gilmour had been attending him, and I relieved her. My reason for remaining was to apply the blister. Mr and Mrs Gilmour told me that they had never seen a blister used—put on, or taken off. Mr Gilmour said he was a great deal better—greatly relieved from the blister. I did not see him again in life. I had conversation with Mrs Gilmour on Saturday. She recurred to the subject of her marriage, in something of the former strain; she said it had been against her mind in taking Gilmour. I cannot say how this conversation came on. Nothing particular led to it. She did not say this in a bitter tone—she seemed grieved. It was in a tone of depression and regret. It appeared to be brooding on her mind. She recurred to the same subject of her own accord on the Sunday evening. I went down to Inchinnan on Thursday after the death. She did not recur to the subject then, so far as I recollect. She came and remained a night in my house, a week after the funeral; she recurred to the subject in the same way, and said she was disappointed in not getting another. I visited her at Inchinnan, before she went to her father's. She mentioned having received a letter from Anderson. I asked if she had it, and she said no—she had destroyed it. I cannot say how long it was after the funeral. She went away.

Cross-examined.—I thought she was kind and attentive to her husband. She was holding his head when he was vomiting. I could not say there was want of attention. She was a good deal in the kitchen. The servant girl was in the kitchen. She came ben to give him anything he wanted.

By the Lord Justice Clerk.—I cannot recollect correctly what led her exactly to speak of her marriage at the first. I cannot say I was struck with it, though I was not prepared, in any way, for it. She did not complain of any unkindness. I could not say that her reason was at all unsettled. I could not say that

her faculties were impaired. I mentioned to her on Friday evening, that, on marriage, it was voluntary on her part in saying that she would be an obedient and affectionate wife; and that she was therefore bound by the laws of God and man to act accordingly. I mentioned, that many persons had not got the one they liked best; but if they studied each other's tempers, they would come in time to like one another. She seemed to receive my remarks quite pleasantly and reasonably. There was no excitement about her when I saw her attending in the house—nothing whatever particular. After death there was no appearance of unnatural elation or excitement. She wept when talking of her marriage. I did not ask her how it came that Dr M'Laws was sent for. I saw no repugnance on her part to take the doctor down. It was my impression that she wanted to take him there, but that she wanted to consult her husband before doing so. I saw no repugnance on Saturday. I do not recollect if there was any other person in the room with Mr and Mrs Gilmour when it was said a message would be sent to me. I had not said on Saturday that I would return on Sunday, unless she and Gilmour let me know. The message was to be sent to me. I supposed it was her act the sending for me. I do not know which of the men-servants came. I had neither said to Mr or Mrs Gilmour that I would come down on Sunday. John Gilmour never made any complaint to me against his wife. I saw nothing, except what I have said, that indicated any alienation or coolness betwixt them.

JOHN M'LAWS.—I am a surgeon in Renfrew; was asked to see John Gilmour on the 6th or 7th January, betwixt 12 and 1, A. M. I found him in bed. He was complaining of pain in his side, fever, and thirst. I bled him. I thought the complaint inflammatory. I did not know any thing of his vomiting, and was not told any thing about it. I was to call back, but I was called away to a different case. On Sunday I heard Dr M'Kechnie was called in, and I did not go back.

Cross-examined.—He told me he thought the origin of his complaint was cold. I ordered his side to be rubbed with turpentine when I was there. I did not

understand that turpentine had been used before. I considered it was Mrs Gilmour, but it turned out to be the servant-maid to whom I gave these directions.

ALEXANDER WYLIE.—I am a druggist in Renfrew. I sell arsenic and other medicines. I always ask questions at people that buy arsenic. I have kept a record of my sales of arsenic since 1832. It was suggested to me by the fiscal to do so, and I have accordingly kept this record. That is my book. It is limited to the matter of arsenic. I recollect of a person coming on the 7th January to buy arsenic. I remember perfectly well it was on a Saturday. It would be a little past 8 in the morning. It was a female who came to me, respectably dressed. The door was stiff to open. She opened it before I came. She asked me if I sold poison or arsenic. I said I did. She said she wanted it for killing rats in the field. I asked her who it was for. She said it was for a John Ferguson. I asked her the name of the farm. She said she had forgot the name of the farm. I named all the farms in my recollection in the neighbourhood. She did not fix on any of them. She said something about its not being long since she came to the place as the reason why she had forgot. I was not satisfied altogether with this, and called in James Smith, who is an old inhabitant of the place. I asked him if he knew a John Ferguson, a farmer in the neighbourhood. Naming all the farms in the neighbourhood, he knew none belonging to a Ferguson. She said the place was up by Paisley, in that direction. I asked her own name, and she told me her name was Robertson. I sold the arsenic to her, twopence worth. I always put up arsenic in two papers, one within another. I marked the words '*Poison, Arsenic,*' both words on the paper. I gave it to her, and she left my shop. I made an entry, before she got the arsenic into her hand. 'January 7, 1843. For John Ferguson per Miss Robertson, for killing rats in the field. James Smith, witness,'—quantity is not mentioned. I made the whole entry before she left the shop. I recollect of a person coming the day following to purchase something from me. It was a man wanting tartaric acid and super-carbonate of soda. He told

me it was for the use of Mr Gilmour, Town of Inchinnan. I gave it to him. I gave some magnesia also. The man said that Mr Gilmour had been seized with a violent vomiting. I can't tell the quantities. I did not mention the quantities to be used. I thought every body would know that. I am perfectly certain there could be no arsenic or poison of any kind in what I sold on Sunday. I saw the thing done up and delivered myself. A person was afterwards shewn to me, to ascertain whether she was the same who bought the arsenic. I say most distinctly that it was the prisoner.

By Mr A. McNeill.—I recollect when I sold the arsenic to the pannel, I said to her don't take it yourself or give it to any one else, for here is James Smith who will be a witness against you. Mrs Wylie saw the person who bought the arsenic.

JAMES SMITH.—I am a grocer in Renfrew; I live near Mr Wylie the druggist. I was in his shop—cannot say positively the day. There was a woman who was buying. She said she had come from the back of Arkleston, tenanted by John Ferguson. I said there never was a man of that name that I had mind of. She said she had forgot the name, as she had not long been there. She got the arsenic. I don't remember her mentioning her own name, for she had told it before I came in. I did not see her going away. I do not know which way she went. I was asked to look at a woman in Paisley, to see if she was the same. I see the prisoner. It was she who bought the arsenic.

MRS WYLIE—Corroborated the evidence of the two preceding witnesses, as to a woman coming to purchase arsenic, and the other circumstances connected with it; with the addition, that the woman did not go in the direction she mentioned, but went in the direction of Inchinnan. She identifies the prisoner as the woman who bought the arsenic.

JOHN ANDERSON.—I reside in the parish of Dunlop. I know Mrs Gilmour, and was acquainted with her before her marriage. I recollect hearing of her

husband's death. I received a letter from her in the month of January, soon after that. I have not preserved it. I had no letters from her during her marriage. I had some after her engagement with Mr Gilmour. I am aware that she went away sometime after her husband's death. I received a letter when she was away, from Liverpool, in her name, and like her hand-writing, I thought it was from her. I could not correctly give the date. I think it was dated 28th April. Her brother had heard that I had got a letter. He asked me if I would give it to him, to let his mother read. I said I would. He took it away, and I never saw it again. I did not tell him to bring it back, but I said he might not destroy it. 'Was there anything in this letter on the subject of her husband's death.'

The counsel objected to the question. The Lord Justice Clerk cautioned the witness as to answering any question on the subject. He was to consider the question now to be put by the Lord Advocate, not as put to the witness, but as put for his Lordship's consideration.

The Lord Advocate repeated the question.—The Lord Justice Clerk—Don't answer that.

The objection was afterwards withdrawn by the prisoner's counsel, and the question was allowed to be put.

Witness—There was something in this letter about her husband's death. There was something about poison. She said she would confess she had bought arsenic to take herself, but did not admit she had administered it to John Gilmour. The purport was, that she would have stopped till all was settled about John Gilmour's death, and complained that she had been sent away. I think she said nothing about Gilmour having got arsenic. Witness repeated that she said she had bought arsenic, but had not given him any. The words 'did not admit' were in the letter. She did not name any individual who had sent her away, but said she was very sorry to be sent away and to leave all her friends. I knew she was away before I received this letter. I heard it soon after she had left her father's. I think the letter was dated the week following.

Cross-examined.—I had been acquainted with Mrs Gilmour from infancy, and intimately for three or four years. I reside near Grange. She was brought up in her father's family up to the time of her marriage. She was of a very gentle, mild, fine disposition. Not a person of a violent temperament in any way.

By the Court.—It was to Thomas Cochran, his brother, I gave the letter.

THOMAS COCHRAN.—I am a brother of Mrs Gilmour. She went to America last April. I understood John Anderson had got a letter from her. I asked for it from him and got it. I can't say the date of it. I gave it to my father or mother. I did not get it back. I read it--glanced over it. I saw in it she was sorry she was leaving her friends. I saw nothing against her, that I noticed, except that. I saw nothing about arsenic in it that I mind of.

Cross-examined.—I was stopping at the next farm to my father's when my sister went away.

ALEXANDER COCHRAN.—I am father to the pannel. I recollect of Mrs Gilmour going away in April last. After she was away, I recollect of a letter that was received by John Anderson. I got it and destroyed it. I read it. I could not say a great deal of what was in it. She mentioned she did not wish to go away. She said when she came back it would be a happy meeting. I recollect nothing of arsenic in it. I advised her to go away.

Cross-examined.—She was not very willing to go. I made arrangements for sending her off. I employed my brother Robert to make the arrangements with a man of the name of Simpson to convey her away. I am sure she did not know she was going to America when she left. I did not go with her. I heard rumours, after the death of John Gilmour, of his having been poisoned; and I had communication with my daughter on the subject, on which she proposed that I should go down to the authorities, and have the body exhumed. I acted on this suggestion. I got old Mr Gilmour to go along with me, and we went to Paisley, and went to the doctors; and they

gave us every satisfaction. The doctors were M'Kech-
nie and son. The body was taken up sometime after.
I went to the Fiscal. He was not at home. Mr M'In-
nes, the partner of Mr Rodger, the Fiscal, told us to go
home and wait for eight or ten days. He thought it
was all nonsense, and I heard nothing more till the
body was raised. It was not raised on any application
of mine.

Re-examined.—I do not remember] the day she
went away. She was some time in Fenwick parish
before she went. I heard this from David Beckett
and my brother. I think it was on a Thursday night
she left, but I am not certain. She was two or three
days at this place in Fenwick. I did not see her after
she left. There was no arrangement as to her going
to America for some time.

By the Lord Justice Clerk.—I think Mrs Gilmour
was away before the body was actually taken up. I
think she was in Fenwick parish at the time the body
was raised. I don't know the exact date when the
body was raised.

The Court then adjourned for a quarter of an hour.

GEORGE M'KAY.—I was superintendant of Ren-
frewshire rural police. In the month of April last, I
heard rumours as to the death of John Gilmour. These
led me to make farther enquiries. I got a warrant about
the 8th of May to apprehend Mrs Gilmour. She had
been away sometime before this. I could not find
her in the country. I made a search for her in Liver-
pool. I got information there which led me to be-
lieve she had gone to America. I followed her there.
—I went to New York, I arrived there sometime be-
fore the vessel she was in. I boarded the vessel as
she approached New York. I found her on board
under the name of Mrs Spiers. I told her she was to
go home with me to Great Britain, and she imme-
diately admitted her name was Mrs Gilmour. I
knew her—and, after a considerable deal of trouble,
I got a warrant to remove her—I arrived here on 12th
September.

ARCHIBALD M'KEAN.—I am a wright at Inchin-
nan. I recollect the death of John Gilmour in January

last. I and my father were engaged as undertakers. I saw the body put in the coffin, and fastened down. I was at the funeral. I afterwards saw the coffin raised in Dunlop churchyard, and his body in it. A mortsafe was over the grave, but it was off before I arrived. They were digging the grave when I arrived. I had no doubt it was John Gilmour's body and coffin. His name was on the coffin-plate.

Dr M'KECHNIE.—I am a doctor of medicine in Paisley. I went to visit John Gilmour at Town of Inchinnan on Sunday 8th January 1843. I was sent for by Robert Robertson. It was one o'clock when I got there. John Gilmour was in bed. I found him very feverish. I understood he had been vomiting. I was told Dr M'Laws had seen him on Friday, and had bled him. I prescribed a calomel powder for him, considering his complaint a bilious complaint. She told me he had vomited a quantity of bile. I ordered a blister. I saw him next day at 12 o'clock. I found him better. I gave him effervescing powders, and prescribed blue pills for him. I had prescribed effervescing powders on Friday, and I showed his wife and Mr Robertson the proportions of the powders. The composition was tartaric acid and soda. I never saw him after Monday, as my son went in my stead. When I was there on Sunday, I expressed a wish to see the stuff he was vomiting. I asked to see his evacuations, both urinary and alvine, and told her to keep them till next day. I asked Mrs Gilmour on Monday, as she was the only person whom I saw, and she said there was so little she did not think it worth while keeping them. I saw there had been one alvine evacuation just made before I arrived. This was below the bed. I did not see what he had vomited. I asked the patient if he had vomited and he said he had vomited less. I was present afterwards, when his body was exhumed on 22nd April. Dr Wylie and Dr M'Kinlay were there. I saw the body then. I saw a dissection made of a part of the body. I saw the results of some experiments some months afterwards. From the symptoms I saw and what I heard at the time. I could form no opinion of any thing injurious having been taken or given. From the in-

spection of the internal parts of the body which I made I formed the opinion, that a foreign body had caused the inflammation which I saw, and that foreign body was arsenic. The symptoms, I observed, during life, were not inconsistent with that opinion. From the appearance on dissection, I should think death was caused chiefly by one application of arsenic, and that one recently before death. I apprehended so from the appearances on dissection. It is possible that a dose may have been given before I saw him; but I don't think the dose which occasioned death was given before I saw him. I remained a long time with him, but he vomited none when I was there. He had very great thirst when I saw him. There was no swelling of his face and eyes. His pulse was high—110 to 112 the first day. It was lower the next day—down to 94.

Cross-examined.—Mrs Gilmour behaved very coolly and collectedly on all occasions. I saw no excitement. She behaved herself as I could have expected from a person in her situation of life—in every respect most properly.

WILLIAM M'KECHNIE.—I visited John Gilmour the day he died. I found him in bed. He was then in a very low state. He complained of pain in the upper part of the abdomen, and in the throat. I heard he had been vomiting. His father told me this. I considered him in a dangerous state. I went about one, and left about two o'clock. I heard of his death next morning. I saw Mrs Gilmour in the house. I bled him, partly on account of a pain in the abdomen, partly on account of head symptoms. I was told he had been wandering before I saw him. I did not observe it. He was disinclined to answer questions, but answered them correctly. He was not comatose, but sluggish and drowsy.

Cross-examined.—I had been sent for on that morning.

DR. WYLIE.—I am a doctor of medicine in Paisley. I remember, in April last, going with the Fiscal to Dunlop in Ayrshire, and of being present at the exhuming of a body. M'Kean, a wright, was there, and

saw the body taken out. The coffin was removed to the session-house, and the body was there inspected. I assisted with Dr M'Kinlay in making a dissection, and made a report without chemical analysis. (Reads—App. No. 2). I carefully preserved certain parts of the body. I kept them. I despatched one part to the Crown-agent. I gave it to the Fiscal. I afterwards made analytical experiments; and made out a report with Dr M'Kinlay. I had what was preserved under lock and key. I made a written report on the 16th May. (Reads—App.No.3.) My original suspicion was converted into conviction by this analysis. I repeated the experiments frequently. The tests used were sufficient to detect arsenic. These tests were of various kinds, and all concurred in the same result—producing something similar to white oxide of arsenic. I did not try the liver. The yellow substance produced by sulphuretted hydrogen was a known form of arsenic, known as orpiment. The yellow patches seen on dissection bear a strong resemblance to this substance. In the course of decomposition, the intestines themselves would produce sulphuretted hydrogen, and this would yield the sulphuret of arsenic. I made an inventory of the articles I got, and put them into a box, for transmission to the Crown-agent. I sealed up all the articles I sent, labelled and signed them. (Articles handed to witness.) This is the inventory. This is the bottle and label I sent. It contained a half of the contents of the stomach. Some distilled water had been added to it. I also sent an earthen jar, which I now identify as one of the articles sent to the Crown-agent. I see my seal. There are four small labels, but there are some labels amissing. I exhibit a piece of left lobe of liver; piece of right lobe of ditto; piece of right kidney; piece of the spleen; æsophagus, and posterior half of the stomach; half of the duodenum, and a small bit of pancreas; half of jejunum, and part of the ileum. The labels are all in my hand.

By the Court.—The substance in the bowels and stomach had not produced ulceration or gangrene, but simply inflammation.

Dr M'KINLAY,—I am a doctor of medicine in Paisley. I went with Dr Wylie to Dunlop, when the

body was exhumed. (In other respects corroborated preceding witness.) I was aware, before this examination, that arsenic had been found in the liver, but rarely.

Dr CHRISTISON.—I am Professor of Materia-Medica in the University of Edinburgh. Was formerly Professor of Medical Jurisprudence. I have written on the subject of poisons, and I am conversant with the subject. I received a number of articles from the Crown-agent in May last, with an inventory. The seals are entire—the tape was cut by me. I see the labels, and the subjects of investigation are sealed by me. I made a chemical analysis, and drew up a report. I carefully preserved what was sent to me. The report is dated 20th November—(Reads—Appendix No. 4.) This is a true report. I applied Riensch's process. The symptoms of poisoning by arsenic are very various. Vomiting is one of the most frequent. Even that, however, is often absent. Pain in the region of the stomach is a very common symptom. I should, from the facts stated in the report of dissection, form the opinion that arsenic had been introduced before death, and was the cause of it. I would be confirmed in that opinion if there had been heat and thirst, and the party dying under these symptoms. I saw, in the portion of the stomach sent to me, the peculiar yellowness produced by arsenic. The stomach was almost perfectly preserved. The intestines remain more entire after death where arsenic has been used. If the death occurred in January, I would attribute the preservation of the intestines to the effect of the arsenic. It is a general effect of arsenic to preserve the intestines of the stomach. If the symptoms were continuous, I would infer that the arsenic produced death, though the illness had been prolonged several days. From all the statements in the reports, I would say one single dose might produce the protracted illness, but not so likely as repeated doses.

By the Court.—This is the second instance in this country that arsenic has been found in the liver. It has been repeatedly found in the liver, in France. It is no constituent part of the human body and is not

formed in it. It was once alleged that it was, but that was disproved. The individual who first promulgated this theory, only argues now that small quantities are found in the bones; but in three several experiments before the Academy of Paris he was unable to show it. Arsenic could only come into the liver by absorption.

The Clerk of Court then read the

DECLARATION OF THE PANNEL.

At Paisley, the 14th day of September 1843 years,

In presence of ALEXANDER CAMPBELL, Esquire, Sheriff-Substitute of the County of Renfrew,—

Compeared CHRISTIAN or CHRISTINA COCHRAN, a prisoner, who, being examined, declares as follows, viz., I am twenty-three years of age, and I was married to John Gilmour, farmer in Town of Inchinnan, now deceased, soon after Dunlop fair, which I think was held shortly after Martinmas last, and I removed on my marriage to my husband's residence, and lived with him there till his death, which took place I think about five weeks after our marriage, and I forget the dates both of the marriage and his decease. I went back to my father's house, in the parish of Dunlop, sometime after my husband's decease, and, after staying some weeks there, I was sent away to Liverpool, and thence I sailed for New York; and on the arrival there of the vessel in which I was a passenger, I was apprehended, and, after being detained as a prisoner for a considerable time in New York, I was taken away from that place as a prisoner, in the charge of Mr George Mackay, and under his charge I arrived at Paisley yesterday morning. I forget at what time it was that I left my father's house for Liverpool as aforesaid, farther than that it was in spring last. When I was sent away, I was not informed where I was to go, but first one man accompanied me on my journey till we came to a small house in a country place, where I remained two days or so, and then another man came and accompanied me to a certain other place, and then a third met and accompanied me to Liverpool, and from Liverpool to New York. The name of the last man was John Speirs, at least that was the name he gave me, and I had never seen him before: but as to the two other men who accompanied me, I don't know even their names, nor do I remember the names of the places at which we stopped. The first part of the journey was on foot till we came to the small house, when the first man left me, and from that house the second man took me in a gig to the place where I was met by Speirs, and then we travelled, first by coach, and after that by rail-

way, to Liverpool. I received no information as to the cause of my leaving the country except from my sister Elizabeth; and, on my enquiring if it was on account of the reports that had been going about as to my husband's death being blamed on me, she said it was, and on my telling her that my going away would cause people to think I was guilty, she told me I would be back in a few days, and that people would say that I could not stand such reports; and my father obliged me to go away without even speaking to my mother. I think it was on a Friday or a Saturday that I went away on my said journey, and I had heard before going away that my husband's body was about to be raised. I cannot remember how long my husband was ill of the disorder of which he died. My said husband and I went from his house at town of Inchinnan to pay a visit to my father at Dunlop, and we returned the day after, having travelled in a gig. My husband had been complaining a little immediately before this visit, and on the day preceding had complained of a severe headache and of pain in his breast, and said he thought it was his heart, but I don't recollect of his vomiting any; and on the morning on which we set out for Dunlop he was much better, but he became much worse again during the latter part of our journey home, and after getting home he continued worse, and vomited, as I think, once that night. The visit to my father was at New-year's-day time. My husband continued ill till he died. He continued to complain of headache until his death, but for sometime previous to his death he complained of his throat, and said the pain had left his breast. He continued, however, to vomit more or less every day after our return home until he died, excepting for a short period before death. He never intimated to me in any way that I was the cause of his ailment; but he said shortly before his death to me that I had broken his heart. I suppose that he said this, because I had told him often before that he had broken mine, and that I could not be to him as a wife ought to be, and the reason of this was well known to him, being that I had been in a manner forced to marry him. While my husband was confined to bed under said illness, I was the only female who attended him. There was one female-servant in the house, and only one, and her name was Mary; but first my sister Mary came and staid a few days, and then my sister Margaret came when she went away, and Margaret staid with me until after my husband's death. I acknowledge that one morning in the course of my husband's illness, I walked to the town of Renfrew, and there bought from one Wylie, a druggist, some arsenic, for which I paid him some few halfpence, I do not remember how many. He questioned me before he gave it, as to what was my name, and what I was going to do with it, and wanted me to write down my name, but I don't think he asked me, or at least I do not recollect of his asking me where I staid. I told him my name was Robertson, and I think I said Margaret Robertson, but I am not sure of that, and told him it was to poison

rats. I took home with me the arsenic, which was wrapped in a paper, and had the word "arsenic, poison" on the back of the paper, and I kept it in my pocket among some halfpence till the string came off the paper, and a little was spilt among the halfpence, which I discovered by finding some of the halfpence white, when I took them out; but this I did not discover until after I had returned to my father's house, after my husband's death. The paper of arsenic had never been opened up by me from the time I bought it. I, first of all, put the arsenic, when I got it from the druggist, into a small bag that I carried, and which was made of black silk, or black velvet, I cannot remember which, and when I reached home I took it out of the bag and put it into my pocket, where it remained as aforesaid, unopened. I rather think that I had dropped the bag before getting into the house with it, and that it was brought to me by one of the servants. When I had gone back to my father's house, after my husband's death, I missed my pocket, which I used to lay at my bed-head. It was on the morning after I returned to my father's house, that I missed it, and I found after that, that my mother had got it, for she questioned me about the paper and its contents, and what I was going to do with it. I at first was not disposed to tell her what it was, but she told me herself that it was arsenic, and I told her I had got it because they were all tired of me, and would not let me have peace, nor let me sit beside them, as if they thought I was not good enough, nor let me remain by myself, as if that was avoiding their company. I did not tell my mother when or where I had bought it. The truth was, I was made unhappy before I quitted my father's house, on my marriage, and I continued to be so after my marriage, and I had procured the arsenic, thinking that I would put an end to myself with it. I farther declare, that previous to my purchasing the said arsenic at Renfrew, I had procured another paper of it, which my servant Mary had bought at my desire, and I think she bought it in Paisley, but whether this was before or after the commencement of my husband's illness I do not remember. Mary told me that the man from whom she got it, said that he must know for whom it was got, and for what purpose, and that she had told him. I had said to her that it was intended for rats, but after I had heard from her what the druggist had said, and what she said about the danger of it, I burned it before her face in the furnace fire of the boiling-house, and this I did upon the same morning that she had bought it to me. I am sure that it was the same morning that she had bought it to me. I am sure that it was the same parcel that she brought to me that I had so burned, and I had never used any part of it in any way, nor even opened up the parcel at all. My feeling and intention were the same when I bade Mary buy this arsenic as when I bought the subsequent parcel myself, but I was frightened with what she told me about its sudden effects in producing death at once, and I therefore destroyed

it. And the fact was, also, that attempts had been making to catch a rat that came to the jawhole of the house, and it was for that reason I mentioned to her that it was for the rats. I never gave to my husband, either during his illness, or immediately before it, any thing either of meat or drink, but what he expressly asked for ; and I never gave him arsenic or any other poisonous thing. My husband complained very much of thirst during his illness. My husband had many a time declined to let a surgeon be sent for, as I had proposed to him during his illness ; and I went one evening, accompanied by one of my servants, and called on Robert Robertson, my uncle by the mother's side, who lives near Paisley, to consult him about getting medical advice, and Robertson proposed coming to see my husband, and bringing Dr M'Kechnie, of Paisley, along with him. When I got home after this visit to my uncle, I found that Dr M'Laws, from Renfrew, had visited my husband during my absence. Dr M'Kechnie, from Paisley, was afterwards called in to attend my husband. When my husband and I were returning from our New-year's-day visit to my father, we called at Mr Hendry the druggist's shop in Paisley, or at least it was a druggist's shop, near the Cross of Paisley, and my husband got from him some rhubarb powders, which he took part of that same night, and indeed continued to take every day for a while. He took part of these himself, and mixed them with ale and sugar himself, and I also mixed some of them with ale and sugar, and gave it to him. It was a young man who sold my husband the rhubarb powders, and my husband did not ask for rhubarb, but merely stated that he had a sore head and a sore throat, and that he was stuffed about the breast, and wanted something to do him good ; and the young man advised him to take the rhubarb. Dr M'Kechnie, when called in, prescribed for my husband some soda and acid drinks, which Dr M'Kechnie also sent, and sometimes I mixed them with water, and gave them to my husband, and sometimes this was done by his father, who was in the house with us two days before my husband died. I have never heard that on my husband's body being disinterred and examined by medical men, they had found arsenic in his bowels, but if that be the case I cannot account for it. He got none from me, and I am not aware that he got any from any body else. All which, after being read over to me, I declare to be truth. Six words deleted.

(Signed) CHRISTINA GILMOUR.
ALEX. CAMPBELL.

(Signed) ROBT. RODGER, *Witness*.
W. L. HOUSTON, *Witness*.
D. M'PHEE, *Witness*.
J. STEVENSON, *Witness*.

The foregoing declaration, written on these fifteen pages by Walter Lamont Houston, Sheriff-Clerk-Depute of the county of Renfrew, was

freely and voluntarily emitted by the declarant ; and, on being read over, was adhered to by her, and was subscribed by her and the Sheriff-Substitute, examiner in her presence, all before these witnesses, Robert Rodger, writer in Paisley, the said Walter Lamont Houston, John Stevenson, corporal of Police in Paisley, and Duncan M'Phee, Sheriff-officer in Paisley.

(Signed)

ROBT. RODGER, *Witness.*

W. L. HOUSTON, *Witness.*

D. M'PHEE, *Witness.*

JOHN STEVENSON, *Witness.*

The Lord Advocate stated that this was the case for the Crown.

The counsel for the pannel then retired for a few minutes to consult as to the propriety of calling evidence. After being absent for a short time, they returned and stated that it was not their intention to adduce any evidence.

The Lord Advocate then proposed to address the Jury. But Mr Maitland stated that he thought it had been understood that the case would not be closed that day, and it would be a convenience to him to have an opportunity of looking over his Notes. It was now seven o'clock.

The Lord Justice Clerk.--I think that, as it would now be impossible for the Jury to retire for deliberation before a very late hour, they had better adjourn now, and meet to-morrow morning at nine.

His Lordship informed the Jury that every attention would be paid to their comforts. They would be taken to a respectable hotel, and properly attended to by the officers of the Court. The following interlocutor was then pronounced.--

‘ In respect of the length of time already occupied
 ‘ by this trial, and the impossibility of bringing it to
 ‘ a conclusion in the course of the present sederunt,
 ‘ the Lord Justice Clerk and Lords Commissioners
 ‘ of Justiciary, with the consent of both parties, and
 ‘ in respect of the necessity of the case, continue the
 ‘ diet against the pannel till to-morrow morning at

‘ ten o’clock; and ordain the hail parties, pannel,
 ‘ witnesses, assizers, and all concerned, then to at-
 ‘ tend, each under the pains of law, and the pannel
 ‘ to be carried to and detained in the prison of Edin-
 ‘ burgh; and the hail fifteen jurors now in the box,
 ‘ being hereby ordained to repair, under the charge
 ‘ of William John Monro, and James Mathew, two of
 ‘ of the macers of Court, to Macqueen’s hotel, Princes
 ‘ Street, Edinburgh, where, it is stated, that proper
 ‘ accommodation has been provided for them, to re-
 ‘ main under charge of the said macers, till brought
 ‘ here to-morrow in the hour of cause above men-
 ‘ tioned, and being kept strictly secluded during the
 ‘ period of adjournment from all communication with
 ‘ any person whatever on the subject of this trial, the
 ‘ said macers always having necessary access to them,
 ‘ for the purpose of seeing to their proper accommo-
 ‘ dation, and the Clerk of Court having access to, and
 ‘ liberty to communicate with them, in relation to
 ‘ their private or personal affairs, if this shall become
 ‘ necessary.’

‘ And the said William John Monro, and James
 ‘ Mathew, macers, and Charles Neaves, Depute-clerk
 ‘ of Court, had administered to them respectively the
 ‘ oath *de fidei*, to have no communication them-
 ‘ selves, and to permit no communication by others,
 ‘ with the jury on the subject of this trial, and to be
 ‘ otherwise faithful in the premises.’

SATURDAY, JANUARY 13.

(*Second Day.*)

The Court met at nine o’clock. The Court was as crowded as on the preceding day, and the interest outside was even more intense. The prisoner was again dressed in deep mourning.

Previous to the commencement of the proceedings, the LORD JUSTICE-CLERK said,—I am exceedingly sorry to be informed, that some of the door-keepers have been taking money for admission. Such conduct

is discreditable to the Court. The doors of a Court of Justice were open to all who were willing to come in till the Court was full, and there ought to be no other let or obstruction but the want of room. A strict inquiry will be made into the circumstances that have occurred, and the Court will feel obliged by any persons who have been so imposed upon giving such information as may lead to the detection of the parties concerned. Care will be taken that such illegal conduct shall not take place in future.

The names of the Jury having been called over—

The LORD ADVOCATE then rose.—My Lords—Gentlemen of the Jury, In a case like the present—a case on which depend the issues of life or death—you, the jury, as well as I, have a most painful duty to discharge. In a case like this—a charge of murder by poison—the first thing necessarily to be considered is, whether death has been occasioned by poison at all. After that, you will proceed to consider how the poison, supposing that proved, has been administered. Upon the first question we, have evidence of a very clear and of a very conclusive kind—evidence as clear as ever has been stated in any case where a charge of murder is involved. The question is, first, whether the death of John Gilmour was a death caused by natural disease, or a death caused by poison? On that subject we have several pieces of evidence. We have the opinions and observations of the two medical gentlemen who examined the body after death, as well as of those who attended the deceased during life, and who also examined the body, which examination was most conclusive as to the manner of death—namely, by poison. The jury would remember that, a few months after John Gilmour's death, rumours arose as to its cause; that his body was disinterred in April last; and, on its being disinterred and examined, there were such indications and appearances as left in the minds of the three medical gentlemen no doubt whatever that there was the presence of arsenic in his stomach. The evidence of Dr M'Kechnie on this point was of peculiar importance. It is nothing to say that his suspicion was not

excited during the illness ; for we now know that, on examining the body after death, and reflecting on what he had seen during life, the conclusion at which he unhesitatingly arrived was, that the disease and the death of John Gilmour was caused by poison, and that that poison was arsenic. But the evidence on the subject does not rest there : Drs Wylie and M'Kinlay afterwards proceeded skilfully and carefully to analyse the contents of the stomach and parts of the intestines. They examined these by various tests, and they found arsenic present by all of them, which leaves no doubt on the subject. Then the same enquiry was made in reference to other parts of the contents of the stomach, of the stomach itself, and of the liver,—not by these gentlemen, nor under their guidance and direction, but in a different place altogether, in this city, by a gentleman separated from them, who was not acquainted with their views, who is known to all the world as a most skilful and correct analytical chemist. He made other experiments : he applied a different set of tests, and the uniform result of them all was, that he found arsenic absorbed in the liver, in the contents of the stomach, and in the stomach itself. If ever there was a case where arsenic was found in the stomach of a party deceased, that case is now before you. If the body had been opened immediately after death, and the arsenic had been found in the state in which it was swallowed, the proof could not have been more clear or conclusive than it is now. The very time that elapsed before exhumation, and the state in which the arsenic was found, is evidence confirmatory of the fact. I have said already that the symptoms shown during life were consistent with this view of the case ; and Dr M'Kechnie is clearly of opinion that death was caused by arsenic, and that the symptoms were consistent with this opinion. I need not go over these symptoms—the vomiting, the thirst, the pain in the lower region of the abdomen,—all these are, in the opinion of men competent to judge, quite consistent with the conclusion to which they afterwards arrived, that the death of John Gilmour was caused by poison. Then also observe the opinion that is entertained by these gentlemen,—observe it

now,—I shall show its importance afterwards,—their opinion, that death was caused by the administration of arsenic, rather in repeated doses than by one application. His illness commenced on Thursday the 29th, or Friday the 30th of December, and it continued down till the period of his death, on Wednesday the 11th of January. From the fact of his continued illness, and of the continued symptoms, the conclusive opinion is, that this man died in consequence of the introduction of arsenic into his stomach, and that by repeated doses. That being the state of the fact as to how he came by his death, our next inquiry is—and a very serious inquiry it is—how that arsenic came to be administered? It must have been administered by some one—either by the deceased or by some other person. The important inquiry is, who administered it? We have no reason to suppose that the deceased poisoned himself. There is no ground to suppose—there is not a peg even on which to hang such a supposition as this. In any case in which death occurs by poison, a secret administration is sure to occur: the administration will be secret: it will not be made in the presence of others. In any such case, therefore, it may be said—the theory may be set up—that the poison was taken by the party himself: that he caused his own death; and it is a possible thing, which may be said in any or in every case of poisoning. But the fact of it being said, or supposed, will not be allowed as any rational ground for coming to such a conclusion. In every case of poisoning, the administration is secret. You cannot expect evidence of a party being seen to administer it; the evidence always stops short of the actual fact of the party being seen to administer the poison—that is done out of sight; and you must seek for the evidence in the circumstances of the case, or, by the force of these circumstances, the evidence may be quite conclusive; and where the evidence is conclusive as to the poisoning, you will not take, as a true ground of coming to a conclusion, the mere statement that the party may have effected it himself. Here there is no ground for suspecting anything of the kind. There is no indication in the conduct of the deceased: there is no ground for suspicion—nothing even has

been stated by the prisoner who knew best what was going on—nothing has been set up by her by which one would surmise or suspect that such a thing would occur. The cause and the duration of his illness is against it, because, if he had taken poison, it would have been in such a quantity as would have killed him at once. If, indeed, John Gilmour had been found secretly requiring poison—if he had been a person complaining or grieving of his state and condition in reference to his union with the prisoner, and if he had then been found dead with poison in his stomach, there might have been some ground for this theory. But unfortunately it is all the other way. Then there is nothing of a kind to indicate, nor the least ground for supposing that the poison was the result of accident. There is no trace of his being in possession of poison—something was said, indeed, of his being in possession, at one period previous to his marriage, of poison to kill rats, which he seems to have used, and to have kept in his chest; but there is no ground for supposing that he had poison at the time of this occurrence; there is no ground to suppose that anything was taken out of the chest by which the poison could have been accidentally mixed up along with the food. There is not anything to lead you to the conclusion that he administered the poison himself: he had no means or inducement to do so: there is no suspicion of any thing of the kind. You must, therefore, find the cause of this poison in some other way: you must trace it to some other hand: and the question comes to be, how does the evidence guide you in the matter? Does the evidence in the case, or does it not, support the conclusion, which I find it my painful duty to ask you to arrive at? Does it support the conclusion, that the poison was administered by the prisoner? Are the circumstances of the case such as to lead—seriously to lead—to that conclusion, in accordance with all reasonable grounds of judging in the case? I think you will find—I am mistaken if you do not find—that there are in this case, as leading to that conclusion, all the facts and the circumstances that can be expected to exist in a case of administering poison. I have said already that you cannot expect direct evidence that she was seen to administer it—

in no case is there less chance of it than in the case of administration of poison to a husband by a wife; and that, too, in a house where there appears to have been no servant attending them within doors—where the wife has charge of every thing, where she prepares and sends the food, attends upon her husband during illness—administers his medicines—is constantly about him—in no case can you less expect to find direct evidence of her being seen to administer the poison. What, then, are the important circumstances to be looked for in this case? Having established the fact, which you must never lose sight of for a moment, that this man died by the administration of poison, what are the things which you are to look for and expect in the course of the enquiry? He dies by poison administered by some one—I say by the prisoner. Then you will require to be satisfied, in the first place, was the prisoner in the course of acquiring poison, and the kind of poison of which he died, at the time that poison was administered? Second, had she an opportunity of administering that poison secretly or unobserved? In the third place, did there exist any motive for administering the poison? and, finally, is there is any ground or room for suspecting any other person of the guilt? I am mistaken if, in this case, you do not find the concurrence of all these circumstances, and that in a way the most striking. In the first place, was she possessed of poison, and of the kind of poison, at the time that it must have been administered to the deceased? I think, on examining the evidence, you will find not only that she was possessed of arsenic, but the evidence shows that there was traced into her possession three several parcels of arsenic. The first of these was on the 27th of December; the second on Friday the 6th of January; and the third on Saturday the 7th of January. For the first, you will remember that she sent the girl Mary Paterson, who states, that, on the Monday before new-year's-day, she left her mistress to go on a visit to her sister in the country, and to return on the Tuesday; and she states, that on going away her mistress desired her to go to a house in Paisley, and direct a

‘callant’ to purchase a parcel of arsenic. It is a little singular—it is worthy of observation—that she did not desire her servant-maid to go herself to the shop and purchase it, but, obviously with a view to break the chain of observation, she was to call somewhere else and send a boy. The girl did not remember the name of the house, and she did go and purchase it herself, and delivered the arsenic so purchased to her mistress. The apothecary or druggist who sold it, asked who it was for; and the girl, not knowing any reason for concealment, stated who it was for, and afterwards communicated this to her mistress. That is the first parcel which was traced into her possession. I shall speak afterwards to the evidence there is of how it was disposed of. This was on Tuesday the 27th of December: the apothecary’s lad indeed thinks it was in the middle of December; but I think the servant girl can scarcely be mistaken as to the day on which she visited her sister; and she says it was on the Monday before new-year’s-day; and, as the poison was bought on her way home, the day after that would be Tuesday the 27th of December. That parcel was marked ‘arsenic, poison.’ She stated that the doctor told her it was so marked; and the apothecary’s lad says the same thing. The second parcel that was traced into her possession—remember we do not undertake to trace all the parcels she may have had—she may have acquired others of which we know nothing—but the next parcel which I trace into her possession is that which John Muir found in a bag or reticule lying near the boiling-house. I think it is clear that this is a distinct parcel of arsenic or poison from any of the others. John Muir states, that he had been that morning engaged before day-light in thrashing. He came home to his breakfast about 7 o’clock. He passed near the boiling-house door, and saw nothing then; but when he went out after breakfast, taking the same road, he found a bag lying, and in it he found a phial containing a brown substance, and a paper marked ‘poison.’ He communicated this to the servant-maid, and she took it in to her mistress, and ‘spiered at her, was that her bag;’ and she said, yes. In that bag there was a small parcel marked poison. The

servant-maid thinks that it might be turpentine that was in the phial; but John Muir says he smelt it. It had a sweet smell, and not the smell of turpentine. This happened on the Friday; and I say, that to this we have first the direct evidence of Muir, and, next, the direct evidence of Paterson. Both are positive that this was on the Friday, and both are positive that it was on the morning of the day on which the doctor was sent for. He was the man that went for the doctor; and he is positive that the bag was found on the morning of that day. There can be no doubt then that Friday was the day. All the witnesses concur that on that day the doctor was sent for. They are not only positive that it was on the morning of the day the doctor was sent for, but Muir's reason for going for the doctor puts it beyond doubt that it was Friday—because he stated, in answer to a question from the Court, and that settles the point as to the day as conclusively as anything can be said to do. He says the reason that urged him to send for the doctor was the finding of the bag. He went on the Friday night, and he went because he had found the bag in the morning: therefore he could not have found the bag in the morning after he went. There is another circumstance to show that this was a distinct parcel from the others. Muir mentions that the only word written on the parcel was the word 'poison.' Now this was seen on no other parcel; for the first parcel contained the words, 'arsenic—poison,' and Dr Wylie's the words 'poison—arsenic.' Muir says that the one he found contained only one word—'poison.' He could not mistake that: the girl Paterson might have made a mistake, because she was only told what was upon the parcel. This, therefore, was the second parcel of arsenic traced to her possession. I remark, further, with regard to Friday morning, that it is proved she was away that morning: that she left her home. Paterson knew of her leaving home; but she told Paterson not to tell the other servants that she was away. She said she was going for something for her husband, and there is no trace that she brought home anything for her husband but the contents of that bag: the phial and the parcel were the only

things brought home that day. The next parcel I trace into her possession was on Saturday the 7th of January, and which she purchased from Dr Wylie of Renfrew. There cannot be the slightest doubt of this purchase: nothing can be more clearly established. Dr Wylie does that which every druggist ought to do, and which shows the accuracy and the correctness of his conduct, and the cautiousness of his dealings: he preserves a record of all the arsenic he sells, the date of the sale, the name of the person who applies for it, the place where it is to be used, and the purpose to which it is to be applied. He tells you that on Saturday the 7th, and it is so recorded in his book, a person called and asked for a quantity of arsenic, and that he sold it to her. His wife confirms him as to the date; so does Smith, the witness, who is brought in: and both Mr and Mrs Wylie speak to the fact, that next day, being Sunday, a person came to their shop to make a purchase of medicines, for the use of Mr Gilmour: and you have evidence that, on Friday forenoon, Dr M'Kechnie suggested a prescription, and that a servant went to Dr Wylie's to procure the medicines. Therefore, as to the date of this last purchase, there can be no doubt. Then you have conclusively traced to her possession, on the 27th December, the 6th January, and the 7th January, three several acquisitions of arsenic. It is therefore proved that she was not only in the possession of arsenic, but that she made repeated acquisitions of it—a fact which corresponds with the opinion of the medical men as to the cause of death. Then, how was that arsenic acquired? Was it openly and avowedly, or was it done secretly, and upon false statements? I have already adverted to the acquisition of the first parcel of arsenic, as stated to be for the purpose of killing rats, and to the round-about way in which it was acquired, by sending some one else to ask for it. As to the time of her acquiring the second parcel, I do not pretend to be able to explain; but if she acquired it that morning, when she went away, desiring her maid not to say that she was away, without stating or assigning any reason, I submit that this was a secret acquirement. As to the third parcel, you have it most clearly in evidence as to the manner in which

that was acquired. She told Dr Wylie that it was for John Ferguson, in a direction different from the farm in which she resides, for the purpose of killing rats. She gives a wrong description of the locality of the farm ; and she gives her own name as Robertson, and then, with great cunning and adroitness, she pretends to forget the name of the farm, having recently come to it—thus attempting to destroy all trace of observation. That acquisition of the arsenic is in all its circumstances suspicious. She goes a stranger into a shop, to persons whom she does not know : she gives a false statement of the person for whom the arsenic was intended ; she gives herself a false name ; she states a false reason ; and she assigns a dexterous reason for not being able to tell the place where she is to go. Perhaps it is not immaterial to remark here, that when medicines of an innocent character was to be obtained from Renfrew, she does not go for that medicine : she never showed her face in Dr Wylie's shop again. We have her, therefore, in possession of poison : of repeated acquisitions of poison, under circumstances secret, and, in every view of the case, most suspicious. Then, is the disposal of the arsenic satisfactorily accounted for ? In regard to the first parcel, she states that she destroyed it by throwing it into the fire. The girl Paterson gives this for a confirmation to her statement ; but she states it was not on the same day she gave it her, but on the next day that she came into the boiling-house with a parcel similar to that which she delivered to her, and threw it into the fire, stating that it was the poison she brought, and gave, for a reason for so doing, that she was afraid to use it, or did not know how to use it. Paterson had told her before, that in answer to a question put by the druggist, she told him for whom the arsenic was intended. If that arsenic was intended for the purpose alleged—for the destruction of rats—then, undoubtedly, the fact that the druggist was told for whom it was obtained was no reason for destroying it. But if it was intended for a purpose such as that which I allege, the fact that the druggist was told for whom it was purchased was a reason why, in the presence of the person from whom it was received, she should either destroy or

pretend to destroy it. The girl said that it was a similar parcel; and that the next day she came into her presence—why she should have selected her presence rather than throw it into the fire of the boiling-house, I am sure I know not; but in her presence she destroys a parcel which she says was it—and that for a reason, and under circumstances altogether different from that which was at first alleged. Then, as to the second parcel of poison, which was traced into her possession on the Friday, we have no account whatever. And to the parcel which she acquired from Wylie, and which she endeavoured afterwards to prove was the one found in the bag, but which was plainly a parcel obtained next day, she says that she carried that in her pocket—that, afterwards, some of it came out of the parcel, and that it was found in her pocket after her husband's death by her mother, who destroyed it, and that she told her mother the purpose for which she acquired it was that of self-destruction. There is no attempt made to support this statement. She does not examine her mother upon the subject. Her statement is, that she put it in her pocket, and then she thinks she dropped it in her bag, and that it was brought to her by the servants; but the bag was found on the previous day, and under a circumstance which, as I forgot before, I shall notice now. Along with the parcel in the bag was found a small phial, containing some fluid, and which was acquired by herself. There is no evidence that she acquired that phial in Dr Wylie's, or any where else, on Saturday. Friday, therefore, is the day on which she had a parcel and a phial. Saturday was the day on which she had a parcel, but no phial. As to the application or disposal of that parcel, she does not support her statement in evidence. The next thing is, how does she account for the acquisition of the arsenic at all? She acquired it for the purpose, she says, of destroying rats. The purpose which she assigns now is the purpose of self-destruction. That is a purpose which rests entirely on her own statement. That purpose may be alleged by any person in any and every case who acquires arsenic secretly or suspiciously; it may be always alleged that their purpose is not to

poison others but themselves. But it is not likely—it is not credible, that, for that purpose, she should have acquired those repeated quantities of arsenic that have been traced into her possession successively at such short periods. It is not likely that the purpose of self-destruction should be working in her mind at the time when her husband was dying. It is not likely that she should require poison successively, almost day by day, and then throw it away, if her purpose was self-destruction—and especially when that is accompanied, on her part, by no attempt so to use it. When a person requires poison for such a purpose, has full opportunity to use it, and yet does not, the mere allegation of that purpose, unless it is supported by evidence, is nothing more than the statement of the prisoner; and there is nothing in this case to support the allegation. Indeed she does make a statement of such an intention on her part, and assigns a reason for it; but when I come to that part of the case, I shall endeavour to shew that the reason she assigns for self-destruction necessarily implies a state of extreme suffering and unbearable distress from being united to the prisoner. Then, this is the position which we have got, that at the time arsenic was administered to John Gilmour she is in the possession of arsenic, which she acquires in repeated quantities—which she acquires secretly, and under mis-statements—which she acquires upon pretences that are not true, that she does not satisfactorily account for disposing of them, and that the reason why she acquired them is not supported in evidence. The next element in the case is the opportunity of administering the poison. On that I need scarcely say any thing here. The opportunities were every opportunity that can possibly exist. She prepared the food—she had the custody of every thing in the house: she seems to have mixed the medicines—in short, she had the sole preparation of every thing that he took. She attended him constantly during his illness—in short, she had every opportunity which a person could have. The next point is, there being thus the acquisition of poison, and opportunities of administering it, was, or was there not, any motive for administering it? I don't

know that we are entitled to look for an adequate or sufficient motive here—because no motive can be adequate to so terrible a crime. But we have in evidence such a motive as, in a mind not well regulated, has been found in other cases to lead to such results. On that part of the case, you have the history of this prisoner as given by herself. You have it in evidence from various persons, and from herself, that she was dissatisfied and grieved with her condition as the wife of John Gilmour. There was a previous attachment to another person, and she does not appear to have been attached to Gilmour. It appears that she was constantly complaining of the circumstance of having been, as she says, under the persuasion or control of others, compelled to unite herself with him. We have, therefore, this person speaking of this to servants and others around her. She could not restrain herself, she could not maintain even that reserve which one would have thought ordinary propriety would have dictated. The matter seems to have taken possession of her mind, for her dissatisfaction was of the most extreme kind; so extreme that, according to her own account of the matter, she could not bear it, and she meditates self-destruction to put an end to her distress. She acquired poison for that purpose. She acquired poison for the purpose of putting an end to that condition of matters which was caused by her union with John Gilmour. She acquired poison for the purpose of putting an end to the union; and, Gentlemen, there are two ways in which arsenic might be used by her to attain that end—she might have poisoned herself, or she might have poisoned her husband. Her husband is poisoned—she is not. Can you then doubt the purpose for which the poison was obtained, or the purpose for which it was used? The union is dissolved, and scarcely more than dissolved, ere she begins to correspond again with the person to whom she was previously attached, and who seems never to have been absent from her mind during the whole progress of that disastrous event. Now, Gentlemen, here are the circumstances of the case. John Gilmour is poisoned—that is clear. Who poisoned him, is the question. The prisoner had all oppor-

tunities for doing so. She was in a melancholy frame of mind ; in a state of unbearable distress. She acquired poison secretly by means of misrepresentations ; and, on repeated occasions, she says that she intended this poison to destroy herself ; but it is an extraordinary thing that while she has not carried that purpose into execution, the cup which she intended for herself has not been quaffed by her, but was by some unknown, some mysterious hand, conveyed to the lips of her husband. What other mode have you to account for this ? There is no reason to suspect self-destruction. He is not found acquiring poison, or in a state of mind which would lead you to suspect him of intending it. The whole circumstances of acquiring poison concur to fix the guilt upon one person, and one only. And under what loose notion or theory are you to avoid the conclusion, to which the evidence directs your minds. There are in this case certain minor circumstances which point to the same conclusion. It was on Tuesday, the 27th December, that the first packet of poison was acquired. His illness took place on the Thursday, and though it continued, with severe vomiting, no doctor was sent for till the Friday of the following week. She went on Friday to her uncle, and stated to him the condition of her husband. The use of that statement is not very clear. It seems to have been commenced in a strange kind of way ; and whether she expected her husband then to be alive or not, I don't know, but she put off the visit of a doctor till the Saturday. And, indeed, it is not at all clear what her object in meeting her uncle was. Mr Robertson did not know him. It appears, indeed, that he knew him by sight. He had seen him at the Cross. Then, again, you will recollect that when Dr. M'Kechnie visited him he gave special instructions that the matter he vomited should be preserved. He gave those instructions to her, and they were not obeyed. She assigned as a reason, that there was very little, and that she had thrown it away. But there being little, if that was true—and certainly the man says that he did not vomit so much as before, was not a reason for throwing it away. Then we have the fact that this party, after the murmur arises

of her husband's death by poison, leaves the country, and that secretly, and under a false name. She leaves as soon as suspicions arose, and when it was known that the body was to be exhumed. Her father gives an account of this ; and so does she. She says, that she left against her will, and at the urgent advice of her friends. She says that she was taken away secretly—that she did not know where she was going, and that she went against her will. She does go though. She acts on the advice of her friends ; and she goes under a false name, for she is found in America under the name of Speirs. It was farther said, that she was desirous the body should be raised and examined ; and an attempt was made to prove that the body was raised on her application, but that does not appear. It appears that the father went to Dr M'Kechnie, and that his account was satisfactory. He was not then of the opinion which he came to afterwards. The father then went to the Fiscal, but did not see him ; he saw his partner or some other person ; but at any rate it does not appear that it was at her application the body was raised, nor does it appear that when the body was raised the father desired to see the result, which might be expected from his going to Dr M'Kechnie. By far the best view that can be taken of the matter is, that the father advises her to go out of the way, and lays the plan for her to go out of the way. It appears, also, that there was a letter from her to Anderson. That letter was destroyed, so that we have not the contents before us. It was destroyed by the father, under whose advice she was acting. Anderson recollects that in it she stated that she was unwilling to go away ; that she regretted being separated from her friends ; and he recollects that there was in it a passage about arsenic, and that she would admit that the arsenic was intended for herself, and not for Gilmour. That letter was given to her brother, and by him to her father. The father read it : the brother says that he read it cursorily. I can scarcely think, that, under the circumstances, the reading of that letter, either by father or brother, would be a cursory or even a single reading, or that one passage or expression in it would escape a fre-

quent perusal. That it contained something about arsenic is clear from the statement of Anderson. Yet her father and brother have no recollection that such a passage was in the letter. But they have a distinct recollection that the letter contained expressions of regret at her going from her friends, and yet in this state of matters the father destroys the letter. But the fact is certain, that in this letter she endeavours to account for the purchase of the arsenic, for it was then known that the investigation was going on, and that Mary Paterson purchased the arsenic for her—very possibly other purchases had been made by others. In these circumstances, and in all the other parts of the case, you have all the elements of a case which are required in that of a death by poison; the acquisition of poison—the repeated acquisition of it; no account of its satisfactory disposal; and you are presented with a motive—alienation in heart from her husband; and therefore I humbly submit—though it is most painful to do so—yet in the discharge of an imperative duty, I ask you, in the discharge of a duty which you owe to your country, to find this case established, that arsenic caused the death of this man, and that it was administered by the pannel at the bar.

Mr MAITLAND.—I join with the Lord Advocate in reminding you that this is a question of life or of death. In criminal courts this is never a question of mere presumption or of probability; but it is one which resolves itself into direct legal evidence. The position with which I start is—that, unless the case on the part of the Crown has made guilt certain, and innocence impossible, you cannot convict my client. The Lord Advocate himself admitted that the evidence must necessarily lead to the result of clear guilt before you can convict. That is just my proposition, and I claim the special attention of the Jury to it, when you retire to consult as to your verdict. The question between the Jury and me is not whether the prisoner was covered with a very dark shadow of suspicion—not that you have strong doubts of her innocence, but if there is legal evidence on which, upon your oaths, you are entitled to hold her

guilty. There were, no doubt, many things connected with the case which were unfortunate for the prisoner—a great deal had been said and thought out of doors; but I feel confident that I do not require to impress upon so intelligent a Jury as that which I am addressing, that it is your bounden duty to forget all that you have either heard, or read, or thought in the case, up to the moment you entered the Jury box. It is most desirable in such cases to get quit of every point, so as to leave no room for doubt. I will, therefore, at once make three distinct admissions. In the first place, there could be no question as to the identity of John Gilmour's body, or as to the substance taken from it, and transmitted in the regular way to the competent authorities to be subjected to investigation. All connected with this part of the case, I frankly admit. Next, as to the medical evidence, in regard to arsenic found in the stomach of the deceased—that was proved beyond all possibility of doubt. Again, there could be no doubt as to the third proposition, which related to the cause of the death of the deceased—that he died from the effects of poison. I admit all that, but I will at this stage make one observation upon the medical evidence, though it bears upon the subsequent part of the case. The Lord Advocate contended that he had made out that death had been caused by repeated doses of arsenic. Now, I cannot discover any evidence that had been heard, or any thing whatever, that entitled the Lord Advocate to say so. On the contrary, one of the doctors gave it as his opinion that death had been caused by only one dose, and that administered shortly before death. Dr Christison was indeed a man of eminence; but it was to be observed, in regard to his evidence, that he was not present at the dissection of the body. Now, he had said, 'that a single dose might produce protracted illness, though not so readily as repeated doses.'

All we draw from this is, that if it is a point in the case for the Crown that death hath been caused by repeated doses, it had not been made out. But, notwithstanding all these points, which, perhaps, appeared to go a great way in support of the Lord Advocate's case, there remained behind the grave

question, whether the commission of the crime had been brought home to the prisoner by legal and conclusive evidence? The crime charged was of no ordinary kind, and one which I confess I had great difficulty even in imagining. The evidence adduced in support of the charge was purely and entirely circumstantial. My learned friend himself admitted that he had no direct evidence as to the administering of the poison by the prisoner to her husband, and he had followed up his statement by telling them, that in cases of this sort it seldom happened that there is any other than circumstantial evidence. Before proceeding to that circumstantial evidence, there were some preliminary points which I think so intelligent a Jury will be inclined to view as of importance in such a case. First, I would direct your attention to the previous good character of the accused. You have before you a female belonging to a respectable family, brought up under her father's roof, continually under her father's care up to the time when she was consigned to John Gilmour. One of the witnesses, in particular, had spoken as to her innocent and blameless character; and I am sure my learned friend, if he had the opportunity of replying to me would not dispute that of all others the accused was one whose character could least excite suspicion of committing so serious a crime. The Lord Advocate had dwelt considerably on the inducements to commit the crime charged, and had contended that there were sufficient motives for the prisoner committing it. I will not bandy words as to the meaning of the term sufficient, but this I do maintain, that the motive might be an adequate motive, and in this sense there was not sufficient motive, in the proper sense of the term—that there was not sufficient, or, in other words, adequate motives, to account for the perpetration of one of the most outrageous of crimes. Before you make up your minds that the pannel has murdered her husband, you will require to be satisfied that she entertained towards him something approaching to remorseless hatred, and you will require to ascertain what was the cause of such hatred. Have you heard any evidence of the sort? Has my learned

friend any more to found upon, except the statement which fell from the lips of the prisoner herself, and which went no farther than that she had some secret and unexplained sorrow in connection with her marriage. When I saw the long list of witnesses for the Crown, I did expect that something substantial and convincing would have been adduced to support this point. But, from the commencement of the trial to its termination, nothing of the kind has been brought forward, and my learned friend has been forced to go to the declaration of the prisoner for evidence to support his plea. He has directed your attention to what the prisoner had said to the witness Paterson, and more particularly to Robertson; and he has asked you to consider that statement, as affording an adequate and satisfactory explanation of the motive by which this outrageous and unheard of crime was perpetrated. The evidence of Robertson was particular upon this point. I admit that the marriage involved in some degree dissatisfaction on the part of the pannel; but Robertson declared distinctly, that the prisoner never expressed herself with any degree of excitement—that he never thought there was any thing odd or remarkable in what she said to him. The witness gave her a good advice, and reminded her that she had pledged herself at the altar to be an affectionate wife, and that things might so turn out as would make her union with her husband comfortable and happy. Robertson said farther, that the prisoner took his advice kindly; he declared also, that prior to the death she showed no excitement whatever, and that after it took place also she showed no indication of alarm or excitement. This part of the case, then, I contend, amounts absolutely to nothing; and are you to consider the circumstantial evidence of the case, with a view to establish the guilt of a person, without any intelligible or assignable motive being shewn for its perpetration? The question is, whether that circumstantial evidence is sufficiently strong to convict the prisoner of a charge so serious. The next point I would ask you to consider is—and it is one of great importance—the general conduct and deportment of the prisoner during the period of her husband's illness. If you are to be-

lieve the Crown, she had been engaged for days in perpetrating the crime with which she stood charged. That for thirteen days she had constantly and continually been engaged in gradually perpetrating the murder of her own husband. Now, human nature, in such circumstances, would afford some remarkable symptom for observation; there would be some symptoms of excitement or confusion. Look to the whole evidence in the history of this domestic tragedy—look to it from its commencement to its termination—and say if the conduct of that woman discovered symptoms of conscious guilt. Dr M'Kechie declared, that so far as he saw, she behaved herself quite collectedly and properly. The witness Robertson, who saw more of her, declared that she complained of no unkindness on the part of her husband; that she seemed like a person who was grieved, and that she sometimes wept when she talked of her marriage. I submit, that, in all her conduct to her husband—her attendance upon him during his distress—she behaved with most becoming attention. Nothing could exceed her attention and kindness; it was all that an affectionate wife could do to a husband on his death-bed. She had sought medical aid when he took ill, and did everything, in short, which was quite opposed to the conduct of a person who was guilty. Then, again, Gentlemen, do you find in the conduct of the prisoner what you would naturally, in such circumstances, expect to find, if she were guilty of the fearful crime imputed to her—any averseness or disinclination on her part to permit and afford every access to her husband during his illness. On the contrary you find the very reverse; no putting of any restraint on any of the servants and other inmates of the house—all of which, I contend, showed the innocence of the prisoner. I now come to the question as to the possession of the poison. In this part of the case, I differ from my learned friend. I hold that there were only two parcels of poison bought, and not, as my learned friend had contended, three. I deny that it has been proved that the prisoner got a parcel of arsenic on Friday the 6th of January. The witnesses who had spoken on this point, had, in consequence of the length of time that had elapsed, forgot the exact day,

and had thus fallen into the mistake of attributing what took place one day to have taken place on another. As to accounting for the disposal of the arsenic, if you keep in view that there were only two parcels of poison, you will have them both accounted for by what was said of them in the evidence. The first parcel had been burned, as declared by Paterson, while the second remained in the pocket of the prisoner, where it was found by her mother some weeks after the death of her husband.

Gentlemen,—I think I cannot do better, after the observations I have made, than to conclude in the words of a great pleader while addressing a Jury, as I have now the honour to do, in a case of similar mystery and in circumstances not unlike to those in which I now find myself:—‘ This case could never, ‘ under any view, be considered but as one of a most ‘ painful and afflicting character. If proved, the ‘ pannel’s guilt was of a most unpalliated kind. They ‘ would either return her to society as innocent, or ‘ condemn her to the death as a most foul and de- ‘ testable murderess. It was altogether incredible ‘ from its extreme atrocity. There was no motive— ‘ no provocation; and yet they were called upon ‘ to believe, that, under pretence of administering ‘ relief, she inflicted a death of agony and torture, ‘ and stood by unmoved, while her helpless victim ‘ was descending into an unpitied grave. He was ‘ anxious to put them on their guard against yielding ‘ to the honest indignation which imputed guilt like ‘ this was so apt to excite. There was no cause ‘ by which good men were so often hurried into ‘ erroneous judgments. It was a natural, laudable, ‘ instinctive feeling, which roused the human mind ‘ to indignation on the bare suspicion of so enormous ‘ a crime having been committed, and which made ‘ it prone to punish. But they would fortify them- ‘ selves against this feeling, and dispassionately ‘ weigh the evidence that was before them. In itself, ‘ it was hardly a credible case, which involved in it- ‘ self so many unheard of aggravations. They should ‘ rather cling to any opposite supposition, by which ‘ they might arrive at a more natural conclusion.’

The learned gentleman, in conclusion, called upon

the jury solemnly to consider whether, upon evidence so circumstantial and imperfect, they could convict the pannel. If, in the case of the prosecution, there was wanting one link in the chain of evidence—if there was a doubt, or the least obscurity in it, it was their duty to give the prisoner the benefit of it, and return a verdict of Not Proven.

The LORD JUSTICE-CLERK charged the Jury.—He began by observing, that all he could do was merely to assist the Jury in discharging the responsible duty which devolved upon them. It was, however, assistance alone that he could afford, for it was with the Jury that the case mainly rested. They were placed in one of the most solemn situations in which men could be placed, and he would give them all the assistance in his power. The law in such cases gave to them the power of judging as to the innocence or guilt of the accused. The law of the country placed the matter supremely in their hands. If the evidence led them to think that the pannel was not guilty, they were to be regardless of the consequence, and without hesitation, or doubt, or scruple, return a verdict of innocence. If, on the other hand, the evidence was such as led them to hold the prisoner guilty, they would be sustained against all possible feelings of anxiety by the knowledge that they were doing that duty faithfully which had been committed to their charge. It was for them, in the first place, to discharge from their minds any thing they had heard previous to their entering upon the discharge of their duty as a Jury. The learned Lord here read over the indictment, and then proceeded to remark on the nature of the charge. It was not only a charge of murder, but it was a charge of murder under circumstances which rendered its perpetration fearful and atrocious. The prisoner was accused of a crime which could only be explained by that depravity of human nature, the mystery of which man cannot penetrate. The accusation was, that a few weeks after marriage, the young female at the bar—educated in the house of a respectable Scottish farmer, coming from a part of the country, the inhabitants of which are well known to be of the

highest respectability—coming, he would say, from the very sanctity of her father's house, and within a few weeks after her marriage, she, with deliberation, cunning, and coolness, conceived and executed the deadly purpose of poisoning her husband. After a minute and careful survey of the evidence, he concluded by saying---

From all this history, if you are satisfied, in the first place, that John Gilmour died from the effects of poison, and that that poison was afterwards found in his body—if you are satisfied, from the evidence, of that most essential foundation to this heavy and serious charge; and, above all, if you are satisfied that none of the substances which were given to him to alleviate his illness, can be reasonably supposed to contain poison, seeing that the symptoms of illness at his death were only an aggravation of those he had at first, which were never interrupted, though they were mitigated—if you are satisfied of all this—then you will come to that part of the case which must exercise your grave and serious deliberation. If his death was caused by poison—poison received into his stomach and absorbed into his liver and other parts of his body, which plainly could not have been introduced externally, such a supposition being entirely out of the case—then that poison got into his body either intentionally or accidentally; and though you will not allow the least defect of proof, such as is necessary to produce conviction in your minds, to be supplied by any supposition or any theory, still, in judging of the evidence of guilt, you will attend to the character of every view that can be taken of this case. I say that the poison was administered either accidentally or intentionally. A fair and reasonable probability of accident—I don't say a mere possibility—is always of importance in this part of the case, to a Jury that is anxious to discharge its duty. Is there, then, anything in the case which you think leaves it open to you to take this view—whether, after the symptoms of illness had appeared, you find any likelihood on which you can rest your conviction, that the poison was mingled and sold accidentally? Then might he not have got it in the house? He had poison, in all probability, in the course of the

autumn: it may be that a part of it was still in his chest: it is not improbable that some might have been there. But the chest in which it was contained was removed before his marriage, into his own room. Do you find any appearance of his being careless in its use? If it was administered by accident, you will ask, was there any one else affected by the food which poisoned him? Is there any appearance of that? or was the poison kept in the place where he slept—though he appears to have been a sober man—in the ale or the porter, of which he appears occasionally to have partaken, or was it left in any chest where cheese or bread was kept? None of these suppositions appear in the evidence. You will look over the whole of the case in every view of it which can be taken; you will give every view your most important consideration—you will attend anxiously and vigilantly to every probability which can show that the administration of poison was the effect of accident. Still, you must remember, if you are not satisfied of that, that a great deal more must be proved and made out before you can fasten upon any individual the horrible charge of administering it intentionally. One view has been suggested to you that he may have taken it himself; and you are bound to consider the case in that view. You have been desired to do so on the part of the pannel, and you will look anxiously to all the facts of the case to see whether this suggestion is a probable account of his death. If so, you will then have nothing else to consider. These two views must, of course, be laid aside by you before you can really feel yourselves called upon to bend your mind to the consideration, whether it was intentionally given to him by his wife. Now, I say here that we must not take the statement as proved, that she was forced into this marriage by her parents. I think I am bound, in justice to them, to say that there is no proof that the parents on either side knew that this marriage was made under coercion. Whether some of her friends might not have suspected a previous attachment, I do not know; but there is no proof that the marriage was forced upon her against her will, and after open remonstrance; and I am glad for her sake that that has not been proved; for if that had

been the case, we could have the more easily believed that the evil which is in the heart of man might have rebelled against what was thus forced upon her, than we can believe that she committed the deed only under feelings of disappointment—feelings of regret at the marriage, which had taken place without her openly remonstrating against it. In considering the question whether John Gilmour intentionally took poison, an important question for you to consider is, whether there is any proof that John Gilmour knew of the attachment of his wife to another; that the marriage was against her inclination; and that her heart was alienated from him. There was apparently no object of a pecuniary nature in the circumstances of the match; for she, the daughter of a small but respectable Ayrshire farmer, was married to the son of a neighbouring tenant, in the same circumstances of life apparently as her father. Is there, then, any proof that John Gilmour sued and got his wife, knowing that her affections were not placed upon him: or is there proof that he afterwards found it out. Correspondence with Anderson he could not detect, to create or to awaken his jealousy, because Anderson swears that no letters passed between them during her husband's life. Her father and her brother were both examined; but none of them were asked any questions on the subject, and there is no evidence that John Gilmour knew what is stated in the declaration of the pannel. She says that she often told him he had broken her heart: that was after the marriage; and that he, in return, said she had broken his. But no one in the house appears to have seen any unkindness on his part; and no one has stated that she complained of his being unkind; but it appears that to Mary Paterson she spoke in tones of regret. But he is not shown to have known of this; and you will consider, if that were so, would he have gone with her to the place where she formerly lived to meet her friends, unless, indeed, it were to keep up the appearance of attachment where none in reality existed. Is he shown to have been a person of such a character—a man of such nice and strong sensibilities, that his hearing of a country girl having had a previous attachment to

another before she was united to him would lead him to commit suicide? Is there anything in any speech or any act of his—anything that his father heard—or anything that has been stated by any one of the witnesses, to induce you to think that was the state of mind on his part? On the contrary, it is proved by her father and others that there was no unkindness on his part towards her. Is there any appearance of depression on his part? Is he seen to abandon his occupation—to go about like a heart-broken man? Does he complain to that respectable and excellent witness, Mr Robertson, to whom, though his wife's uncle, he must have felt that he could safely disclose the state of his mind—does he complain to him, and ask him to remonstrate with his wife? Nothing of the sort. Then look at the character of the disease and its progress. Is it likely to be the sort of death that a person resolved upon suicide would choose—that he would suffer a slow and lingering process of disease, especially if you adopt the opinion that his death was caused by repeated doses. These are all matters for your anxious consideration. But though you are not satisfied with either of these views—though you may think that accident will not explain his death, though you may not believe that he took it himself, and though you may not see any other to suspect—still there is much evidence required to bring such a charge home to you, that the poison was intentionally given to him by his own wife. I take it there is no proof that the marriage was forced—that is the best view of it for her; but she was dissatisfied—she was unhappy—she was complaining; she recurs to it after every time she saw her uncle; and the question for you to consider is, if you are satisfied the poison was intentionally administered, will that fact, with those which have been proved of her getting the poison—will that afford a sufficient explanation of her motives? It is a sad and fearful alternative, no doubt, that is presented to us by her own statement in her declaration, that she got the poison for the purpose of dissolving the marriage by taking it herself, especially when, at the time the poison was so obtained, and for such a purpose, as she alleges, the result is, that the husband dies of poison, and that she lives. Still that

may have been ; and you, who are the best judges of the case, may say, that, without any proved act on her part of administering the poison, your minds revolt from the notion that she could commit the crime which has been charged against her. Still you must remember, while to all these matters you will give the utmost possible weight—considering the improbability of the charge that has been brought against her, and its inconsistency with many things that were seen during her life—that there was no unkindness shown on either part—nothing to exasperate—nothing to exaggerate—nothing to show that the marriage was against her choice. Still, with all these great and strong improbabilities, there are strong and weighty facts proved ; and it will be for you to say what is the result after you have given them all the weight you can. But if, after all, you feel that there is still doubt—that there is still mystery—that there is less proved than you expected to have heard in such a case—if you think that her conduct during her husband's illness is inconsistent with the charge—if you do not believe that she could have conducted herself in the way she is described to have done, on the supposition that she administered the poison, and witnessed its slow and agonising effects—that she could not have conducted herself with that cool and collected deportment to which Dr M'Kechie speaks—that she could not have gone through that extraordinary scene without suspicion in the mind of any human being, except from the finding of the bag—if she could see the father and brother of Gilmour—especially if they knew that the marriage was not according to her will—and still they had no suspicion—if there is not a single act of hers like the conduct of a person that is conscious of guilt attending upon her husband—laying aside, of course, at present the purchase of the poison—if you think that it is inconsistent with the notion of guilt—if you think that no human being could have gone through such a scene without exciting suspicion in the minds of her relatives, or of the doctors, or of Mr Robertson, to whom she detailed her complaints, and who saw no want of attention on her part—if you think that her's was not the conduct of a person engaged in poisoning her husband, and that

doubt is left in the case—that there are still mysteries unexplained, I will not tell you that you must give, for I know that you will give, the full benefit of that doubt or obscurity to the individual who is charged with the perpetration of this dreadful crime. You will now retire to deliberate on the case; and the result you come to I feel will be—nay, I have a perfect confidence that it will be—the truth of the case; for of the truth of the case—in the question of the guilt or the innocence of the person who is charged in a Court of Justice, there is no test that I recognize superior to the judgment of an intelligent and conscientious Jury who deliberate under the sanction of their oaths on the question that is submitted to them.

The address of the learned Lord occupied four hours and a half in delivery.

At half-past four the Jury retired to consider their verdict, and in about an hour afterwards they returned into Court, and by their chancellor returned the following verdict:—The Jury, after careful and mature deliberation of the evidence brought before them in this case, are unanimously of opinion that John Gilmour died from the effects of arsenic; but they find that the charge is *Not Proven* against the pannel at the bar as libelled.

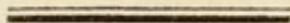
The verdict was received with loud but not very general applause in the Court.

The LORD JUSTICE-CLERK thanked the Jury for the attention they had given to this case. He very severely censured the conduct of those of the audience who had given expression to their feelings, which he said was discreditable to a Court of Justice. If applause were allowed, the next thing would be, that, when a Jury gave in a verdict contrary to the feelings of the audience, they would be hissed for the conscientious discharge of their duty. He regretted that the macers had not identified any of those who were guilty of this disgraceful proceeding, which it was their duty to have done; if any person had been identified and brought before him, he would assuredly have committed him to prison for a great contempt of Court.

The prisoner was then dismissed from the bar.

She was, however, removed down stairs to avoid the gaze of the multitude, and the Court adjourned.

In order to deceive the crowd outside the Court, a hackney coach was driven to the door, which had the effect of drawing to the spot all the persons in the square; and while they were anxiously waiting, Mrs Gilmour and one or two friends came out by a door to the Outer-House, and unobserved walked under the piazzas to the Lawnmarket and thence to the White Hart Inn, Grassmarket, where her friends were awaiting her, with whom she set off the same night by the 10 o'clock Railway train for Glasgow.



APPENDIX.

No. I.—PETITION for the Apprehension of Mrs GILMOUR
and Exhumation of the Body of JOHN GILMOUR, and the
Sheriff-substitute's deliverance thereon.

21st April 1843.

Unto the Honourable the Sheriff of Renfrewshire, or his
Substitute,

The PETITION of ROBERT RODGER, Writer in Paisley,
Procurator-Fiscal of Court.

Humbly Sheweth,

That the petitioner is informed that John Gilmour, late farmer at Town of Inchinnan, in the parish of Inchinnan and shire of Renfrew, died at Town of Inchinnan foresaid, on the 11th day of January last, 1843, or about that time, after a short illness, in the course of which he was seized with violent vomiting, accompanied with thirst and internal pain of the stomach and bowels: And, from various circumstances that occurred at the time of his death, and have since transpired, as well as from the nature of his illness and sudden death, suspicions have been excited that his death was caused by reason of arsenic, or some other deadly poison, having been administered to him immediately or recently before his death, and that he has thus been murdered. And the petitioner is further informed, that Christian or Christina Cochran, then wife of and residing with the said John Gilmour, (daughter of and now residing with Alexander Cochran of South Grange in the parish of Dunlop, Ayrshire,) is suspected of having committed the said crime, actor, or art and part.

That the body of the said John Gilmour was buried on or

about the 16th day of January last, 1843, in the churchyard of Dunlop, in the parish of Dunlop and shire of Ayr. And in order that the body of the said deceased may be disinterred and examined, and that the said Christian or Christina Cochran or Gilmour may be apprehended and examined, and thereafter dealt with according to law, the present application has become necessary.

May it therefore please your Lordship to grant warrant to _____ officers of Court, and to messengers-at-arms, to pass, search for, and apprehend the person of the said Christian or Christina Cochran or Gilmour, wherever she can be found, within the shire of Renfrew; and for imprisoning her within the prison of Paisley, therein to remain, as charged guilty of the foresaid crime, until thenceforth liberated in due course of law. And also to grant warrant for citing witnesses to be precognosced relative to the facts before set forth: Further, to grant warrant for searching the person, houses, haunts, and repositories of the said person complained against, for articles connected with the said offence, and for signing and securing the same; and to recommend to the Magistrates of other counties to give their concurrence to the premises. And, in particular, to recommend to the Sheriff of Ayrshire to grant warrant for disinterring the body of the said John Gilmour; and also to remit to Drs. George Wylie and Daniel M^cKinlay, of Paisley, to inspect and examine the said body, and to report thereon *quam primum* as to the cause of his death. According to Justice, &c.

(Signed) ROBT. RODGER, P. F.

Paisley, 21st April 1843.

The Sheriff-substitute having considered the foregoing Petition, Grants warrant to officers of Court, jointly and severally to pass, search for, apprehend, and bring before him for examination, Christian or Christina Cochran or Gilmour complained on; also to search for, seize, and secure, as craved, and to cite witnesses to be precognosced. And farther, recommends as craved; and in particular, to the Sheriff of

Ayrshire to grant warrant for exhuming or disinterring the body of the said John Gilmour for examination. And remits, as craved, to Drs. George Wylie and Daniel M'Kinlay to examine and inspect the same, and report as to the cause of death, all as craved.

(Signed) ALEX. CAMPBELL.

Ayr, 21st April 1843.

The Sheriff-substitute grants concurrence for putting the within warrant into all due and lawful execution within the county of Ayr. Also grants warrant for exhuming and disinterring the body of John Gilmour for examination.

(Signed) AND. JAMESON.

No. II.—FIRST REPORT BY DRs WYLIE & M'KINLAY.

Paisley, 22d April 1843.

By direction of the Procurator-fiscal of Renfrewshire, acting under a warrant of the Sheriff, We, the undersigned, proceeded to Dunlop in Ayrshire, to inspect the body of the late Mr John Gilmour, farmer, who died at Inchinnan on the 11th, and was buried at Dunlop on the 16th day of January last. There were present at the examination Dr Robert M'Kechnie from Paisley, and also Mr Newman, surgeon, from Stewarton—the latter by desire of the deceased's relations. The notes taken on the occasion were read in presence of these gentlemen, and agreed to by them as correct.

The body was considerably decayed, and the face could not be recognised; but the grave-clothes were identified before us by Mr Archibald M'Kean, wright, Inchinnan. The skin was green in many places over the chest and abdomen: the muscular system was getting into a gelatinous state; but the fibres were still quite distinct: the right side was more lurid than the left. The chest and abdomen having been laid open, the intestines exhibited a blush all over the external surfaces. At a part where the ileum was in

contact with the colon, there was more of redness than elsewhere; and at that place there was an effusion of lymph, which limited the two surfaces by adhesion. On the inferior aspect of the left side of the transverse arch of the colon, and on the upper surface of that part of the ileum next to it, there were stains of a bright yellow colour, in large spots and streaks along these bowels: these stains and streaks were particularly large and bright also on the right half of the large curvature of the colon, where they are included within the cavity of the Winslow. The great end of the stomach was very red, but in some places was of a bright yellow colour. The upper surface of the liver was of a dark colour, excepting at the edge of the right lobe, where it was of the usual appearance—its under surface was yellower than usual. The lungs were normal, and without disease or morbid adhesions. The heart was normal. The alimentary canal was next removed from the top of the œsophagus to the anus, for the purpose of examining their internal surface, and collecting their contents. The internal surface of the œsophagus was very red. On opening the stomach, its internal surface was found thickly sprinkled with small yellow particles, some of which were very bright, some were darker, but no gritty particles were felt. There were also extensive patches and streaks, of a bright yellow colour, on the anterior side of the great arch, and stretching towards the pylorus. The posterior or dorsal side was very red, and its substance thickened; indeed the whole of its internal surface was either red or yellow—the latter colour resembled orpiment. The duodenum was red, externally and internally. The valvular folds of the inner coats of the upper half of the jejunum were enlarged and reddened. The rest of the jejunum and ileum were red, both externally and internally, in many places; and throughout the whole alimentary canal the redness, externally and internally, corresponded in locality. No feculent matter was found in the small intestines; but they contained a red jelly-like mucous matter, in all those places where their internal coat was red. The ascending part and the transverse arch of the colon were reddened and thickened.

There was a yellow patch on the left side of the area and top of the descending colon. The rectum was thickened, and was very red internally.

The stomach contained only about one and a-half ounce of reddish coloured fluid, which was preserved. The contents of the intestines, similar in appearance, but thicker, were also preserved. The following parts were all preserved for future examination and experimental analysis—namely, the greater part of the œsophagus and the stomach; the duodenum, with a portion of the pancreas adhering; the jejunum; the ileum; the colon and rectum; a piece of the right and of the left lobe of the liver; the spleen, and the right kidney.

Having carefully considered the above, we are of opinion that the aforesaid John Gilmour died from the effects of an acrid poison, which produced the inflammation of the stomach and bowels above-mentioned; and that, from the yellow particles on the lining of the stomach, and the yellow patches and streaks in the substance of the stomach and bowels, we suspect that acrid poison to have been arsenic. All which we humbly certify on soul and conscience, at Paisley, this 22d day of April 1843 years.

(Signed) GEORGE WYLIE, M.D.

„ D. M'KINLAY, M.D.

No. III.—SECOND REPORT BY DRS WYLIE & M'KINLAY.

Paisley, 16th May 1843.

We, the undersigned, proceeded to make a chemical investigation of the following named parts of the body of the late Mr John Gilmour, and the contents thereof, all as mentioned in the Report of a Post-mortem Examination, made at Dunlop, on the 22d day of April last, and which were then preserved for future examination; namely, a portion of the contents of, and a piece of the stomach; a part of the ileum, and some of its contents; and, lastly, a piece of the rectum. Each of them was separately subjected to the same procedure,

viz. it was boiled for half an hour in some distilled water, to which was added a little pure potassa ; the liquor was cooled and filtered. Strong distilled vinegar was then added to neutralize the potassa and throw down the casein. The liquor was again filtered, when it became perfectly transparent and nearly colourless. Into a few drops of this liquor the ammoniaco-nitrate of silver test was dropped, when it showed a rich lemon-yellow precipitate. Into another little portion, the ammoniaco-sulphate of copper test was dropped, when it gave a green precipitate. A third portion of the fluid was treated with sulphuretted hydrogen gas, when it assumed a rich orange, and on standing a few days yielded a yellow precipitate. A quantity of the liquor was subjected to Marsh's apparatus—the materials to be used having been previously tested and found pure, and the apparatus being all new. Some of the gas produced was burned, when it gave a dense smoke, having the odour of garlick. The little flame was introduced into a small glass tube, and some of the smoke then condensed at the part of the tube near the flame ; it became covered with a metallic looking crust, and in the cooler part of the tube it was covered with a white chrySTALLINE matter. Both of these were readily volatilized by the heat of a flame, and condensed again in a cooler part of the tube. It was thus by heat driven from place to place. A considerable quantity of the gas was next burned in a small bottle, with free access of atmospheric air. The interior of the bottle became gradually encrusted with a white shining chrySTALLINE matter, which was afterwards dissolved in distilled water. Some of the solution was tried with the ammoniaco-nitrate of silver test, when it gave a splendid rich yellow precipitate. Another portion was tried with the ammoniaco-sulphate of copper test, when it gave a bright green precipitate. Both these precipitates were redissolved by the addition of an excess of nitric acid or of ammoniaco. Another portion of the above liquor was exposed to a stream of sulphuretted hydrogen gas, when it became of a bright orange colour, and afterwards deposited an orange precipitate. Having carefully considered the

above analysis, we are of opinion that their results plainly indicate the presence of arsenic in the contents and substance of the stomach and bowels of the aforesaid Mr John Gilmour, and that the said arsenic was the cause of his death. The above we hereby certify, on soul and conscience, at Paisley, the 16th day of May 1843 years.

(Signed) GEORGE WYLIE, M.D.
 „ D. M'KINLAY, M.D.

No. IV.—REPORT BY PROFESSOR CHRISTISON.

Edinburgh, 20th Nov. 1843.

I certify that, in the month of May last, I received, from the Crown Agent, a box containing various articles, described as having been taken from the body of John Gilmour. The articles were all labelled and duly sealed; the seals were entire; and the articles corresponded with an Inventory sent to me at the same time.

I first examined a fluid in a bottle, described as part of the contents of the stomach, and amounting to about three ounces. On heating it with muriatic acid and a slip of copper ribbon, a coating was found on the copper which presented the external character of metallic arsenic; and when the coated copper was heated in a glass tube, a white sublimate was obtained, which possessed all the most characteristic of the properties peculiar to oxide of arsenic, and which in fact was that substance in the same state in which it is usually administered as a poison.

The next article examined was described on the label as a portion of the liver of John Gilmour. It was boiled for some time in water containing a little muriatic acid; and the solution was subjected to the same process as the contents of the stomach, and with results precisely similar. The only difference was that the arsenic, eventually obtained in the state of oxide, was some what larger in quantity.

I also examined, in the next place, the stomach itself. It was treated exactly in the same manner as the liver, except

that a portion only of the solution was employed for the copper test: the results were identical with those obtained in the instances of the contents of the stomach and the substance of the liver; arsenic being clearly detected. The remainder of the solution was then subjected to what is commonly called Marsh's process, improved according to the method recently recommended by a committee of the French Institute, and metallic arsenic was thus obtained, with highly characteristic properties. Farther, by means of a contrivance added to the apparatus of Marsh, I collected also a quantity of arsenic in the form of oxide, or in the state in which that poison is administered; and the substance thus obtained was subjected to all the most appropriate tests, physical as well as chemical. By all these various methods, a uniform result was obtained, indicating invariably the existence of arsenic in the textures of the stomach.

Having thus detected arsenic unequivocally in the contents of the stomach, in the stomach itself, and in the liver, it did not seem necessary to examine any other article among those sent at the same time, which simply consisted of various fragments of the intestinal canal, and of the different glandular tissues in the abdomen.

(Signed) R. CHRISTISON, M.D., &c.

No. V.

REPORT OF THE PROCEEDINGS IN AMERICA
 IN THE CASE OF
 CHRISTINA COCHRAN OR GILMOUR,
adv.
 THE BRITISH GOVERNMENT.

The defendant in this case was arrested by a warrant under the hand and seal of Sylvanus Rapalyea, a United States Commissioner. The warrant bears date (*viz.*) 2nd June 1842.

'To the Marshal of the United States for the Southern Districts of New York, and to his deputies, or any, or either of them.

'Whereas complaint on oath hath been made to me, charging that Christina Cochran, otherwise Gilmour, did, on the 2nd day of May 1842, abscond and flee from Justice, and is about to arrive at the

‘ port of New York, the said Christina Cochran otherwise Gilmour, having been charged with the crime of Murder in Scotland, and sufficient evidence having been laid before me as would justify the apprehension and commitment of the said Christina, in the place where the alleged offence was committed.

‘ Now therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said Christina Cochran otherwise Gilmour, and bring her body forthwith before me, or some other Judge or Justice of the United States, or United States Commissioner, or a Justice of the Peace or other Magistrate of the State of New York wherever she may be found, then and there to be dealt with according to law for the said offence.

‘ Given under my hand and seal this 2nd day of June in the year of our Lord 1843, and of our Independence the 67th.

‘ SYLVANUS RAPALYEA, L.S.,
‘ United States Commissioner for the
‘ Southern Districts of New York.’

The warrant was granted upon an alleged treaty between Great Britain and the United States concluded at Washington 9th August 1843, of which the following is a copy.

ARTICLE X.—‘ It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisition by them or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons, who being charged with the crime of Murder, or assault with intent to commit Murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other, provided that this shall only be done upon evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges, or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered: and if on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate, to certify the same to the proper executive authority that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.’

Her Counsel, Thomas Warner, Esq., believed the prisoner to be insane, and therefore procured a postponement of the hearing of her case until she could be examined by medical men. The Commissioner made an order in the nature of a writ *de lunatico inquirendo* to enquire into her state of mind, and after the medical gentlemen had examined her, the cause came on to be heard on the 12th of July, before the Commissioner.

The following is the case as it occurred before the Commissioner.

Thomas Warner, Esq., appeared as counsel for the prisoner, and Alexander Watson, Esq., (in the absence of Mr Price,) for the prosecution.

Mr Warner made a motion to exclude witnesses from being present, except the one, for the time being, under examination, which was overruled by the Court.

The first object of enquiry, agreeably to permission given, was to be the sanity or insanity of the prisoner.

Dr Rogers was first sworn,—He stated that when he first saw the prisoner, he was of opinion that she was not of sound mind, but he afterwards changed that opinion. He underwent, after stating his various visits, a close examination. He said that neither her physical symptoms nor her personal appearance evince insanity; she has an intelligent countenance. I do not consider her deficient in intellect. I saw her a third time in company with two other physicians. I questioned her in relation to the voyage, her home, her father's house, and various other things to which she answered properly. She said that the person with whom she came over, and had charge of her, had taught her the name of plants, he being a gardener. At one time she would relate a story and contradict it the next, or pretend ignorance. At the third visit she said that the man that came with her (Speirs) had put her name down on the books as his wife. She said that he wanted to sleep with her, but she would not permit it: and told the captain, who gave her another berth. She had previously said that he had slept with her, but not as a husband. She explained that he wanted to get into her berth, because the vessel was crowded. She seemed rational. At one time she had an elastic garter around her wrist, on the clasp of which was the name of Victoria. I asked her what it was. She at first said she could not tell, she then spelled the word and pronounced it. She pretended she did not know who Victoria was, but suddenly broke off, and related an anecdote of a dispute on board the vessel relative to Queen Victoria, which satisfied my mind, that she perfectly well knew who she was. The whole commission of physicians agreed to meet on the Wednesday following, which we did. They were unanimous in opinion. I was not present, (Dr R. then answered several questions as to symptoms of idiocy in patients afflicted.) The only symptoms of such that we could find in the prisoner was at the first interview, which was an absence of memory. There were one or two other points as connected with her state of health and her want of appetite.

Mr Rapalyea, Commissioner, here interrupted the counsel, considering that it was unnecessary to proceed with such extreme minuteness. Mr Warner replied.—The Commissioner said the object was to know the result in the minds of the Physicians, so far as to ascertain whether the prisoner is of sufficient sane mind to authorise the examination to proceed. The counsel, however, was at liberty to examine the witnesses, now on the stand, if he desires it at length. Several other questions relating to general idiocy were then put and answered. Has frequently visited cells of prisons and wards of hospitals, and such—described the air arising from such, &c.

Mr Alexander Watson (Counsel for the British Consul) opposed the minuteness of the examination, and moved the Commissioner that it be overruled.

On the cross-examination by Mr Watson, Dr. R. said, that he came to the conclusion, on the fourth visit, that her insanity was feigned. She also showed that her want of memory was feigned, with a view to deceive us. Thinks she is now capable of comprehending the nature of the examination, and the character of everything passing around her. Thinks so from the general result of my examination. One reason why I thought her insanity was feigned: she pretended not to know Speirs (who came over with her) when he was present.

Dr James M'Donald was then sworn.—First visit, 28th June—sat with her half an hour or more, and left her with my mind undecided; she did all the talking. I put but a few questions: one of them was,

whether and when she had married Gilmour? She denied all knowledge of it—said she did not recollect it. Before I left, I spoke of Gilmour as her husband, and her answer was as if she had been married. Her conversation was simple, like that of a child. On my second interview, I required the keeper to let me see her unobserved; but she no doubt heard the noise in opening the cell adjoining, from the grating of which I saw her. She was sitting on the floor, and repeating the words, ‘Yes, yes,’ ‘No, no,’ ‘I never saw the like.’ When I went in she was glad to see me. I asked her several questions, as to Paisley, Glasgow, and other places; also as to the name of the keeper of the prison, and several questions of the kind, to which she professed ignorance. She had a pair of elastic garters tied round her wrists, and a pair of scissors by her side, with which she had scratched one of her hands. She was soon called to dinner. On the third visit I found Dr Roges and other gentlemen with her: she then, too, denied all knowledge of her place of birth, and such, of which she professed no recollection. I got her to count the brass nails on a trunk; but she pretended she could not do so, even to the number of 12. She would say 1, 2, 3, 5, 7, and so on. When we went out we stopped near her cell, and commenced talking relative to her case. On turning my eyes inside her cell I saw her looking and listening with the deepest interest, and apparently with the possession of all her faculties. At the next interview Dr Rogers alluded to her connexion with Speirs, on which she spoke fully and with perfect recollection, denying connexion with him. I saw her yesterday again: she appeared melancholy, and spoke of her friends having treated her harshly. The solecisms of her former conversations did not then appear. I asked her as to her marriage. She said she recollected a great number of persons in her father’s house. Her father had confined her in a garret. She was brought down; and she supposes if she was married at all, she was married on that occasion. My opinion is that her insanity is feigned. I judged it from her general conduct, her express want of all knowledge as to places and events, and her manner in overacting her part. I contrasted it with her conversation at one or two other times. She had always a way of evading a question—too ingenious for an idiot.

Several other questions were asked by Mr Warner, but they related principally to the various grades of idiocy.

Mr Watson then moved, that the further examination of the subject be postponed to this day at three o’clock, which was allowed.

In the evening of this day, and shortly after the counsel for the prisoner had left the court, he was taken seriously ill, so much so that a physician had to be sent for, and he was attended by sitters up all night.

This caused, on the next day, the following application to the court:—

The prisoner was brought into court soon after three o’clock, with a view of continuing the examination in relation to her alleged insanity, and the general charge of murder preferred against her.

Mr Thomas T. Greasley rose and said, that he was here, for Mr Warner, on the part of the prisoner. He came to make a motion, which, if denied, would leave the prisoner totally undefended. He then read an affidavit made by himself, in which it was stated, that Mr Warner, counsel for prisoner, had been unwell the day previous in the morning,—that he left him sick at the office in the evening, after the close of the examination,—and, on going there this morning, he understood that a physician had been sent for, and attendants had sat up with Mr Warner all night. He saw him again at two o’clock to-day, when he was still confined to his bed, and is yet unable to

rise therefrom. In the present stage of the examination, the deponent has reason to believe that no person but Mr Warner could properly attend to it.

The certificate of Dr Nelson, confirming this statement of Mr Greasley, was also read. Mr Greasley then made a motion to have the cause adjourned for a short time. Mr Warner may be able to get out to-morrow, but will not probably be sufficiently recovered then to proceed. He could no doubt, however, do so the day following.

Mr Alexander Watson, counsel for the British Government, rose and stated that he knew Mr Warner to be sick. He had called at his office three times this forenoon, without being able to see him. Although anxious to proceed, he would make no opposition to the motion, but leave it entirely with the court.

The Commissioner consented that the adjournment should take place till two o'clock on Saturday, when the examination must proceed, whether the counsel is ready or not.

On Saturday, the 15th July, Mr Warner was so much recovered as to be enabled so proceed with the case, when the following proceedings on that day were laid before the Commissioner.

Dr Nelson was called and sworn. His evidence was as follows:— Is a practising physician, residing at 77, White Street: graduated in 1812 in Canada, in this country, in Castleton, V.S., and Pillsfield, Massachusetts, where he lectured as professor in the colleges there: he has also practised in Canada: had not paid particular attention to the subject of mental alienation: the subject has fallen under his notice to the same extent as to the generality of practitioners: had visited the prisoner on five occasions: the first time he went to see her he enquired into her general health, and found it good in all respects—she was sound in body, and that was the case on the occasion of each visit: she appeared to him to be perfectly sound in body and mind, but deficient in mind;—what mind she had appeared as sound as that of simpletons or imbeciles usually. He could not discover any mental disease: he thought there was an imbecility of mind—it did not amount to dementia, as that would have implied the loss of something once possessed; neither was it quite so low as idiocy.

She spoke to him freely, but not with that coherency which persons of such free discourse usually manifest. On every occasion on which he visited her, there appeared to be uniformity of expression; less agitation, however, on occasion of the final visit, when she appeared to be more free and easy in her manner. The only tests he employed were conversation, interrogation, and observation of her countenance and manner. Heard the evidence of Dr Rogers; did not hear it very distinctly, however, in consequence of his position in Court. On the first occasion in conversing with her, and endeavouring to elicit some information of her family, and her former habits of life, she spoke of her father, and a little sister, and expressed a hope soon to see them again; she repeated frequently, that she hoped it would not be long before she saw them. This was on the first of two occasions in which witness saw her in company with Dr Rogers. Witness then suggested to Dr Rogers the propriety of suggesting to her that they had the power of sending her home—she spoke voluntarily, and was somewhat vehement in her manner: she spoke of ill-treatment she had received from her father, wept slightly, but said, that notwithstanding she wished much to see her father. Her countenance did not change perceptibly during these conversations. On the second visit, Dr Rogers had a book of printed blank forms in his hand, and after turning over the leaves in order that she might see it, he said, 'Christina, will you go home—will you go back to Scotland? I shall sign an order if you say you will go.' Her reply was, 'Aye, I will go.' He then said,

'you know if you go back, you will be tried for the murder of your husband, and you will be hanged.' Witness did not at this time perceive any change of countenance in her. Dr R. then repeated, 'If you go, I will sign the order,' she replied 'Aye, but how can I go?' The Dr returned 'you will be sent as you came, in a ship.' She said then 'Oh! I dinna like a ship—it is so long—so long in crossing—I would rather go in a coach.' That was the amount of her objection. Throughout these various statements, she did not evince any more indications of pleasure. Was not present at the time referred to by Dr Rogers, when the scene with the Justice took place. It is possible that she was deceiving, but he had no proof of it; if not deceiving, believes that she would, if allowed to go at large, be cheated in every transaction with others; she had deceived him with remarkable ability if she did deceive. Each time he went to see her she had her wrist done up with a garter, and was scarifying her hand. The jailor asked why she did so. She replied that 'It was amusing to see the flies come and lick up the blood.'—Was not present in her cell when she spoke to Dr R. about her knowledge of her home. He had heard her speak very much about her grandmother, and that was the only manifestation that looked like a loss of mind. She thought her grandmother was always in bed, and that was the reason she would not sleep on the bed. She also excused herself to the jailor for sitting on the floor, by saying that she saw 'granny' on the bed. If she were not deceiving, the fact of this imagination of seeing her grandmother, who was dead, would imply a diseased mind. On one occasion witness and Dr M'Donald were conversing near the door of her cell, in the gallery. Her cell door was open, Dr M'Donald walked very carefully to the door to observe her—after looking a short time, he returned, and said he found her listening. Witness then went in the same way to the door, and found her sitting by the hinges of the door in the usual place in which he found her on each occasion of his visits. She was working with her wrists as usual, with her back towards the door. She was sitting, and occupied as usual.

Q. From all your observations, what is your opinion as to the state of her mind?

A.—On the supposition that she was not deceiving, I was of opinion, until my last visit, that she was not capable of taking good care of herself, although capable of taking moderate care. On enquiring once more on the final visit respecting the state of her health, he thought he discovered evidence of more intelligence than that evinced on former occasions, although still of very low degree. She appeared capable of distinguishing to a certain extent between right and wrong.

Q.—Was she conscious of what was passing around her?

A.—I can only speak of what I saw. I do not wish to guess; I do not wish to give a gratuitous opinion. She may be deceiving but I have had no evidence of it; she is conscious of what is passing around her, but not to the same extent as a person of ordinary intelligence.

Q.—Is there any particular in which you differ from the witnesses already examined?

A.—It appeared to me that the witnesses examined before me were under the impression that she was deceiving them,—that may be the case, but I have no fact authorizing me to swear that.

Mr Warner here called Dr Cumming.—Mr Lord objected to the examination of Dr Cumming, as he had not been named in the Commission.

Mr Warner then said, it seems most extraordinary to me, that an attempt should be made here to stifle truth. I should have supposed

that the medical witnesses named in the Commission would be themselves desirous that others of the professional brethren should be called on to testify, who had not participated in that 'unity of action,' of which we have heard. Without at all disparaging the talent and ability of the gentlemen in the Commission, I am fully confident that the physicians I intend to call are at least fully equal to testify as to the mental condition of this female. You are here, Sir, to ascertain the state of this woman's mind, and I am quite at a loss to perceive how you reject the testimony I now propose to offer.

Mr Lord—I do not think this is a proper place for any discussion of this kind. You, Sir, are merely the examining magistrate, and in my judgment you are not authorized to protract the examination indefinitely, as the proposition of the opposite counsel would necessarily oblige you to do.

Mr Warner—I insist, Sir, on my right to introduce these witnesses.

Commissioner Rapalyea—At this stage of the proceedings, I refuse to allow you.

Mr Warner—Well, then, Sir, as you do not permit me call these medical witnesses, I propose to call other witnesses who have been familiarly acquainted with the prisoner; who were at school with her; persons in whose care and charge she has been from the time of her arrival in this country.

Mr Lord objected.

Mr Warner—I think I can offer substantial grounds of the legality and propriety of my proposal. I will refer you to Bech's Treatise on Medical Jurisprudence, a work held deservedly in the highest repute, for proof of the principle that the testimony of the attendants and nurses of persons of unsound mind is the best possible evidence. I cannot certainly perceive the grounds on which the testimony of five or six medical gentlemen is to be regarded as solely admissible.

The Commissioner decided that he should examine only the medical gentlemen appointed on his Commission.

Dr Childs was then examined—Had his first interview with her on the 26th June; conversed on the passage she had had, and other incidents of the voyage, in order to put her at ease. Allusion was made to sea sickness: she said she had suffered very much from it; that, previous to sailing, provisions had been laid in for her use, but she was so sick she could not use them, and distributed them to the passengers, and particularly to some children, to whom she had taken a great fancy. She was not minute in her descriptions. Witness then tried to ascertain something about her early education; she conversed freely respecting her relatives, and evinced affection for them; endeavoured to elicit a description of her father's house and grounds, and she gave one; she also alluded to her grandmother, and said she had spent much of her early life with her; she gave the name of the place where her grandmother resided, and the relative position of it with the house of her father; on each visit she gave this information precisely alike. After this, witness alluded to her present condition, and said they accused her of poisoning her husband. Could not gather from her the date or circumstances of her marriage; she had no distinct recollection of it, but thought it was in the spring; that she said but little of her husband; that he took sick, and died in a few weeks; expressed a good deal of emotion about the report of the murder of her husband; and said, if her friends were here they would soon do away with the bad impression; said it was contrary to her desire to come here, but that she was coerced into leaving. An important point in the opinion of the witness, was her remarks relative to her objections to coming. She said that her leaving there would be equivalent to an acknowledgment of her guilt. This con-

vinced witness that she was fully capable of reasoning ; she said she had seen Mr Speirs, but did not know him. Her manner was quite composed, although fatigued, and a little degree of incoherence of memory on some little points on the first visit.

[The witness was then proceeding to relate a conversation he had had with Mr Speirs—Mr Warner objected. Mr Lord contended it was quite proper, but the Commissioner, of course, decided otherwise.]

The witness went on—Found her, on next visit, lacerating her hand, and a ligature tied round her wrist; looked on that as rather an 'extravagant operation' Next visit, her hand was still more lacerated; went over a part of the same ground he had formerly occupied. With respect to her marriage and the death of her husband, instead of answering the question, she went off on some other track—relating ill treatment of her father. Her moral feelings were, it seemed, under restraint by her family. She spoke of having been 'thrashed' by her father, and confined in a garret, but still expressed affection for him.

Asked her, on the third visit, where her acquaintance with Speirs commenced: She could not tell whether it was the stage-coach or the ship. The next interview was with Dr Cheesman. Witness was strengthened in his previous opinions. The bandage was still upon her wrist, but witness designedly did not allude to it. In the seven visits in the cases in which she gave direct answers, the answers were uniform—a somewhat unusual thing with insane persons. It had been stated to witness that she could not count. Last Sunday, he took with him a friend and visited her. There was a trunk with brass nails, and he asked her to count twenty of them. She did so, slowly, but accurately. She then counted by fives, which she did up to fifty without mistake; and by tens, up to twenty without mistake. She also evinced an ability to subtract correctly; and also in adding numbers together she evinced some capability. Had ascertained that she had been in ill health in childhood, and that her education had been neglected, and her mind not overcharged with intellect. When witness spoke of her alleged improper intimany with others, she defended herself with some emotion from the imputation. When charged with the murder, she said, if her friends were here, they could clear her of the charge.

On each interview, she told a story about running off without her shoes, and hiding in a fence, where she was discovered by a favourite dog, and was then carried back and confined in a garret.

Cross-examined by Mr Warner.—Thinks that Dr Rogers was mistaken about the presence of witness when Dr R. asked her to count. He arrived at the conclusion that her moral insanity is not manifested. He thought her possessed of rather limited intellectual endowments.

Q. Does she reach mediocrity?

A. She is not above it.

Q. Does she reach it?

A. She falls rather short of, but with proper culture might reach it.

Q. Did you make this remark on Wednesday, that the laceration of her hands discover ingenuity?

A. I was not on the stand since then.

Q. Did you represent it as a discovery of her great ingenuity that she lacerated her hand to keep the flies off her face?

A. No.

Q. Did you feel her pulse down stairs on Wednesday?

A. I don't recollect.

Q. Did you then ask her about her appetite?

A. Yes.

Q. Do you consider that, in a case of this sort, appetite is any criterion of idiocy?

A. Sometimes they are gluttons; sometimes they don't eat much.

Q. The same remark would apply to sleep?

A. Idiots generally sleep well.

Q. Would the pulse be necessarily affected?

A. That would depend upon the temperament and habits of the individual.

Q. Did her telling the same story repeatedly indicate in her case, in your opinion, the presence of intelligence?

A. Insane people generally do not so repeat the same story.

Dr Hosack was the next witness. Saw the prisoner yesterday, in company with a friend. She was sitting on the floor. She expressed herself satisfied with her treatment; stated that she was not conscious of the cause of her confinement. Said that she had never been married. Witness then spoke of the marriage not being her own act, but she persisted in the denial of her marriage. Admitted attachment to another individual, whose name, however, she would not mention. She wept much when speaking on this subject. She spoke of the severity of the treatment she had received from her relations. Witness then said, "I suppose your husband treated you badly?" She said, "Yes, he did;" and then she went on and said, that she could not obey him and love another. She then asked witness, "When will all this be over?" She seemed quite indifferent to the question relative to her connection with Speirs. She called the court a church, and said she had heard nothing. She said, however, that she recognised witness as having been in the court. Witness is of opinion that she has a perfect consciousness of what is passing, and of its relation to herself. Witness was anxious to examine her on the subject of memory. He had a letter which she had written, and he asked if she could repeat what she had written. She said so until it came to about the middle of it, when she spoke of her attachment to Speirs. She also said that none of the language of the letter was taken from a book.

Cross-examined by Mr Warner.—You said she had on one occasion wept more than idiots would? Is it not usual for idiots to sob and cry much?

A. Yes, but not so much as she did. Did not believe that the exhibition of emotion was so common in idiots as in lunatics.

Drs Hoffman and Cheesman were called, but did not answer.

Mr Lord submitted whether the examination should not now be terminated. He considered that a sufficient amount of evidence had been offered to enable the Commissioner to decide.

Mr Warner contended for his rights to call additional witnesses, particularly those acquainted with her early life. He reminded the Commissioner that, in the course of Dr Rogers's examination, he inferred, from her coherent manner of relating incidents connected with her early life, she was of sound mind. Now, he (Mr W.) was prepared to shew that in these statements he was in error. Could he not, then, offer testimony to that effect, as well as the evidence of other medical gentlemen?

Mr Commissioner Rapalyea believed that the argument was, that three medical witnesses should be examined on each side. It would take too much time to go into the examination of more witnesses.

Mr Warner.—And is a month's time, sir, of greater importance than the right and interest of the prisoner? Commissioner.—Sir, I didn't need a month's time to make up my mind. I have made it up already—that this woman is not insane.

Mr Lord contended that the opposite counsel had no right whatever to go *ad libitum* into the examination of witnesses in this preliminary investigation.

The Commissioner then decided that no additional witnesses should be called.

Mr Warner excepted to the decision.

Mr Lord then proposed to enter on the direct accusation; and was about to call Mr M'Kay, when

Mr Warner stated that he was so ill that he could not go on.

The Commissioner then adjourned the further proceedings in the case until Monday at two o'clock.

The examination of this case was resumed on Monday, before Mr Commissioner Rapalyea, in the United States Circuit Court; and the question of the prisoner's sanity having been already settled, Mr Lord, who appeared for the British authorities, proceeded to establish his case, whereon to justify her surrender. He called the constable, George M'Kay, who had pursued the prisoner from Scotland to this country, and examined him, to prove the murder, the identity of the prisoner, &c.

He deponed That he knew John Gilmour, the deceased husband of the prisoner: he saw him at his house, at Inchinnan, on or about the 6th of January last, and he heard of his death at the time it occurred.

Mr Warner desired the witness to confine himself to facts within his own knowledge.

Mr Lord continued his examination: and the witness said he ceased to see the deceased after about the 11th January: he never saw the deceased after that time, until he saw the body exhumed for medical examination, on the 22d of April. He was an officer of justice, and, as such, he attended the disinterment. He was superintendent of the police of the county of Renfrew. The body having been disinterred, a portion of the stomach was given to him, which he secured in a box, and conveyed to Dr Wylie, who, in a few days succeeding, exhibited to him a quantity of arsenic which had been discovered in the stomach by three physicians, who had applied the usual tests. Enquiry was instituted as to the cause of death in consequence of certain reports which were in circulation.

Mr Warner objected to the production of reports as evidence in this case; and said, if reports were to be received, he should feel it to be his duty to give other reports in evidence.

The Commissioner, after hearing a few observations from Mr Warner and Mr Lord, decided that he must confine the examination to legal evidence.

Mr Lord continued the examination; and the witness said—After the death of John Gilmour the prisoner returned to the house of her father.

Mr Lord.—Did a report arise of foul death?

Mr Warner again objected to reports being given in evidence.

Mr Lord continued that, on these reports arising, the prisoner fled from justice, and that it was admissible evidence in a preliminary examination to show the conduct of the prisoner.

Mr Warner said, a foul death was assumed, of which there was as yet no proof.

Mr Lord replied, that he had proved a death, and a disinterment: then there was a report and an immediate flight; and he contended that it was admissible.

The Commissioner said, he thought it was admissible testimony.

Mr Warner intimated then, that he should have to appeal from the Commissioner's decision.

Mr Lord desired the witness to state the circumstances attending the flight; and he said that, after the reports got into circulation, he went down to the house of the deceased, and made enquiries from the servants; and a warrant was thereupon issued against the prisoner, which he and another officer proceeded to her father's house, in Ayrshire, to execute; and then he found she had fled. No person about her father's house could give him any information about her; and, after making some enquiries in the neighbourhood, he returned home. He sent officers to different points to make enquiries, but without the desired result. He next made enquiries about the purchase of the arsenic, and he found a shop in Renfrew, kept by one Hugh Wylie, where it had been sold.

Mr Warner objected to this evidence, as it was a matter that was not within the witness's personal knowledge. Some discussion ensued on this point, in the course of which it was ascertained that the witness had seen an entry in the druggist's books, which was the amount of the information which he possessed.

Mr Lord contended that he could give particular acts in correspondence, to satisfy the Commissioner, for the purposes of this enquiry.

Mr Warner denied his right to introduce reports and cursory evidence for the purpose of bolstering up a bad case, under a bad treaty, —a treaty which was so bad, that it was not worth the paper on which it was written. Because the British Government had entered into a treaty with the Government of the United States, all the rules of evidence were not to be broken down, and his client given up, right or wrong.

The Commissioner said, that circumstances which the witness had heard from others, were inadmissible.

Mr Lord said, the correspondence of facts made them evidence.

The witness then went on to say, that he satisfied himself of the prisoner's absence on the 13th of May. He was instructed by the Sheriff of Renfrew to make a further investigation of the matter, and he accordingly proceeded to Cummerland, in Ayrshire; and, at the coach-office, he ascertained that a man named Jameson, and his wife, had taken the coach that morning. He did not know Jameson. He learnt that Jameson's wife had left for Carlisle on the 24th of April, being the morning on which he went to apprehend the prisoner. He proceeded by the coach to Carlisle, and enquired, on the night of his arrival, of the coachman, for persons answering the description of Jameson and his wife, and he learned that they had arrived in and left Carlisle.

Mr Warner again objected to this course of examination. How, he asked, did the witness know of his own knowledge that it was the same coach and coachman that brought the Jamesons? The coachman's having told him so did not constitute it admissible evidence.

Mr Lord contended that he had a right to show that the witness was led from place to place by discovering the route of persons calling themselves Jameson, and why he was led to a certain result.

After argument the point was abandoned, and the examination continued.

He had a warrant for the arrest of this woman, and he found her on board the brig Excel, on the 21st June, in this port. He ascertained that she had assumed the name of Mrs Spiers. She denied on board that her name was Christina Gilmour. He was led from Carlisle to Liverpool by the descriptions of certain persons; and, at the latter place, he made enquiries from a person named M'Dougal, at the railroad station.

Mr Warner objected to the recital of what M'Dougal told him.

The witness passed then to another point, and said he found the

names Mr and Mrs Speirs on Shaw's shipping books, and from the description given to him.

Mr Warner objected to this information being given.

Mr Lord argued that it was a description which had guided the witness in all his travels—but it was deemed inadmissible; and the witness proceeded:

He found two persons of the name of Speirs. He afterwards found two persons calling themselves Speirs, on board the brig *Excel*, of which the prisoner is one.

Mr Warner cross-examined the witness at great length. He said he was a police-officer for the county of Renfrew, and he was also a Sheriff's-officer for that county. His jurisdiction was confined to that county. He was in no other respect an officer, minister, or authority of the general Government (those being the words of the treaty.) Of his own knowledge, he knew nothing of the prisoner's criminality. He was examined closely on the subject of the prisoner's identity. He said he recollected seeing her at the house of Gilmour, the deceased, at the time he had previously mentioned. He was next examined as to his knowledge of arsenic; and he said he had seen it at least fifty times, but he had never been engaged in any business or profession which would bring him in connection with that poison. The body of Mr Gilmour had been interred some three or four months, when the disinterment took place; and he afterwards saw a small quantity of arsenic which had been taken from the stomach. He had before seen arsenic which had been taken from deceased persons, and he had no doubt that the substance which he saw was arsenic. He was examined as to his knowledge that the disinterred body was the body of the prisoner's husband; and he replied, that the grave was pointed out by the friends of the deceased, whose name was on the coffin-plate.

The cross-examination was continued at great length on these and a variety of other points.

Mr Lord said he should there rest his case.

Mr Warner said he should object to the gentleman's calling additional testimony at a subsequent stage of the proceedings if he rested now.

Mr Lord said he should rest then, and moved for a warrant for the surrender of the prisoner.

Mr Warner said that he moved that she be discharged.

Mr Lord.—Have you any evidence to call?

Mr Warner.—I do not deem any necessary, as you have made out no case against her.

Mr Lord.—I will sum up as the case now stands; but if you have any evidence, call it.

Mr Warner.—If you will agree to sum up, as the case now stands, I will say that I have no evidence. He then proceeded to address the Commissioner on the case as it stood; and he contended that there was no legal evidence given that a murder had been committed, or, if a murder had been committed, that the prisoner was the guilty person. The body from which the arsenic was taken was not identified; but if it were, there was no evidence to shew that the arsenic had not been administered by his own hand. He also raised objections to the warrant, and very ably discussed the various points in the case, and urged that the Commissioner was bound to set the prisoner at liberty.

Mr Lord addressed the Commissioner, and contended that there was sufficient evidence to warrant the surrender of the prisoner to the British authority.

The Commissioner intimated that he should take several days to consider the conclusion to which he should come; and the prisoner was remanded to jail to await the result.

On the 21st July the Commissioner gave the following judgment:—
 ‘ I, Silvanus Rapalyea, a Commissioner of the Circuit Court of the
 United States, in the second Circuit for the Southern District of New
 York—Do hereby certify, That, upon hearing evidence of criminality
 in the matter of Christina Cochran, otherwise Gilmour, charged with
 the crime of murder in Scotland; and, after carefully considering
 the same, do decide that, according to the laws of the place where
 she was found and arrested, sufficient evidence has been adduced to
 justify her apprehension and commitment for trial.

‘ SILVANUS RAPALYEA, United States Commissioner.’

Mr Warner, on the 22d July, procured the allowance of a writ of Habeas Corpus, by the Recorder of the City of New York.

The following is a copy of the Petition for the allowance of the writ:—

*To the Honourable Frederick A. Tallmadge, Recorder of the city
 of New York,*

The PETITION of THOMAS WARNER, of the city and county of New York, residing at No. 20, Duam Street, an attorney and counsellor at law, humbly shews to your honour,—

That Christina Cochran, alias Christina Gilmour, of that part of the kingdom of Great Britain and Ireland called Scotland, lately arrived in the harbour and city of New York, as she had a lawful right to do, and with the purpose of residing in the United States of America, as she had and has lawful right to do, without let or hindrance: Nevertheless, upon some complaint made to Silvanus Rapalyea, a Commissioner of the United States, your Petitioner shews, that the said Rapalyea assumed, as such Commissioner, to act under the tenth article of the treaty of Washington, concluded at Washington on the 9th day of August last, passed by and between her Majesty Queen Victoria and the President of the United States, although said article of said treaty had not been made effectual, confirmed, enacted, or acted upon by Congress, so as to vest in said Rapalyea as such Commissioner any judicial power to proceed under said article of said treaty in any manner howsoever; and so assuming to act under said article of said treaty, the said Silvanus Rapalyea, without authority of law, issued a warrant to the Marshal of the United States, for the Southern District of New York, directing him to arrest the said Christina Cochran, alias Gilmour, and to keep her in custody until the farther order of said Silvanus Rapalyea; and thereby the said Christina is unlawfully restrained of her liberty, and unjustly detained in custody by Silas M. Stilwell, the Marshal of the United States, or Monmouth B. Hart, or James Thorne, under the order of arrest and commitment issued by said Rapalyea, as such Commissioner.

And your Petitioner further shews, that the said tenth article of the said treaty, is in these words:—‘ Art. X. It is agreed that the United States and her Britannic Majesty shall upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other, provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective Judges and other Magistrates of the two governments, shall have

power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.'

That if the said article had been made effectual by enactment of Congress, and said Rapalyea as such Commissioner, were authorized by the laws of the United States, to act as a Magistrate in carrying into effect said article, his certificate by the terms of the treaty would be conclusive upon the President of the United States; and as no appeal could be taken from the decision of such Commissioner, so acting as a Magistrate, by reason of the absolute obligation of the treaty requiring the President to deliver the fugitive person charged upon certificate of any Magistrate.

Your petitioner humbly represents that the said Christina, in the peculiar circumstances under which she is arrested, by an officer acting without the authority of law, and without right of appeal or revision of said Rapalyea's proceedings, is exposed to unlawful and tyrannical privations of her unquestionable right to dwell in this land of freedom, and under the protection of its laws.

And your petitioner further shews, that the process of said Rapalyea is in the following words:—

"To the Marshal of the United States for the Southern District of New York, and to his deputies, or any or either of them.—Whereas complaint on oath hath been made to me, charging that Christina Cochran, otherwise Gilmour, did, on the second day of June 1842, abscond and flee from justice, and is about to arrive at the port of New York, the said Christina Cochran, otherwise Gilmour, having been charged with the crime of murder in Scotland, and sufficient evidence having been laid before me as would justify the apprehension and commitment of the said Christina in the place where the alleged offence was committed."

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Christina Cochran, otherwise Gilmour, and bring her body forthwith before me, or some other Judge or Justice of the United States, or United States Commissioner, or a Justice of the Peace, or other Magistrate of the State of New York, whereon she may be found, then and there to be dealt with according to law for the said offence. Given under my hand and seal this 2d day of June, in the year of our Lord 1843, and of our Independence the sixty-seventh.

SILVANUS RAPALYEA, L.S.,
*United States Commissioner for the
Southern District of New York.*

That said process is not issued by any Court of the United States, or any Judge thereof, nor have the Courts or Judges of the United States any exclusive jurisdiction in the case, or supposed case, of the said Christina, under any laws of the United States, nor has the said Rapalyea, as such Commissioner, any jurisdiction by entertaining said complaint, or issuing his said warrant, or by his unlawful or unauthorised arrest and detention of said Christina. And your petitioner further shews, that the cause or pretence of such confinement or restraint in custody, to the best knowledge and belief of said Chris-

tina, and of your petitioner, is the suspicion of her having committed the crime of murder, which your petitioner humbly shews to your house was not sustained before said Rapalyea, as Commissioner, by any legal proofs whatever; and, nevertheless, said Rapalyea has certified, under said treaty, to the effect that she is a fugitive person, within the provisions of said article of the treaty, and thereupon the President of the United States will be constrained to deliver the said Christina into foreign custody, and she will be carried away from the United States.

Whereupon your petitioner, in behalf of said Christina, who is now in close custody in the debtors' jail in Eldridge Street, in the city of New York, humbly prays that the people's writ of Habeas Corpus may be issued in due form of law, addressed to the said Silas M. Stilwell, Monmouth B. Hart, Sheriff of the city and county of New York, and James Thorn, keeper of the said prison, directing them, or one of them, forthwith to have the body of the said Christina before your honour, at such time and place as your honour may appoint, and then and there to produce the warrant of commitment, under which said Christina is held in custody and in prison, and to shew the true cause of her said apprehension and detention, according to law in such case made and provided.

THOS. WARNER.

Sworn the 22d day of July
1843, before me,

F. A. TALLMADGE.

The writ of Habeas was returnable on the 26th July. Mr Warner, on the day he obtained the allowance of the writ of *Habeas Corpus*, immediately proceeded to Washington with a petition and remonstrance to the President of the United States.

The following is a copy of the Petition and Remonstrance.—

TO HIS EXCELLENCY JOHN TYLER, President of the United States of America,

THE REMONSTRANCE AND PETITION OF CHRISTINA GILMOUR, humbly shews, that your remonstrancer and petitioner is the same person described and proceeded against before Thomas Rapalyea, a Commissioner of the United States, appointed under the act of 1st March 1817, within the Southern District of New York, who on yesterday the 21st July current, made a certificate to the effect that your remonstrant and petitioner is a fugitive from justice, from the United Kingdom of Great Britain and Ireland, and ought to be delivered to some officer of Her Majesty Queen Victoria, to be taken away from the United States, and dealt with in said kingdom, as a person charged with the crime of murder. Whereupon your remonstrant and petitioner humbly shews that all said proceedings have been instituted and conducted, as she is advised, without due authority of law, according to the constitution and laws of these United States, and without any right on the part of Her Majesty Queen Victoria, or any officer acting under Her authority, to deprive your remonstrant and petitioner of her just and legal right, to remain free and unrestrained in these United States; and the better to enable your Excellency to understand the merits of her remonstrance and petition, the said Christina shews and submits to your Excellency:—

First.—That there has been no requisition made upon the Government of the United States or its officers, in any proper form of law, to warrant any proceedings whatever against her.

Second.—That the treaty of Washington, made the 9th day of August last, under which it is pretended that the said Christina is liable to be arrested and proceeded against, and sent away to the

kingdom aforesaid, has not been made effectual to this end by such prerequisite legislative enactments of Congress as can alone authorise her arrest and delivery as a fugitive within the scope of that treaty.

Third.—That by force of the constitution of the United States, the judiciary power of the United States was and is vested in our Supreme Court, and such inferior courts as Congress should from time to time ordain and establish. That Congress has not ordained and established any court with jurisdiction over such cases as your petitioner; and especially Congress has not authorised any Commissioner to act thus judicially upon the case of said Christina; and she submits that Congress had no power under the constitution to vest any such judicial authority in any Commissioner, but only in a court properly so called and constituted as a court of record, whose proceedings may be revised by writ of error, or *certiorari*, and her case be brought to the knowledge, for revision and determination, of the Supreme Court, whose protection, under the law of nations, she had an indefeasable right to claim, even against the express provisions of a treaty, if such had and ought to deprive any of the subjects of Great Britain of their right to such protection in a foreign land from the highest judicial tribunal of that land, in as much as no such treaty could divest subjects of Great Britain of their right to personal liberty in a foreign country, under the law of nations, for offences charged as committed in said kingdom, until the Parliament of Great Britain shall have sanctioned such treaty to this effect, which as yet has not yet been done; and in the meantime the Supreme Court of the United States is bound to protect your petitioner's personal liberty against such arrest on such imputed charge of crime, according to the law of nations. And your petitioner avers that she is innocent of the crime laid to her charge, and claims the protection of the United States, according to its existing laws and the laws of nations.

Fourth.—That your petitioners arrest and restraint of liberty, has been and is unlawful, even if the treaty were operative and effectual *per se*; because there has been no proper requisition made for her arrest, and delivering according to its manifest provisions.

Fifth.—That the treaty does not include female fugitive persons, but is limited in its operations against males only.

Sixth.—That even if the Commissioner, said Rapalyea, was authorised to act, the proceedings before him were not founded upon any documentary evidence; that the police-officer named therein as a witness had not any authority whatever to apply for and obtain her arrest, to receive her in custody.

Seventh.—That the proceedings of said Rapalyea were illegal and exceptionable, in this, that he admitted evidence against her not proper to be admitted according to law on primary examinations, according to the laws of the United States; and that the said Commissioner rejected evidence in exculpation of your petitioner, which he ought according to the law of the land, and of the state of New York, to have received and considered, but refused to do so, although the counsel, Mr Warner, insisted upon her legal right to this effect, before the said commissioner; and against these grievances your petitioner has no relief or remedy, save by your Excellency's interposition; and your petitioner humbly submits, that if your Excellency, by the terms of the 10th article of said treaty, is bound by the certificate of said Commission, and cannot revise his proceedings, your petitioner is deprived of her liberty against the laws of nations, the laws of England, and the laws of the United States.

Wherefore, your remonstrant and petitioner humbly prays your Excellency will disregard the certificate of said Commissioner as a nullity, and an act on his part not authorised by law, and direct your

petitioner to be discharged forthwith from the custody in which she is now held, and suffered to go at large, as is her right ; and to this end, that your Excellency will allow her counsel, Mr Warner, to be heard before your Excellency or such officer of the Government of the United States to which the proceedings in her case may be referred, and she, as in duty bound, will ever pray.

CHRISTINA GILMOUR.

Dated July 22nd 1843.

State of New York, }
City and County of New York. }

I, Thomas Warner, of said city, Counsellor at Law, being duly sworn, doth depose and say, that the facts set forth in the above written remonstrance and petition are true.

Sworn the 22nd day of July 1843,
before me,

THOMAS WARNER.

Mr Warner not having returned from Washington so as to enable him to appear before the recorder, Mr Thomas Greasley attended instead of her counsel on behalf of the prisoner, and moved for a farther delay in the matter as her counsel was unavoidably absent.

Counsel for the prosecution opposed the motion.

The Recorder said, in this case, under ordinary circumstances, I would have no objection to grant the delay asked for by the prisoner's counsel, and possibly no inconvenience might be occasioned if a delay took place. But there is a preliminary question in the case, which must be now passed upon, and to which my attention has been particularly directed since those papers were laid before me, and in my judgment, from a careful examination of the treaty, the petition and the other papers before me, I cannot see that any good can arise from delay. On the contrary, in my good judgment, the treaty ought to be carried out as speedily as possible. I do not mean that the right of the accused should be in any manner whatever abridged. I mean that she should have the full benefit of the treaty, and of the laws of our land. But I consider it important to both Governments, and to the cause of justice, that this case should receive as speedy a decision as it will admit of.

Under these circumstances, and having carefully examined the question, both in relation to the jurisdiction and facts of the case, as now disclosed, I should consider that I was not performing my duty as a Magistrate, if I delayed any longer.

Counsel for the prisoner here addressed the Court, and contended that the United States' Court had no jurisdiction of the case, as, before the treaty could be considered a binding instrument on either country it should first have the sanction of the Legislature. And that this treaty was not the law of England in June last, when the crime was alleged to have been committed. In proof of which he would refer the court to the public papers, in which they would find that, in June last, Lord Aberdeen moved the second reading of the Ashburton Bill, and said, that, as the law then stood, no treaty could be carried into effect without an Act of Parliament. The treaty was also a mere nullity until confirmed by an Act of Congress; and it, until then, gave no power whatever to the United States' Court to act under it.

And, as to the authority of a State officer to exercise jurisdiction in the case already in the hands of the United States' authorities, counsel remarked, that it was an every-day proceeding, where a minor had been enlisted in the United States' army or navy, for a State court to issue its writ of *Habeas Corpus*. If the recorder thought proper to

exercise jurisdiction in the case, there could be a writ of error from his jurisdiction to the Supreme Court, and it could be ultimately carried to the Supreme Court of the United States, and decided by the highest legal authority in the land.

Mr Price, for the prosecution, said he supposed that the threat to carry up the question to another tribunal could have no influence on his Honor, the Recorder, after having carefully examined the case; nor could there be any doubt that these objections had no substance.

He, Mr Price, was aware that, in the English Parliament and French Chamber of Deputies, they legislated in relation to treaties, and thus carried them into effect; But the mode of making treaties was different in this country—the constitution gave the President power alone to make treaties, and they receive effect when confirmed by the Senate. He would also remark, that delay was sought for, in this case, by most extraordinary means; and the affidavits presented, in order to obtain it, were of a most extraordinary character.

When last brought before a Magistrate delay was sought on the ground of the woman being insane; and delay is now asked for an affidavit of this alleged insane woman, who swears that she is not guilty of the offence.

The Recorder.—I do not think that the fact, whether the treaty has been consummated or not, is the question for my consideration. For, if there had been no treaty at all, I would still be of opinion that I had no jurisdiction in this case on the facts which have been presented to me by the Marshal. I therefore think there is no reason for me to hesitate on the ground taken by counsel, that the treaty must be legislated on before it takes effect.

The petition presents this state of facts,—namely, that Christina Gilmour was committed by U. S. Commissioner, Sylvanus Rapalyea, on the 2nd of June 1843, on complaint made to him, announcing that she committed an offence recognised by the treaty—namely, that she had committed a murder in Great Britain, and that he committed her on that testimony: and the petition alleges, that such commitment was illegal, as the Commissioner had no judicial authority to commit the woman, and that it was in violation of law. These facts gave me jurisdiction over the matter, and made it requisite for me to issue the writ of *Habeas Corpus*.

And, as there are some erroneous ideas of the duty of a magistrate in such a case, I will remark that, when facts of this sort are presented to a magistrate, he is subject to a penalty of £1000 if he does not issue the writ. I say this, lest it should be thought the act on my part was a voluntary one.

I therefore issued the writ; and the Marshal made a return to it, that she was detained by the United States Commissioner.

The Statute of this State, in prescribing the duties of Judges, says, that prisoners in certain cases shall not be entitled to a writ of *Habeas Corpus*,—to wit, persons committed by a Judge of the United States, in cases over which he has the exclusive jurisdiction by the laws of the United States, or by the law of this State.

The question then is,—Has the United States Court exclusive jurisdiction in this case? If the offence was committed out of the United States, it is clear that no other than the United States Court can have jurisdiction over it. In saying this, I do not refer to the treaty, but to the laws of the land, which makes murder, committed on board of our vessels at sea, a case over which the United States have alone jurisdiction. And it appears that, in this case, if any offence was committed, it was committed out of the United States, and not within the jurisdiction of any state officer.

But, if there was any doubt on the subject, we have only to refer

to the treaty, and we find, in article 10th, that it is agreed between the United States and her Britannic Majesty, that there shall be a mutual requisition made for the delivery of offenders, in certain cases, if they seek an asylum or are found in the territories of either power, provided that, by the laws of that place, their commitment would be justified; and the Judges of the two Governments have jurisdiction to issue warrant for their commitment. The treaty is not limited to Judges of the United States, but to Judges or other magistrates respectively.

Assuming, therefore, that the treaty is valid between the two Governments, had Commissioner Rapalyea power to issue his warrant, under that broad phraseology of the treaty which extends it to Judges as other Magistrates? In my judgment, Commissioner Rapalyea had power to do so, under the statute of 1842, which gives him full magisterial powers.

Who is a Magistrate? In order to be so, it is not necessary that he be called Judge or Recorder, it is only necessary that he be a person appointed by law, and to hear applications and grant commitments; and his authority, in my judgment, extends to all offences which come under the jurisdiction of the United States, if he is an officer under the General Government of the country.

It would be absurd to suppose that, under this treaty, a State officer is an officer of the General Government, and I do not deem myself such an officer; but, on the contrary, Mr Rapalyea being an officer under the General Government, can, under the statute of our state, and his commission from the General Government, take cognizance of this case, and no State officer has any jurisdiction over it. I, therefore, have no power to review the judgment of Mr Rapalyea. Whether or no the President will act on it, I of course do not know; but, in my judgment, my duty is to at once recommit the prisoner, to abide such decision as the Government may think proper.

Not having leisure to commit my opinion to paper, the phraseology of it may perhaps be more crude than I could wish; but I hope it is sufficiently intelligible to convey my reasons for acting as I do.

The prisoner was then re-committed to prison.

The Secretary of State, on the 9th August, made out and sent to the Commissioner the following decision.—viz.

DEPARTMENT OF STATE,
Washington, 9th August 1843.

To all towhom these presents shall come.—Whereas Henry S. Fox, Esq., the Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, hath made requisition, in conformity with the provisions of the tenth article of the treaty concluded at Washington on the 9th day of August 1842, for the delivering up to justice of Christina Cochran, alias Gilmour, charged with the crime of murder, alleged to have been committed within the jurisdiction of Great Britain. And Whereas the said Christina Cochran, alias Gilmour, hath been found in the state of New York, within the jurisdiction of the United States, and hath, by proper affidavit, and in due form of law, been brought before S. Rapalyea, U. S. Commissioner for the Southern District of New York, upon the said charge of murder. And whereas the said S. Rapalyea hath deemed the evidence sufficient to authorise to require her commitment, and hath accordingly committed her to the jail of New York. All which appears by a certified copy of the proceedings transmitted to this department.

Now, these presents are to require the Marshal of the United States for the Southern District of New York, the District Attorney of the

United States for the said district, and any other public officer having the charge and custody of the said Christina Cochran, alias Gilmour, to surrender and deliver her up to George M'Kay, an officer of the Government of her Britannic Majesty, or any other officer of said Government duly authorised by her Britannic Majesty's said Envoy Extraordinary and Minister Plenipotentiary, to receive her into custody.

L. S.

Given under my hand and seal of the office of the Secretary of State of the United States, on the day and year herein aforesaid.

A. P. UPSHUR.

The following letter accompanied the warrant. They were both enclosed to the Marshal of the District.

DEPARTMENT OF STATE,
Washington, 9th August 1843.

Silas M. Stillwell, Marshal of the United States for the Southern District of New York,—Sir, I transmit to you herewith a warrant issued upon the requisition of the British Minister, in conformity with the provisions of the tenth article of the Treaty of Washington, directing the surrender and delivery of Christina Cochran, alias Gilmour, a fugitive from justice, charged with the crime of murder, alleged to have been committed within the jurisdiction of Great Britain, to George M'Kay, or any other officer of her Britannic Majesty's Government duly authorised to receive her into custody. I am, &c.

A. P. UPSHUR.

Mr Warner, the counsel for the prisoner, then drew a Petition for a writ of *Habeas Corpus*, which was, on the 11th August, presented to Judge Betts, for his allowance; but he, on the following morning, returned the Petition.

The following are copies of the Petition and Judge Betts' opinion thereon:—

To the Honourable Smith Thompson, and Samuel R. Betts, Circuit Judges of the Circuit Court, of the second Circuit of the Southern District of New York,

The PETITION of CHRISTINA COCHRAN, otherwise GILMOUR, now a prisoner confined in the jail or prison at Eldridge Street, in the city of New York,

Humbly sheweth,

That your petitioner is a native of that part of the United Kingdom of Great Britain and Ireland called Scotland. That your petitioner lately arrived in the harbour and city of New York, as she had a lawful right to do, and with the purpose of residing in the United States of America, as she had and has lawful right to do, without let or hindrance.

Nevertheless, upon some complaint made to Sylvanus Rapalyea, a Commissioner of the United States, your petitioner shews that said Rapalyea assumed, as such Commissioner, to act under the tenth article of the Treaty of Washington, concluded at Washington on the 9th day of August last past, by and between Her Majesty Queen Victoria and the President of the United States, although said article of said treaty had not been made effectual, confirmed, enacted, or acted upon by Congress, so as to vest in said Rapalyea, as such Commissioner, any judicial power to proceed under said article of said treaty in any manner howsoever; and so assuming to act under said

article of said treaty, the said Sylvanus Rapalyea, without authority of laws, issued a warrant to the Marshal of the United States for the Southern District of New York, directing him to arrest your petitioner, and to keep her in custody until the further order of said Sylvanus Rapalyea; and thereby your petitioner was unlawfully restrained of her liberty, and unjustly detained in custody, by Silas M. Stillwell, the Marshal of the United States, or Monmouth B. Hart, or James C. Thorne, under an order of commitment issued by said Rapalyea as such Commissioner.

And your petitioner further shews, that the said tenth article of the said treaty is in these words:—Art. X. “It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them or their ministers, officers, or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder, assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an assylum, or shall be found within the territories of either, provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed, and the respective Judges and other Magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made upon oath, to issue a warrant for the apprehension of the fugitive or persons so charged, that he may be brought before such Judges, or other Magistrate respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.”

That the said Rapalyea, assuming to exercise a jurisdiction over your petitioner, under and by virtue of the said tenth article of the said treaty, issued a process against your petitioner, in the words following: that is to say,—

‘To the Marshal of the United States, for the Southern District of New York, and to his deputies, or any or either of them—Whereas complaint on oath hath been made to me, charging, that Christina Cochran, otherwise Gilmour, did on the 2nd day of June 1842, abscond and flee from justice, and is about to arrive at the port of New York, the said Christina Cochran, otherwise Gilmour, having been charged with the crime of murder in Scotland, and sufficient evidence having been laid before me, as would justify the apprehension and commitment of the said Christina, in the place where the alleged offence had been committed.

‘Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said Christina Cochran, otherwise Gilmour, and bring her body forthwith before me, or some other Judge or Justice of the United States, or United States commissioner, or a Justice of the Peace, or other Magistrate of the State of New York,—wherever she may be found, then and there to be dealt with according to law for the said offence,

‘Given under my hand and seal this 2nd day of June, in the year of our Lord 1843, and of our Independence the sixty-seventh.’

SYLVANUS RAPALYEA,

*United States Commissioner for the Southern
District of New York, L.S.*

That by virtue of such process, your petitioner, on or about the day of the date thereof, was taken into custody by the Marshal of the United States for the Southern District of New York, and ever since has been and now is held in custody by the said Marshal, at the prison in Eldridge Street in the city of New York.

That your petitioner was on the 15th day of July last brought by and in the custody of the said Marshal, before the said commissioner, when and where her counsel on her behalf, offered and was prepared to maintain various points of law in objection to the jurisdiction of the said commissioner, and among others, as she is informed and believes the following :—

That the tenth article of the said treaty was not at the time of the arrest and detention of your petitioner the laws of the United States, inasmuch as no legislative action had been taken by Congress to make it effectual in law: and that consequently your petitioner's arrest and detention were unlawful.

That your petitioner on her arrival within the jurisdiction of the United States, was entitled to the protection of the Government of the United States as a British subject.

That by the terms of the said tenth article, the obligations of the contracting parties are reciprocal—neither can claim to have it enforced in the other's territory until such claimant shall have made it effectual within his or their own jurisdiction.

That no requisition agreeably to the terms of the said treaty had been made by the authorities of Great Britain upon the authorities of the United States for the ex-tradition of your petitioner.

That at the time said process was executed against your petitioner, the tenth article of the said treaty was not the law of Great Britain because your petitioner had not given her consent thereto through her representatives in Parliament, and for that reason could not by law be deprived of her rights as a British subject by the Queen of Great Britain and the President and Senate of the United States.

That her arrest and detention under the said tenth article of the said treaty was therefore illegal.

That said Rapalyea then and there refused to hear these and all other objections to his jurisdiction of your petitioner's case, and thereupon proceeded to receive evidence against your petitioner.

And your petitioner further shews to your Honour, that no sufficient evidence was produced before said Commissioner to sustain the charge of murder, then and there alleged against her, and for which she was apprehended and held in custody as aforesaid. Nevertheless the said Rapalyea held that the evidence produced was sufficient to sustain said charge, and thereupon issued his warrant to the effect following.

Southern District of New York S. S., By Sylvanus Rapalyea, a Commissioner for the circuit and district courts of the United States, for the Southern District of New York, to the Marshal of the United States for the said District. Whereas Christina Cochran otherwise Gilmour, stands charged before me, on the oath of George M'Kay, with the murder of John Gilmour, late farmer in the town of Inchinnan, in the parish of Inchinnan and shire of Renfrew in Scotland, within the jurisdiction of her Britannic Majesty; and the said Christina Cochran otherwise Gilmour, having been brought before me to the end, that her criminality might be heard and considered, and on such hearing, the evidence having been by me deemed sufficient to justify her apprehension and commitment for trial if the said offence had been committed in the southern district of New York, where the said Christina Cochran otherwise Gilmour was found. These are therefore, in the name of the President of the United States of America, to command you the said Marshal, to convey to prison the body of the

said Christina Cochran otherwise Gilmour, and deliver her to the keeper thereof, to the end that she may be safely kept in prison until delivered by due course of law.

Given under my hand and seal this 21st day of
July 1843.

SYLVANUS RAPALYEA, (L. S.)
U. S. Commissioner.

That by virtue of such commitment your petitioner is now detained a close prisoner in said gaol.

That the said Commissioner thereupon prepared and forwarded his certificate to the President of the United States, in the words and figures following, viz. On Friday the 21st day of July 1843, at 11 A.M., the Commissioner made the following decision:—I Sylvanus Rapalyea, a Commissioner of the Circuit Court of the United States in the second circuit for the Southern District of New York, do hereby certify, that, upon hearing the 'evidence of criminality' in the matter of Christina Cochran, otherwise Gilmour, charged with the crime of murder in Scotland, and after carefully considering the same, do decide that, according to the laws of the place where she was found and arrested, sufficient evidence has been adduced to justify her apprehension and commitment for trial.

(Signed) SYLVANUS RAPALYEA.
United States Commissioner.

And your petitioner further shews to your Honour, that the President of the United States having had the subject under consideration, has intimated that if said Commissioner should be considered by himself a Magistrate within the meaning of the treaty, that he the President of the United States would be bound conclusively to deliver up your petitioner to be sent out of the United States, notwithstanding your petitioner has had no hearing, and no opportunity of a hearing before the judiciary power of the United States, or any competent branch thereof, as to her right to remain in the United States of America.

And your petitioner further shews, that, immediately upon the issuing and delivery, by the President of the United States, of his warrant for the surrender of your petitioner, as a fugitive, under said Treaty, she will be forthwith removed, by force and against her will, without the jurisdiction of any courts of the United States, beyond the protection of the laws of the United States. And your petitioner shews to your Honour that the President of the United States has not power to revise the proceedings of the Judge or Magistrates, duly authorised and within the meaning of the treaty, however he may be of opinion that the refusal of such Judge or Magistrate to hear the defence or to answer is against common right.

And your petitioner humbly shews to your Honour, that she will thereby be deprived of her liberty and her right, as an alien friend, without remedy or relief, unless by the interposition of the judiciary power of the United States, on a writ of *Habeas Corpus*, issued by a Judge of a county of the United States, granted upon this application, and served upon the said Marshal, and the rest who hold her now in custody, before the issuing and delivery and execution of such warrant by the President.

And your petitioner further shews, that she is informed that the Secretary of State of the United States has, in the absence of the President from the seat of Government, issued a warrant under the great seal of his department, not signed by the President of the United States, nor under the seal of the United States, requiring the Marshal

of this district to surrender her, to be transported out of the United States, and that she is apprehensive that she will thereunder be delivered to George M'Kay, or other person, for that purpose.

Wherefore your petitioner humbly prays, that a writ of *Habeas Corpus* may be issued, in due form of law, addressed to the said Silas M. Stillwell, Monmouth B. Hart, Sheriff of the city and county of New York, James C. Thorne, keeper of the said prison, and George M'Kay, directing them, or one of them, forthwith to have the body of your petitioner before your Honour, at such time and place as your Honour may appoint; and then and there to produce the warrant of commitment, under which your petitioner is held in custody and in prison, and to shew the true cause of her said apprehension and detention, according to law in such cases provided.

CHRISTINA COCHRAN, *v.* GILMOUR.

Southern District of New York, U.S.—Christina Cochran, otherwise Gilmour, being duly sworn, doth depose and say, that she is the petitioner in the above-written petition, and that the contents thereof and the facts set forth in the said Petition are true.

CHRISTINA COCHRAN, *v.* GILMOUR.

Sworn to, this 11th day of August 1843, before me,

GEO. W. MORTON, U.S. Comr.

Southern District of New York, U. S.—Thomas T. Greasley, of the city and county of New York, Counsellor-at-Law, being duly sworn, doth depose and say, that he knows the facts set forth in the above petition; that he has read the same over; and that the contents thereof, and the facts set forth in the said petition, are true.

THOS. T. GREASLEY.

Sworn to, this 11th day of August 1843, before me,

GEO. W. MORTON, U. S. Commr.

OPINION OF JUDGE BETTS

In the matter of Christina Cochran, otherwise Gilmour, on application for the allowance of a writ of *Habeas Corpus* :—

I am of opinion that the 10th article of the Treaty of Washington, concluded August 9th 1842, is, under the 2nd sub-division of the 6th article of the constitution of the United States, in force as a subsisting law of the land; and is accordingly to be observed and executed by the judicial authorities of the country.

I am of opinion that a Commissioner appointed by a Circuit Court of the United States, pursuant to the Act of Congress in that behalf, is, by force of the Act of Congress of August 23, 1842, empowered to perform the functions pointed out by the 10th article of the said treaty.

I am of opinion that it is not competent for a Judge of the United States, in vacation, to revise, on *Habeas Corpus*, the adjudication of such commissioner as to the efficiency of the proof of criminality of a party charged before him.

I am of opinion that a writ of *Habeas Corpus* cannot be rightfully allowed for the purpose of enquiring into the legality of a warrant emanating from the executive branch of the Government, intended to surrender a person, duly committed to a Marshal of the United States, to the authorities of Great Britain, under the provisions of the 10th article of the said treaty, before the party shall be thereby actually transferred to and detained in such British custody within the United States.

I accordingly refuse to allow the *Habeas Corpus* prayed for in this case.

SAMUEL R. BETTS, U. S. Judge, &c,

New York, Aug. 12, 1843.

