

**The trial of Katharine Nairn [Ogilvie] and Patrick Ogilvie, for the crimes of incest and murder [of Thomas Ogilvie]. Containing the whole procedure of the High Court of Justiciary; upon the 5th, 12th, 13th, 14th, 15th and 16th days of August 1765 / [Katharine Nairn Ogilvie].**

### **Contributors**

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Ogilvie, Patrick, -1765.  
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T H E  
T R I A L

O F

K A T H A R I N E N A I R N

A N D

P A T R I C K O G I L V I E,

For the Crimes of I N C E S T and M U R D E R.

C O N T A I N I N G

The whole procedure of the High Court of Ju-  
ficiary; upon the 5th, 12th, 13th, 14th, 15th,  
and 16th days of August 1765.

E D I N B U R G H:

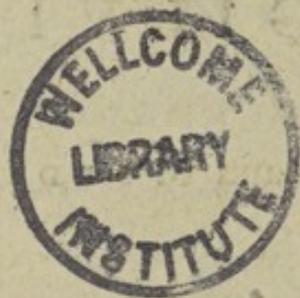
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M, D C C, L X V.

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*Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, quinto die mensis Augusti, millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Justiciarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Henricum Home de Kames, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Justiciariae S. D. N. Regis.*

*Curia legitime affirmata.*

*Intran.*

KATHARINE NAIRN, widow of the deceased THOMAS OGILVIE of Eastmils in the county of Forfar ;

A N D

PATRICK OGILVIE, Lieutenant of the eighty-ninth regiment of foot, brother-german of the said deceased Thomas Ogilvie ;

BOTH now prisoners in the Tolbooth of Edinburgh ; PANNELS :

*Indicted and accused* at the instance of THOMAS MILLER of Barskimming, Esq; his Majesty's Advocate, for his Majesty's interest, for the crimes of INCEST and MURDER, in manner mentioned in the Criminal INDICTMENT raised thereanent, *Bearing,* THAT WHEREAS, by the laws of God, and the laws of this and all other well governed realms, the crime of INCEST, committed betwixt a man and the wife of his brother-german, especially when such crime is committed within the dwelling-house of the injured husband, where the offenders were cherished and entertained by him with confidence and trust, is a heinous crime and most severely punishable ; AND particularly, by an act passed in the parliament of Scotland in the year one thousand five hundred and

sixty-seven, being the first parliament of King James  
 the Sixth, chap. 14. intituled, " Anent them that com-  
 mits incest," it is statuted and ordained, " That  
 quhatsumever person or persones that committes  
 the said abhominable cryme of incest, that is to say,  
 quhatsumever person or persones they be that abuses  
 their bodie with sik persones in degrie, as God in  
 his Word has expresslie forbidden, in ony time cum-  
 ming, as is contained in the XVIII. chapter of Le-  
 viticus, shall be punished to the death : " AND ALSO  
 WHEREAS, by the same holy law of God, and by  
 the laws of this and every other well governed realm,  
 all wilful HOMICIDE OR MURDER, especially when  
 perpetrated by poison, and above all, when such mur-  
 der is committed under trust, or upon a person to  
 whom fidelity and affection are due by the most  
 sacred ties, is also a crime of the most heinous  
 and atrocious nature, and severely punishable : Y E T  
 T R U E I T I S, AND OF VERITY, That the  
 said KATHARINE NAIRN and PATRICK OGILVIE,  
 shaking off all fear of God and regard to the laws,  
 have presumed to commit, and are guilty, actors,  
 art and part of both, or one or other of the said hei-  
 nous crimes of INCEST and MURDER, aggravated as  
 aforesaid : IN SO FAR AS, the said Katharine Nairn  
 having been married to the said deceased Thomas O-  
 gilvie in the month of January last, in this present  
 year one thousand seven hundred and sixty-five, and  
 the said Patrick Ogilvie having about that time re-  
 turned from abroad, and taken up his residence at the  
 house of Eastmiln, belonging to the said deceased  
 Thomas Ogilvie his brother, in the parish of Glenylla  
 and county of Forfar, the said Katharine Nairn did,  
 soon after her said marriage, alienate her affections  
 from her said husband, and fall into a course of inde-  
 cent familiarities with the said Patrick Ogilvie, which  
 soon became the subject of observation and regret to  
 her unhappy husband, and to her friends and family ;  
 and notwithstanding repeated admonitions given to the  
 said Katharine Nairn, and to the said Patrick Ogilvie,  
 by

by the said Thomas Ogilvie and their other relations, to abstain from such indecent familiarities, they obstinately persisted therein, frequently retired together, and continued in private for a considerable time, as well in the fields as within the house of Eastmiln, and in other houses and places of that neighbourhood; and the said Katharine Nairn and Patrick Ogilvie, yielding to their inordinate desires, did, after the said marriage, *viz.* in the months of January, February, March, April, May, and June, all last past, and before the twelfth day of that last month, at different times, and in one or other of the rooms of the house of Eastmiln, and in the out-houses adjacent thereto, lie together, and abuse their bodies with one another, and thereby they and each of them committed the abominable crime of incest; and their indecent conduct having at last become the subject of observation and just censure, not only to the said deceased Thomas Ogilvie and his family, but to the neighbourhood, the said Patrick Ogilvie was, on that account, dismissed by the said Thomas Ogilvie from his house, on or about the twenty-third day of May last; And the said Katharine Nairn did, upon that occasion, and thereafter, express her resentment against her husband, by the most outrageous behaviour; and before the said Patrick Ogilvie left the said house, or soon after, he and the said Katharine Nairn did *treacherously and wickedly* conspire to murder the said Thomas Ogilvie by poison; and, upon different occasions, the said Katharine Nairn signified this her wicked purpose to Anne Clark, daughter of the deceased Allan Clark officer of excise, who then lived in family with her, and informed her, that the said Patrick Ogilvie had undertaken to provide the poison, which she did not then believe either of them capable of, and endeavoured to divert the said Katharine Nairn from such wicked thoughts; but, instigated by the temptations of the devil and of their own wicked hearts, the said Katharine Nairn and Patrick Ogilvie persisted in their wicked conspiracy; and from the time the said Patrick Ogilvie was dismissed

from his brother's house, he and the said Katharine Nairn carried on a secret correspondence by letters, and had private meetings together for the purpose of concerting the perpetration of their wicked design; one of which letters, without a date, and unsigned, but of the hand-writing of the said Katharine Nairn, will be produced in evidence against them, and will be lodged in the hands of the clerk of the High Court of Justiciary, before which they are to be tried, that they may see the same: And, for accomplishing the murder so concerted betwixt them as aforesaid, the said Patrick Ogilvie did, about the latter end of May last, repair to the burgh of Brechin, in the county aforesaid, and there bought and received from James Carnegie, surgeon in that burgh, a small phial glass of Laudanum, which he pretended was for his own health, and about half an ounce or more of Arsenick pulverized, and put up in three or four different dozes, in separate paper-covers, pretending that he had occasion for that poison, in order to kill some dogs, which destroyed the game in that part of the country where he resided. And the said Patrick Ogilvie brought the said poison to Alyth, within a few miles of Eastmiln, where he arrived upon or about Monday the third day of June last, at the House of Andrew Stewart merchant there, his brother-in-law; and, upon the day following, he did there receive a letter from the said Katharine Nairn, which, by her orders, was delivered to him in private, by Elizabeth Sturrock her servant, to which he returned an answer that same day with the said Elizabeth Sturrock, by a letter, with injunctions to deliver it privately to the said Katharine Nairn; which was done accordingly: And, upon the day following, being the fifth day of June, the said Andrew Stewart having had occasion to go to the house of Eastmiln, he, the said Patrick Ogilvie, did send with him two small phial glasses, one of which he said contained Laudanum, and a paper with directions about the manner of using it; and also a packet which he said contained Salts, and a letter closed with

a wafer, and likewise sealed with wax, addressed to the said Katharine Nairn at Eastmilm, and he informed the said Andrew Stewart, that these were medicines for the use of the said Katharine Nairn herself, and desired him to deliver them and the letter privately into her own hands: And the said Katharine Nairn, having been previously advised by the said Patrick Ogilvie, that he was to send the poison by the said Andrew Stewart, watched his arrival at the house of Eastmilm, and, upon his coming there, conducted him into a private room, and received from him the above particulars, which she presently locked up in a drawer alongst with the letter, without reading the same; and, in this manner, or by some other conveyance to the prosecutor unknown, the Arsenick bought by the said Patrick Ogilvie as aforesaid, was conveyed by him to, and received by the said Katharine Nairn, at the house of Eastmilm: And the said Andrew Stewart having, some time after his arrival there, discovered to the said Anne Clark, that he had brought some medicines from the said Patrick Ogilvie, which he had delivered to the said Katharine Nairn, Anne Clark did thereupon disclose to the said Andrew Stewart, and to Isobel M'Kenzie the mother of the said Thomas Ogilvie, her apprehensions of danger to the said Thomas Ogilvie's life; and all these persons, or some of them, did that night advise and caution the said Thomas Ogilvie, to take no meat or drink from his wife, except what he saw others taking; and some time that same night, the said Katharine Nairn, said to the said Andrew Stewart, *she wished her husband was dead*; and the said Thomas Ogilvie did that same night sup with the said Katharine Nairn his wife, and the other persons above named, in his ordinary state of health, and went to bed at the usual time of night, having been abroad the preceding day: That next morning, the sixth day of June, or one or other of the days in the beginning of that month, breakfast was set in the parlour earlier than usual, and the said Thomas Ogilvie not having then got out of bed, the said Katharine Nairn filled out the

first of the tea in a bowl, which she said she was going to carry up to the Laird, meaning her husband; and accordingly left the parlour with the said bowl in her hand; but instead of carrying it streight to her husband, she went into a closet adjoining to his bed-room, where she remained for some time, and there wickedly and feloniously mixt the arsenick which she had received as aforesaid, or some other deadly poison, into the said bowl of tea, which she afterwards carried to her husband, and pressed him to drink the same, which he accordingly did: And soon after he rose from bed, went abroad, conversed with some of his tenants and servants, and then appeared to be in his ordinary state of health; but before he got back to the house, and within the space of an hour or thereby after he had drunk the said bowl of tea, he was seized with a violent reaching and vomiting, and having got into the kitchen, he continued there for some time in great distress, upon which he was helped up to his own room, and laid in bed, where he remained reaching, vomiting, and purging with such violence, that he sometimes appeared convulsed; and, in the intervals of his distress, he did say to his friends, and others about him, that he had been poisoned by the said bowl of tea which he had got from his wife; and he having called for water to drink, which was brought up to the room by Anne Sampson his servant-maid, in the same bowl, or one like to that out of which he had drunk the tea, he said, "*Damn that bowl, for I have got my death out of it already,*" and ordered her to bring up the water in the tea-kettle, for he would drink out of nothing else; and having continued in the situation above-described for several hours, his tongue swelled, and his mouth became so parched and dry, that he could scarcely speak; and during his illness, though from the beginning very alarming, the said Katharine Nairn not only endeavoured to hinder his friends and neighbours to have access to him; but when she was pressed, by the said Andrew Stewart, to send for a surgeon,

furgeon, ſhe obſtinately reſiſted that propoſal till near ſun-ſet, when the ſaid Thomas Ogilvie her husband, appearing to be then very low and near his end, ſhe ſent a ſervant on horſeback to bring Peter Meik furgeon at Alyth, who accordingly came with all diſpatch; but, before his arrival, her husband was dead, having died in the night betwixt the ſixth and ſeventh days of June laſt, or upon one or other of the days or nights in the beginning of that month: And from the ſymptoms of his diſorder, and whole circumſtances of the caſe above recited, it evidently appears that he died of the poiſon which was mixed and given to him, by the ſaid Katharine Nairn, in the bowl of tea as above mentioned. And ſome days thereafter, when it was propoſed to inſpect the dead body, the Katharine Nairn appeared like one diſtracted, and cried out, *What will I do!* And the ſaid Patrick Ogilvie being adviſed of the death of the ſaid Thomas Ogilvie his brother, to whom he is heir, in caſe the ſaid Katharine Nairn be not with child, he immediately came to Eaſtmiln, took up his reſidence there, and gave the neceſſary orders for the interment. And the ſaid Katharine Nairn and Patrick Ogilvie, having been apprehended there and committed to the priſon of Forfar, by George Campbell, Eſq; ſheriff-ſubſtitute of that county, as guilty of the murder of the ſaid Thomas Ogilvie, and examined by the ſaid ſheriff ſubſtitute upon the fourteenth and fifteenth days of June laſt, did each emit two ſeveral declarations, which were ſubſcribed by each of them, and by the ſaid ſheriff-ſubſtitute; which declarations are to be uſed in evidence againſt them upon their trial, and ſhall be lodged in the hands of the clerk of the ſaid Court of Juſticiary, that they may have acceſs to ſee the ſame; And another examination of the ſaid Patrick Ogilvie, taken before James Balfour, Eſq; Sheriff-ſubſtitute of the county of Edinburgh, upon the twenty-ſecond day of the ſaid month of June laſt, and ſubſcribed by them and the ſaid James Balfour; and alſo an examination of the ſaid Katharine Nairn, taken before the ſaid James Balfour,

Balfour, upon the twenty-fourth day of the said month of June last, and subscribed by him, will likewise be produced in evidence against them in the course of their trial, and will in like manner be lodged in the hands of the clerk of the said Court of Justiciary, that they may have access to see the same. AT LEAST, at the time and place aforesaid, the said Thomas Ogilvie was murdered or died by poison, wilfully administered to him; and of which murder or poisoning the said Katharine Nairn and Patrick Ogilvie, and each of them, or one or other of them, are guilty actors, or art and part. ALL WHICH, OR PART THEREOF, or that they were guilty of the crime of incest above charged against them, being found proven by the verdict of an assize before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, they, and each of them, ought to be punished with the pains of law, to the terror of others from committing the like in time coming.

THOMAS MILLER.

LIST of ASSIZE.

- 3 Sir James Clerk of Pennycuick
- 4 Sir Alexander Gibson of Pentland
- 5 Sir Robert Morton of Gogar
- 6 Thomas Trotter of Mortonhall
- 7 George Warrander of Bruntsfield
- 8 John Howieson of Braehead
- 9 John Borthwick of Cruikston
- 10 James Forrest of Commiston
- 11 Alexander Muirhead of Linhouse
- 12 Hugh Dalrymple of Fordel
- 13 John Wightman of Maulislie
- 14 John Christie of Baberton
- 15 Adam Cunningham of Bonnytown
- 16 Thomas Brown of Braid
- 17 Alexander Sheriff of Craigleith
- 18 James Finlay of Wallyford
- 19 Alexander Gibson of Cliftonhall

James.

- James Linn of Gorgie  
 Sir Robert Dalziell of Binns  
 20 Thomas Sharp, younger of Houston  
 Robert Ramsay of Blackraig  
 John Paterfon of Kirkton  
 David Dundas, younger of Newhalls  
 James Dallas, younger of Parklie  
 25 Henry Cochran younger of Barbachlaw  
 Sir George Suttie of Balgonie  
 Sir John Hall of Dunblaw  
 Sir John Sinclair of Stevenson  
 John Henderson of Liston  
 30 William Hay of Lawfield  
 Charles Hay of Hopes  
 Richard Newton of Newton  
 James Hume of Gemmelshiells  
 Alexander Wedderburn of St Germans  
 35 William Ramsay of Preston  
 Oliver Colt of Auldham  
 John Forrest senior, merchant in Edinburgh  
 William Callander merchant there  
 Ralph Dundas merchant there  
 40 John Fordyce merchant there  
 Daniel Seton merchant there  
 George Chalmers merchant there  
 William Ramsay merchant there  
 Gavin Hamilton bookseller there  
 45 Archibald Wallace merchant there.

GILB. ELLIOT.  
 ALEX. BOSWELL.  
 AND. PRINGLE.  
 GEO. BROWN.

L I S T of W I T N E S S E S.

\* The witnesses so marked were examined for  
 the Prosecutor.

1 \* *George Spalding* of Glenkilrie

2 *Bethia Nairn* his spouse

3 \* *Andrew*

- 3 \* *Andrew Stewart* merchant in Alyth
- 4 *Martha Ogilvie* his spouse
- 5 \* *James Carnegie* surgeon in Brechin
- 6 \* *Gilbert Ramsay* surgeon in Coupar of Angus
- 7 \* *Peter Meik* surgeon in Alyth
- 8 \* *Dr John Ogilvie* physician in Forfar
- 9 \* *Lieutenant George Campbell* late of the 89th regiment of foot
- 10 \* *Patrick Dickson* merchant in Brechin
- 11 The Reverend Mr *Thomas Masson* minister of Glenylla
- 12 *Katharine Gruer* reliet of M. Kenzie,  
late servant in Eastmiln
- 13 \* *James M. Kenzie* session-clerk of Glenylla
- 14 *James Rattray* of Kirkhillocks
- 15 *Anne Robertson* his spouse
- 16 *William Clark* of Holemerry, one of the elders of the parish of Glenylla
- 17 \* *Elisabeth Sturrock* late servant to the deceased *Thomas Ogilvie* of Eastmiln
- 18 \* *Anne Sampson* late servant to the said deceased *Thomas Ogilvie* of Eastmiln
- 19 \* *Alexander Lindsay* late servant to the said deceased *Thomas Ogilvie* of Eastmiln
- 20 \* *Katharine Campbell* late servant to the said deceased *Thomas Ogilvie* of Eastmiln
- 21 *John Guthrie* in Dalnakebock, late servant to the said deceased *Thomas Ogilvie* of Eastmiln
- 22 *Anne Robertson* late servant to the said deceased *Thomas Ogilvie* of Eastmiln
- 23 *John Rattray* servant to *John Robertson* of Cray
- 24 *Margaret Downie* servant to *William Ker* writer in Forfar
- 25 *Jean Low* servant to *William Gorty* taylor in Forfar
- 26 \* *Anne Clark* daughter to the deceased *Allan Clark* officer of excise
- 27 \* *George Campbell* of Carsgownie, Esq;
- 28 \* Mr *John Ure* sheriff clerk of Forfar
- 29 *Patrick Orr* writer in Forfar
- 30 *Fergus*

- 30 *Fergus Fergusone* residenter in Kirkton of Glenylla  
 31 *Margaret Rait* his spouse  
 32 *William Shaw* residenter at Little Forter in the pa-  
 rish of Glenylla  
 33 \* *John Gilloch* wright in Dalnakebock  
 34 \* *Mr James Balfour* of Pilrig, advocate, sheriff-  
 substitute of Edinburgh  
 35 \* *William Dunbar* writer in Edinburgh  
 36 *William Campbell* writer in Edinburgh  
 37 *James M<sup>c</sup> Niccol* in Newton of Glenylla  
 38 *John Hall* portioner in Achlish  
 39 \* *James Millam* tacksman of the Eastmilm of  
 Glenylla  
 40 *James Dougal* surgeon in Kirriemuir  
 41 *Mr Laurence Brown* minister at Lintrethan  
 42 *Andrew Murison* one of the macers of Justiciary  
 43 *Charles Copland* messenger in Edinburgh  
 44 \* *David Rattray* younger in Cammock in the pa-  
 rish of Glenylla  
 45 \* *John Lamar* in Craigendeach in the said parish  
 46 *Alexander Barnet* in Cammock in the said parish  
 47 *Helen Murray* spouse to the said Alexander Barnet  
 48 \* *James Barnet* son to the said Alexander Bar-  
 net  
 49 *Alexander Reid* writer in Edinburgh  
 50 *David Spalding* of Whitehouse  
 51 *Alexander Reid* tenant in Ennoch in Glenkilrie  
 52 *John Tudhope* residenter at Guardwell in the parish  
 of Liberton  
 53 *Isobel Farquharson* his spouse  
 54 *Tudhope* relict of Knight,  
 and daughter to the said John Tudhope, resi-  
 denter near Dean  
 55 Mrs *Dallas* spouse to Gibb  
 coachmaster in Canongate  
 56 Dr *Willian Cullen* phyfician in Edinburgh  
 57 *James Russel* surgeon in Edinburgh  
 58 \* *Robert Smith* surgeon in Edinburgh  
 59 *James Rae* surgeon in Edinburgh  
 60 *William Forrester* or *Froster* tenant in Eastmilm  
 61 *John*

- 61 *John Turnbull* writer in Edinburgh  
 62 *John Stewart* writer in Edinburgh  
 63 *Isobel M<sup>c</sup>Kenzie* relict of the deceased *Thomas Ogilvie* of Eastmiln, and mother to the deceased *Thomas Ogilvie* last of Eastmiln  
 64 Dr *John Rutherford* physician in Edinburgh

LIST of the WRITINGS and other particulars to be adduced in evidence.

The bottle of laudanum mentioned in the indictment

The declarations therein mentioned

The letter therein mentioned

A letter from *Katharine Nairn* the pannel to the deceased *Thomas Ogilvie*, dated, *Glenkilry, Weensday*

A letter from *Katharine Nairn* the pannel to the said *Thomas Ogilvie*, dated, *Glenkilries, Jany 4<sup>th</sup> 1765*

The said INDICTMENT being read over to the pannels in open court; and they being severally asked, What they had to say against the same? they answered, *They were not guilty.*

*Procurators for the Prosecutor.*

*Thomas Miller* of Barskimming, Esq; his Majesty's Advocate, for his Majesty's interest.

*Mr James Montgomery* Advocate, his Majesty's Solicitor.

*Sir David Dalrymple* Advocate.

*Mr Patrick Murray* Advocate.

*Mr David Kennedy* Advocate.

*Procurators in Defence.*

*Mr Alexander Lockhart* Advocate.

*Mr David Græme* Advocate

*Mr David Rae* Advocate.

*Mr Andrew Crosbie* Advocate.

*Mr Henry Dundas* Advocate.

DUNBAS, for KATHARINE NAIRN the pannel, *repeated* the signed Defences; and *represented*, That, in 1764, the now deceased Thomas Ogilvie of Eastmilm, a gentleman rather advanced in years, of a tender constitution, and possessed of a very small fortune, made his addresses to this unfortunate pannel, (then scarce nineteen years of age), in proposals of marriage: which, contrary to the opinion of his friends, by reason of the smallness of his fortune, she accepted of from principles of pure love and affection: and the marriage being accordingly celebrated in the beginning of January last 1765, was dissolved, by Mr Ogilvie's death, upon the 6th of June last; when the affections she had conceived for her husband can scarce be supposed to have had time to cool or subside,

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

Her parents, education, age, sex, character, and behaviour, in that stage of life previous to her marriage, when female passions are most powerful and predominant, which she flatters herself will be attested by persons of the greatest honour and probity, render it highly incredible, that any person, not hardened and inured to every species of wickedness, lost and abandoned to every principle of virtue, should at once plunge into crimes of so deep a dye.

Conscious of her innocence, she wishes for nothing more ardently than a fair and impartial trial, as the only means of reparation that can be made to her injured character, so much traduced; and which, in the event, she is hopeful, will appear to be the result

of the most inveterate rancour, hatred, and deadly malice, conceived against her by one of her own sex, a person of most flagitious life, and abandoned character; and who, she is now told, is the principal evidence meant to be used against her.

Since her imprisonment, no endeavours have been spared to impress the public with sentiments of her guilt, by publication of many false, malicious, and wicked reports, industriously propagated to the prejudice of her general character.

But she rejoices in the appeal she will soon be able to make to the world, to her judges and jury, to vindicate her from the charge of those horrid crimes with which she stands now arraigned. At the same time, as she cannot know what false evidence may be produced against her, self-preservation requires, that she should not pass over any material objection to the form of this indictment.

And, in that view, she objects to that article of the indictment which charges the crime of incest, said to have been committed *in one or other of the rooms of the house of Eastmilk, and out-houses adjacent thereto, at different times, in January, February, March, April, May, and June, all last past, and before the 12th day of that last month*; that is, in other words, from the day of her marriage till the sixth day after her husband's death.

She takes no exception to the generality of the places charged where this crime should have been committed, *viz.* "in one or other of the rooms of the house of Eastmilk, and out-houses adjacent thereto;" though she is advised, that after so full a pre-cognition as she is told has been taken, by examination upon oath of every person that could be supposed to have the least knowledge in these matters, at which none were allowed to be present upon her part, the places where this supposed crime is said to have been so frequently repeated should have been specially condescended upon, and described. But she is advised, and humbly submits it to the consideration of her

honourable

honourable judges, and the impartial world, that a most unbecoming and improper latitude has been taken, in charging the time of the commission of this supposed offence, comprehending the whole space, every hour, day, week, and month, from the period of her marriage, to her husband's death, and even while he was lying a corpse, before his interment on the 12th of June.

The disadvantages to which she must necessarily be exposed, in making her defences against so general a charge, are too obvious to need illustration; and therefore she does humbly insist, that this branch of the indictment cannot be sustained, or admitted to proof.

But if, contrary to expectation, the same shall be sustained, she proposes, by undeniable evidence, to traverse and redargue every material circumstance charged in the indictment, as well with regard to this as the other crime with which she is accused; and, without departing from any other defences which may occur to her counsel, the great lines of those facts which she proposes to prove, will be these following.

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

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

3<sup>d</sup>, That Lieutenant Patrick Ogilvie, her husband's younger brother, the supposed associate in the crimes charged, having returned from the East Indies, broken and shattered in his constitution, much about the time of the pannel's marriage, came to pay his first visit to his brother, and for some time had his principal residence in his brother's house; whereby, and by means of his near relation, he distinguished a becoming friendship and intimacy with the pannel, his sister-in-law.

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

5<sup>th</sup>, That Alexander Ogilvie, the younger brother of her husband, had, about the beginning of this year 1765, intermarried with a woman of the lowest rank, the daughter of a common porter in Edinburgh, which gave great offence to his two brothers; and the pannel does not doubt, but she might, upon occasion thereof, have expressed her sense and feeling of the reproach thereby brought upon their family. Of which the said Alexander Ogilvie having got intelligence, this, joined with the disappointment in the expectation he had conceived of the succession to his brother's estate, he from thenceforward entertained a  
most

most groundless resentment against the pannel, the innocent cause of that disappointment; and took every occasion to publish the most scandalous falsehoods, calculated to create a misunderstanding between her and her husband.

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

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

*8th*, This diabolical contrivance happened unluckily, in point of time, to coincide with some differences that had arisen between Mr Ogilvie, and his brother the Lieutenant, in settling accounts about

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

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

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

11th, The pannel's behaviour upon that melancholy occasion was decent and becoming, expressive of the real sorrow and grief she felt. The tale that is told of her having administered the poison in a bowl of tea that morning, will be disproved in the strongest manner. She had none to administer; and every circumstance, as it is expected to come out on proof, will shew,

shew, that she had it not in her power so to have done, had she intended it; and that *de facto* none was administered.

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

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

CROSBIE, for Lieutenant PATRICK OGILVIE, pannel, *Repeated* his signed Defences; and *represented*, That the said Lieutenant Patrick Ogilvie having obtained a commission in the regiment, he behaved in the execution thereof in a proper and inoffensive manner; and being ordered along with his regiment to the East Indies, he remained there till his health obliged him to return home; when he came to  
the

the house of Eastmiln, where his brother resided, who was then about to be married to Katharine Nairn, the other pannel, and where he continued for some time with an inoffensive character, suitable to that which he had maintained in the regiment in which he had served, of which there are many officers ready to attest the character he held.

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

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

The friends of the family of Eastmiln had taken umbrage at the marriage of Alexander Ogilvie with the daughter of a common porter; he thought it necessary, therefore, to send some person to interpose as a mediator with that family; and the person he made choice of was Anne Clark.

Anne Clark was accordingly dispatched to the house of Eastmiln. She was received, without suspicion, as

a relation of the family; and, in that character, without inquiry into her former life and conversation, she was treated as an equal, and a gentlewoman.

Such was the pretext of sending Anne Clark to the house of Eastmilk: something deeper, however, seems to have been intended. The deceased Thomas Ogilvie of Eastmilk had for many years been subject to consumptive symptoms; he had been afflicted with ulcers in his bowels, which had been discovered at the distance of about five years before his death; ever after he had been in a valetudinary state; and there was reason to apprehend he would not be long-lived. The relations of Mrs Ogilvie, in particular, had shown some apprehensions, that by his premature death the provisions in her favour might be rendered ineffectual. The pannel Patrick Ogilvie was also in a bad state of health: he had been obliged to return from the East Indies, where he had been in service with his regiment, on account of his valetudinary habit: and from the situation which the two elder brothers were then in, there is the greatest reason to believe, that Alexander Ogilvie had entertained the most sanguine hopes of succession to the estate; which, by the marriage of Thomas, and the return of Patrick for the recovery of his health, seemed likely to be disappointed.

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

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

The period which was chosen to insinuate these jealousies was remarkable. The pannel Lieutenant Patrick Ogilvie had some differences with his elder brother, concerning his patrimony; for a dispute had occurred about the balance of a bond of provision resting owing to Patrick Ogilvie. Miss Clark laid hold of that opportunity to propagate her malicious alledgeances; and in the heat of a conversation which arose concerning the balance of this bond of provision, and what Thomas had done with it after he took it up from the custodier, first insinuated his apprehension of an improper intercourse between the two pannels.

To minds already heated by a dispute concerning money matters, this incident served to add greater warmth. The two brothers parted with some animosity, the pannel Patrick declaring his intention never to return to the house of Eastmilk.

The intention of the pannel was, after visiting his friends in the country, as he had now tolerably recovered his health, to return to his military service in the East Indies; hoping, by means of this, to avoid both the jealousy of his brother, and the envy of his other relations. Though often solicited, therefore, to return to his brother's house, he kept always at a distance, from that day when he discovered the first symptom of jealousy.

Mrs Ogilvie, the other pannel, had for some time before this complained of bad health; and particularly she complained of want of sleep: on account of  
her

her complaints she had been in use to take salts and laudanum as medicines. In the hearing of the pannel she had expressed her desire to have some of these medicines; and as he, while at sea, had been in use to take both on account of his bad state of health, and in a short time expected one of his sea-chests would arrive, in which he had a quantity of both, he proffered to her to send her some laudanum and salts as soon as the trunk or chest they were in should be brought to the country: and she told him she would be obliged to him for them, as they were so ill to be had of a proper kind in that remote part of the country.

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

What symptoms attended the deceased Mr Ogilvie's last illness, the pannel, not having been at the house of Eastmiln, cannot, from his personal knowledge, pretend to say. As far as he has been able to inform himself, however, he cannot discover, that there is the least evidence that he died by poison. Nor did the pannel, on any occasion, pretend to hinder a dis-  
section

section of the body, or any other mean of discovery, whether the defunct had died of poison or not. On the contrary, he urged and insisted, that such trial should be made. And he having sent for a surgeon to inspect and open the body, the person whom he had dispatched express for that purpose, was privately stopped by Alexander Ogilvie, the younger brother, who is the person on whose signed information he was originally committed to prison.

Such are the material facts which the pannel apprehends he is called on to explain, in vindication of his good fame: and to these facts he subjoins the following defence, in terms of the statute.

1<sup>st</sup>, That the libel contains a *cumulatio actionum in criminalibus*; which is reprobated in law.

2<sup>dly</sup>, That so far as relates to the incest, the libel is utterly vague and inconclusive, being destitute of all circumstances of time or place, or other requirites that can enable the pannel to make a pointed defence; and therefore ought not to pass to the knowledge of an assize.

3<sup>dly</sup>, The libel, as far as respects the crime of poisoning is utterly irrelevant *quoad* this pannel.

LOCKHART, *for* Katharine Nairn,  
RAE, *for* Patrick Ogilvie,

Adhering to the defences severally proponed for them, *represented*, That the indictment charges the pannels with incest committed betwixt them, in the months of January and June, and interveening months, and before the 12<sup>th</sup> day of the said month of June: That the said Katharine Nairn, and the deceased Thomas Ogilvie were not married till the 30<sup>th</sup> day of the the said month of January; and to instruct that, produces and oppones their contract of marriage, dated the 29<sup>th</sup> of January, and they were married the subsequent day. And therefore contended, That as to the month of January, the indictment could not go to proof, farther than as to the last day of that month.

2<sup>dly</sup>, As the deceased Thomas Ogilvie died on the 5<sup>th</sup> of June, the time interveening betwixt that and  
the

the 12th, were equally irrelevant, as incest could not be committed with the widow after the death of the husband, at least to infer the pains of law, which, in our practice, are generally meant the pains of death.

Sir DAVID DALRYMPLE for the Prosecutor, *answered*, That *cumulatio actionum criminalium*, is established in the practice of the Justiciary Court; and in this case is particularly necessary and proper. That it is established in the practice of the Justiciary Court, is evident by the following examples, selected from many of the same nature which occur in the Books of Adjournal.

16th *February* 1580. Andrew Glencorse indicted for poisoning his wife, and for incest with his wife's mother.

6th *September* 1610. William Douglas of Lincluden, slaughter and treasonable theft, being a landed man.

30th *March* 1638. Isobel Kailtie, notour adultery, and murdering two children born of the adulterous intercourse.

30th *March* 1638. Andrew Harvie, art and part of the murder of Isobel Dalgleish, and of adultery with Helen Stevenson.

27th *July* 1642. Margaret Cuninghame, adultery and murder of the child born in the adultery.

12th *March* 1645. John Gordon, bigamy, adultery, and theft.

28th *March* 1646. Margaret Thomson adultery and forgery.

20th *December* 1649. James Wilson, incest with his wife's daughter, and adultery with another woman.

21st *April* 1664. John Swinton and Janet Brown, notour adultery and murder of Swinton's wife.

27th *May* 1665. Margaret Hamilton, adultery and murder of her husband.

9th *April* 1670. Major Thomas Weir, fornication, adultery, incest, and bestiality.

12th *September* 1678. Isobel Hay, adultery and murder of her adulterous child.

15th January 1694. Doctor John Elliot, Daniel Nicolson, and Marion Maxwell, murder, falsehood, forgery, and notour adultery.

9th November 1702. Margaret and David Myles, incest and child-murder.

9th November 1703. Mary Graham, incest with her father, and child-murder.

21st February 1706. Elifabeth Hunter, incest and adultery.

As this *cumulatio actionum criminalium* is fully established by practice, so in this case it is particularly proper and necessary: the two crimes charged, incest and murder, are, from the circumstances of the charge, intimately connected; and it is proposed in general to prove both by the same witnesses. To make separate trials for each crime would be oppressive to the witnesses, the jury, and the parties. It is true that accusations for different crimes may be thrown into one libel, in such manner as to prove oppressive. Whenever this is attempted, the court will interpose; but not in order to prevent the trial of different crimes in one libel where nothing oppressive is meant, and where the expediency of the *cumulatio actionum*, is obvious. As to what is said, That the charge for incest is unintelligible or vague, it is answered, That it is laid in terms the most unexceptionable, in the express words of an act of parliament; and surely the legislature must be presumed capable of conveying by words, a just idea of the crime which it meant to punish.—As to what is said, that the libel for incest is vague, charging the crime as committed in January and June 1765, and the interveening months, it is answered, That in all criminal indictments a latitude of this kind is allowed in practice; for witnesses may be distinct as to the circumstances of the crime charged, and yet may not be certain as to a day, or even as to a month. Indictments do generally comprehend the term of three months. In the case, the King's Advocate against Oliphant, 4th February 1736, a libel for a single act of sodomy, bearing

two months in one year, and two in another, was held sufficiently articulated; and in that form was remitted to the knowledge of an assize. When an indictment contains the charge of a crime, which in its own nature is capable of frequent repetition, as incest is, a still greater latitude is allowed. Thus in the case of Forbes 1758, tried for corrupting young girls, an indictment was remitted to the knowledge of an assize, altho' it bore that the crime was committed in some one or other of the months from May 1757, to April 1758, inclusive.—If the pannel Mrs Ogilvie was not married till the 30th of January 1765, the charge of incest preceeding that date will cease of course. If it shall be proved that she and Lieutenant Ogilvie defiled their bodies after the death of Eastmiln, it may not perhaps be capital incest by the act 1567, which refers to the 18th *chap.* of Leviticus; but it will nevertheless be incest punishable in law: and if no incest but what was committed after the death of Eastmiln should be proved, then the jury will find accordingly, and the court will adapt the punishment to the offence. As to what is said, that the murder by poisoning is not properly laid against Lieutenant Ogilvie, it is answered, That the contrary appears from the tenor of the indictment. But altho this were not the case, yet he is charged as guilty art and part of that crime, which is in law a relevant indictment, and as such must be remitted to the knowledge of an assize.

“ The Lord Justice-clerk and Commissioners of  
 “ Justiciary, having considered the criminal indictment  
 “ raised and pursued at the instance of Thomas Mil-  
 “ ler of Barskimming, Esq; his Majesty's advocate,  
 “ for his Majesty's interest, against Katharine Nairn  
 “ widow of the deceased Thomas Ogilvie of Eastmiln  
 “ in the county of Forfar, and Patrick Ogilvie Lieu-  
 “ tenant of the eighty-ninth regiment of foot, bro-  
 “ ther-german of the said deceased Thomas Ogilvie,  
 “ pannels, with the foregoing debate, repell the hail  
 “ objections made to the form of the indictment; and

“ find the said indictment relevant to infer the pains  
 “ of law: But allow the pannels and each of them  
 “ to prove all facts and circumstances that may tend  
 “ to their exculpation or alleviation of their guilt;  
 “ and remit the pannels with the indictment as found  
 “ relevant to the knowledge of an assize.”

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

“ The Lord Justice-clerk and Commissioners of  
 “ Justiciary continue the diet against the said Ka-  
 “ tharine Nairn and Lieutenant Patrick Ogilvie pan-  
 “ nels, till Monday next, the twelfth instant, at se-  
 “ ven o'clock in the morning; and ordain parties,  
 “ assizers, witnesses, and all concerned, then to at-  
 “ tend, each under the pains of law; and the pan-  
 “ nels in the mean time to be carried back to prison.”

*Curia Justiciaria S. D. N. Regis, tenta in Nova  
 Sessionis Domo de Edinburgh, sexto die Augusti,  
 millesimo septingentesimo sexagesimo quinto, per  
 Honorabiles Viros Dominum Gilbertum Elliot de  
 Minto, Baronetum, Dominum Justitiarium Cleri-  
 cum, Alexandrum Boswel de Auchinleck, Andream  
 Pringle de Alemoor, Henricum Home de Kames,  
 Jacobum Ferguson de Pitfour, et Georgium Brown  
 de Coalston, Commissionarios Justiciarie S. D. N.  
 Regis.*

*Curia legitime affirmata.*

The which day, there was a petition presented to  
 the said Lords in the names of Katharine Nairn relict  
 of the deceased Thomas Ogilvie of Eastmiln, and  
 Lieutenant Patrick Ogilvie brother to the said Thomas  
 Ogilvie, HUMBLY SHEWING,

That the petitioners stood indicted before their  
 Lordships, at the instance of his Majesty's advocate,  
 for the alledged crimes of incest and accession to the  
 supposed murder of the said Thomas Ogilvie.

That the petitioners had pleaded not guilty to this  
 grievous accusation, and were confident, that in the  
 course

course of the trial their innocence would be fully vindicated to the satisfaction of the court and jury.

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

That, among other misfortunes under which the petitioners laboured, they had been accused, by report, of endeavours to secrete material witnesses in that matter; and tho' conscious of their innocence in that, as well as in other respects; yet several of the witnesses have on that, or some other account, been secured as prisoners in the Castle of Edinburgh.

That, among these witnesses, was Anne Clark, designed daughter of the deceased Allan Clark officer of excise, who is now confined in the same room with two or more maid-servants, who were in the house of Eastmilk at the time of Thomas Ogilvie's death, and who would be most material witnesses for the petitioners in that cause.

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

That it would occur to their Lordships, that the

petitioners were exposed to imminent danger by the said Ann Clark's being constantly confined in the same room with other material witnesses, whose sex, station, and inexperience, tho' otherwise honest and well inclined, might expose them to be influenced and prejudiced by the malicious endeavours of that artful woman. For these reasons, the petitioners were confident, that their Lordships would forthwith give orders for separating the said Ann Clark from the said other witnesses. THEREFORE PRAYING, That it might please their Lordships forthwith to grant warrant to the Deputy-governor of the Castle of Edinburgh, or any other proper officer, to remove the person of the said Ann Clark from the room in which she was presently confined; or otherwise to separate her from the said maid-servants, and to keep her separate from them, or any other witnesses to be adduced against the petitioners in that present prosecution. According to Justice, &c. (Signed) HENRY DUNDAS.  
DAV. RAE.

*Edinburgh, 6th August, 1765.*

I THOMAS MILLER Esq; his Majesty's Advocate, consent, That the prayer of the within petition be granted; but upon this express condition, that no person whatever be admitted or have access to any of the three witnesses, except in presence of one or other of the officers of the court of Justiciary, which their Lordships shall think proper to appoint. (Signed) THO. MILLER.

“ The Lords Justice-Clerk and Commissioners of  
 “ Justiciary having seen and considered the foregoing  
 “ petition, with the consent of his Majesty's Advocate subjoined thereto, recommend to the Deputy-  
 “ Governor of the castle of Edinburgh, or other proper officers, to cause remove the said Anne Clark  
 “ from the room where she and the other two women  
 “ before named are presently staying, into some other  
 “ room in the said castle, until Monday next the  
 “ twelfth day of August current; and also recommend,  
 “ as above, that care be taken that no person get access  
 “ cess

“ cefs to any of the faid three women, betwixt and  
 “ that time, except in prefence of Robert Auld writer  
 “ or Andrew Murifon macer of this court, or either  
 “ of them.” (Signed) GILB. ELLIOT, I. P. D.”

*Curia Justiciaria S. D. N. Regis, tenta in Nova Sef-  
 fionis Domo de Edinburgh, duodecimo die Augusti,  
 millesimo feptingentesimo sexagesimo quinto, per  
 Honorabiles Viros Dominum Gilbertum Elliot de  
 Minto, Baronetum, Dominum Justiciarium Cle-  
 ricum, Alexandrum Boswel de Auchinleck, An-  
 dream Pringle de Alemoor, Henricum Home de  
 Kames, Jacobum Ferguson de Pitfour, et Georgium  
 Brown de Coalston, Commissionarios Justiciariae  
 S. D. N. Regis.*

*Curia legitime affirmata.*

*Itran.*

KATHARINE NAIRN, widow of the deceased Tho-  
 mas Ogilvie of Eastmilo,

A N D

PATRICK OGILVIE lieutenant of the eighty-ninth  
 regiment of foot, brother-german of the deceased  
 Thomas Ogilvie,

B O T H present prisoners in the Tolbooth of Edin-  
 burgh; PANNELS :

*Indicted and accused as in the former federunt.*

The Interlocutor on the relevancy being read over  
 to the pannels in open court,

The Lords proceeded to make choice of the follow-  
 ing persons to pass upon the affize of the faid pannels,

Sir James Clark of Pennycuick

John Howieson of Braehead

John Chrystie of Baberton

Adam Cuninghame of Bonnytonn

Alexander Sherriff of Craigleith

David Dundas, younger of Newhalls

Sir George Suttie of Balgonie

Charles Hay of Hopes

William Ramfay of Preston

John

John Forrest senior, merchant in Edinburgh  
 George Chalmers merchant in Edinburgh  
 Gavin Hamilton bookseller in Edinburgh  
 Archibald Wallace merchant in Edinburgh  
 John Borthwick of Cruikston  
 Thomas Brown of Braid

The above affize being all lawfully sworn, and no objection in the contrary,

His Majesty's Advocate proceeded to call the following witnesses :

DAVID RATTRAY younger in Cammock, in the parish of Glenylla, aged forty-two, married, purged of malice and partial counsel, sworn, and interrogate, depones, That he lives in the neighbourhood of Eastmilm, and did hear it talked in the country, that Mrs Ogilvie the pannel, and Lieutenant Ogilvie the other pannel, lived in too familiar a way, and walked out together with others in their company : That the Deponent himself once saw them at their walk, when there was no body with them, when they were leading other arm in arm, and at that time he saw the pannel Lieutenant Ogilvie kiss Mrs Ogilvie the other pannel once : That this happened after the late Thomas Ogilvie of Eastmilm's marriage with the pannel, and before his death ; cannot remember the precise time, but there was a storm on the ground then : That at the above-mentioned time the pannels were walking near the house of Eastmilm, crossing the King's high-way, when the witness saw as above, when he was no farther from them than the fourth part of a quarter of a mile ; and that the pannels were in a hollow way when he saw Lieutenant Ogilvie give the other pannel one kiss as above. *Causa scientie patet.* And this truth, as he shall answer to God.

(Signed) DAVID RATTRAY.

GILB. ELLIOT.

JOHN

JOHN LAMAR in Graigendeach, in the parish of Glenylla, aged forty seven, married, purged of malice and partial counsel, sworn, and interrogate, depones, That he lives very near Eastmiln, and has heard the clashing people of the country commonly report, that the pannel Mr Ogilvie liked Mrs Ogilvie the other pannel too well ; and that a dispute in the family of Eastmiln about that time arose, which took its rise, as was said, from a suspicion, that the two pannels liked other too well : That upon this Mr Ogilvie the pannel left the house of Eastmiln, as was reported, upon the above suspicion ; and that it was even said in the country, that the two pannels loved one another too well : That the deponent himself knows, that Mr Ogilvie the pannel went away from the house of Eastmiln, about a fortnight, as he thinks, before Eastmiln's death, and the deponent saw him return to the house of Eastmiln the morning after Eastmiln's death : That before Mr Ogilvie the pannel left Eastmiln's house, the deponent has often seen the two pannels walking arm in arm, and their arms about each other's neck : That he has seen them in that posture at their walk, even when Miss Clark and the Laird of Eastmiln himself were in company, as well as when there was no body else with them. Depones, That the report of the love between the two pannels he did not hear in the country till after Lieutenant Ogilvie had left the house of Eastmiln, as above ; and that he never saw the pannel Mrs Ogilvie till after her marriage : That since the marriage he has seen Dr Alexander Ogilvie, a brother of Eastmiln's, at the house of Eastmiln ; and that Anne Clark, a witness cited in this trial, was there before him and at the same time : That the deponent's house lies at about a quarter of a mile's distance from Eastmiln's house, on the other side of the river, from whence it is easy to see any person who comes out or goes in to the house of Eastmiln. *Causa scientiæ patet.* And this is truth, as he shall answer to God. And depones he cannot write.

(signed) GILB. ELLIOT.

JAMES

JAMES BARNET, son to Alexander Barnet in Cammock, in the parish of Glenylla, aged fifteen years, unmarried, purged of malice and partial counsel, sworn, and interrogate. *Dismissed.*

JOHN GILLOCH wright in Dalnakebock, aged twenty-six years, married, purged of malice and partial counsel, sworn, and interrogate, depones, That, about a fortnight after Eastmiln's marriage, the deponent was sent for to the house of Eastmiln to put on some locks and brass-work upon a drawer: That accordingly the deponent went to the room where the drawers stood, in which room he saw the pannel Mr Ogilvie lying in bed: That when he was so employed, Mrs Ogilvie the pannel came to the room-door where the deponent was at work, she having heard him, as he supposed, at work. Upon Mr Ogilvie the pannel observing her, he desired her to come in: That after having said to the deponent, John, are you begun? she went in and asked Mr Ogilvie the pannel, What! Are not you up yet? and then she went towards the bedside, where stood a little chest, upon which she sat down, and then they eat some sweet bread together, which had been got at a market. Depones, That he observed her hand about the bed-cloaths, just upon Lieutenant Ogilvie's breast; at which time she said to him, You are not poor, but pretty fat; but did not observe whether her hand was below the bed-cloaths, or above. Depones, That when Mrs Ogilvie the pannel was going out of the room, Lieutenant Ogilvie kicked up the bed-cloaths with his feet, and threw them up upon his body; upon which Mrs Ogilvie said, Ah! you daft dog! and the deponent at that time saw so much of the said Lieutenant Ogilvie's body, that he, the deponent, could judge whether he was a man or a woman: That, after breakfast, Mrs Ogilvie came to where the deponent was at work, and gave him a dram; and Lieutenant Ogilvie being present, she gave him also a dram, for he was by that time dressed. Depones, That the week before  
Eastmiln's

Eastmiln's death, the deponent went to Eastmiln to do some work: That when he was sawing, Elizabeth Sturrock then a servant in that family, came to the deponent, and asked him, If he knew which way the Laird had gone? he said, he could not tell. Upon asking her why she put such a question, she answered, That as Lieutenant Ogilvie was expected at Eastmiln that day, she could with the Laird and he might not meet. And depones, That he the deponent saw Eastmiln walk away from the house some time before. Depones, That on the evening of the day last mentioned, as the deponent was returning from his work, he saw Mrs Ogilvie the pannel returning to Eastmiln, upon the road that leads from the Kirktoon to that place, and observed Mrs Ogilvie and Anne Clark meet upon that road; and that same night he saw Mr Ogilvie the pannel standing at the Kirktoon, which is not a quarter of a mile from Eastmiln: That, at the time above mentioned, when Lieutenant Ogilvie kicked up the cloaths, and the Lady said to him, Ah! you daft dog! the deponent does not think she saw the condition the Lieutenant's body was in, as she was then going out of the room. Depones, That while Mrs Ogilvie was sitting upon the chest by Lieutenant Ogilvie's bed, as above deponed to, the deponent could see Mr Ogilvie's breast from the posture he was then in. Being interrogate for the pannel, depones, That when he saw Mrs Ogilvie the pannel upon the road from the Kirktoon returning to Eastmiln, as above deponed on, and Anne Clark upon the same road, that they were both walking towards Eastmiln, and Anne Clark foremost. *Causa scientia patet.* And this is truth, as he shall answer to God.

(Signed)

JOHN GILLOCH.

GILB. ELLIOT.

KATHARINE CAMPBELL, late servant to the deceased Thomas Ogilvie of Eastmiln being called; against adducing of whom it was objected, That she ought not to be received as a witness, no execution being

being returned against her twenty-four hours before the diet of compearance, conform to the forms of court established. *2do*, That she bears ill-will and malice against the pannel Mrs Ogilvie, having been dismissed her service for theft; on which occasion she expressed resentment in strong terms, and swore revenge, which is offered to be proved *instanter*.

Sir DAVID DALRYMPLE *answered*, on the part of his Majesty's Advocate, That the *first* objection ought to be repelled. The fact is, that this witness was given out in list with the others; but as she had gone into a distant part of Scotland, could not be cited by the messenger so soon as the other witnesses were. She was cited on the Saturday before the first diet of compearance; but the execution did not come up to Edinburgh till after that diet. Upon its being received, it was on Wednesday last in the forenoon given out to the agents for the pannels. The act 1672 ordains, that the list of witnesses be given out with the indictment, and this was done here; but no law requires that the executions should be returned into court twenty-four hours before the first diet of compearance: In the present case it was impossible that the execution could be sooner produced, and the pannels can suffer nothing by this; for they saw the name of the witness in list, and they have had more time for this purpose than they would have had, if the execution had been given out twenty-four hours before the first diet of court, and then the relevancy had been determined and the proof taken at the same diet.

As to the *second* objection, it ought also to be repelled. No particular condescence has been made of malice or cause of malice at this time, and the witness will be purged of malice in the initials of her oath in common form; and therefore the objections ought to be repelled agreeable to the universal practice of the court.

“ The Lord Justice-Clerk and Commissioners of Ju-  
 “ sticiary, having considered the foregoing objections  
 “ and

“ and answers thereto, repell the objections, and allow the witness to be received; reserving to the consideration of the court, whether or not any special expressions of malice and the cause thereof, that may be condescended on by the pannels in their exculpation, shall be admitted or not.”

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

On pronouncing of which interlocutor, Mr Alexander Lockhart advocate, procurator for the pannels, protested for remeid of law; and that any interrogatories he shall put afterwards to this or other witnesses, during the trial, shall not be deemed a passing from this protestation.

It being represented to the court, That Katharine Campbell the witness before named, could speak the English language but very ill; and that an interpreter or interpreters would be necessary to interpret what she said in the Irish or Earse language into the English; and Robert Gray writer in Edinburgh, and James Frazer writer to the signet having appeared, they were appointed to be interpreters, and gave their oaths as such *de fideli*.

And the said KATHARINE CAMPBELL, aged twenty-seven years, unmarried, solemnly sworn, purged of malice and partial counsel, and examined, depones, That twenty days after the deceased Mr Ogilvie of Eastmils's marriage with Katharine Nairn one of the pannels, she was sent by the lady Glenkilrie her sister to serve as a washer woman at Eastmils: That the deponent staid in that service for ten weeks: That about fourteen days, to the best of her remembrance, after she went there, the said deceased Mr Ogilvie went from home, and as she heard, to Dunfinnan: That before Mr Ogilvie went to Dunfinnan, she observed Lieutenant Ogilvie the pannel, frequently kissing Mrs Ogilvie the pannel, and showing a great fondness for her: That the deponent having said to Lieutenant Ogilvie the pannel, that she thought he showed

too great fondness for his sister-in-law, and that it would not be worse if he showed less, the Lieutenant answered, that his brother desired him to be fond of her, to keep her chearful in the beginning. Depones, That she saw the Lieutenant frequently holding the pannel Mrs Ogilvie in his arms when he was kissing her. Depones, That when the deceased Mr Ogilvie went to Dunfinnan, the two pannels continued at Eastmiln: That the deponent made up beds for them in two separate rooms: That the room she made up for Mrs Ogilvie was immediately above the kitchen, where the deponent slept: That before the deponent went to bed, her mistress called down to her, if she was not yet to bed; and that she thought she saw the deponent have a light; the deponent answered, she was not yet gone to bed, but was going soon: That after the deponent had gone to bed, she heard the pannel Mrs Ogilvie utter these words, O fy, fy; and that she heard the bed moving as if some body had been stirring in it: That the deponent upon this became under great terror, but thereafter fell asleep. That next morning when she went up stairs, she found the Lieutenant's bed in the same state that she had made it up the night before, and the bed no way discomposed as if one had lain into it. Depones, That some time before she went to bed, she went up to Mrs Ogilvie's room, where she saw the Lieutenant sitting with her: That the deponent proposed to mend the fire in the lady's room, and to make a shake-down there, for the deponent's lying there all night by her: That Mrs Ogilvie desired the deponent to go to her own bed, for that she had no difficulty to sleep in a house by herself. Depones, That the cause of her being under the terror as above, was, that she thought the two pannels were then in bed together. Depones, That she made up Mrs Ogilvie's bed next morning, which was much tossed and tumbled; but as Mrs Ogilvie might have done this herself, the deponent did not, from the appearance of that bed, form her conjecture. Depones, That the kitchen where the deponent slept had

no plaistered cieling, so that the smallest noise in the room above could be heard there. Depones, That there were two other servant-maids at Eastmiln at that time; *to wit*, Ann Samson and Elizabeth Sturrock. Depones, That she never heard, while she continued in Eastmiln, any circumstances happening between the two pannels, such as has been above described, except one night as before mentioned; and remembers particularly that the other nights that Eastmiln was at Dunfinnan, the Lieutenant's bed in the morning had the appearance as if it had been slept in; and so had Mrs Ogilvie's. Depones, That she never spoke of what she heard the night above mentioned, to the best of her remembrance, till after she had left the house of Eastmiln, when she communicated the same to Lady Glenkilrie, the pannel Mrs Ogilvie's sister. Depones, That the deponent constantly slept in the kitchen alone, while Eastmiln was at Dunfinnan, and all the time she was in the service. Depones, That while the deponent was in the service at Eastmiln, there was a sister of the Laird's married in his house; after which the whole family went to Dunfinnan, and when they returned, all of them, except Eastmiln and his mother, expressed dissatisfaction with the deponent, but upon what occasion they never explained to her. And being further interrogate, depones, That the motion she heard in the room above her, deponed to above, she then thought was the motion of a man and woman in bed together, and such as a husband and wife have together; and that she would have been of this opinion, tho' she had not seen the Lieutenant's bed unruffled next morning. And being interrogate by one of the jury, depones, That she always considered that it was Anne Clark who stirred up her mistress against her the deponent. And being specially interrogate, depones, That the night aforesaid when she heard the noise in the bed above described, she slept none till towards the morning; then fell asleep, awakened again in a fright, and told the old Lady Eastmiln that she was under terror,

but did not explain the cause. Depones, That Anne Clark was not come to the family at the time the Laird went to Dunfinnan, and she heard the noise as above in the bed. And being interrogate for the pannels, depones, That Anne Clark came to Eastmiln about a fortnight, to the best of the deponent's remembrance, after the deponent came there. And further depones, upon the pannels interrogatory, That she did not hear the motion above mentioned, but at the time above deponed to, and did not hear these motions repeated at any other period that night. Further depones, That while she staid in the house, she made all the beds without the assistance of any of the other servants. And, upon recollection, depones, That she slept in the kitchen by herself ever till Anne Clark came to the house; but after she came, Elizabeth Sturrock slept in the kitchen with her the deponent. Depones, That Anne Clark met the Laird as he was going to Dunfinnan, and came to Eastmiln two nights before he returned. Further depones, That when she found Lieutenant Ogilvie's bed in the state above described in the morning, as if no person had lain in it, it was about sun-rising: That she saw the Lieutenant come down stairs, and Mrs Ogilvie the pannel was still in bed: That she made up Mrs Ogilvie the pannel's bed that same day, but after dinner: That when Eastmiln went to Dunfinnan, to the best of her remembrance, he staid away three nights, and came home the fourth. And upon the oath being read over to her, desired that it might be marked, That what is said of her having made up Mrs Ogilvie's bed in the morning, is a mistake, and improperly taken down, for that it was after dinner she made it up. Depones, That she never got any wages but a pair of shoes from Eastmiln; and that when she asked her wages, she was told by Mrs Ogilvie the pannel, in presence of Anne Clark, Lieutenant Ogilvie, and the deceased Eastmiln, that she was well off that she got leave to go without wages; and that the deceased Eastmiln followed her, and desired her to return, which she did,  
and

and staid for a day ; but that Mrs Ogilvie next morning turned her off. *Causa scientie patet.* And this is truth, as she shall answer to God. And depones she cannot write.

(Signed) ROB. GRAY.

JAMES FRASER.

ALEX. BOSWELL.

ANNE CLARK, daughter to the deceased Allan Clark officer of excise, being called,

Mr HENRY DUNDAS for the pannels, made the following objections to her being received :

1<sup>mo</sup>, That she is a person of an infamous character, being held and reputed to be a notorious liar and dissembler, a disturber of the peace of families, and sower of dissension, and also a common whore and prostitute.

2<sup>do</sup>, That she has not only been held and reputed such as above described, but it will be clearly proved, that she lived and resided for no less than three years and a half in a noted bawdy-house within the city of Edinburgh, as a common prostitute, notwithstanding that at the same time the said house was frequently visited by the constables as a house of bad fame, and that frequent disturbances happened therein, to the great offence and scandal of the neighbourhood.

3<sup>io</sup>, The said Anne Clark did, in confederacy with Alexander Ogilvie, brother to the deceased Thomas Ogilvie last of Eastmilk, publish and propagate false, scandalous, and malicious aspersions upon the characters of the pannels, relative to the matters libelled, and did endeavour to make dissension and differences between the pannel Mrs Ogilvie and her deceased husband. And,

4<sup>to</sup>, The said Anne Clark does, and has entertained and expressed, on sundry occasions before and since the decease of the said Thomas Ogilvie, deadly malice and inveterate ill-will against both the pannels, and has threatened repeatedly to do all she could to bereave them of their lives.

Sir DAVID DALRYMPLE, on the part of his Majesty's Advocate, *answered*, That all and every one of the objections ought to be repelled; and that for the reasons following:

With respect to the *first*, it is obviously irrelevant. No such thing is ever allowed in the practice of the Judiciary court, as a general proof of character; and indeed, were it allowed, criminal trials in Scotland would become inextricable; were the character of each witness to be thus inquired into, there would be as many separate trials as there are witnesses produced. Besides, were this new form to be introduced, witnesses would be deterred from appearing upon citation given. Instead of being called to give evidence, they would in effect be called to stand an inquiry upon the whole conduct of their lives. If they were to appear and undergo such a scrutiny, they would come much worse prepared for their defence than the parties themselves when tried for the greatest crimes. For the parties know what is charged against him, and by what evidence it is proposed to prove such charge: They are therefore enabled to prepare for their defence. But witnesses neither know what may be charged against them, nor by what evidence it is proposed to prove such charge; they are therefore incapable of preparing for their defence. Indeed, by the forms established in Scotland, the public prosecutor himself has no means of confuting such a charge brought against a witness. He may be possessed, as he is actually in the present case, of certificates from credible persons to prove the character of the witness to be unblemished; but he is not at liberty to produce them, because he must confine himself to the examination of the witnesses whose names are given out with the libel, and to the evidence therein mentioned.

With respect to the *second* objection, That the witness is a common prostitute, &c. it cannot be received in this case; for the crimes charged are occult crimes, said to have been committed *intra familiam*, and they can only be proved by witnesses who resided in the family,

mily, be their character what it will. The witness against whom the objection is moved did reside in the family at the period when the crimes charged are said to have been committed. She was a near relation of the family of Eastmiln, was received and entertained as such, and had occasion to have daily intercourse with the pannels. If such necessary witnesses were to be rejected, it follows, that the crimes charged could not be proved at all. Against the last witness, Katharine Campbell, it was objected, That she had been turned out of the family for some small thefts; had vowed revenge, and entertained malice against Mrs Ogilvie the pannel. Against this witness it is objected, That she is of an abandoned character and common prostitute. Like objections might be moved against every other person of the family called as witnesses; and thus it would follow, that in the house of Eastmiln, the greatest crimes might be committed with certain impunity, because there were in the family no witnesses of irreproachable characters, who might give evidence of such crimes.

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

With respect to the *fourth* objection of deadly malice. It is a charge in itself most improbable, That a witness would deliberately resolve to perjure herself out of malice. The pannels ought to condescend, not only on the particular expressions used, but also on the cause of such deadly malice. Were a general proof of malice expressed in words to be permitted, then it would be in the power of every witness favouring the pannel, to *incapacitate* himself from bearing evidence  
to

to facts which might be hurtful to the pannel; and hence it is, that the practice of the court requires, that not only the expressions importing malice be proved, but that the probable cause of such deadly malice be also proved

“ The Lords Justice-Clerk and Commissioners of Ju-  
 “ sticiary, having considered the foregoing objections  
 “ and answers thereto, repell the objections; and al-  
 “ low the said Anne Clark to be examined, reserving the  
 “ consideration of the alledgeance, as to the said Anne  
 “ Clark’s being the author of the report of the pan-  
 “ nels guilt, till their exculpation; and also reserving  
 “ to the consideration of the court, whether or not  
 “ any special expressions of malice, that may be con-  
 “ descended on by the pannels in their exculpation,  
 “ shall be admitted or not.

(Signed) GILB. ELLIOT, I. P. D.”

On pronouncing of which interlocutor, Mr Alexander Lockhart advocate, procurator for the pannels, protested for remeid of law.

The said ANNE CLARK, daughter to the deceased Allan Clark officer of excise, aged thirty and upwards, unmarried, purged of malice, and partial counsel, sworn, and interrogate, depones, That she was cousin-german to the deceased Mr Ogilvie of Eastmiln, and went to Eastmiln upon the first day of March last: That her reasons for going there were, not only to see Eastmiln and Mrs Ogilvie, who were then recently married, and Lieutenant Ogilvie who was then come from abroad, but also to endeavour to make up the peace betwixt that family and their brother Alexander, who had entered into a very mean marriage below the rank of his family: That after the deponent had been some little time at Eastmiln, she came to be informed, that Mrs Ogilvie the pannel was censured for being too familiar with the other pannel, Lieutenant Ogilvie: That the deponent informed Mrs Ogilvie the pannel of what she had thus heard; and desired Mrs Ogilvie to be upon her guard as to her conduct, and

to abstain from the Lieutenant's company: That notwithstanding this, Mrs Ogilvie was frequently in a room by herself with the Lieutenant. Depones, That upon Sunday the nineteenth day of May last, all the family went to church, excepting the two pannels and the deponent; and that they three staid together conversing in the lower part of the house; but thereafter the two pannels left the deponent in the low room, and went up stairs together to the east room above stairs, which was the Lieutenant's room, and immediately over head of the room where the deponent was left: That she heard, by the motion of the feet, that both of them had entered the room above, and, as she judged, they went towards the bed; and thereafter the noise of the feet ceased: That upon this the deponent, in order to discover what was passing, went up the stair; and as the bed in the Lieutenant's room was an alcove bed, the back of which came to the side of the stair, and there was nothing betwixt the bed and the stair, but a piece of plaister and the timber of the bed, so that a person standing in the stair could hear distinctly what passed in the bed, she stood and listened; and from the motions that she heard, is positive that they were in bed together, and abusing their bodies together; by which she means, they were lying carnally together. Depones, That immediately after this she came up to the room where the pannels were, and walked to the end of the room, without looking into the bed: That she then turned and saw the Lieutenant, one of the pannels, standing close by the side of the bed buttoning his breeches; and she observed his shirt at first out. That at this time she observed Mrs Ogilvie was in the same bed; and that she saw her cloaths which she had then on, which were a red and white callico bed-gown and skirt. Depones, That the same evening she told Mrs Ogilvie the pannel what she had seen and heard: That Mrs Ogilvie made no answer. Depones, That upon the Monday, the pannels repeated the same thing, which the deponent is positive of, because she saw them go out of the  
low

low room, and heard them enter the Lieutenant's room, move towards the bed; and then the deponent listened at the stair, and heard the same motions repeated: That, upon the Tuesday and the Wednesday, she heard them again retire together to that room, and move towards the bed; but she did not any of these two days go to the stair. Depones, That she told the deceased Mr Ogilvie of Eastmiln's mother, the deponent's aunt, what she had heard and seen; this she told her Sunday night, Monday, and Tuesday. Depones, That she heard afterwards from the deceased Eastmiln, that his mother had said to him, that the pannel, Mrs Ogilvie, was troublesome to the other pannel the Lieutenant: That, on occasion of this information, there was ill blood and high words between the two brothers; and at length Eastmiln deceased ordered the Lieutenant out of his house; and that this happened upon the Thursday immediately subsequent to the Sunday aforesaid. And further depones, That upon the Sunday, Eastmiln, as she believes, was at Glenkilry: That the other days he was at home; but as he went to visit his workmen every morning, when the pannels went together to the Lieutenant's room as aforesaid, it was at the times that Eastmiln was out with his workmen. Depones, That Lieutenant Ogilvie left the house of Eastmiln about three o'clock after noon of the Thursday aforesaid: That, upon his leaving it, the other pannel, Mrs Ogilvie, went up to the room which had been his, and threw herself down upon a bed in that room, different from the alcove bed-above mentioned, and there fell a-tearing and crying; and that, when her husband came to the room, she ordered him to go out of it: That Eastmiln, upon that occasion, told his wife, that her conduct was improper, and that she would ruin her reputation, by intermeddling in the differences betwixt him and his brother. And being further interrogate, depones, That, before the Sunday above mentioned, the deponent has frequently seen improper familiarities between the two pannels; particularly, she has

has seen them kissing one another, and him having his hand down her breast. Depones, That when the Lieutenant went off, as above mentioned, and Mrs Ogilvie was in the above disposition, Eastmiln, as he had frequently upon former occasions, when he and his wife differed about the Lieutenant, expressed his desire to go and leave his own house; and the deponent, who, at that time, saw little prospect of harmony between them, proposed to Mrs Ogilvie, that she should agree to this scheme, which she seemed very well pleased with; but that next day both seemed to have changed their mind. And being further interrogate, depones, That, about a fortnight or three weeks after the deponent went to Eastmiln, the two pannels, and the deceased Mr Ogilvie of Eastmiln having gone to pay a visit at Glenkilry, they all of them returned, as the deponent thought, in very bad humour; and, in particular, Mrs Ogilvie the pannel was so, and expressed her dissatisfaction with her husband, and said, If she had a dose, she would give it him; but the deponent at that time did not think Mrs Ogilvie serious in what she said: That thereafter, but she cannot precisely specify the times, Mrs Ogilvie did frequently signify to the deponent, that she was resolved to poison her husband; and told the deponent, she intended to get poison either from Mr Robertson a merchant in Perth, or Mrs Eagle who keeps a seed-shop in Edinburgh, upon pretence of poisoning rats: That the deponent, seeing Mrs Ogilvie intent at that time upon that project, endeavoured to divert her from it by gaining time, and signified, that if she applied to these people for the poison, she would be brought to an untimely end; but that she, the deponent, would go to Edinburgh, and get a brother of the deponent's who lived there to buy the poison: That Mrs Ogilvie approved of the deponent's proposal; but complained, that the deponent was long in putting it in execution, and therefore proposed to the deponent to speak of it to Lieutenant Ogilvie the pannel, as he could get it more expeditiously; and this the deponent declined to do.

do. Depones, That, upon the day that the Lieutenant was put from the house, she, Mrs Ogilvie, told the deponent, that, with much difficulty, she had prevailed upon Lieutenant Ogilvie the pannel to undertake to furnish her with poison. Depones, That upon Wednesday, which was the day immediately before Eastmiln's death, Mrs Ogilvie the pannel, told the deponent, that she had received a letter the day before from the Lieutenant, which was brought to her hand by Elisabeth Sturrock; and in this letter he had acquainted her, that he had got the poison the length of Alyth, but did not chuse to trust Elisabeth Sturrock with it; and that he would send it by Andrew Stewart his brother-in-law, whom he was to send with it next day; so that she expected it there that night. Depones, That, upon this occasion, she told Mrs Ogilvie, she never believed it would come to that pitch, and exhorted her most earnestly against the propofal, saying, It would not only bring her to misery, both in this world and in the next, but would be bringing a disgrace upon the family she was come of, and upon that into which she was married: That, upon this occasion, Mrs Ogilvie said to the deponent, to let her alone, for the conversation was disagreeable to her, as the deponent knew, and she was determined to put her resolution in execution whatever might be the event. Depones, That the reasons given by Mrs Ogilvie for coming to this strange resolution, and for rejecting all the propofals the deponent made for her living in friendship with her husband, were, that she did not love her husband, and never could love him; and that he had used Lieutenant Ogilvie ill upon her account; and said, How happy could they live at Eastmiln, if there were none there but the Lieutenant, she, and the deponent! That, upon one occasion the deponent, in remonstrating against these wicked propofals, told Mrs Ogilvie, that, altho' her husband were dead, she and the Lieutenant could not enjoy one another; Mrs Ogilvie answered, That they could go and live in some of the countries where he had been.

been. And being further interrogate, depones, That when she was remonstrating to Mrs Ogilvie against poisoning her husband, she specially mentioned to her, that as she had been guilty of adultery and incest, it was a dreadful thing to crown all with murder. Depones, That upon the Wednesday's night aforesaid, immediately preceeding Eastmiln's death, Mrs Ogilvie the pannel and the deponent went out together, Mrs Ogilvie having expressed her impatience for Andrew Stewart's arrival : That they did not meet with Andrew Stewart ; but when they returned to the house, found him sitting with the old Lady Eastmiln, he having come in another way : That Mrs Ogilvie the pannel immediately carried Andrew Stewart up stairs with her, who staid with her about half an hour, and then came down stairs by himself : That the deponent asked him, If he had brought any thing with him? he answered nothing at first ; but, upon her pressing, and saying, She was sure he had brought something with him, he then said he had brought some drugs for Mrs Ogilvie, which, at time, he described as being in two phial glasses : That the deponent, on this occasion, said, they were black drugs : That Mrs Ogilvie the pannel having come down stairs very soon after, the deponent did not get an opportunity at that time to explain to Andrew Stewart what she meant by calling them black drugs. But Mrs Ogilvie and Andrew Stewart having gone out towards the Kirkton, and left the deponent and her aunt Lady Eastmiln by themselves, the deponent told her aunt, that she believed what Andrew Stewart had brought was poison ; for that Mrs Ogilvie the pannel had told her, the deponent, that Andrew Stewart was to bring the poison. Depones, That the old Lady Eastmiln was present when the deponent said to Andrew Stewart, they were black drugs, as above mentioned : That the deponent, after acquainting the old Lady, as above, asked

ed her, if she should inform the deceased Mr Ogilvie of Eastmilk of the particulars? That the old Lady said it would be improper; for that Mrs Ogilvie would persuade her husband, that it was but laudanum for her own use, and would resent it against the deponent; and that the only method that occurred to her was, that both she and the deponent should caution Eastmilk against taking any thing from his wife in private. Depones, That after this, she went to the Kirkton with a view of being advised by the minister what was fit to be done in such a case; but had the misfortune to miss him, he not being at home, the door locked, but the key in it: That Eastmilk and his wife, the pannel, and Andrew Stewart, were all in the Kirkton at that time, in the house of Fergus Ferguson, a tenant of Eastmilk's, who keeps a public house: That they having come away from the Kirkton, Mrs Ogilvie and Andrew Stewart walked on like a pistol-shot before Eastmilk; and the deponent joined Eastmilk, and signified to him, that it would be very proper and necessary for him to leave his own house, for that she believed his life was in danger; but did not tell him, that she suspected the danger was from his own wife: That Eastmilk said, he could not leave home at that time, because of his labour; she having signified, that there was a danger in a delay, Eastmilk answered, He understood what she meant; but that he was determined he would take nothing she gave him, and so would put it out of her power. Depones, That her aunt, that same night, both before and after supper, told her, that she likewise had cautioned Eastmilk to take nothing from his wife. Depones, That the same evening she informed Andrew Stewart, that she believed it was poison he had brought, and told him her reasons for believing so; that Andrew Stewart appeared to give credit to what the deponent said. After Eastmilk and his wife had gone  
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up stairs to bed, Andrew Stewart, the old Lady, the deponent's aunt, and the deponent, had a long conversation how to disappoint Mrs Ogilvie's design; and particularly, she remembers, that Andrew Stewart proposed, that as he knew the drawer wherein she had put the things that he had brought her, means should be used in the night-time to get Mrs Ogilvie's keys to open the drawer and take out the things; or, if that would not answer, that they might get a tradesman next day, or as soon as they could get an opportunity, to open the back of the chest of drawers, and so get into the particular drawer to get out the things. Depones, That Mrs Ogilvie, as Andrew Stewart told that night, received a letter from Lieutenant Ogilvie, which he, Andrew Stewart, brought along with him; and that the Lieutenant had desired him to deliver that letter, with the drugs, privately to Mrs Ogilvie the pannel. Depones, That she never insinuated to Eastmiln any suspicions she had of his life being in danger, till that night above mentioned, which was the one immediately preceeding his death; but that she frequently told to the old Lady his mother of the danger she apprehended Eastmiln was in, from the disposition his wife appeared to be in; and the old Lady said, that she likewise was suspicious, because she thought her daughter-in-law would stick at nothing: But that the deponent did not explain to the old Lady the affair of the poison, till after the Lieutenant was turned away from Eastmiln, when she advised her to warn her son of his danger. And being further interrogate, depones, That from the time that the deponent went to his house in March last, Eastmiln appeared to be under great distress of mind on account of the difference between him and his wife; but she did hear him complain of any bodily indisposition, excepting sometimes of a pain in his breast, which she thinks happened twice; but he never kept his bed one

day, nor even an hour extraordinary: That the day immediately before his death, there had been a quarrel between him and his wife; and the quarrel was, that Mrs Ogilvie had given the deponent some cambric to make into ruffles for the Lieutenant, who, she said, had sent the cambric to her Mrs Ogilvie; whereas Eastmilk said a chapman had come that day to the house, and craved him for the price of it, and that he had refused to pay it: That upon this quarrel Eastmilk had gone out in bad humour, and, as the deponent thinks, without his breakfast; and the deponent heard, that he spent the day among his tenants over the hill: That he returned in the evening, and said he was not well, and went to bed without supper. Depones, That Eastmilk never had at this time, or at any time, so far as she knows, any violent vomitings, purging, or convulsions; and, so far as she knows, no body else ever heard of any such thing. Depones, That next morning Mrs Ogilvie the pannel made the tea for breakfast somewhat earlier than usual: That the deponent having come into the breakfasting room, heard Mrs Ogilvie the pannel say, that the Laird and Elizabeth Sturrock were well off that morning, for they had got the first of the tea: That the deponent before this had been sitting with her face to the window, and her back to the table, but did not take any notice what Mrs Ogilvie had been doing; but upon Mrs Ogilvie expressing herself as above, turned about and asked, What! has the Laird got tea! and Mrs Ogilvie answered he had; upon which the deponent said nothing. Depones, That she does not know the reason why Mr Ogilvie had not come down to breakfast that morning. Depones, That she had said to the old Lady, as she thinks, she was frightened about the tea the Laird had got; but said nothing to Andrew Stewart of it, and this she means of the time before the Laird was taken ill,

ill. Depones, That Mrs Ogilvie the pannel, during the time of breakfast, went out of the room twice or thrice, and at length came in and told the Laird was taken very ill: That the deponent overheard a report among the servants, that he was troubled with a purging and a vomiting: That the old Lady desired the deponent to go up and see Eastmiln, which she did in about half an hour after breakfast: That she continued very short while in the room, she looked to him, and he appeared to her to be in a dying condition: That she came off very soon crying; Mrs Ogilvie the pannel met her, and asked if she was daft? That the deponent answered, in way of surprise or derision, O! ay! and Mr Ogilvie is dying. Depones, That after she had come down stairs, and staid half an hour or so, the old Lady desired her to go up stairs to her son Eastmiln, to keep him from these two women; and which the deponent understood she meant Mrs Ogilvie and Elizabeth Sturrock, who were then sitting with him: That the deponent accordingly went up stairs before mid-day, as she thinks, and continued with him till his death, which happened betwixt eleven and twelve o'clock at night: That Eastmiln, as the deponent has above expressed, was seized, as she heard, with a purging and vomiting: That after she went up stairs to him, he had for some time some purging, but not near so violent as she had been informed it was before: That he had a most severe vomiting, and called always to give him a cold drink: That he drank great quantities of cold water: That the deponent having mixed it with milk, he complained of that, and insisted to have cold water by itself, and then drank some small ale; but upon his brother-in-law Glenkilry's coming there, which was in the evening when it was almost dark, he dissuaded him from taking more ale: That the deponent tried him once with a glass of wine and a piece of sugar in it, which he drunk, and for about an hour after

taking it vomited none : That the deponent got the glafs of wine from Mrs Ogilvie the pannel : That Eastmiln immediately after taking the water or the ale threw it up again ; but after he had drunk the glafs of wine, as aforefaid, there was an intermiffion of the vomiting for about an hour ; and though he drank both water and ale after that, he kept it longer than before. Depones, That Eastmiln complained of a burning at his heart, as he called it ; and complained bitterly of pains in the brawns of his legs, and faid they would rent, and defired the deponent to bind them up for him, which the deponent accordingly did : That there was a fevere heaving at his breast, and a ftrong caw, and he cried to keep open the windows to give him breath : That he was constantly in motion, moving his head, his legs, and his arms : That fhe obferved in the afternoon he did not fpeak plain, which fhe fupposed was owing to his tongue having fwelled ; but fhe did not fee his tongue : That about an hour or an hour and a half before his death, he had an intermiffion of the vomiting ; but that at length he was again attacked with a moft fevere prefs of vomiting, after which he fell back upon the deponent, who was fitting behind him in the bed fupporting him, and expired. Depones, That fhe heard Eastmiln, during his diftreff, fay to James Millam his tenant in the mill, who was attending him, that it was either ftrong poifon or rank poifon, that was killing him. Depones, That before one o'clock fhe heard the old Lady Eastmiln fay to Eastmiln, that he had broke his promife to her in taking any thing from his wife : That he answered, It is too late now, mother ; but fhe forced it on me : That at this converfation there were none prefent, but the old Lady and the deponent. Depones, That fhe knows nothing about fending for any furgeon to attend upon Eastmiln, further than that fhe herfelf fent Annie Robertfon

son, one of the servants of the house, to tell Andrew Stewart, who she understood had then gone off for Alyth, to desire Mr Meik the surgeon at that place to come to Eastmiln; and that this happened the forenoon of the day on which Eastmiln died: That she thinks, before she sent off Annie Robertson herself, she heard some conversation about sending for a surgeon; and thinks that it was Andrew Stewart and the old Lady who were talking of it. Depones, That after Eastmiln's death, she was told by James Millam, that he had got orders from Mrs Ogilvie the pannel, to take a horse and go and acquaint Lieutenant Ogilvie of his brother's death; but that thereafter it was concerted, that as Glenkilry, in whose house the Lieutenant then staid, was going home from Eastmiln, that he should acquaint the Lieutenant: That next morning the Lieutenant arrived about six o'clock, as she thinks. Depones, That the day on which Eastmiln died, Mrs Ogilvie the pannel came in for a very little to him in the forenoon: That thereafter she frequently proposed to come back to him, if the deponent were dismissed; but Eastmiln would not agree to this, and she came no more near him. And being further-interrogate, depones, That the morning after Eastmiln's death, she told the Lieutenant the pannel, that she knew the whole affair of the poison, and asked him how he could send it to Mrs Ogilvie: That the Lieutenant appeared to be under great concern and confusion, and told, That suppose he had sent it to her, he did not think she had so barbarous a heart as to give it. And three missive letters, marked by the deponent and the Lord Examiner's subscription, being shown to her, depones, That the letter which begins *Dr Captain*, and is not subscribed, and has no date, and another letter which begins *Dr Sr*, and is dated *Glenkilry, Weensday*, and signed *Ketty Nairn*, are both very like Mrs Ogilvie the pannel's writing,  
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but the first she is sure is her writing; and the third letter, which bears date at *Glenkilry*, and addressed *To Thomas Ogilvie, Esq; of Eastmiln*, depones, That she does not know whose hand-writing it is. Depones, That she did not, either the day of Eastmiln's death, or the day after, acquaint any body, by letters or otherways, of her suspicions and belief that Eastmiln died by poison. And being interrogate for the pannels, depones, That upon the Monday, Tuesday, and Wednesday above mentioned, when she has deponed, That the two pannels were together, in manner above described, the old Lady and the deponent were in the house, and some servants, who were at the other end of the house. And being interrogate, From what place the pannels went when they went to the room above stairs for the said three days? depones, they went from the low room in which the deponent was all these days: That she is positive the old Lady Eastmiln was in the low room with them upon the Monday; but has been informed from her, that she observed nothing: That she desired the old Lady, on the Wednesday, to observe the motion of their feet in the room above; but the old Lady said she did not hear it, which the deponent imputed to her being dull of hearing; That when the deponent heard as above, these last three days, it was after breakfast, and, as she thinks, about eleven o'clock before noon. Depones, That when she went into the room where the two pannels were upon the Sunday, the door of the room was open. Depones, That she did not meet Eastmiln upon the road that day she came to his house; but she saw him the day before at the boat of *Bermeny*, but did not speak to him, he having passed before she knew it was him: That when she came to Eastmiln, she found none in the room that she came into, but Eastmiln and his mother: That after she came to Eastmiln, she slept with her aunt the old Lady.

Lady. Depones, That she does not know where the servants lay; but has a notion, that Katharine Campbell and Elifabeth Sturrock lay in the kitchen. Depones, That she has seen Elifabeth Sturrock several times in her bed in the kitchen; and that she does not remember to have seen Katharine Campbell in her bed, tho' she slept in the kitchen: That the servant-maids had no place to sleep in, in the house, but the kitchen; but the third maid slept out of the house. Depones, That Lieutenant Ogilvie slept in the room she has formerly mentioned; but she never knew him sleep in any of the beds, but the alcove-bed, except when his brother was lying a corpse. Depones, That she had once a conversation with one Mr Dougall a surgeon, upon the nature of laudanum, which Mr Dougall had been speaking of the day that Lieutenant Ogilvie was put from Eastmiln: That Mr Dougall had been telling that he took it for the gout; and she asked, If it was not dangerous? he told her, that there had been instances of fatal effects that it had; but said, if it was cautiously taken, there was no danger: That she asked how much one might take with safety? which he told her; but that she did not ask how much of it would do a man's business. Depones, That from her own knowledge she cannot say whether Eastmiln was abroad the morning of that day on which he died; but that she heard it reported by others, particularly by Ann Sampson, that he had been out that morning; and heard it reported, that it was after he had got the bowl of tea; and that he was seized with a vomiting before he got in again. Depones, That she knows there was once a dose of salts sent from Edinburgh to Eastmiln for Mrs Ogilvie's use; but never heard of any more salts coming into the family. Depones, There was no body present when the old Lady desired her to go up stairs and attend Eastmiln, and keep these two women from him.

Depones,

Depones, That Alexander Ogilvie, one of Eastmiln's brothers, came to Eastmiln upon the Tuesday forenoon, after his death. Depones, That when the deponent once asked Eastmiln, when he was dying, if he did not chuse that his wife should be with him? his answer was, " Miss Clark, I chuse a drink;" and that either Glenkilry, or James Millam, or both, was present at this time: That what Eastmiln vomited was much of the colour of squeezed eggs, or greenish yellow: That Alexander Ogilvie aforesaid came to Eastmiln upon the Monday eight days after she came there; and that she came on a Friday; and that he staid there till his sister was married: That she never heard of any report of the indecent familiarities between the pannels before she came to Eastmiln: That she never knew Mrs Ogilvie the pannel, till the deponent went to Eastmiln as aforesaid. Depones, That she never had any difference with any of the family of Eastmiln while she staid there: That she never heard that Eastmiln had employed James Millam to turn her away from Eastmiln, or borrow money from him to give her to go away from the house: That after Eastmiln's death, she got a message from Mrs Ogilvie the pannel, by Martha Ogilvie, Eastmiln's sister, to dismiss from the house. Depones, That the conversation she had with Lieutenant Ogilvie the pannel, about his sending the poison to the other pannel, was at the burn-side, upon the east side of Eastmiln. And, upon the prosecutors interrogatory, depones, That she does not know that Mrs Ogilvie the pannel took any salts after her husband's death. Depones, That when she saw Eastmiln, in coming to his house, at the boat mentioned above, she was informed he was then returning from Dunfinnan. And being further interrogate, upon the part of the pannels, depones, That she was informed, the drawers into which the things were put that Andrew Stewart brought, stood in the Lieutenant's

nant's room. Depones, That after the pannels were committed to prifon at Forfar, ſhe, the deponent, went back to Eaſtmiln, and ſtaid for a few nights: That at this time Alexander Ogilvie, Eaſtmiln's brother, had a roup of the cattle at Eaſtmiln. *Cauſa ſcientie patet.* And this is truth, as ſhe ſhall anſwer to God. And being further interrogate, upon the part of the proſecutor, depones, That when Mrs Ogilvie the pannel was carried priſoner from Eaſtmiln, Alexander Ogilvie took up ſome ſmall keys of hers, and aſked her, If he ſhould take care of them? and that ſhe anſwered, She did not care who took care of them. Depones, upon recollection, That Alexander Ogilvie had the keys in his hands when he aſked the above queſtion: That Alexander Ogilvie locked all the rooms in the houſe, except the laigh room; and put the keys in a drawer of that laigh room, which he locked, and took the key with him. And this is alſo truth, as ſhe ſhall anſwer to God.

(Signed) ANNE CLARK.

ALEX. BOSWELL.

ELISABETH STURROCK, late ſervant to the deceased Thomas Ogilvie of Eaſtmiln, aged twenty-three years, unmarried, purged of malice and partial counſel, and interrogate, depones, being ſolemnly ſworn, That about the end of laſt harveſt, ſhe entered as a ſervant to the deceased Thomas Ogilvie of Eaſtmiln, and continued in that ſervice till the ſaid Thomas Ogilvie's death: That about Candlemas laſt, the ſaid Thomas Ogilvie was married to Mrs Ogilvie, at which time the ſaid Mrs Ogilvie came home to Eaſtmiln: That much about the ſame time Lieutenant Ogilvie the pannel came likewiſe to reſide at Eaſtmiln, where

where he continued till about a fortnight before the said Thomas Ogilvie's death: That during Lieutenant Ogilvie's residence at Eastmiln, she had occasion to observe too great a fondness betwixt the said Lieutenant and Mrs Ogilvie the pannels, which proceeded even to indecencies, she having frequently seen them kissing and hugging each other in and about the house of Eastmiln: That the late Thomas Ogilvie used frequently to be from home, particularly about his workmen: That during his absence she has frequently observed the two pannels retire by themselves to the upper rooms of the house, both the easter and wester room, when she believed there was nobody in these rooms but themselves. Depones, That one night about sun-set, during the time aforesaid, the deponent having occasion to speak to Mrs Ogilvie the pannel, about what ale the deponent should bring from the Kirkton, the deponent went up stairs to the east room, where the Lieutenant used to lie, to see for her mistress: That she found the door of the room open; and upon looking into the room, she observed the two pannels lying in the bed in which Lieutenant Ogilvie usually lay: That she suspected them to be there, by hearing them breathing: That upon discovering them, she immediately turned back without speaking to them, and run down to the first flatt of the stair, where she stopt, and called up to her mistress to see if she was in the foresaid room, upon which her mistress answered her from that room, as she apprehended it, that she was there: That Lieutenant Ogilvie the pannel likewise spoke to her from the same place at that time. Depones, That at another time, and before the time above mentioned, and soon after Mrs Ogilvie the pannel's marriage with the late Eastmiln, and while the late Eastmiln was at Dunfinnan, she was told pretty early in a morning by Anne Sampson, a neighbour-servant, that she, Ann, believed Lieutenant Ogilvie the pannel

pannel was gone into her mistress's room: That upon this the deponent went up to her mistress's room to see into the truth of it; and when she went into the room, she observed Lieutenant Ogilvie the pannel going from the bedside towards the window, in his night gown: That she is sure her mistress was then in bed in that room, as she was not got up by that time in the morning, nor had she come down stairs, nor was she in the only other room above stairs, which the deponent immediately went and looked into. Depones, That at several other times, when the deponent had occasion to be sitting at her wheel in the kitchen, which is immediately under Mrs Ogilvie the pannel's room, and where one can easily hear any noise, even to a laigh word, that is made in Mrs Ogilvie's room, the deponent heard the feet of the two pannels in the room, and shuffling at the side of the bed: That the reason why she believed it to be the feet of the pannels which she heard there, was, that she saw them go up together to that room just before she heard the noise as aforesaid. Depones, That she believes Lieutenant Ogilvie the pannel was put away by the late Eastmiln from the house, upon Eastmiln's suspicion, that the Lieutenant was too great with Mrs Ogilvie the pannel: That her reason for believing so is, that about the time Lieutenant Ogilvie went away, the deponent, as she was going to her bed in the kitchen, overheard the late Eastmiln, when he was going to bed with his wife in the room above, say to his wife, That she was too great with Lieutenant Ogilvie the pannel; and that they were as frequent together as the bell was to ring on Sunday. Depones, That Ann Sampson was in the kitchen at the same time; and the deponent believes she heard what passed betwixt Eastmiln and his wife, as aforesaid, and the deponent challenged her for listening. Depones, That after Lieutenant Ogilvie the pannel had left the house of

Eastmiln, the deponent observed the other pannel, Mrs Ogilvie in tears and crying; upon which occasion Mrs Ogilvie said to the deponent, That she was sorry, or grieved, Lieutenant Ogilvie had left the house, Depones, That upon the night of the day that Lieutenant Ogilvie left the house, as aforefaid, Mrs Ogilvie the pannel gave the deponent a letter to be carried to Lieutenant Ogilvie at Little Forther, about three miles from Eastmiln: That Mrs Ogilvie desired the deponent to let nobody know she had got such letter: That the deponent did not know what were the contents of the letter: That Mrs Ogilvie desired the deponent to tell Lieutenant Ogilvie, that she had been bad since he went away; and that her husband was not owning her: That she delivered the letter accordingly to Lieutenant Ogilvie at the water-side near Little Forther: That the Lieutenant, in answer, bid the deponent tell Mrs Ogilvie, that he was very well; and that she should keep up a good heart; and that he was to go to Baron Reid's. Depones, That afterwards Mrs Ogilvie the pannel gave her another letter to carry to Lieutenant Ogilvie at Glenkilry, and to deliver it privately, which the deponent carried accordingly; and she received an answer in writing from the Lieutenant to Mrs Ogilvie, which the Lieutenant likewise desired her to deliver privately; and she did so. Depones, That upon another time, being the Tuesday immediately before the late Eastmiln's death, Mrs Ogilvie the pannel sent the deponent with another letter to Lieutenant Ogilvie at Alyth, likewise with orders to deliver it privately. Depones, That she delivered the letter to Lieutenant Ogilvie accordingly, and then went and did some other business in the town of Alyth, and returned and received an answer from Lieutenant Ogilvie to the last mentioned letter, which he desired her to take care of and deliver privately; when he likewise told her, that he had a packet of li-

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mens lying at a house near by, and a letter with them, which the Lieutenant desired the deponent to call for and take to Eastmiln with her : That the deponent returned streight to Eastmiln with the Lieutenant's answer; and Mrs Ogilvie not being then at home, the deponent went and fetched a bundle of linens, and the other letter, all which she delivered to Mrs Ogilvie at the same time. Depones, That the answer she received last from the Lieutenant, as aforesaid, was a large thick letter, bigger than a sheet of paper; but she did not think there was any thing in it but paper. Depones, That Eastmiln appeared to be in his ordinary health upon the Tuesday before he died, and that he usually had very good health, the deponent having never known him to be in bad health while she was in his service : That upon the Wednesday before his death, he was likewise in good health : That upon the Thursday morning upon which he died, the deponent knew little about Eastmiln, as she herself was confined to bed by sickness, except that she heard that Eastmiln had been taken ill : That Mrs Ogilvie the pannel came into the kitchen where the deponent was lying, and told the deponent in a low voice, or a whisper, that she, Mrs Ogilvie, had given the Laird his breakfast that morning, and she desired the deponent to say, that she had likewise got her breakfast, altho' the deponent had then got none : That some time thereafter Mrs Ogilvie sent Ann Sampson with some tea to the deponent in a bowl, which the deponent drunk : That the deponent commonly got tea in the morning when she was indisposed. Depones, That after the deponent had got out of bed on the said Thursday morning, and before she got the tea as aforesaid, she observed the late Eastmiln come in at the outer door, and come forward to the kitchen where the deponent was : That he was then very ill, and vomited much : That, at this time, she believes the rest of the family

were at their breakfast, Mrs Ogilvie the pannel having come into the kitchen for some cream to the tea. Depones, That Mrs Ogilvie, seeing Eastmiln so ill, desired him to go up to his bed, which he did, and the deponent helped him to go up stairs and to throw off his cloaths: That after he had been a little while in bed, he said, he thought himself some easier. But depones, That in a short time he turned very ill again, fell a vomiting and purging, and complained of every part of his body; said, his heart was broken or riven, and he tossed very much. Depones, That Eastmiln, during his illness, called frequently for cold water, and drank often of it. Depones, That about ten or eleven o'clock that forenoon, when old Lady Eastmiln, Andrew Stewart, and the deponent, were in the room together attending the late Eastmiln, Eastmiln said, in the deponent's hearing, That he was poisoned, and that woman had done it. Depones, That, by that woman, the deponent understood Eastmiln meant his wife: That the old Lady seemed to understand it in the same way, and reproved her son Eastmiln for saying so. To which Eastmiln answered, That it was very true, and his death lay at her door. Depones, That upon the day Eastmiln was ill, as aforesaid, Mrs Ogilvie the pannel came pretty often up to his room to see him in the forenoon; but she did not come near him at all in the afternoon; and that, in the afternoon, Mrs Anne Clark, who sat clost by Eastmiln, desired the deponent to go down and tell Mrs Ogilvie the pannel to come up and see her husband. Upon which Eastmiln himself said, No! no! I do not want her: That Anne Clark told the deponent, she might go down and bid her come up for all that: That the deponent accordingly went and told Mrs Ogilvie; but Mrs Ogilvie refused to come up, saying, She did not like to see dying people. Depones, That, during her husband's illness, Mrs Ogilvie did not chuse that the  
people

people in the neighbourhood that came to see him, should get access to his room, for fear of disturbing him : That the deponent went and brought the precentor in the afternoon, or rather about dinner-time, when the precentor went and prayed by Eastmiln ; Mrs Ogilvie, who had sent the deponent for the precentor, went up stairs with him to Eastmiln's room. Depones, That Mrs Ogilvie was not very dull, or shewed great marks of grief upon her husband's death, till Alexander Ogilvie, Eastmiln's brother, the doctor, came to the house upon the Tuesday thereafter ; when Mrs Ogilvie having ordered the deponent to desire Alexander Ogilvie to speak with her, and he having refused to do so, Mrs Ogilvie fell a crying, and wringing her hands, throwing herself back upon the bed, and saying, What could be the meaning of this ? Depones, That Alexander Ogilvie stopped the burial, and sent for Doctor Ogilvie of Forfar, and Doctor Ramsay, and Doctor Meik of Alyth, to inspect the dead body of his brother : That, at this time, Mrs Ogilvie behaved very ill, weeping and crying, and wringing her hands, and tearing herself ; but the deponent does not know the cause of this behaviour. Depones, That Lieutenant Ogilvie, at the time of his brother Eastmiln's death, lived at Glenkilry's house ; and Glenkilry having been at Eastmiln when Thomas Ogilvie died, he went home and desired Lieutenant Ogilvie to go to Eastmiln upon that event : That Lieutenant Ogilvie came to Eastmiln next morning, and the deponent seeing him approach the house, told Mrs Ogilvie that he was coming. Upon which Mrs Ogilvie went out, and desired the deponent to tell Lieutenant Ogilvie to speak to her in the stable : That the deponent went accordingly and delivered the message to Lieutenant Ogilvie, who was then walking with Doctor Meik, and the Lieutenant went to Mrs Ogilvie in the stable, as desired. Depones, That after the late  
Eastmiln's

Eastmiln's death, and after Mrs Ogilvie heard the Sheriff of Forfar was coming to examine them at Eastmiln, Mrs Ogilvie desired the deponent to say to the Sheriff, that the deponent had seen Mrs Ogilvie mix up the bowl of tea, which she, Mrs Ogilvie, had given her husband the morning of the day on which he died; and that the deponent had drunk some of it before Eastmiln tasted it; and that she likewise drank off what Eastmiln left of it; she likewise particularly desired the deponent to say, That the deponent was in the closet with her, Mrs Ogilvie, when she mixed up the bowl of tea; and that she, Mrs Ogilvie, gave her husband some short-bread with it: That Mrs Ogilvie told the deponent, that if the deponent would say, as thus directed, she would stand by the deponent, that no harm should happen to her: That the deponent should go with her where ever she went; and while she, Mrs Ogilvie, had a halfpenny, she should have the half it. Depones, That Mrs Ogilvie spoke to the deponent in this manner several times: That Lieutenant Ogilvie was present upon these occasions, heard what Mrs Ogilvie desired the deponent to say, and he himself desired the deponent to say as Mrs Ogilvie directed her. Depones, That some time before Eastmiln's death, the deponent knows Mrs Ogilvie took a dose of salts, the deponent having got a part of them: That she never knew Mrs Ogilvie's taking salts but that time. Depones, That before Eastmiln's marriage, she lay in the laigh room with old Mrs Ogilvie and her daughter: That after the marriage, she continued to lie with the old Lady, till Anne Clark came to Eastmiln: That after that, Anne Clark lay with the old Lady, and the deponent lay in the kitchen with Katharine Campbell: That at this time, Ann Sampson lay in an out-house till Katharine Campbell went away. Depones, being interrogate for the pannels, That what she has above deponed concerning the pannels kissing and hugging

hugging one another, happened at different times, sometimes when they were by themselves, and at other times when they were in company with others. Depones, That when she saw the Captain in Mrs Ogilvie's room, in his night-gown as above, the door was in part open, so that she could see into it; and that she did not go into the room. And being interrogate, for the pannels, What number of persons, not of the family, got access to the room in which Eastmiln was, after his being taken ill as above? depones, That, to the best of her remembrance, the persons who got access, were, Mr Spalding of Glenkilrie, William Froster, Anne Froster, James Millam, and David Watson: That James Millam, William Froster, and Anne Froster, were brought in by the deponent, without the knowledge of Mrs Ogilvie. Depones, That she did not hear Alexander Ogilvie give orders to the persons who were sent for the doctors, to inspect Eastmiln's body; but she afterwards heard of it from the persons who had been sent, and who on that account had come to get meat in the family; but that she the deponent was forbid by Mrs Ogilvie to give them meat. Depones, That when the deponent was first brought to town, she was lodged, for about the space of twenty days, in the house of one Mr Gardiner at the head of the Cowgate, by Mr Murison the macer: That from thence she was carried to the Castle of Edinburgh, where she has remained since that time; That the deponent, Anne Clark, Anne Sampson, and Katharine Campbell, were lodged in the same room till Thursday, or Friday last, when Anne Clark was put into another room in the Castle, where she remained a day and a night, and was thereafter put into the room with the deponent, and the other persons above mentioned. Depones, That while the deponent, and the other persons above mentioned, were at the house of one Gardiner and in the Castle, they had some, tho' not

not much, conversation upon the subject of this trial; but that in these conversations, all of them declared, that they considered it as their duty to tell nothing but the truth. Depones, That upon the morning of the day after Eastmilk's death, Anne Sampson told Mrs Stewart, Eastmilk's sister, in presence of the deponent, that the bowl out of which Eastmilk was said to have drunk the poison the day before, was below a press in the kitchen: That the deponent having taken out the bowl, observed something greasy in the bottom of it, and intending to try if there was any thing poisonous in the grease, she put some broath into the bowl, and gave it to a dog, who eat it up; but was nothing the worse of it: That the deponent made this experiment of her own accord, and not on the suggestion or desire of any other person whatsoever. And depones, That Anne Sampson has often told the deponent, that she had filled the said bowl with water, and offered it to Eastmilk, that day on which he died; but that he had refused to drink out of it, damning the bowl, and saying he had already got his death out of it. *Causa scientiæ patet.* And this is truth, as she shall answer to God. And being further interrogate, depones, That while the deponent was in Eastmilk's service, she never heard of his being troubled with vomitings, purgings, or cholicks, before that day on which he died; and that she never knew of his being indisposed, except by slight colds. Depones, That when Lieutenant Ogilvie went into the stable where Mrs Ogilvie was, as has been above deponed, he did not remain there above four or five minutes. And this is also truth, as she shall answer to God: and depones she cannot write.

(Signed) AND. PRINGLE.

ANNE

ANNE SAMPSON, late servant to the deceased Thomas Ogilvie of Eastmiln, aged nineteen years, unmarried, purged of malice and partial counsel, sworn, and interrogate, depones, That she entered servant to the family of Eastmiln Whitsunday was a year: That after being some time absent, she returned a few days before Miss Clark came to the house: That after her return she had more than once occasion to observe Mrs Ogilvie and Lieutenant Ogilvie kissing one another; particularly once in the kitchen before the deponent and another servant-maid: That she has seen them embrace and hugg one another: That when the Laird was out of the house, she has known them retire to a room by themselves, but not staying above an hour at a time. Depones, That one morning when the Laird was at Dunfinnan, she heard the two pannels speaking together in bed in the room above: That she was in the kitchen, the cieling of which is not plaistered, and where she could hear the lowest voice in the room above: That upon this she desired her fellow-servant Elisabeth Sturrock to go up stairs and see what was going on; and that Elisabeth, upon her return, told the deponent, that the Lieutenant had got out of the bed before she was got to the door; and that she saw him going from the bed towards the window in his night-gown. Depones, That this was about sun-rising. Depones, That the Lieutenant left the house a fortnight before his brother's death; and, before that time, the deponent being in the kitchen with her fellow-servants, Elisabeth Sturrock and Annie Robertson, they all heard the Laird and Lady talking together in bed in the room above: That the talking begun with the Lady's scolding her husband; upon which the Laird bade her hold her tongue, for that she and the Lieutenant were as common as the bell that rings on Sabbath. Depones, That the morning the Lieutenant left the house, she saw Mrs Ogilvie weeping: That this was before he went away; and that she saw her also weep after he went away. Depones, That Eastmiln was a healthy man; and that, before the day he died, she never heard him complain, if it was not sometimes of an headach; and that the night before he died, he was in

health, so far as she knows. Depones, That the night before her master died, she saw Andrew Stewart in the house of Eastmilk; and that she was told by Elisabeth Sturrock and Miss Clark, the night thereafter, that the said Andrew Stewart had retired with Mrs Ogilvie into a private room. Depones, That the morning of the day her master died, breakfast was ready betwixt eight and nine, a little sooner than ordinary: That she saw her mistress make up the bowl of tea in presence of her mother-in-law and Miss Clark, for Andrew Stewart was not then up: That she followed her mistress up stairs, wanting some beef out of the beef-stand, and saw her go into a closet adjoining her master's room: That the deponent followed her into the closet, demanding the beef; but that her mistress bade her go down stairs, as she was not ready yet; and that she was always wanting something; and that Mrs Ogilvie appeared to be in a passion at her: That her master was at that time in bed; and that, when the deponent was in the closet, she saw Mrs Ogilvie stirring about the tea with her face to the door; and that, upon what her mistress said to her as above, she went out of the closet down to the kitchen; but that she did not see her mistress, when in the closet, put any thing into the tea. Depones, That at this time she saw Alexander Lindsay, a servant-lad in the house, standing upon the stair-head, near the closet-door, at the time her mistress was in the closet. Depones, That her master got up between nine and ten, and first went to the stables to see his horses fed, and then to the Shilling-hill, where he conversed with some of his tenants: That, in his returning towards the house, she saw him vomiting, and still more when he came into the kitchen; and that, when he was there, Mrs Ogilvie came into the kitchen and ordered Elisabeth Sturrock to help him up stairs, and followed him herself. Depones, That some time thereafter she was ordered to carry up some clean water for her master for drinking, which she did in the same bowl that he got his tea in from Mrs Ogilvie; but that she first synded the bowl with some water: That she went up stairs with the bowl into her master's room, and found him in bed; but that, upon seeing the bowl,  
 he

he cried, "Damn that bowl, for I have got my death in  
 "it already," and bid her, at the same time, carry it  
 down stairs out of his sight; and that she carried up  
 water to him in the tea-kettle, which he drunk of. De-  
 pones, That the reason for her synding the bowl was,  
 that it appeared to be greasy and white; and that she  
 knew the bowl to be the same as above, because Mrs  
 Ogilvie, after giving her master his tea, came down stairs  
 with it and set it down in the kitchen on the foreside of  
 the press. Depones, That, after synding the bowl, as  
 aforesaid, the grease did not come wholly out of it.  
 Depones, That the day her master died, about mid-day,  
 she was sent by Mrs Ogilvie two miles to clip some sheep.  
 Depones, That Mrs Ogilvie frequently went to see how  
 her husband was in the forenoon, but not once in the af-  
 ternoon; and that, when the deponent was going up  
 stairs to see him between twelve and one o'clock, she  
 was turned back by Mrs Ogilvie. Being interrogate on  
 behalf of the pannels, depones, That when Mrs Ogilvie  
 made up the bowl of tea in the breakfasting room as  
 aforesaid, the deponent saw her put in milk and sugar;  
 but whether she put in any honey, the deponent does  
 not perfectly remember, nor whether she saw any honey  
 upon the table. Depones, That the family seldom  
 breakfasted without honey; but that the day deponed  
 upon she rather thinks there was none; because, she be-  
 lieves, at that time the house was out of honey. And  
 being further interrogate in behalf of the pannels, de-  
 pones, That, at the time deponed upon, when she car-  
 ried up the fresh water to her master to drink, she synd-  
 ed the bowl with water, and not with broath out of  
 the pot. Depones, That the next day thereafter the  
 bowl was synded with broath out of the pot, and given  
 to a dog; and that it was the deponent that did so,  
 by the direction of Elisabeth Sturrock; and that Elisa-  
 beth Sturrock gave her no reason for doing so: Fur-  
 ther depones, That she took the bowl for carrying wa-  
 ter to her master, because it was at hand; and that  
 she had no notion at that time of her master being poi-  
 soned, nor till after his death. Being interrogate in be-

half of the pannels, When she returned from the sheep-clipping? depones, That it was about nine at night. Upon which, being again interrogate, How she came to depone as above, That Mrs Ogilvie did not once visit her husband in the afternoon? answers, That was because she was told so by the other servants, who added, That her master did not want Mrs Ogilvie up, for fear of doing her harm. Depones, That after she saw her mistress make up the bowl of tea in the breakfasting parlour, as aforesaid, she went into the kitchen and made up the fire, before she followed her mistress to the closet, as above deponed to. *Causa scientiæ patet.* And this is truth, as she shall answer to God.

(Signed) HENRY HOME.

ANDREW STEWART merchant in Alyth, aged thirty, married, purged of malice and partial counsel, sworn, and interrogate, depones, That, upon the evening before Mr Ogilvie of Eastmiln died, being a Wednesday, the deponent was at the house of Eastmiln, when, upon his coming into the house, Mr Ogilvie told him, that he had forbid his brother, the Captain, the house, on account of suspicions he had, that his wife was too much taken up in doing things for his brother the Captain, and not for himself; and that, at the same time, he mentioned some differences he had with his brother concerning money-matters. Depones, That on the Monday before Eastmiln, the deponent's brother-in-law, died, Lieutenant Ogilvie (who is above designed Captain) came to the deponent's house in Alyth on horseback; and that the horse he rode belonged to Mr Ogilvie of Eastmiln. Depones, That, on the day thereafter, being the Tuesday, Elisabeth Sturrock, a former witness, came to the deponent's house, and bought some things for the family of Eastmiln: That he does not know that she brought with her any letter for Lieutenant Ogilvie; nor does he know if Lieutenant Ogilvie gave her any letter for Mrs Ogilvie the pannel. But depones, That he did that day inform Lieutenant Ogilvie, that he, the deponent, was to be at Eastmiln next day. Depones, That, upon the day thereafter, he accordingly went to Eastmiln, and before he went off,

Lieutenant

Lieutenant Ogilvie delivered to the deponent a small phial glass containing something liquid, which he said was laudanum; and also a small paper-packet, which he said contained salts; and that the morning of the day preceding, the deponent saw the Lieutenant working among some salts, at least, which appeared to the deponent to be salts, which were in a chest belonging to the Lieutenant: That the phial glass was round, and knows that there was another phial glass in his own house which was square: That he is positive, as he has already deponed, that one phial glass was delivered to him by the Lieutenant; and cannot say, with certainty, that two might not have been delivered to him by the Lieutenant; but rather thinks he got only one; and that at the time when the above particulars were delivered to the deponent, the Lieutenant desired him to deliver them privately into Mrs Ogilvie's own hand: That he did not see the packet made up, nor did he open it to see what it contained. Depones, That, on the foresaid packet, there was a letter directed for Mrs Ogilvie of Eastmiln, which letter was sealed both with wax and a wafer; and that round the packet there was a loose paper of directions, in what manner the laudanum was to be used. Depones, That when he came to Eastmiln in the Wednesday afternoon, he was carried into a room where old Lady Eastmiln was; and that, within a short time thereafter, Mrs Ogilvie the pannel and Miss Clark came into the room: That, at the desire of Mrs Ogilvie, he followed her up to the easter room, where Mrs Ogilvie having asked him, If he had brought any word to her from the Lieutenant? he delivered to her the several particulars above mentioned, which the deponent saw her immediately put into a drawer in the room: That he did not see her read the letter at that time; but that she put the whole together into the drawer: That, soon thereafter, Miss Clark asked the deponent, What he had brought with him from the Lieutenant to Mrs Ogilvie? or if he had brought any thing with him? He at first said, he had brought nothing; but upon Miss Clark's pressing him with great earnestness, he at last informed her of the particulars he had brought: That, upon this, Miss Clark

said, that she was afraid Mrs Ogilvie might poison her husband. Depones, That soon thereafter Miss Clark, in presence of the deponent and the old Lady, desired Eastmiln not to take any thing out of his wife's hand, except at the table. To which he answered, that he would not: That the old Lady joined with Miss Clark in desiring Eastmiln to take nothing out of his wife's hand; but that the deponent was at that time very much displeas'd with both, as he then had no suspicion that Mrs Ogilvie had any design against the life of her husband. Depones, That that same night he heard Mrs Ogilvie say, That she lived a most unhappy life with her husband; that she wished him dead; or, if that could not be, she wished herself dead. Depones, That the deponent supped with Eastmiln and the rest of the family that night: That he then appeared to be in his ordinary state of health; but that some times before that same night, he told the deponent and the rest of the company then at the Kirkton, that he had swarfed or fainted on the hill; that, for that reason, he could drink no ale: That, upon this, they call'd for a dram, which he took, and thereafter seem'd hearty, and in good spirits; and Eastmiln then said, that the swarf had happened to him on the hill that same day. Depones, That that night the deponent told, that he intended to go off from Eastmiln early next day, which occasioned their getting breakfast more early than usual: That Eastmiln did not breakfast along with the family, the only persons present at breakfast being Mrs Ogilvies elder and younger, Miss Clark and the deponent being then only present: That the deponent saw Mrs Ogilvie making a bowl of tea, by filling it out of the tea-pot, and putting sugar and milk in it; and that she said, in presence of the company, that she was to give it to her husband, who was then in bed; and that the deponent saw her go out of the room with the bowl in her hand: That, about an hour and a half after they had begun to breakfast, they were told that Eastmiln had been suddenly taken ill; upon which Miss Clark immediately run up to the room in which he was, and soon thereafter returned weeping, and told them, that Eastmiln had got a bad breakfast.

Depones,

Depones, That the deponent immediately run up stairs, where he found Eastmiln vomiting and purging violently: That he heard him say, that he was all wrong within; and that he had got what would do his turn: That Eastmiln called very much for drink: That they offered him milk; but that he would drink nothing but water: That he complained much that he was burning within. Depones, That he proposed to Mrs Ogilvie that a surgeon should be called to his assistance, to which she would not agree, saying, that he would be better: And upon the deponent's renewing this proposal, she said, She would not for any money that a surgeon should be called, as the consequence of this would be, to give her a bad name from what Miss Clark had said of her: That, upon this, the deponent told Mrs Ogilvie, that Mr Meik, surgeon in Alyth, whom the deponent had recommended, was a discreet person: That he would come; and that he would tell none but her what he thought of him: That, upon this, the deponent left her, she having previously agreed that Mr Meik should come: That the deponent thereafter set out on his journey; but, before he had got far from the house, one of the girls, whose name he thinks was Robertson, came up to him, and desired that Mr Meik might be sent with all haste: That after supper, the deponent had a conversation with Miss Clark concerning the suspicions she had of Mrs Ogilvie's intentions against her husband, in which the deponent proposed, that they should either take Mrs Ogilvie's keys out of her pocket, or break open her drawers at the back, in order that they might satisfy themselves if the particulars brought by the deponent were poison or not; and that this was the only method by which mischief would be prevented: That Miss Clark did not seem to agree to either of these proposals, and the deponent himself had at that time no suspicion that there was any foundation for Miss Clark's fears; and the deponent was confirmed in this opinion, from his having been told by the old Lady, that she had gone up to the room-door, after her son and daughter-in-law were in bed; and that there was then more kindness between them than usual. Depones,  
That

That his wife had frequently told him, before the death of Eastmiln, that he was a tender man; but that he never heard of his having been troubled with violent vomitings, or purgings, before the day on which he died: That he had the appearance of a tender man; and that the deponent has heard his wife say, that he would not be a long liver. Depones, That at the conversation above mentioned at Kirkton, he heard Eastmiln say, that he had been ill of a cough and sore breast; and that, for some time past, he had been thinking of writing to Doctor Ogilvie at Forfar, to send him some things: That the deponent laughed at him for talking in that manner, and bid him take a dram. Depones, That the drawer into which Mrs Ogilvie put the particulars delivered to her by the deponent, stood in that room in which the deponent slept that night. Depones, That at the time when Alexander Ogilvie the deponent's brother in-law arrested the corpse, the deponent advised Lieutenant Ogilvie to make his escape, if guilty; to which he answered, That God and his own conscience knew that he was innocent. Depones, That the two pannels lived at the house of Eastmiln, from the time of Eastmiln's burial to the time that Mrs Ogilvie was apprehended; and that for some time after the pannels continued to live there; but how long he cannot say. Depones, That Mrs Ogilvie had been blooded the day before Eastmiln's death, or the day before that; and that she had been ill, and taking drugs for some time before, as the deponent had heard. *Causa scientia patet*; and this is truth, as he shall answer to God. And at reading over the oath, depones, That at the time when Lieutenant Ogilvie delivered the particulars above mentioned to the deponent, he desired him to put them into Mrs Ogilvie's own hand; but did not mention the words *privately, or by herself*; and that his reason for denying at first to Anne Clark, that he had brought any parcel from Lieutenant Ogilvie, was, because he considered Miss Clark as a person given to raise dissension in families; and because, that he had been desired by the Lieutenant to put the particulars into Mrs Ogilvie's own hand. And this is also truth.

(Signed) AND. STEWART.

GEO. BROWN.

JAMES CARNEGIE surgeon in Brechin, married, aged about forty and upwards, being solemnly sworn, purged of malice and partial counsel, depones, That in the end of May last, he got a message from Lieutenant Ogilvie the pannel, with whom he is acquainted, desiring him to meet him at Colin Smith's vintner in Brechin: That the deponent having gone there, found him in company with one Lieutenant Campbell of the same regiment, and one Mr Dickson: That Lieutenant Ogilvie took the deponent aside, and told him, that he was troubled with gripes, and wanted to buy some laudanum from him, and at the same time told him he wanted to buy some arsenick, in order to destroy some dogs that spoiled the game: That the deponent told him, that he was uncertain whether he could furnish him with these things or not; but that he should look when he went home: That the deponent, when he went home, found he had some of both, and put up a small phial glass of laudanum, and betwixt half an ounce and an ounce of arsenick, both which he delivered next day to the Lieutenant, after the deponent had dined with him and Lieutenant Campbell next day in Smith's: That Lieutenant Ogilvie took the deponent into another room, away from Lieutenant Campbell, when he was to receive the laudanum and the arsenick, and there the deponent delivered them to him: That the price of both was a shilling: That the arsenick was pulverized; and Lieutenant Ogilvie having asked how to prepare it, the deponent gave him directions. Depones, That he had sold of the same arsenick formerly to people for poisoning of rats, and heard that it had the desired effect. Depones, That he has been accustomed, when he sold arsenick, to take receipts from low people who bought it, but never from gentlemen; and as the deponent knew Lieutenant Ogilvie, and had a good opinion of him, the deponent did not ask a receipt from him, although, when the Lieutenant spoke about it first, the deponent said to him, "We use to take a receipt for arsenick:" That the Lieutenant answered, "See first if you have it," adding at the same time, "Very good." Depones, That he got his arsenick from a druggist in Dundee;

Dundee; but how long ago he cannot say, there being a small demand for arsenick at any time. *Causa scientiæ patet.* And all this is truth, as he shall answer to God. Depones, That he wrapt it up in the form of a penny-worth of snuff under three paper-covers. Depones, That the arsenick which he sold as above was white arsenick. Depones, that he cannot take upon him to say, from looking at arsenick, whether it be arsenick or not; nor can he say from the taste, for he never tasted it; but that he bought this as arsenick, had the name marked upon it upon the package, and heard from those he sold it to, that it had killed rats, as above mentioned. Depones, upon a further interrogatory, that he heard of Mr Ogilvie of Eastmilk's death after the time that he sold the arsenick to the Lieutenant. *Causa scientiæ patet.* And this is also truth, as he shall answer to God.

(Signed) JA. CARNEGIE.

ALEX. BOSWELL.

Lieutenant GEORGE CAMPBELL, of the late eighty-ninth regiment, unmarried, aged about twenty-two, being solemnly sworn, purged of malice, partial counsel, and interrogate, depones, That he has known Lieutenant Ogilvie the pannel these five years past: That in the beginning of June last, as he thinks, the pannel called for the deponent at Phinhaven, and desired him to go along with him to Brechin, because he wanted to see his old landlord William Finlay vintner there: That they accordingly went to Brechin, and put up at Colin Smith's vintner, and the pannel called for James Carnegie surgeon there, but had no conversation at that time apart from the deponent: the pannel invited Mr Carnegie to dinner, after he and the deponent should return from the fishing, which they were going to next day; and accordingly he came to dinner, and the pannel and Mr Carnegie went out after dinner to another room, and had some private conversation for some few minutes, and then returned back to the deponent; and the deponent and the pannel went to Phinhaven that night, it being Friday's night, and he staid with the deponent Saturday and Sunday

Sunday nights, and left him on Monday; and on the Saturday after, the deponent heard of Mr Ogilvie of Eastmilm's death. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) GEO. CAMPBELL.  
JAMES FERGUSON.

PATRICK DICKSON merchant in Brechin, married, aged sixty and upwards, being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That when the pannel Mr Ogilvie was in prison at Forfar, the deponent went to visit him, and he desired the deponent to go to James Carnegie surgeon in Brechin, and talk to him, that he might not be imposed on by any body; and the deponent accordingly went and conversed with Mr Carnegie, who informed him, that he had sold the pannel some laudanum and some arsenick, for both which he received a shilling; and the deponent returned to Forfar and communicated to the pannel what Mr Carnegie had said; upon which the pannel seemed to be under some concern, and seemed desirous to speak with Mr Carnegie, without either confessing or denying to the deponent that he had bought the arsenick, for he had only acknowledged buying the laudanum on the Saturday before, when the deponent had been with him in prison; and the deponent told him, that he had some business on hand which hindered him to send Mr Carnegie to him; and the pannel desired the deponent to tell the Sheriff that he wanted to see him, to amend something in his declaration with regard to the laudanum which the pannel received from Mr Carnegie. *Causa scientiæ patet.* And all this is truth, as he shall answer to God.

(Signed) PAT. DICKSON.  
AND. PRINGLE.

PETER MEIK surgeon in Alyth, unmarried, aged about twenty-seven, being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That upon the day that Mr Ogilvie of Eastmilm died, the deponent was sent for as a surgeon to him:  
That

That he was dead before he came, as the deponent was informed, about two hours : That immediately upon the deponent's arrival, he was carried up by a servant to Mrs Ogilvie the pannel's room, where she was sitting, and she appeared to be in great grief and concern for her husband's death, and desired the deponent, that whatever he might think he discovered to be the cause of her husband's death, that he would conceal it from the world. And depones, There was no body else present with the deponent and the pannel at that time : That, upon going to the room where the corpse lay, and afterwards going out of the house, he met with Mr Ogilvie the pannel, who went up with him to the room where the corpse lay, and appeared to be in great grief and concern for his brother : That five or six days after, he was called upon to inspect the body of Eastmiln : and, upon inspecting it, he observed the nails and a part of the breast discoloured, and his tongue swelled beyond its natural size, and cleaving to the roof of his mouth, and no part of his tongue was beyond his lips, though it did come out beyond his teeth : That he has observed the symptoms of the nails and the breast to occur after a natural death, but never that of the tongue at the same time, though he has observed the tongue swelled without the other symptoms. And being interrogate, Whether he understood these symptoms to be the effect of poison ? depones, That he is not so much acquainted with the effects of poison, as to have formed a judgment whether that was the cause in this case ; but he was led to make that conjecture from the notice given him by Andrew Stewart, who had told him that the defunct was thought to be poisoned, and from the caution given him by Mrs Ogilvie the pannel, to conceal any thing that might discover the manner of her husband's death. Depones, That Alexander Ogilvie, the defunct's youngest brother, told the deponent that he was sent for to open his brother's body ; and Gilbert Ramlay surgeon in Coupar being also there, the deponent and he agreed to open the body ; but Alexander would not agree to it unless Doctor Ogilvie at Forfar was there ; and as the deponent and Mr Ramlay could  
not

not stay till he came, it was laid aside. Depones, That neither of the pannels made any objection to it; and that Alexander desired them to take a superficial view of the body, which they did, and discovered the symptoms aforesaid. *Causa scientiæ patet.* And all this is truth, as he shall answer to God.

(Signed) PETER MEIK.  
AND. PRINGLE.

GILBERT RAMSAY surgeon in Coupar of Angus, married, aged about thirty-eight years, being solemnly sworn, purged of malice and partial counsel, and interrogate depones, That he was sent for to Eastmilla about five or six days after the Laird's death, and was desired by Alexander Ogilvie, his youngest brother, to inspect his body along with the preceding witness; and, upon looking at it, they observed the nails and part of the breast discoloured, and his tongue swelled: That he has observed the first two symptoms to happen in a natural death, in consequence of putrefaction; but has not observed the last symptom: That these symptoms are owing to something very acrid, and made the deponent suspect that he died of poison: That his lips were very little swelled, but more discoloured than by a natural death: That the deponent had heard suspicions of poison before he came there. And being interrogate for the pannels, depones, That he had observed the tongue swelled even in a natural death, but not to that degree it was in this case. And depones, That if he saw a dead body with these symptoms, though he had got no notice of any suspicion of poison, he would suspect it from these appearances. And being interrogate, Whether all these symptoms might not happen in a bilious cholic? depones, That the great swelling in the tongue, and discolouring in the lips, would not happen. And being interrogate for the pannels, Whether all the usual symptoms of poison happened in this case? depones, That he cannot answer that question with any certainty, never having seen the body of any other person who died of poison. And being further interrogate, depones, That the usual symp-

H

toms

toms that occur in poison by arsenick, are vomiting, and evacuating downwards, and a great swelling in the tongue, and a blackness in the breast. And being further interrogate, depones, That there was no appearance of ulcers in this case, either in the tongue or the lips. Depones, That the deponent proposed to open the body; but he was opposed by Alexander Ogilvie, on account that Doctor Ogilvie from Forfar was not there; but, as far as the deponent knows, it was not opposed by either of the pannels. And further depones, That he believes every thing in the body would, after being so long dead, be in a state of putrefaction; so that he doubts if the poison would have been certainly discovered though the body had been opened. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) GILBERT RAMSAY.  
JAMES FERGUSON.

Doctor JOHN OGILVIE, physician in Forfar, aged forty-eight years, married, being solemnly sworn, purged of malice and partial counsel, and interrogate, depones, That he heard that the late Eastmiln died upon the sixth of June last; and that a few days after that, the deponent was desired by the Sheriff-substitute of Forfar-shire to go to Eastmiln to inspect the corpse of the defunct: That the deponent forthwith obeyed their order, and arrived at Eastmiln upon the twelfth of June last, about noon: That upon his arrival Alexander Ogilvie, the defunct's brother, desired the deponent to go and inspect the corpse, which were then lying in an out house; That he found the corpse in its grave cloaths, and in a coffin; and having inspected the body, he observed that the face, the arms, and several other parts of the body were black and livid, and that the nails were remarkably black; and as to the tongue, it was locked fast by the jaws, so that he could only observe a small part of it, which projected beyond the teeth, which part being the tip of the tongue, he observed to be white and rough, and of a very unusual appearance: That the breast was white, and the lips pretty much of a natural colour: That from the appearances above described,

bed, he could draw no conclusion as to the cause of the de-  
funct's death; as almost all these appearances might have ari-  
sen from the putrid state the body was then in; and that  
the only thing that appeared extraordinary to him, was  
the appearance of the tongue above described: That the  
deponent had some inclinations to have opened the body,  
and if the two surgeons, who he heard had left Eastmilk  
that morning, had been there, he believes he might have  
done so; but as they were gone, and as the deponent in  
his own opinion, thought the body too much putrified to  
be opened with safety to the operator; and as he was  
likewise of opinion, that in such a state of putrefaction,  
no certain signs could have been discovered of the cause  
of the death by opening the body, the deponent declined  
to do it. Depones, That the appearance of the tongue  
before described, was not such as happens in common  
deaths, but such as occurs from convulsions, or other  
strong causes. Depones, That Lieutenant Ogilvie the  
panel, neither desired nor forbid the deponent to inspect  
the corpse; but he was present with the deponent when  
he inspected them as aforesaid. *Causa scientiæ patet.*  
And this is the truth, as he shall answer to God.

(Signed) JOHN OGILVIE.  
AND. PRINGLE.

ROBERT SMITH surgeon in Edinburgh, aged fifty  
years and upwards, a widower, who being solemnly  
sworn, purged of malice and partial counsel, and exa-  
mined, depones, That he had once occasion to attend a  
patient, being a woman near Ormiston, who had got arse-  
nick and died of it, as the deponent verily believes: That  
the deponent went and saw the woman about two hours  
after she had taken the arsenick in some pottage, as she  
told him: That the deponent, when he came, found her  
seized with a violent vomiting and a purging: That she  
complained of a burning heat in her stomach and bowels,  
and had a great thirst, and drank frequently of milk and  
water: That the deponent, after staying some time with  
her, went away, and after a few hours, returned to her  
again, when he was informed the before-mentioned symp-

toms had continued upon her, that is to say, the vomiting, purging, pain, and drought: That she soon thereafter died, having lived, as the deponent thinks, about nine hours after she took the arsenick. Depones, That the deponent next day inspected the dead body of the foresaid woman, and could discover nothing externally upon the body, different from the appearances after a natural death; but that, upon opening the body, he discovered the stomach and guts to be red and inflamed, and the stomach appeared to be gangrened, and in parts of the stomach he discovered some arsenick. Depones, That at the time the woman had received the arsenick, as above deponed, a child had likewise taken a spoonful or two of the pottage, which occasioned the child to vomit, and thereby throw up the arsenick, as he believes, so that the child recovered. Being interrogate for the pannels, depones, That a person may be seized with a vomiting, purging, internal pain, and drought, without having received arsenick; as these symptoms may occur in a bilious chollic and other cases. *Causa scientia patet.* And this is the truth, as he shall answer to God.

(Signed) ROBERT SMITH.  
AND. PRINGLE.

GEORGE CAMPBELL Sheriff substitute of Forfar, aged seventy and upwards, *solutus*, who being solemnly sworn, purged of malice and partial counsel, and examined, depones, That upon looking at the two declarations now exhibited to him, emitted before him by Mrs Ogilvie the pannel, and other two by Patrick Ogilvie pannel, that all these were emitted freely before him, and faithfully taken down from their own mouths, and subscribed by them before the deponent. And also, that the deponent's name adjected thereto, is his subscription. Depones, That he, as Sheriff substitute of the county of Forfar, went to Eastmilk upon the first of July last, in order to search for papers or letters belonging to any of the pannels: He the deponent did find in a trunk, or drawer, he cannot say which, the letter now exhibited to him, marked by his hand, and that of John Ure his clerk,

clerk, on the day aforesaid. And another letter being exhibited to him, without date or subscription by the writer thereof, and with a docquet on the back, signed *George Spalding*, and another docquet below, signed *Anne Clark* and *Alexander Boswal*, depones, That to the best of his memory, he thinks he received the said letter inclosed in one wrote by Alexander Ogilvie the pannel's brother, addressed to the deponent. And a third letter being exhibit to him, signed *Ketty Nairn*, with a docquet on the back, signed *Anne Clark*, *Alexander Boswal*, depones, That he found the said letter in one of the repositories at Eastmilm, when he made the search above mentioned. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) GEO. CAMPBELL.  
GILB. ELLIOT.

JOHN URE Sheriff-clerk of Forfar, aged forty years, married, being solemnly sworn, purged of malice and partial counsel, and interrogate, depones, That the four declarations now exhibited to him, two by Mrs Ogilvie pannel, and two by Patrick Ogilvie pannel, were all freely emitted before the preceding witnesses, and in presence of the deponent, and all signed by him the deponent, by the Sheriff substitute George Campbell, and the pannels. *Causa scientiæ patet.* And this is the truth, as he shall answer to God. (Signed) JOHN URE.

GILB. ELLIOT.

The three Letters and four declarations before deponed to were read to the Court and Jury, and of which the tenor follows :

### FIRST LETTER.

Dr Captin

I was sorrie I missed you this day. I sat at the water fde a long time this fornoon; I thought you would have comed up here; if you had as much mind of me as I have

of you, you would have comed up, tho' you had but stayd out by as there was no use for that, there is more rooms in the house then one. God knows the heart that I have this day and instead of being better its worse, and not in my power to help it. You are not minding the thing that I said to you, or you went out here and what I wrote for. Meat I have not tasted since yesterday dinner, nor wont or you com here, tho' I should never eat any it lyes at your door. Your brother would give any thing you would come, for God's sake come.

## S E C O N D L E T T E R.

Dr Sr

I received yours just now; I am very glad to hear that you went safe home, no thing could give me greater pleasure then to here of you being well; Mrs Spaden was safely delivert of a daughter last night, and is in a very good way; Mr Spaden thought it needles to write you as I have wrote you: As for that you write me about any body clattring any noncens you need not be afraid of that about any thing, for I am detrmind not to mind any thing; We shall send to you when Willie and Chairele comes up, but in the mean time. I think you may send one Sunday to see and to let us here how you are; the pain will not write for me: I have no more time to write, but my best respects to your mother is all from

Dr Sr

yours while

*Glenkilry Weensday*

K E T T Y N A I R N .

## T H I R D L E T T E R.

Dr Sr

I recved yours, and as you propose coming this day eight days, Mr. Spalding thinks it proper that hi runs an exprefs to Edinburgh to my Uncle, which I think very right, and till you heare the consequence thereof, I think you better not trust any writer, which you shall hear the moment the exprefs comes back; as I see you mean nothing but what is genteel, you may expect nothing else

at

at my hand, and tell wee see you heare is all with  
compts to you and feamily

Dr Sr

your most humble servt

KETTY NAIRN.

*Glenkilry Jan. 4. 1765.*

Addressed on the back, *To Thomas Ogilvie Esq; of  
Eastmiln.*

FIRST DECLARATION by KATHARINE  
NAIRN.

*Forfar, 14. June, 1765.* In presence of George Campbell  
Esq; Sheriff-substitute.

*Compeared* KATHARINE NAIRN, lawful daughter of  
the deceas'd Sir Thomas Nairn of Dunfinan Baronet,  
and relict of the deceas'd Thomas Ogilvie of Eastmiln,  
who being examined, declares, That Lieutenant Patrick  
Ogilvie was at Eastmiln when she was married to his bro-  
ther, and continued there as his proper residence till with-  
in these three or four weeks, when he left the same, as his  
brother and him did not agree. That the evening Patrick  
Ogilvie left Eastmiln, the Declarant wrote him a letter,  
which she sent by Elizabeth Sturrock one of the maid ser-  
vants to Little Forthar, as she was going there, at least a-  
bout a gun-shot from Little Forthar, for some whisky  
from one Robert Easson. Declares, That she did not  
write any letter to said Patrick Ogilvie when at Glenkil-  
rie, nor to be sent him to one John Spalding's, nor to  
Glenkilrie. Declares, That on Tuesday before her hus-  
band's death she was sending said Elizabeth Sturrock to  
Alyth with some yarn, when she wrote a letter by her to  
deliver to said Patrick Ogilvie relative to some of his  
shirts she had been mending to him, and the letter was  
directed to the care of Andrew Stewart, and that she got  
no return by Elizabeth Sturrock, but that next day she  
got a return to her letter by said Andrew Stewart a mer-  
chant

chant in Alyth, who was coming to Eastmilkn however, and that it was the afternoon of the day before her husband died. That Andrew Stewart beside the letter brought her two doses of salts and a small phial glass with a little laudanum, and that the letter was but a quarter of a sheet of paper, containing mostly directions about the salts, and how much of the laudanum to take; but whether the letter was open or sealed she does not remember. That before Patrick Ogilvie left his brother's house, she asked him, any time he was at Alyth, to buy for her and send to Eastmilkn two doses of salt and a little laudanum as she slept very ill; That when Andrew Stewart deliver'd the letter she read same, being only a direction as above, and after laid the salts and laudanum into a drawer till she should use same, and that she took one of the doses of salts on the Friday after her husband's death, and the other on the Saturday; and on the Sunday and the Monday nights she took laudanum each night, and as she did not use the whole laudanum, she delivered back the glass and the remainder of laudanum, to the said Patrick Ogilvie on his return to Eastmilkn, after his brother's death. That on Thursday morning the sixth of June, her husband being distressed the night before, and many days preceding; and that morning he complained of a shortness of breath, and that thro' the night he had been distressed with it, she therefore gave him his tea in his bed; and that when the rest of the family were at their tea, she filled up a bowlful for her husband, which, with a bit of hard bisket from Dundee, she carried streight from the low room, where they were at breakfast, upstairs to her husband's room and gave him; and that she took the bisket out of a basket standing on a by-table in the room, aside the family then sitting at breakfast. But that she did not go into any closet with the tea, before giving it to her husband: That she never heard from her husband, nor any person else, that he blamed the tea for his illness. Declares, That Elizabeth Sturrock got so much of the tea Mr Ogilvie left, as he did not drink it out, and also got another bowl  
of

of tea after, both which she gave her, out of her own hands. And this she declares to be truth.

KETTY OGILVIE.  
GEO. CAMPBELL.  
JOHN URE, Clk.

SECOND DECLARATION by KATHARINE  
NAIRN.

*Forfar* 15 June 1765 in presence of the said George  
Campbell Esqr Sheriff substitute

*Compeared* the said KATHARINE NAIRN *alias* Ogilvie  
who being re-examined Declares That before the Lieu-  
tenant left Eastmilm she heard him say that he had both  
salts and laudanum in a chest that he brought from the  
East Indies, and that she said she would be obliged to him  
for a little of the salts and laudanum, as she had much  
need thereof

KETTY OGILVIE.  
GEO. CAMPBELL.  
JOHN URE Clk.

FIRST DECLARATION by PATRICK OGILVIE

*Forfar* 14th June 1765 By George Campbell Esqr She-  
riff-substitute of Forfarshire

*Compeared* Lieutenant PATRICK OGILVIE of the eigh-  
ty-ninth regiment of foot who being examined declares  
That so far as he remembers he came to this country from  
abroad in January last, and that his principal residence  
was at the Eastmilm of Glenyla his brother Thomas  
Ogilvie's house, and that he left that place about three  
weeks ago. That the reason he left it was on account  
of some dryness betwixt his brother and him occasioned  
by some surmises or reports in the country; but though  
these had not happened he was determined not to stay  
longer about his brother's. That since leaving same he  
has had no fix'd residence, but has been going about see-  
ing his friends and old acquaintances. Declares That  
the evening he left his brother's house, he went to Mr  
Shaw's house at Little Forthar, and when walking by the  
water side there with George Shaw, Elisabeth Sturrock a  
servant

servant of his brother Thomas Ogilvie's, brought him a letter from Mrs Ogilvie his brothers Lady, the contents of which were desiring him to return to his brothers house, and that he sent a verbal message, he was not to return at that time, as he then intended going the length of Baron Reids on a visit. Declares That the next day when at Little Forthar he received another letter from his brother by James Millam, the contents of which were to the same purpose as Mrs Ogilvie's, which James Millam knew. That some days after when at Glenkilrie he received another letter from said Mrs Ogilvie, but who was the bearer of it he does not remember, nor does he remember if he wrote any answer to that letter. Declares that he was in Alyth the Tuesday before his brothers death when he received a third letter from Mrs Ogilvie by the aforesaid Elizabeth Sturrock, but to which he returned no answer in writing. That the said evening of Tuesday he gave to Andrew Stewart merchant in Alyth his brother-in-law a small open note by way of wrapper or direction round a small phial glass in which were some drops of laudanum, and in the wrapper two doses of salts folded close by the glass; and that the write in the note or wrapper properly contained directions for Mrs Ogilvie how to use the laudanum, and so far as he remembers was to take fourteen or fifteen drops at a time. That all this he told to Andrew Stewart, and that it was for Mrs Ogilvies own proper use, and to deliver it to nobody else, but did not desire him to do it privately or to let nobody see him deliver it, only desired him to be sure to deliver it to herself. Neither did he deliver a sealed letter to Andrew Stewart at the time for Mrs Ogilvie. That the said laudanum and salts he brought from the East-Indies with him as a remainder of what he used when his health was bad there and on his passage home, having done the same by his surgeons directions both at land and sea. And this he declares to be truth.

PAT. OGILVIE.  
 GEO. CAMPBELL  
 PATRICK ORR Clk  
 JOHN URE witness

## SECOND DECLARATION by PATRICK OGILVIE.

*Forfar* 15th June 1765. By George Campbell Esqr Sheriff-substitute

*Compeared* the said Lieutenant PATRICK OGILVIE who being re-examined declares That it consists with his knowledge that of the laudanum he sent as mentioned in his last Declaration there was not above thirty drops or guts of it used so far as he can recollect from the quantity he sent and what remained in the phial glass the day after his brothers death, that the declarant came to Eastmilk when Mrs Ogilvie returned him the glass & the remainder of laudanum therein, & which he instantly produces, & is immediately sealed up with the declarants own seal & lodged in the Sheriff Clerks office. And that when the declarant delivered the glass to Andrew Stewart, he shook the same to him & shewed him betwixt him & the light the quantity of laudanum therein, who upon looking at the same just now must be sensible that there is no more out thereof than about the quantity of thirty guts as above, and that Mrs Ogilvie told him she had used about that quantity, & also made use of the salts. Declares that within these two weeks he was at the town of Brechin & in company with James Carnegy surgeon of that place, but that he received from him no laudanum or any other medicine whatever. That when he was at Eastmilk in the course of conversation with Mrs Ogilvie, he happened to say that he had some salts and laudanum, that he used when at the East Indies in his chest at Dundee which would be very soon at Alyth, when Mrs Ogilvie desired to have some of both salts and laudanum as it might give her rest when uneasy & could not procure sleep, And this he declares to be truth

PAT. OGILVY  
GEO. CAMPBELL  
PATRICK ORR Clk  
JOHN URE witness

Mr JAMES BALFOUR of Pilrig, Sheriff-substitute of the shire of Edinburgh, aged fifty and upwards, married,

ried, who being solemnly sworn, purged of malice and partial counsel, examined, and interrogate; and two declarations or examinations being now exhibited to the deponent, depones, That, at the desire of the Lord Advocate, the deponent, upon the twenty-second of June last, went to the Laigh Council-house of Edinburgh, where Patrick Ogilvie pannel being brought before him for examination, depones, That the declaration now exhibited to him, signed by the deponent and the said Patrick Ogilvie pannel, is what was emitted by the pannel before the deponent at that time: That, on the Monday thereafter, the deponent, at my Lord Advocate's desire, went to the Tolbooth of Edinburgh in order to examine Katharine Ogilvie the other pannel. The paper now exhibited to him, and signed by him before William Dunbar and John Stewart, both writers in Edinburgh, witnesses subscribing thereto, contains a faithful narrative of what passed on that occasion. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) JA. BALFOUR.  
GILB. ELLIOT.

WILLIAM DUNBAR writer in Edinburgh, aged twenty four, unmarried, who being solemnly sworn, purged of malice, partial counsel, examined, and interrogate, depones, That the examination of Patrick Ogilvie pannel, mentioned in the deposition of the preceding witness, was emitted in the deponent's presence, and he saw the said pannel and the Sheriff-substitute subscribe the same. Another paper being exhibited to him, containing what passed on the examination of Mrs Ogilvie pannel, by Mr James Balfour Sheriff-substitute of the shire of Edinburgh, in the Tolbooth thereof, depones, That the said paper contains a faithful account of what passed on that occasion; and that the deponent is a signing witness to the said James Balfour's subscription thereto annexed. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

WILL. DUNBAR.  
GILB. ELLIOT.  
The

The two papers before deponed to were read to the Court and Jury, and the tenor thereof follows :

*Edinburgh, the twenty-second day of June, One thousand seven hundred and sixty-five years.*

In presence of Mr JAMES BALFOUR of Pilrig, Sheriff-substitute of the shire of Edinburgh, *Compeared* Patrick Ogilvie, late of Colonel Morris's regiment ; and being interrogate, Whether he sent any salts to Mrs Ogilvie of Eastmiln his sister, or any medicine, or any thing wrapt up in a paper ? Refuses to answer this question.

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

Being interrogated, Whether he had in his possession a bottle of laudanum during his voyage home from the East-Indies ? He refuses to answer this question.

Being interrogated, How many guts or drops of laudanum he was in use to take at a dose ? He refuses to answer this question.

Being interrogated, Whether laudanum was in use to bind or loose him while at sea ? He refuses to answer this question.

Being interrogated, What was the bulk of each dose of salts he took ? Refuses to answer this question.

Being interrogate, Whether he sent a bottle to the said Mrs Ogilvie by the hands of Andrew Stewart ? and whether he told Andrew Stewart that there were salts along with the bottle ? Refuses to answer this question.

Being interrogated, What was the nature of the surmises and reports which occasioned a dryness betwixt him and his brother Eastmiln ? He refuses to answer this question.

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

Being interrogated, When he first heard of his brother's illness, and from whom ? Refuses to answer this question.

Being interrogated, Whether he had any conversation with his mother, or any of the family, or in the family, as to the nature of his brother's distemper, or cause of his death? Refuses to answer this question.

Being interrogated, Whether he slept in the house of Eastmilkn after his brother's death? for how many nights? in what room? and who slept in the room with him? He refuses to answer any of these questions.

Being interrogated, In what room the said Mrs Ogilvie slept during the nights between the death and burial of her husband? He refuses to answer this question.

Being interrogated, Whether he did ever send for any medicines from one Dougal a surgeon in Kirrymuir? or did ever hear any body send for any medicines from him? He refuses to answer this question.

Being interrogated, Whether he has had any conversation with any of his brother's servants concerning the circumstances which happened on the day of his brother's death? He declines answering this question.

Being interrogated, Whether, while he was in the prison of Forfar, he sent any messages by word or writing to the said Mrs Ogilvie? He refuses to answer this question.

Being interrogated, Whether he is acquainted with one Mr Carnegie a surgeon in Brechin? or whether he ever bought any medicines or poison from the said Mr Carnegie? He refuses to answer these questions.

Being interrogated, Whether he recollects what time his deceased brother was married? answers, He does not recollect just now.

Being interrogated, Whether he the declarant was present at the marriage? answers, That he was.

Being interrogated, Whether he was acquainted with the said Mrs Ogilvie before her marriage with his brother? answers, That he was not.

Being interrogated, Whether he absolutely refuses to answer the above questions, which it is said above he refuses, or declines to answer? or whether he declines at present to answer them? He now answers, That he absolutely refuses to answer them to-night; but he does  
not

not know, whether he may hereafter answer some of them or not.

And being interrogated, Whether he inclines to give any reason for this refusal? answers, That he does not think it necessary to give any reasons.

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

PAT. OGILVIE.

JA. BALFOUR.

*At Edinburgh, the twenty-fourth day of June, One thousand seven hundred and sixty five years.*

In presence of Mr JAMES BALFOUR of Pilrig advocate, Sheriff-substitute of this Sherifffdom of Edinburgh, *Compeared* Mrs KATHARINE NAIRN, widow of the deceased Thomas Ogilvie of Eastmilk; and a copy of two several declarations emitted by her, upon the fourteenth of June instant, before George Campbell, Esq; Sheriff-substitute of Forfar, and subscribed of this date by the said Mr James Balfour, being read over to her, she was asked, If there was any thing in the said declarations which she now desired to correct or alter? she refused to answer this or any other question put to her, having been so advised by her friends and counsel: And the following questions were separately put to her.

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

Did she read the letter? What were the contents? Has she the letter? or how has she disposed of it?

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

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

Did she sleep with her husband the night before his death? When did she first see and speak to him next morning the sixth of June?

Was she in use to give him tea in his bed? Did he desire tea that morning? Did any body see her make the tea and fill the bowl for her husband? Did she carry up the tea from the place where it was made streight to his room? Did he refuse or show any unwillingness to take it? Did she give any of the tea which her husband had drank to any other person?

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

Where did she sleep from the time of her husband's death, till the time of her commitment to the prison of Forfar?

Where did Lieutenant Ogilvie sleep during that time?

How many letters did she write to Lieutenant Ogilvie from the time he was dismissed from her husband's family? If she sent any letters, mention how many, by whom sent, and to what places sent, and what were the contents, and what answers she received. Does she know what is become of these letters and answers?

To all and each of which questions, put separately to her, she refused to give any answer. And further refuses to adhibit her subscription hereto.

In witness whereof, the said Mr James Balfour, William Dunbar writer in Edinburgh, and John Stewart writer there and hereof, have adhibited their subscriptions, time and place foresaid.

(Signed) JA. BALFOUR.

WILLIAM DUNBAR witness.

JOHN STEWART witness.

JAMES M KENZIE, session-clerk of Glenylla, aged forty years, married, who being solemnly sworn, purged of malice, partial counsel, examined, and interrogate, depones, That some time after the late Eastmiln's death, the deponent was in the house of Eastmiln, where Alexander Ogilvie brother of the late Eastmiln likewise was: That he saw the said Alexander Ogilvie have several papers in his hand, one of which, he said, he was to send to Forfar, as it might be evidence against Mrs Ogilvie the pannel; and that the deponent looked at that paper, and saw

law that it was in the form of a letter without a subscription; but the deponent did not read it, nor hear it read: And a letter libelled upon, beginning *Dr Captain*, and indorsed on the back by the names of *George Spalding* and *George Campbell*, being now exhibited to the deponent, he depones, That he cannot now say positively whether or not that is the letter shown to him by Alexander Ogilvie, as aforesaid; but thinks it is like it. *Causa scientia patet.* And this is truth, as he shall answer to God.

(Signed) J. A. M'KENZIE.

AND. PRINGLE.

JAMES MILLAM, tacksmen of the Eastmilk of Glenylla, aged thirty-six years, married, and being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That, during the late Eastmilk's illness, upon that day on which he died, the deponent was sometimes in the room with him, particularly about two o'clock in the afternoon, when the deponent asked the late Eastmilk, How he was? to which Eastmilk answered, That he was very ill; and the deponent further asked him, What he thought was the matter with him? to which Eastmilk answered, I am gone, James, with no less than rank poison! *Causa scientia patet.* And this is the truth, as he shall answer to God.

(Signed) JAMES MILLAM.

AND. PRINGLE.

GEORGE SPALDING of Glenkilrie, aged thirty and upwards, who being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That he is married to a sister of Mrs Ogilvie the pannel, and has had frequent occasion of seeing Mrs Ogilvie's hand-writing: and a letter, without a subscription, beginning, *Dr Captain*, and indorsed on the back by the subscriptions of *George Spalding* and *George Campbell*, being exhibited to the deponent, he depones, That he thinks that letter is of the hand-writing of Mrs Ogilvie the pannel; but cannot be quite positive, as he has seen her write sometimes better, and sometimes worse, according as her

pen was. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) GEORGE SPALDING.  
AND. PRINGLE.

ALEXANDER LINDSAY, late servant to the deceased Thomas Ogilvie of Eastmiln, aged twenty-one, unmarried, who being solemnly sworn, purged of malice, and partial counsel, examined, and interrogate. depones, That he came to be a servant at Eastmiln about six o'clock of the morning of that day on which Eastmiln died: That, about nine o'clock that morning, he saw Mrs Ogilvie the pannel standing in a closet up stairs between the two bedrooms: That the deponent was going up to the garret to take down a wheel: That the door of the closet was open; but the deponent did not go into the closet; and that he did not then observe any thing that Mrs Ogilvie was doing, nor that she had any thing in her hand; and that, when the deponent went up to the garret, Mrs Ogilvie called up to him not to walk over the closet, for fear of shaking down something. Depones, That when he was in the garret, he saw Anne Sampson standing at the stair-head, near the closet where Mrs Ogilvie was. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) ALEX. LINDSAY.  
AND. PRINGLE.

His Majesty's Advocate declared he concluded his proof.

L I S T of W I T N E S S E S summoned for  
K A T H A R I N E N A I R N.

\* The witnesses so marked were examined.

1. \* *George Spalding* of Glenkilrie
2. *Andrew Stewart* merchant in Alyth
3. *Martha Ogilvie* his wife
4. Lieutenant *George Campbell* late of the 89th regiment of foot, at Phinhaven
5. *Patrick Dickson* merchant in Brechin

6. *Colin*

6. *Colin Smith* vintner there
7. *James Rattray* of Kirkhillocks
8. *Anne Robertson* his wife
9. *Alexander Lindsay* late servant to the said deceased  
Thomas Ogilvie of Eastmiln
10. \* *George Campbell*, Esq; sheriff-substitute of the  
county of Forfar
11. *John Ure* sheriff clerk of Forfar
12. *Fergus Fergusson* in Kirkton of Glenylla
13. \* *Margaret Reid* his wife
14. \* *James Millam* tacksmen of the Eastmiln of  
Glenylla
15. *David Spalding* of Whitehouse
16. *David Watson* miller at Eastmiln of Glenylla
17. *Isobel M. Kenzie* widow of the deceased Thomas  
Ogilvie some time of Eastmiln, and mother of the  
said last deceased Thomas Ogilvie of Eastmiln
18. *Thomas Farquharson*, eldest son of Paul Farquhar-  
son of Perlie
19. *John Farquharson* at Formall
20. *Gilbert Ramsay* surgeon in Coupar of Angus
21. \* *Jean Wallace* servant to George Spalding of  
Glenkilrie
22. \* *John Paterfon* son of James Paterfon in Clockno-  
cater in Glenylla
23. *Andrew Paterfon* also son of said James Paterfon
24. \* *Margaret Paterfon* daughter to the said James  
Paterfon
25. *Katharine Fergusson* daughter of Fergus Fergusson  
in Kirkton of Glenylla
26. *James M. Kenzie* schoolmaster at Glenylla
27. *James Dougal* surgeon in Kirriemuir
28. \* *Elizabeth Fergusson* spouse to John Breffack por-  
tioner of Invercarity
29. *Alexander Robertson* at Binzean
30. *Alexander Ramsay* at Bridge-end of Lintrathen
31. *Janet Irons* spouse to William Glas at Burnside of  
St Martin's
32. \* *Isobel Douglas* at Wardhead of Formall
33. Mr *James Warden* schoolmaster at Alyth

34. *Patrick Ramsay* at Achmuir  
 35. \* *Thomas Jack* tenant in Kirkton of Glenylla  
 36. *Thomas Ogilvie* in Little Kenny  
 37. *John Ramsay* of Kinalty  
 38. *James Manson* servant to Colin Smith vintner in Brechin  
 39. *Thomas Morgan* vintner in Dundee  
 40. *Helen Knight* his servant  
 41. *Helen Sinclair* spouse to Robert Dow in Dundee  
 42. *Charles Farquharson* watchmaker there  
 43. *Patrick Ogilvie* shipmaster there  
 44. *James Kay* junior mariner there  
 45. *James Dickson* stabler at Cowgate-head of Edinburgh  
 46. *Robert Heron* shoemaker there  
 47. *John Gardiner* stabler there  
 48. *Gardiner* his wife  
 49. *Anne Younger* spouse to Charles Ramsay barber in Edinburgh  
 50. *David Murray* stabler there  
 51. *Joseph Baron* porter at the foot of Merlin's-wynd, Edinburgh  
 52. *Christian Ogilvie* his wife  
 53. *Andrew Murison* macer to the court of Justiciary  
 54. *Murison* his wife  
 55. *Robert Gibb* coachmaker in Canongate head  
 56. *Mary Dallas* his wife  
 57. *Thomas Miller* of Barskimming, Esq; his Majesty's Advocate  
 58. *John Davidson* writer to the signet  
 59. Mrs *Hay* widow of *Cuthbert* of Castlehill  
 60. *Donald Farquharson* cadie or council-post, and residenter in Edinburgh  
 61. *John Laing* journeyman wright, foot of Old Assembly-clofs, Edinburgh  
 62. *Francis Schaw* carpenter, son of Duncan Schaw at Cortachie  
 63. *Robertson*, son of John Roberson of Cray  
 64. *Farquharson* wife of *Wallace*, porter and indweller in Edinburgh  
 65. *John*

65. *John Farquharson* some time in Sheithie, now in  
Ground of Dirie
66. *Elisabeth Sturrock* late servant to the deceased Tho-  
mas Ogilvie of Eastmiln
67. *Ann Sampson* late servant to the said deceased Tho-  
mas Ogilvie
68. Dr *Robert Menzies* physician in Coupar in Fife
69. *Moir* wife of said Dr Robert Menzies
70. *Hay* relict of Bruce of Bunzean
71. *George Rodger* sawer of timber in North Leith
72. *John Rodger* his son
73. Mrs *Sarah Young* late boarding mistress in Edin-  
burgh, now in
74. *James Rattray* porter or workman in Edinburgh
75. *Margaret Spalding* his spouse
76. *Anne Rattray* spouse to Alexander Ogilvie, brother  
of the said deceased Thomas Ogilvie of Eastmiln
77. *Thomas Black* late surgeon in Dundee, now in Perth
78. Mr *James Hill* preacher of the gospel, residing at  
Wester Gowrdie
79. *John Sword* merchant in Edinburgh
80. *John Ballantyne* in Kirkton of Glenylla
81. *John Schaw* tenant in Downie
82. *James Rob* tenant in Tullich
83. *John Farquharson* at Dykehead in Ground of Dirie
84. \* *James Scott* late druggist in Edinburgh, now in  
Alloa
85. Dr *James Chrissie* late of Keith
86. *George Jaffray* writer in Edinburgh
87. *James Smith* writer in Edinburgh
88. *Anne Cameron* spouse to Alexander MacGregor sta-  
bler there
89. *Henry Walker* late servant to Peter Fyfe stabler in  
Edinburgh
90. *Jean Haig* widow of John Allan baker in Edin-  
burgh
91. *Charles Stewart* tailor in Edinburgh
92. *John Armstrong* writer there
93. *Francis Carlyle* writer there
94. *John Fenton* journeyman-painter in Edinburgh

95. *James Rae* writer in Edinburgh
96. *John Pearson* writer there
97. *James Corrie* writer there
98. *James Harrower* writer there
99. *Gilbert Stewart* writer there
100. *Janet M'Lauchlan* servant to John Gillosh in Dalnackebock
101. *Isobel Robertson* wife of Alexander M'Kenzie in Inveredry
102. *Bathia Nairn* spouse to George Spalding of Glenkilrie
103. Dr *Adam AUSTIN* physician in Edinburgh
104. Dr *Clerk* physician in Edinburgh
105. Dr *Stewart Threipland* physician there
106. *John Scott* son to Dr James Scott physician in Alloa
107. *James Carnegie* surgeon in Brechin
108. Mrs *Margaret Murray* relict of Archibald Eagle seed-merchant in Edinburgh

The List of Witnesses summoned for Lieutenant PATRICK OGILVIE is the same as the above, with the omission of the 108th.

*The following Witnesses were adduced by the Pannels for proving their exculpation\*.*

GEORGE SPALDING of Glenkilrie, aged thirty and upwards, married, who being solemnly sworn, purged of malice, and partial counsel, examined, and interrogate, depones, That, in February last, he wrote a letter to the Lady Nairn, pressing her Ladyship, that interment should be taken in favour of Mrs Ogilvie of Eastmilk, upon her contract of marriage, because her husband Eastmilk appeared to be in a bad state of health. Depones, That, for some years past, Eastmilk appeared

\* N. B. The List of Witnesses summoned for the Prosecutor, the List of Affize given out in the Indictment, and the List of Witnesses summoned for the Pannels, are not ingrossed in the Record.

to him to be in an indifferent state of health, complaining often of a heart-cholic, or a pain in his stomach, attended with a short cough, which was not continual, but which seldom left him. Depones, That he wore a plaiden jacket and a belt round his middle, much broader than ever he saw another wear, with lappets of leather hanging down his haunches: That, upon his marriage, he took off these happings. Depones, That before he got the said broad belt he wore a stripped woollen night-cape upon his breast, the lower end of which reached near his breeches; but never observed him wear it after he got the belt. Depones, That, about six years ago, the deponent was told, that Mr Ogilvie of Eastmilk had an ulcerous fever; after which the deponent saw him frequently, but never saw him look so well as formerly. Depones, That the old lady Eastmilk told the deponent, that her son Eastmilk was about forty years of age when he died. Depones, That Eastmilk was married the thirtieth day of January last. Depones, That when Eastmilk was complaining of the said pain of his stomach, in the deponent's house, he the deponent has frequently given him a dram to comfort him; and particularly, a little before Eastmilk's marriage, Eastmilk being ill of the said disease in the deponent's house, he got hot ale and whiske, with a scrape of nutmeg in it, and was put to bed without any supper. Depones, That he does not certainly know how old Mrs Ogilvie the pannel is, but believes her to be about twenty-one. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

(Signed) GEORGE SPALDING.

HENRY HOME.

JAMES MILLAM tacksmen of the Eastmilk of Glenylla, formerly sworn this day on the part of the prosecutor, and now examined on his said oath on the part of the pannels, depones, That the very next day after Lieutenant Ogilvie had left the house of Eastmilk, Eastmilk employed the deponent to carry a letter to his brother, and he read this letter to the deponent, the contents of which the deponent has forgot, further than that

that it contained a request to the Lieutenant to return to Eastmiln: That upon this occasion the deponent was informed by Eastmiln of indecent familiarities which his mother told him had passed betwixt the Lieutenant and his wife Mrs Ogilvie; but that for his part he did not believe them: That the deponent delivered the letter according to his instructions, and received an answer from the Lieutenant, which was also read to him by the Lieutenant, importing the Lieutenant's declining to return to the house of Eastmiln, because of the reports that were raised against him. Depones, That reports were in the country of indecent familiarities betwixt the two pannels: That he knows not what gave rise to these reports; but that for his part he never saw any indecencies betwixt them. Depones, That his dwelling-house is within a penny-stone cast of the house of Eastmiln, and that he has been frequently in that house. Depones, That he was very well with Eastmiln; and that if any thing concerned Eastmiln, he would have imparted it to the deponent as soon as to any other. Depones, That Eastmiln, four days before his death, complained to the deponent of a gravel and cholic; and that he could not live, if he got not the better of it: That on the evening of the Tuesday before his death, he went into the deponent's house, saying he was cold, and ordered some shilling-seeds to be set on fire for warming him: That he complained of his being ill, refusing to eat, and saying he would have no other supper but the fire; and that he was fading as fast as dew goes off the grass. Depones, That the same night was not cold. Depones, That Eastmiln, the night before he died, was again in the deponent's house, and said he was no better. Depones, That the day after Eastmiln died, he saw the Lieutenant sitting on a bed-side of the house of Eastmiln, with his mother on the one hand, and Dr Meik on the other; and that he could not be pacified: That Mrs Ogilvie was in another room, and did not see her: That the Lieutenant, in the situation above described, was gushing out of tears. Depones, That he does not know whether there was any quarrel betwixt Mrs Ogilvie and Anne Clark before Eastmiln's death; but

but that Eastmiln complained to him, that he could not get peaceable possession of his own house for Anne Clark : That he wished her away ; and that he got from the deponent a ten-shilling note for the expence of her journey. Depones, That upon the Monday after Eastmiln's death, Anne Clark left the house of Eastmiln ; and that the deponent saw her get money from Mrs Ogilvie the pannel immediately before her departure. Depones, That when the mournings came home upon occasion of Eastmiln's death, Anne Clark complained to the deponent for want of a mourning apron, adding, that she should make it as dear to them as if it was a gown, meaning the pannels, as he understood ; and his reason for understanding so, was, that it was the Lieutenant who sent for the mournings. Depones, That the day Eastmiln died, he was sent for to see him ; and that he came about twelve o'clock, at which time there was no person with him but Anne Clark : That, upon that occasion, he staid but a very short time : That he returned about an hour thereafter, and several other times, till Glenkilrie came : That he saw several persons in the room besides Glenkilrie, who came to see Eastmiln ; but that he does not remember their names. And being interrogate for the prosecutor, depones, with respect to the letter which he got from Eastmiln to deliver to his brother the lieutenant, That he now recollects a passage in it importing, that Eastmiln was to go to Edinburgh, to stay there a fortnight, perhaps a month, or six weeks. Depones, That the said letter, which the deponent carried from Eastmiln to his brother the Lieutenant, was inclosed by the Lieutenant in the said letter, which the Lieutenant wrote in return, and which letter the deponent put in his pocket without looking at the direction : That he offered the said letter to Eastmiln, which Eastmiln, without opening it, bade the deponent give to his wife — because it was directed to her ; and which he did accordingly. And being further interrogate for the prosecutor, How it came, that when the Lieutenant's letter was read over to him, that he did not know it was addressed to a woman ? depones, That he took no notice of this, but only of the Lieutenant's

nant's refusing to return to the house, because of the reports raised against him. Depones, That before the day on which Eastmiln died, the deponent never heard that he was ever troubled with any violent vomitings or purgings. Being interrogate, Whether, to the deponent's knowledge, Eastmiln did not continue in the same state of health after his marriage that he was for a year before? depones, That he never heard him complain before his marriage; but has heard him often complain after it, though he was as intimate with Eastmiln before his marriage as after it. *Causa scientiæ patet.* And this truth, as he shall answer to God. And being further interrogate depones, That the Monday after the pannels were put in Forfar jail, Alexander Ogilvie youngest brother to Eastmiln, roused the stocking upon the farm of Eastmiln that belonged to his deceased brother: That he gave it out, that he did this by authority of a letter from his brother the Lieutenant: That he received the ready money got at the roup; and that the bills were taken payable to him at Martinmas next. And this is also truth, as he shall answer to God.

(Signed) JAMES MILLAM.  
HENRY HOME.

JEAN WALLACE, servant to George Spalding of Glenkilrie, unmarried, aged thirty and upwards, being solemnly sworn, purged of malice, and partial counsel, examined, and interrogate, depones, That she was servant in the deceased Eastmiln's family for three years, and left it, as she thinks, about six years ago: That the last year she was in his service, as she thinks, Eastmiln had an ulcer, and was attended by Dr Ogilvie: That since that time the deponent had little occasion to see Eastmiln, and did not hear him make any complaints of his health; but that the deponent from his looks did not think he was in good health. Depones, That while he was bad of the ulcer, he was confined, as she thinks, for six weeks, and she herself sat up frequently with him. *Causa scientiæ patet.* And all this is truth, as she shall answer to God. And Depones, she cannot write.

(Signed) ALEX. BOSWELL.

ISOBEL DOUGLAS at Wardhead, *dismissed* of consent of the pannels.

THOMAS JACK in Kirkton of Glenylla, married, aged forty and upwards, being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That about ten o'clock of the day upon which Eastmiln died, the deceased Eastmiln told him, that he had been out the day before visiting some of his tenants biggings; and that he was very bad that day, and had been obliged to rest himself three times; but told the deponent, that he was better that morning; and that he told the deponent, that he had been a mile, or a mile and a half, from home the day before. *Causa scientiæ patet.* And all is truth, as he shall answer to God.

(Signed) THOMAS JACK.  
ALEX. BOSWELL.

ELISABETH FERGUSON, spouse to John Bresack, portioner of Invercarity, aged thirty-five, or thereby, being solemnly sworn, purged of malice, and examined, and interrogate, depones, That the day before Thomas Ogilvie of Eastmiln died, the deponent saw him in her own house, which is, as she thinks, about three miles from Eastmiln: That he was on foot: That he told her he was not very well; and that he had been taken ill, as he said, when he was going home some time before that, and had not got the better of it, or was not much better yet. *Causa scientiæ patet.* And all is truth, as she shall answer to God. And depones she cannot write.

(Signed) ALEX. BOSWELL.

JOHN PATERSON, son of James Paterson in Clocknocator of Glenylla, married, aged twenty-two years and upwards, being solemnly sworn and interrogate, depones, That he saw Eastmiln the day before he died about a mile from his own house: That he was going west to see some of his tenants biggings: That Eastmiln complained to the deponent that he was sick: That he said his bowels were all sore; and that he had not been so ill for six years: That he lay down and took a sleep upon

the ground: That the deponent's sister Margaret Paterson was with the deponent at this time, and none other. *Causa scientiæ patet.* And all is truth, as he shall answer to God.

(Signed) JOHN PATERSON.

ALEX. BOSWELL.

MARGARET PATERSON, daughter of James Paterson in Clocknocater of Glenylla, unmarried, aged thirty or upwards, being solemnly sworn, purged, and interrogate, *ut antea*, depones, and concurs with her brother the preceding witness in all things; with this addition, That Eastmiln likewise complained of sore bones. *Causa scientiæ patet.* And being further interrogate, depones, That Eastmiln after this went farther west, and did not return home that she saw. And depones, All this is truth, as she shall answer to God.

(Signed) ALEX. BOSWELL.

MARGARET REID, spouse to Fergus Fergusson in Kirkton of Glenylla, aged about threescore years, being solemnly sworn, and purged, interrogate, depones, That she saw the deceased Eastmiln in her own house, which is about a quarter of a mile distant from his, the day before he died: That Eastmiln told her, that he was not well, and he behoved to get Dr Ogilvie to give him something to do him good: That Eastmiln was then walking, and had come from the hill. *Causa scientiæ patet.* And all is truth, as she shall answer to God. And depones she cannot write.

(Signed) ALEX. BOSWELL.

Doctor JAMES SCOTT physician in Edinburgh, married, aged about forty, being solemnly sworn, purged of malice and partial counsel, examined, and interrogate, depones, That he has made sundry experiments upon arsenick: That he knows it will not dissolve in warm water; and that the common arsenick that is to be met with in the shops, although pretty fine pounded, falls to the bottom of a vessel with water almost instantaneously: That it never puts on a greasy appearance. But being further interrogate upon the part of the prosecutor, depones, That if arsenick be put into a bowl of tea with  
milk

milk and sugar, that, if it was stirred round, the arsenick would be suspended so long, that it would kill a person that had drunk it; and if there was honey in the bowl, the arsenick would be still more suspended thereby. *Causa scientiæ patet.* And all this is truth, as he shall answer to God.

(Signed) JAMES SCOTT.

ALEX. BOSWELL.

GEORGE CAMPBELL of Carsgownie, Sheriff-substitute of Forfar-shire, a witness formerly solemnly sworn, and examined on the part of the prosecutor, depones, That some time after the late Eastmiln's death, the deponent went to the house of Eastmiln to make a search for any thing that might appear there to clear up the cause of Eastmiln's death: That the deponent not having the keys of the drawers in the house, broke up several of them, and particularly the drawers of what was said to be the late Eastmiln's cabinet: That, in one of these drawers, he found some brownish white powder wrapped up in two or three small parcels: That the deponent not knowing what that powder was, carried it away with him, and afterwards showed it to James Carnegie surgeon in Brechin, and asked him what kind of powder he took it to be? and particularly, Whether or not he thought it was arsenick? That James Carnegie, after looking attentively upon the powder, declared, That he did not know arsenick but by the effects of it; and could not say, upon sight, whether that powder was or was not arsenick. Depones, That Alexander Ogilvie, brother to the late Eastmiln, was not present with the deponent either at the foresaid search at the house of Eastmiln, or when he shewed the powder to James Carnegie as aforesaid. Depones and produces some of the powder foresaid which he found at Eastmiln; which powder, upon the opinion of Dr Cullen physician in Edinburgh, and Mr James Russell surgeon there, who tried it before the Court and the Jury, he believes it to be saltpetre. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

(Signed) GEO. CAMPBELL.

AND. PRINGLE.

The Procurators for the pannels renounced all further probation.

Betwixt the hours of One and Two o'clock in the morning of the fourteenth current,

“ The Lords Commissioners of Justiciary ordain the  
 “ Affize instantly to inclose in this place, and to return  
 “ their verdict at four o'clock this afternoon, being the  
 “ fourteenth day of August current, and appoint the  
 “ haill fifteen Assizers then to be present, and the pannels,  
 “ in the mean time, to be carried back to prison;  
 “ and continue the diet to that time.”

*Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, decimo quarto die Augusti anno millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Justiciarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale-moor, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Justiciariæ S. D. N. Regis.*

*Curia legitime affirmata.*

*Intran.*

KATHARINE NAIRN, and PATRICK OGILVIE;  
 P A N N E L S.

*Indicted and accused as in the foregoing federunt.*

The persons who passed upon the affize of the said pannels, returned the following verdict :

“ At Edinburgh, the fourteenth day of August, One  
 “ thousand seven hundred and sixty five years,  
 “ The above affize having inclosed, did make choice  
 “ of the said Sir George Suttie of Balgonie Baronet, to  
 “ be their Chancellor, and the said Alexander Sherriff of  
 “ Craigleith, to be their Clerk ; and having considered  
 “ the criminal indictment raised and pursued at the in-  
 “ stance of THOMAS MILLER of Baskimming, Esq;  
 “ his

" his Majesty's Advocate, for his Majesty's interest, a-  
 " gainst KATHARINE NAIRN widow to the deceased  
 " Thomas Ogilvie of Eastmiln, in the county of Forfar,  
 " and PATRICK OGILVIE Lieutenant of the eighty-  
 " ninth regiment of foot, brother-german to the said de-  
 " ceased Thomas Ogilvie, pannels, with the Lords Ju-  
 " stice-Clerk and Commissioners of Justiciary their inter-  
 " locutor pronounced upon the relevancy thereof, toge-  
 " ther with the depositions of the witnesses adduced by  
 " the prosecutor for proving the same, and the deposi-  
 " tions of the witnesses adduced for the pannels in excul-  
 " pation, they, by a great plurality of voices, find the  
 " pannels *guilty* of INCEST, as libelled, during the life  
 " of the now deceased Thomas Ogilvie of Eastmiln: and  
 " they further find, by a great plurality of voices, the  
 " said pannel KATHARINE NAIRN *guilty* of MURDER,  
 " by poisoning the said Thomas Ogilvie her husband;  
 " and the said Lieutenant PATRICK OGILVIE pannel  
 " *guilty Art and Part thereof* In witness whereof the  
 " said Chancellor and Clerk have subscribed thir presents  
 " upon this and the preceding page, place and date fore-  
 " said, in their name, and by their appointment.

(Signed) GEO. SUTTIE Chan.

ALEX. SHERRIFF Clk."

Immediately upon the reading of the above verdict,  
 his Majesty's Advocate judicially appeared in court, and  
 craved, that the Lords might proceed to pronounce a sen-  
 tence *condemnator* upon the said verdict.

Mr ALEXANDER LOCKHART, as procurator for both  
 pannels, *represented*, That, during the short space of time  
 that he and the other counsel for the pannels have had to  
 recollect the proceedings in the course of this trial, and  
 upon hearing the verdict itself, as now read in court, sun-  
 dry particulars have occurred to the counsel for the pan-  
 nels, which they are humbly to insist upon as jointly and  
 severally relevant why no judgment can pass against them  
 upon this verdict; and as, in support of some of these,  
 there will be occasion to refer to the records of the pro-  
 ceedings

ceedings themselves, which till now have been in the hands of the jury; and as it is their earnest desire to state these in the most proper and becoming manner, he therefore moved the Court, in behalf of both pannels, That they be allowed a reasonable time to prepare, state, and support the particulars, of the heads of which they shall furnish a note to his Majesty's Advocate this very night.

ADVOCATUS *answered*, That the record of the trial has been open, and subject to the consideration of the counsel for the pannels, during the whole course of the trial: That, if any objection is to be taken against the course of procedure during the trial, it is necessary that such objection should be taken and tried before the jury is discharged; but as the counsel for the pannels have moved no objection or plea in arrest of judgment, and have only moved for a delay, in order that they may have further time to find out and move such plea, he insisted, That this is no plea; and therefore craved judgment upon the verdict, unless the counsel for the prisoners shall state a special and legal plea, why such judgment should not pass.

“ The Lord Justice-Clerk, and commissioners of Justiciary, having considered the foregoing debate, declare,  
 “ That they will proceed to give judgment upon the verdict, unless the procurators for the pannels will forthwith state special reasons in arrest of judgment.

(Signed) GILB. ELLIOT, I. P. D.”

“ The Lord Justice-Clerk, and Commissioners of Justiciary, having heard the procurators for both parties,  
 “ upon the reasons for arrest of judgment, they appoint a  
 “ minute of debate to be made up and engrossed in the  
 “ record of court; and supersede advising the said verdict  
 “ and debate till to-morrow at eleven o'clock before  
 “ noon; and continue the diet till that time; and ordain the pannels to be carried back to prison.”

*Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis  
Domo de Edinburgh, decimo quinto die mensis Augusti,  
anno millesimo septingentesimo sexagesimo quinto, per  
Honorabiles Viros Dominum Gilbertum Elliot de Minto,  
Baronetum, Dominum Justiciarium Clericum, Alexan-  
dram Boswell de Auchinleck, Andream Pringle de Ale-  
moor, Jacobum Ferguson de Pitfour, et Georgium  
Brown de Coalston, Commissionarios Justiciarie dict.  
S. D. N. Regis.*

*Curia legitime affirmata.*

*Intran.*

KATHARINE NAIRN

AND

PATRICK OGILVIE,

Present prisoners in the Tolbooth of Edinburgh;

PANNELS:

*Indicted and accused as in the preceding sederunts.*

LOCKHART, RAE, CROSBIE, and DUNDAS, for the pannels, by this minute, *represented*, That no judgment ought to pass on this verdict, in respect that, so far as any thing is found against the pannels, the same is void and null; the proceedings in the course of this trial having been most informal and irregular. Particularly, between the hours of three and four of the afternoon of Monday the twelfth instant, the jury arose from their seats, and dispersed into different corners of the house; some of them, on that occasion, even going out of the room where the court sat; and continued so dispersed, eating and drinking, and conversing in private with different persons, and particularly, with the counsel for the prosecutor, for the space of half an hour and better, a witness being then under examination, and a part of her deposition reduced into writing, before they had so dispersed; till at last the clerk, at the desire of one of the judges, called over the list of assize, when they again assembled and took their seats, one or more persons having conversed in private with the witness then under examination, during the time the jury had been dispersed; the said witness being Anne  
Clark,

Clark, against whom objections had been proponed by the pannels, but over-ruled, and a protest for remeid of law taken thereon. This, it is apprehended, was an actual adjournment of the trial; at least, it had all the bad effects of an adjournment, an opportunity being given to converse with the jurymen in private, to sollicite them, and to offer evidence, which the pannels and their counsel had no opportunity to see or hear; an event which the law of this country has been particularly careful to avoid; and has considered the preventing such things, and giving absolute security against them, to be a fundamental point in a trial by jury, as appears by the act 1587. ch. 91. whereby, “ Our Soveraine Lord, considering the wranges  
 “ alledged sustained by diverse noblemen and others,  
 “ lieges of this realme, being accused of treason, be solle-  
 “ siting, boasting, and menacing of the assize, after they  
 “ were inclosed, the accusers and other persones, their fa-  
 “ vourers, having liberty to pass to the said assize, and to  
 “ produce to them sic writs and witnesses, and uther  
 “ probation, as they pleased, to verify the crime outwith  
 “ the presence of the partys accused; quhairby the just  
 “ defence of their lives, lands, and honours, was taken  
 “ away; therefore our said Sovereign Lord, with advice  
 “ and consent of the estates of this present parliament,  
 “ has statuted, declared, and ordained, That, in all times  
 “ coming, the haill accusation, reasoning, writes, wit-  
 “ nesses, and uther probation, and instruction whatsom-  
 “ ever of the crime, fall be alledged, reasoned, and de-  
 “ duced to the assize in presence of the party accus’d, in  
 “ face of judgement, and no otherways.”

From which statute it is plain, the legislature meant effectually to guard against every opportunity of making any impression upon the minds of jurymen, excepting by what was said and done in open court, and in presence of the pannels; and all the salutary effects of this statute must be eluded, if opportunity is given for the counsel for the prosecutors, or others, to sollicite, practise upon, or argue with the jurymen, during the course of the trial, in private, by permitting them to leave their seats, disperse thro’ the house, and converse privately with what-  
 ever

ever person they think proper: That, in like manner; about four of the clock in the morning of Tuesday the thirteenth of August, at least, between the hours of three and five of the morning of that day, the jury dispersed again in the same manner; and, in their absence, part of the deposition of Elisabeth Sturrock, one of the witnesses, was taken down: That, about that time, the court likewise broke up, no quorum of the judges continuing on the bench; the Lord Kaims only remaining there, the rest retiring and conversing in private with sundry of the jury and others; and, upon that occasion likewise, the jury eat, drank, and conversed in private with different persons, and in particular, with the counsel for the prosecutor; whereby the trial was again interrupted: That no roll was called; nor was it any ways ascertained that they re-assembled, the Lord Kaims only calling out, "Gentlemen of the Jury, Are you all there?" and the depute-clerk of Justiciary answering, "I see fifteen;" but no answer was returned by the jurymen themselves. That, in this case, the court was most unquestionably adjourned, as no quorum of the judges remained sitting on the bench; and though no act of adjournment appears in the record, yet, it is humbly apprehended, That that, instead of mending matters, renders them worse; for an adjournment *via facti*, is, unquestionably, as much an adjournment as one made by order of court, having all the bad consequences of it, and many more. That it is an adjudged point, that, after a jury is charged with a panel, the court cannot be adjourned till the jury is inclosed. This was solemnly determined in the case of Janet Ronald, who was tried, in May 1763, at the circuit-court of Perth, for the crime of giving poison to her sister; in which case, after the proof was concluded, and while his Majesty's Advocate was addressing the jury, one of the jurymen happened suddenly to be taken ill, and appeared incapable of doing his duty at that time; for which reason the court was adjourned till next morning, when that jurymen being recovered, and the jury again re-assembled, were inclosed, and returned a verdict against the prisoner, finding her *guilty*, art and part of the crime libelled.

led. It was moved in arrest of judgment, That the court having been adjourned before inclosing the jury, and the jurymen dispersed, and an opportunity given to sollicite and practise on them in private, the verdict was void and null, and no sentence could follow in consequence thereof. The matter, on account of its importance, was referred to the Court of Justiciary at Edinburgh, where it was solemnly debated in presence of the whole Judges; and, after informations had been given in on this point, and recorded in the Books of Adjournal, the Court being of opinion, that this adjournment vitiated the whole proceedings, did not pronounce any sentence on this verdict, but assilzied the pannel, and dismissed her from the bar: That the adjournment of the court in the present case ought to have the same effect to vitiate all the subsequent proceedings, and to procure an absolvitor to the pannels; since every bad consequence that can be figured or imagined to result from an adjournment by act of the court must result also from an adjournment *via facti*: That about three o'clock of the afternoon of Tuesday the 13th of August, at least some time between the hours of two and four of the afternoon of that day, the jury again dispersed, and conversed in private with sundry persons in different parts of the house, and continued dispersed for the space of half an hour or upwards; after which they again returned to their seats: That in all these various adjournments and dispersing of the jury, it was out of the power of the pannels, or their counsel, to prevent the jury being actually dispersed, on all these several occasions, before they were aware, no motion having been made publicly for leave of the court to disperse, and the pannels and their counsel being intent upon the business that was going on, and that intention first interrupted by the noise the jurymen made when actually dispersing: That it is in vain, in the present case, for his Majesty's Advocate to plead the necessity of the jury being refreshed in such a case; for they were refreshed on several other occasions besides those above mentioned, at which times the refreshments were always given them in their seats; and it is apprehended that ought always to be

be the case, as it is a material point, that the quality and quantity of the refreshments they take, particularly the wine, and other strong liquors, should be regulate by the court, under whose immediate inspection every thing of that nature should be given them ; but by jurymen dispersing, and drinking liquors, in what quantity, and of what quality they please in private, and while removed from the inspection of the court, there is a hazard of their becoming intoxicated with the liquors they drink, which may be of the most dangerous consequences to the security of those who are tried, and consequently to the lives and liberties of the subjects in this country in general. That the bad effects of all these several adjournments were severely felt by the pannels in this case; they served to protract the trial, and what impressions were communicated to the jurymen, when dispersed, or what quantities of liquors they swallowed, are circumstances which cannot be known to the pannels or their counsel ; but after the last time the jurymen were dispersed, and when the evidence on the part of the pannels began to be adduced, several of the jury showed a very great impatience, and insisted, that that evidence which the pannels thought material for them should be cut short. And some of them particularly disputed the relevancy and propriety of the questions put by the counsel for the pannels with great heat, in so much that some of the Judges and other jurymen, were obliged to interpose, in order that the exculpatory proof might go on : and the counsel for the pannels were obliged to pass from many witnesses, in order to procure attention from those assizers. Hence, though thirty-three hours were spent in hearing calmly the proof adduced for the prosecutors ; yet the proof for the pannels, after being heard by those jurymen with great impatience, was put an end to in about three hours. By this means the whole proof relative to the conduct of Alexander Ogilvie, which the pannels had insisted much upon in their defences, was prevented ; some of the jurymen saying, That they had nothing to do with Alexander : That at one period of the trial, one of the jury retired from his place, and continued absent a considerable

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time ;

time ; yet the proof went on in the mean time, the witnesses were examined, and their depositions taken down in writing in the mean time, he paying no attention thereto, nor was he capable of doing so at the time ; so that he could no more judge of what was said or done at that time, than if he had been twenty miles absent : That on sundry occasions jurymen did retire without leave asked or given, and went out of the room where the court was sitting : That it is in vain for his Majesty's advocate, to plead the necessities of nature as an excuse in such cases ; for there is a remedy known and commonly practised, when those necessities oblige the jurymen to withdraw, *viz.* leave is asked of the court, which orders a macer to attend the jurymen, that no person may have any private intercourse with him during the time he withdraws, and the trial is stopt till he returns

That, by the act concerning the regulation of the judicatories, passed in the third Session of the second parliament of King Charles the Second, in the 10th article concerning the Justice-court, it is enacted, " That, in  
 " all criminal pursuits, the defender, or his advocates,  
 " be always the last speaker, except in case of treason  
 " and rebellion against the King." Which act, though alter'd as to prosecutions not extending to the loss of life, or to demembration, before the Court of Justiciary, or in Circuit-courts, and where the evidence is not taken down in writing, by the act 21<sup>mo</sup>, *Geo. II. chap. 19. § 18.* yet remains in full force as to all other criminal courts, and as to all trials brought in this court which may extend to the loss of life or limb, and when the evidence is taken down in writing. That this statute notwithstanding, after the advocates for the pannels had concluded their speeches to the jury, and nothing remained, by the forms of Court, but to inclose that jury for the purpose of returning their verdict, one of the judges did address himself to the jury, in a speech concerning this trial, and the credibility of particular witnesses, whereby the pannels were deprived of a legal and most material privilege, *viz.* the impression that must be left by the last pleader upon the minds of the jury in their behalf.

That

That, besides all these informalities committed during the course of procedure, the record is very defective, tho' the defects cannot at present be so particularly pointed out, as the counsel for the pannels have not yet had an opportunity of inspecting it. However, they do condescend on the following defects: That sundry admissions made by his Majesty's advocate, in point of evidence, favourable for the pannels, are not taken down; so that the record passed to the knowledge of the assize, without bearing these admissions. One of these admissions was, passing from the crime of incest during a part of the time libelled; another was relative to the conduct of Alexander Ogilvie: That the protests for remeid of law taken for the pannels at different parts of the trial, are not ingrossed in the record, though, that was specially insisted for at the time they were taken, and precedents pleaded on and produced; neither is the condescence relative to the malice of Anne Clark, which was made for the pannels, but found not relevant by the court, mentioned in the record; and this is the more material, that the omission of this condescence was used as an argument with the jury for the credit of Anne Clark's testimony, by the Judge who was the last speaker on this trial; though, it will be remembered, that when the counsel for the prosecutor had concluded the rest of his proof, he gave notice to the court, That as the counsel for the pannels had charged malice against Anne Clark, one of the most material witnesses for the prosecutor, and meant to adduce witnesses for proving that malice, he judged it necessary, on his part, to adduce some witnesses, in order to obviate that objection, and to show that this witness was so far from bearing malice against the pannels, that, after she had been once precognosced, she had withdrawn and sequestered her person, when a warrant by this court was out against her, in order to avoid her being brought as a witness in this cause.

That the verdict appears to be informal; and the counsel for the pannels apprehend it will be found a special one, when applied to the interlocutor of relevancy: That it does not bear that the jury considered the writs produced,

duced, but only the depositions of the witnesses, though writings were produced both by prosecutor and pannel; particularly, the declarations of the pannels when examined; the questions put to them by the Sheriff of Edinburgh, which they are said to have refused to answer; Anne Clark's letter to the Lord advocate; the alledged letters from one of the pannels; a letter from Lord George Beauclerk; a letter from Colonel Morris, in whose regiment the pannel Patrick Ogilvie served, attesting his good character. Therefore the verdict has proceeded on a partial consideration of the evidence. And the inattention of the jury to the whole evidence, appears in another particular, *viz.* in their finding the pannels guilty of the incest as libelled, which includes the whole month of January; though it is in proof, that the late Thomas Ogilvie was not married till the 30th day of that month. That if time were allowed to the counsel for the pannels to consider the verdict, and inspect the records, and prepare arguments in support of the positions they have now laid down, they apprehend there is good cause why judgment should not pass on this verdict. They have set forth these objections in obedience to the court's desiring them to condescend, and craved that more time may be allowed them to state these objections more fully, or any other which may occur, and liberty given them to inspect the record, and have copies of the verdict; which has been refused them by the clerk. And this demand, they apprehend, is the more reasonable, that they have only had a recess of fourteen hours, from the time that the jury were inclosed, after enduring the fatigues of a trial which lasted for forty-three hours; so that they are not in a condition, at present, to argue their objections so properly as they will be when more time is allowed them. All and each of the facts set forth they offer to prove, and they crave that a proof may be allowed accordingly.

HIS MAJESTY'S ADVOCATE and SOLLICITOR GENERAL *answered*, That the conduct of the defence for the pannels in this trial has been extraordinary from first to last, as appears from the defences, compared with the proof in exculpation. That after a trial of forty-three  
hours

hours continuance, before a jury of the most respectable character, and after a verdict returned finding the pannels guilty, an attempt is now made to disappoint public justice, by a plea in arrest of judgment unknown in the law, unsupported by any precedent, and in itself irrelevant and frivolous. That this plea has been introduced with a declamation upon the liberty of the subject, and of the importance of preserving a jury trial; and yet the plea itself tends, if it has any meaning, to prove, that no trial of a capital crime in this country can be taken by a jury; because the length of such trials must, in most cases, make it necessary for jury-men to refresh themselves, and to retire for answering the necessities of nature; and if these things cannot be permitted by the court, the necessary consequence is, that no such trial can proceed by jury; and in order to bring such criminals to justice, a new form of trial must be invented. That when a plea so groundless and frivolous is, for the first time, taken up in behalf of two pannels, whose rank and situation in life enable them to bring many learned counsel to argue and give countenance to such a plea, in behalf of two pannels convicted by their country of the most atrocious and dangerous crimes; it becomes the dignity of the court to hear sully, and then to give such a judgment as will show that the law knows no distinction of persons; and that the criminal law in this country, upon which the security of the government and the safety of the people depends, must have its course with equal effect against the greatest as well as the meanest of the subjects. That this trial hath been conducted with more attention and favour for the defence of the pannels, than any trial that has occurred in the memory of any of the members of the court. That the strictest orders were given that no jury-man should retire, even for relieving the necessities of nature, without leave of the court, and being attended by a macer of the court; which was accordingly punctually executed throughout the whole course of the trial. That, when it became necessary for the jury to refresh themselves from time to time, for greater dispatch, and to prevent confusion, they left their bench, and were refreshed at a table

immediately below, at, and under the eye of the court; and the insinuation, that some of the jury may have taken too much liquor, is false and injurious to the knowledge of the court, and was not so much as insinuated in the debate when the jury was present, and is now, for the first time, thrown into this minute. One of the jurymen being indisposed, rose from his seat and walked for some time behind the seat, but heard the whole evidence. That no criminal trial, where such refreshment of the jury has been necessary, was ever carried on in a manner so little exceptionable as the present; and the tendency of the pannels plea is to show, that no criminal has been legally condemned in Scotland, in any case where the trial has continued for such a time as to require refreshment to the jury, or the retiring of any jurymen, or the relieving the necessities of nature. That during the time the jury were refreshing themselves the first day, Anne Clark was under examination, which lasted eight hours, and remained in her place, under the immediate eye of the court, till her examination was resumed upon the return of the jury to their places; and no person spoke to her, except the macer of court, when he gave her some bread and wine. And during the whole course of the trial, upon notice given, that any of the jury had retired to ease nature, the proceedings stopt till his return; so that, though from the necessity of the thing, the court did, for some short intervals, stop proceeding in the proof, yet there was no adjournment of the court; and this appears from the record of the court, which the pannels cannot disprove; and the court remained full, without one moment's interval, during the whole course of the trial; and as all the facts stated in the plea offered for the pannels passed in presence of the court, and as it is not pretended that any wrong was done, or any exception taken, in behalf of the pannels, to any part of the procedure during the whole trial, far less after the jury was inclosed, no proof can be allowed of the facts upon which the plea is founded, and the court must take them upon their own knowledge. The late case of Janet Ronald has no relation to the present case; for there the court was adjourn-

ed,

ed, and the jury dismissed after they were charged with the pannel, which was found to be contrary to law: That the insinuation thrown out against the jury, That they were impatient to hear the evidence for the pannels, is likewise false and injurious to the knowledge of the court: That after the prosecutor concluded his evidence, which he abridged as much as possible, the counsel for the pannels proceeded to open their defence by a proof, That, after the pannels were committed to prison, the cattle at the house of Eastmilt were sold by Alexander Ogilvie; and it appearing clearly from their own evidence, that this roup proceeded from an order of the pannel Patrick Ogilvie, it was observed by one of the jury, that this fact did not appear to be material to the issue; and as they found themselves much exhausted by fatigue and want of rest, they would not be able to attend to such evidence as might be material for the pannels defence; which was submitted to the consideration of the pannels own counsel; and they did accordingly declare, That they gave up that article of their proof.

The protest taken by the pannels for remeid in law, is extant in process, and makes a part of the record of this trial. The objection to the evidence of Anne Clark, founded upon malice, was clearly disproved before the jury by evidence: That she was so far from harbouring malice against the pannels, that, on the contrary, after she was precognosced before the Sheriff, she withdrew herself from the place of her abode, and concealed herself in different places about this city under a false name, in order to prevent her being adduced as an evidence in this trial; and although his Majesty's Advocate, perceiving the danger of protracting this trial to an unnecessary length, did not insist to have this part of the evidence taken down; yet it appeared so strong to the pannels own counsel, that, when they came to state the grounds of their allegation of malice, and to adduce their witnesses in support thereof, the Judge Examiner gave his opinion, that the condescence, as stated by them, was not relevant; and they did not insist for the opinion of the  
court;

court; which was plainly giving up and passing from this objection of malice, or any proof thereof.

That the verdict is accurate and formal in all respects. — There is no necessity that the verdict should mention the evidence upon which the jury proceeded: That all the written evidence adduced before the jury was in behalf of the prosecutor, and no written evidence whatever was proved or adduced before the jury in behalf of the pannels; and if it can be supposed, that the jury did not take under their consideration this part of the prosecutor's evidence, it was so far favourable for the pannels; and he appeals to their Lordships knowledge, that, in most trials before this court, the declarations of the pannels, and other written evidence, are referred to in the libel, and produced before the jury; and many verdicts have been returned, upon which execution passed, wherein no mention is made of their having considered such written evidence; for it is in their power to take that evidence under their consideration as a ground of their verdict or not as they please.

That it is the undoubted right of the counsel for the pannel, to be the last speaker upon the import of the evidence, and the prosecutor has no reply; but it is the inherent right of the court, and essential to public justice, to correct mistakes in law or in fact, by which false impressions upon the jury may be made by the counsel on either side: That the verdict, with respect to the incest, is unexceptionable, and properly applies to the charge in the libel.

That no admission was made by his Majesty's advocate, that is not properly entered upon record: That he passed from the incest charged to have been committed after the sixth of June, in presence of the court and jury, and the verdict properly applies to the libel as so restricted: That the counsel for the prisoners had access to the record during the whole course of the trial, and since that time; and it is improper to move the court for an arrest of judgment till they have further time to consider the record, in order to discover what objections they can there find  
in

in support of their plea. In respect of all which, judgment ought to be pronounced.

After reading over the foregoing minutes judicially, in presence of the pannels and court, the Lords proceeded to advise the same, and pronounced the following interlocutor.

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

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

On pronouncing of which interlocutor, Mr ALEXANDER LOCKHART Advocate, procurator for the pannels, protested for remeid of law; and thereupon took instruments in the hands of the clerk of court.

Then there was a petition given in and presented to the court by the said Katharine Nairn pannel, signed by Mr Alexander Lockhart, and Mr Henry Dundas, her lawyers, bearing, That the petitioner has the misfortune, in the criminal prosecution now depending against her in this court at the instance of his Majesty's Advocate, to have a verdict returned against her by a plurality of voices, finding her guilty of the crimes of which she was charged: Whereupon his Majesty's Advocate having moved for judgment, sundry objections were stated upon her part, why no judgment can pass against her upon that verdict: That, abstracting from these, she now begs to represent to the court, That she is pregnant: And though she cannot take upon her, from her inexperience in these matters, positively to say how far she is advanced in her pregnancy,

pregnancy, according to her best opinion, she judges she may be about three months gone with child.

Therefore praying, It might please their Lordships, to direct the proper inquiry to be made into her present state and condition as to her alledged pregnancy; and, upon the same being properly certified, to supersede judgment against her, if any judgment can pass upon the verdict, till after delivery.

Which petition being read in court, and judicially adhered to by her,

“ The Lord Justice-Clerk, and Commissioners of Justiciary, having heard this petition, they grant warrant for letters of diligence, at the instance of his Majesty’s Advocate, for citing three or more skilful midwives to compear before their Lordships against to-morrow, being Friday the sixteenth day of August current, at nine o’clock in the forenoon, to inspect the petitioner Katharine Nairn pannel, and make trial whether or not she the petitioner be pregnant or with child; and accordingly to give their opinion or judgment to the court therein; and continue the diet against the petitioner until the said time; and appoint her, in the mean time, to be carried back to prison; and, for the purpose aforesaid, the said Lords appoint the persons following, to wit, Mrs Johnston, Mrs Hamilton, Mrs Duncan, and Mrs Hill, known midwives, to be cited as above.

(Signed) GILB. ELLIOT, I. P. D.”

“ *The Lord Justice-Clerk and Commissioners of Justiciary having considered the foregoing Verdict of Assize, dated and returned the fourteenth day of August current, against KATHARINE NAIRN widow of the deceased Thomas Ogilvie of Eastmiln in the county of Forfar, and PATRICK OGILVIE lieutenant of the eighty-ninth regiment of foot, brother-german to the*  
“ *said*

“ said deceased Thomas Ogilvie, whereby, by a great plu-  
 “ larity of voices, the said Katharine Nairn and Patrick  
 “ Ogilvie are found guilty of incest as libelled, during  
 “ the life of the now deceased Thomas Ogilvie of East-  
 “ miln; and the said Katharine Nairn guilty of murder,  
 “ by poisoning the said Thomas Ogilvie her husband; and  
 “ the said Lieutenant Patrick Ogilvie pannel, guilty art  
 “ and part thereof: In respect of the said verdict they,  
 “ by the mouth of Isaac Gibbs, dempster of court, decern  
 “ and adjudge the said Patrick Ogilvie pannel, to be car-  
 “ ried from the bar back to the Tolbooth of Edinburgh,  
 “ therein to remain, to be fed upon bread and water  
 “ only, in terms of the act of parliament in the twenty-  
 “ fifth year of the reign of his late Majesty King George  
 “ the Second, intituled, ‘ An act for preventing the horrid  
 “ crime of murder,’ until Wednesday the twenty fifth day  
 “ of September next to come, and upon that day to be  
 “ taken forth of the said Tolbooth, and carried to the  
 “ common place of execution in the Grass-market of  
 “ Edinburgh, and then, and there, betwixt the hours of two  
 “ and four of the clock after noon of the said day, to be  
 “ hanged by the neck by the hands of the common hangman,  
 “ upon a gibbet, until he be dead, and his body thereafter  
 “ to be delivered to Dr Alexander Munro, professor of  
 “ anatomy in Edinburgh, to be by him publicly dissected  
 “ and anatomized, in terms of the said act; and ordain  
 “ all his moveable goods and gear to be escheat and in-  
 “ brought to his Majesty’s use, which is pronounced for  
 “ doom.

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

*Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis  
Domo de Edinburgh, decimo sexto die mensis Augusti,  
millesimo septingentesimo sexagesimo quinto, per Hono-  
rabiles Viros Dominum Gilbertum Elliot de Minto Ba-  
ronetum, Dominum Justiciarium Clericum, Alexandrum  
Boswell de Auchinleck, Andream Pringle de Ale Moor,  
Jacobum Ferguson de Pitfour, et Georgium Brown de  
Coallston, Commissionarios Justiciariæ dict. S. D. N.  
Regis.*

*Curia legitime affirmata.*

*Intran.*

KATHARINE NAIRN,

Prisoner in the Tolbooth of Edinburgh;

PANEL:

*Indicted and accused as in the former federunts.*

“ The Lord Justice-Clerk, and Commissioners of Ju-  
“ sticiary, in respect that Grizel M'Queen, relict of Dr  
“ Hamilton, and Agnes Ker, wife of William Hill one  
“ of the letter-carriers in Edinburgh, two of the four  
“ midwives named yesterday, and cited in consequence  
“ of the warrant then granted for to have appeared this  
“ day, do only compear; and that excuses are offered  
“ and sustained for the other two; therefore they grant  
“ warrant for citing Mary Crawford, wife of William  
“ Richardson baker in Edinburgh; Mary Angus, widow  
“ of Hugh Sheills wigmaker there; and Margaret Wat-  
“ son, widow of William Petrie merchant there, all  
“ known midwives, to compear instantly before this  
“ court, in order to the effect that they, or such of them  
“ as the court shall appoint, may, upon oath, inspect the  
“ pannel Katharine Nairn, and make trial, whether or  
“ not she be with child, and accordingly to give their  
“ opinion and judgment thereupon.

(Signed) GILB. ELLIOT, I. P. D.”

Conform

Conform to warrant granted yesterday and this day, by the Lord Justice-Clerk and Commissioners of Justiciary, for citing of midwives to inspect the pannel, *Compeared*, in presence of the said Lords, Agnes Ker, wife of William Hill late one of the letter-carriers in Edinburgh; Margaret Watson, widow of William Petrie merchant there; Grizel M'Queen, widow of Dr Hamilton; Mary Crawford, wife of William Richardson baker in Edinburgh; and Mary Angus, widow of Hugh Sheills wig-maker in Edinburgh, being all solemnly sworn, depone, That they shall faithfully try, and true report make to this court, of their opinions and judgment, whether the pannel Katharine Nairn is with child or not, as they shall answer to God.

(Signed) AGNES HILL.  
 MARG. PETRIE.  
 GRIZEL M'QUEEN.  
 MARY RICHARDSON.  
 MARY SHEILLS.  
 GILB. ELLIOT.

The said five midwives above named, having removed out of court with the pannel to another room, and re-entered into the same after some short space of time, depone unanimously, From what they have observed, they cannot give a positive opinion, whether the pannel is pregnant or not; and that they cannot depone that the pannel is with child; nor can they depone that she is not with child.

(Signed) AGNES HILL.  
 MARG. PETRIE.  
 MARY SHEILLS.  
 MARY RICHARDSON.  
 GRIZEL M'QUEEN.  
 GILB. ELLIOT.

“ The Lord Justice-Clerk and Commissioners of Justiciary, in respect of the foregoing report, delay pronouncing of sentence against the said Katharine Nairn pannel, till the third Monday of November next to come,

“ at twelve o'clock before noon, in this place, and con-  
 “ tinue the diet till that time; and grant warrant to  
 “ the five midwives before named, along with Mrs John-  
 “ ston another known midwife, and already cited for  
 “ that purpose, and who, upon report, will also be put  
 “ upon oath, That they, by turns, may visit and inspect  
 “ the person of the said Katharine Nairn pannel; and  
 “ ordain the said midwives to report their opinion and  
 “ judgment to the court the said day, anent the said  
 “ Katharine Nairn her pregnancy, or being with child;  
 “ and appoint the pannel, in the mean time, to be car-  
 “ ried back to prison.

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

*COPIES of the LETTERS mentioned in the Minute of  
 Debate in arrest of judgment, p. 124. which were pro-  
 duced in the course of the TRIAL, and are presently  
 lying in the clerk's hands; but which, though mentioned  
 in court, were not proved, and did not enter the record.*

LETTER by ANNE CLARK to his Majesty's Advocate.

LORD ADVOCATE,

Upon my coming to town, I am informed, that you  
 heave been searching for me: It would never bread in  
 my breeft to kept out of the way, had it not been for  
 terror of imprisonment; but houping you will be more  
 favourable to me I shall weat upon you to morrow morn-  
 ing at eight of the clock

*Sunday evening eight  
 of the clock*

ANNE CLARK

To the Right Honourable LORD ADVOCATE

LETTER from Lord George Beauclerk, Commander in  
 Chief of his Majesty's forces in North Britain, To Lord  
 Justice-Clerk.

MY LORD,

By a letter I have just received from the Lord Advo-  
 cate, I find notice has been taken in court, That, not-  
 withstanding

withstanding of the order of the court for confining of Anne Clark in a separate room in the castle; yet, after being separated, she was again remanded back to the same confinement: It is very true; and I have the honour to acquaint your Lordship, that it was done by my orders; as it was represented to me, that the room in the gunner's house she was by desire put into, was by no means a place to keep a prisoner in safety; and I am determined, that all prisoners intrusted to the care of the military under my command, shall always be put in places of security. I have the honour to be, My Lord,

Your Lordship's

Holyroodhouse, }  
Aug. 12. 1765. }

Most obedient humble servant,  
G. BEAUCLĒRK.

To the Right Honourable the Lord Justice-Clerk.

LETTER *from* Staats Long Morris, *Esq;* to Mr James Smith *writer to the signet.*

*Huntly-lodge, Aug. 3. 1765.*

S I R,

This day I received your letter of the 31st of July, requesting an attestation of Lieutenant Ogilvie's behaviour while he was under my command.—His conduct, as an officer, was unexceptionable; and he was always thought by myself, and the other officers of the regiment, to be an inoffensive harmless man. I am, Sir, Your most obedient, and very humble servant,

STAATS L. MORRIS.

To Mr James Smith Writer to the Signet, Edinburgh.

withstanding of the order of the court for continuing of  
same Clerk in a separate room in the castle; yet after  
being separated, she was again remanded back to the same  
confinement. It is very true, and I have the honor  
requiring your assistance, that it was done by my order  
as it was remitted to me, and the two in the same  
nonetheless was by desire put into, was by no means a  
place to keep a prisoner in safety; and I am determined  
that all prisoners committed to the care of the military  
for any command, shall always be put in places of secur-  
ity. I have the honor to be, My Lord,

Your humble servant  
G. BRUCE

To the Right Honourable the Lord Justice Clerk

LETTER from Sir James Stewart to the Lord Justice Clerk

SIR,  
This day I received your letter of the 24th of this  
instant, in relation to the Lieutenant of the Castle,  
wherein he was under my command, and the same  
being by myself, and the other officers of the  
Castle, to be an absolute bar to the same.  
I am most obedient and very humble servant,  
James Stewart

To the Right Honourable the Lord Justice Clerk