The speeches and judgement of the right honourable the Lords of Council and Session in Scotland, upon the important cause, His Grace George-James Duke of Hamilton and others, pursuers; against Archibald Douglas, defender / Accurately taken down and published by William Anderson.

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THE SPEECHES and JUDGEMENT OF THE RIGHT HONOURABLE The LORDS of COUNCIL and SESSION in SCOTLAND,

UPON

The important Cause,

His Grace GEORGE-JAMES Duke of HAMILTON and others, Pursuers;

AGAINST

ARCHIBALD DOUGLAS, Esq; Defender.

Accurately taken down and published

BY

WILLIAM ANDERSON Writer in Edinburgh.

EDINBURGH:
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To the PUBLIC.

THE following ſheets contain the opinions delivered by the judges of the court of Seſſion in Scotland, at deciding the great cauſe of Douglas. The general attention which the importance and extraordinary circumſtances of this cauſe excited, perſuaded the publiſher, that it would be doing an acceptable ſervice to the public, to give them, as exactly as he could, the ſubſtance, and, as nearly as poſſible, the words of the ſeveral opinions. To qualify him for this taſk, he made himſelf fully acquainted with the cauſe; and, while the judges were delivering their opinions, he took down the greateſt part of what each of them ſaid. Theſe notes he daily corrected and enlarged from his memory: Not ſatisfied with this, he got the ſeveral opinions reviſed by thoſe who were beſt qualified to correct any errors, or to ſup-

ply

ply omiſſions, which might have eſcaped: So that the preſent publication may be depended upon as exact and genuine.

THE long vacation which followed ſoon after the deciſion of the cauſe, by diſperſing the gentlemen of the law, retarded the publication. The winter-ſeſſion has given the publiſher an opportunity of making the whole more correct; and he now offers it to the public, with humble confidence, that his diligence and candor will meet with approbation.

SEVERAL of the judges, in delivering their opinions, took occaſion to obſerve, that in a cauſe of ſuch extent, they did not mean, nor was it neceſſary for them, to reſume the whole of the facts and arguments of either party; but merely to ſtate the outlines, and ſome of thoſe circumſtances which had made the ſtrongeſt impreſſion on their own minds. It would be in vain, therefore, to expect that from any ſingle opinion,

nion, or perhaps from the whole of them taken together, a thorough knowledge of the cauſe can be acquired: They alone who have a previous acquaintance with at leaſt the great lines of the cauſe, can reap the proper entertainment or inſtruction. However, to render their utility as general as poſſible, the publiſher has cauſed reprint the caſes of both parties, which were given in by appointment of the court a few days before the hearing of the counſel in ſummer 1766, in order to give a general idea of the foundations of this important ſuit; and as they are authentic, and the only papers which contain an abridgement of the capital facts in queſtion, it is thought they may be of conſiderable uſe in aſſiſting the reader to underſtand the import of ſome paſſages in the judges opinions, which may happen to be too briefly expreſſed for thoſe who are totally unacquainted with the circumſtances.

THESE caſes being already in many peoples hands, are printed ſeparately, that the ſpeeches may be had either by themſelves, or with the caſes prefixed.

Edin. 12. Feb.
1768.

CON-

CONTENTS.

TUESDAY, 7th JULY 1767.

	Page
Lord President, - - -	1
Lord Strichen, - - - -	46

WEDNESDAY, 8th JULY.

Lord Kames, - - - -	57
Lord Auchinleck, - - -	63
Lord Coalston, - - -	87

THURSDAY, 9th July.

Lord Barjarg, - - -	113
Lord Alemoore, - - - -	130
Lord Elliock, - - - -	174

FRIDAY, 10th July.

Lord Stonefield, - - -	234
Lord Pitfour, - - -	253
Lord Gardenstoun, - -	288

SATURDAY, 11th JULY.

Lord Kennet, - -	332
Lord Hailes. - - -	380

TUESDAY, 14th JULY

Lord Justice-Clerk, - - -	451
Lord Monboddo, - - -	493
Judgement of the court, — —	620

THE

LORD PRESIDENT ſpoke firſt, in the following Manner.

My Lords,

IN delivering my opinion on this great and important cauſe, it was my reſolution to have ſpoken laſt, and not until I had heard the opinions ſeverally given by your Lordſhips. This was my reſolution ſo long as we ſat fourteen in number, and ſo long as there was a certainty, that the queſtion could not fall to be determined by my caſting vote. But, as we now ſit fifteen in number, and that there is a poſſibility that my caſting vote may be called for, I judge it my duty to ſpeak firſt, to ſtate my opinion and the grounds of it, not doubting but that, if it is erroneous, ſome of your Lordſhips who are to ſpeak after me will correct me.

And, in giving this my opinion, I ſhall ſtate only ſuch arguments as move me, and ſcarcely at all touch thoſe which tend to ſupport a contrary opinion; at leaſt, until I firſt hear what opinions are formed by your Lordſhips;

ſhips; for to theſe at preſent I am an entire ſtranger.

If I ſhall omit any thing, I ſhall hope for your Lordſhips indulgence to have leave to add it in the way of reply.

I agree then with the principle laid down in the defender's memorial, page 38. "That "the acknowledgment of parents is not of it-"ſelf *probatio probata*; but that a proof of ſuch "acknowledgment, or even of habite and re-"pute, is good preſumptive evidence, and "ſufficient for a jury to ſerve." This principle is true; and it is alſo true, that a jury might have ſerved, nay, ought to ſerve, upon ſuch evidence. But then it is equally true, that when ſuch ſervice is brought before this court by reduction, the verdict becomes no more than a legal preſumption, and may be redargued by a contrary proof:—The queſtion of fact remains to be reviewed by your Lordſhips, as in place of a grand jury, and to be tried by the rules of evidence.

Evidence is either direct, or moral, or circumſtantiate.

The firſt leaves no room for doubt in the breaſt of the judge or jury. It is ſometimes compared to mathematical demonſtration.—Such evidence is not in this cauſe. The ſe-

cond

cond equally compels the mind, from conviction, to aſſent; but it depends on a chain of circumſtances laid together, and always introduces proofs on both ſides. In ſuch caſes the judge muſt weigh every circumſtance in the ſcale of juſtice, and give his opinion where he thinks the evidence preponderates.

It is not fair to ſay, that a poſſibility of being deceived ought to deſtroy a concluſion drawn from circumſtantiate evidence: From the frailty of human nature, perhaps a poſſibility of deception attends every kind of evidence. In matters of the higheſt moment, even in religion, we muſt be ſatisfied with moral evidence, and are bound to form our opinions upon it. In direct evidence, two witneſſes may ſwear falſely: *Alibi* may be proved. Circumſtantiate or moral evidence is often ſtronger, becauſe it hangs on many dependent circumſtances, which mutually aid and ſupport each other. Inſtances of this occur every day.

As to the application of certain general maxims quoted both by purſuer and defender, concerning the *onus probandi*, I do not agree with either party. There is, in this cauſe, a ſingle fact to be determined, Is the defender the ſon of Lady Jane Douglas? This

fact

fact does not now reſt on the ſimple acknowledgment of parents, or on habite and repute;——would to God it had; but the acknowledgment of the ſurviving parent is qualified by time, place, the preſence of other people at the birth, and many other circumſtances.

THE purſuer offers circumſtantiate evidence to diſprove this fact; the defender has brought evidence to ſupport it. The proof lies before your Lordſhips. It then remains for me, as for others, to weigh this evidence; and, with my hand upon my heart, and as I ſhall anſwer to the ſupreme Judge of the world, to ſay whether I can or cannot aſſent to the following propoſitions, *viz.*

THAT upon the 10th day of July 1748, Lady Jane Douglas, in the houſe of Madame le Brune at Paris, was delivered of this defender, and of another ſon now dead, by the aſſiſtance of Pier la Marr a man-midwife: That Sir John Stewart became acquainted with this La Marr, in the year 1721, at Leige; was introduced to him by Colonel Fountaine; met him accidentally at Paris in the year 1748, where La Marr had come *ſur une affaire épineuſe*; thought he would get him cheaper than any other;

other; therefore employed him to deliver Lady Jane: That La Marr at firſt declined to tell Sir John Stewart where he lodged; but afterwards gave him his addreſs (as corrected by Sir John, in his depoſition 9th Auguſt 1763): That La Marr actually delivered Lady Jane: That the perſons preſent at the delivery were Madame le Brune, her daughter, La Marr, Mrs Hewit, and Sir John: That the youngeſt child of whom Lady Jane was delivered was ſent to be nurſed at a village near Paris under La Marr's care: That La Marr correſponded with Sir John and Lady Jane concerning this child: That the letters of La Marr, produced by Sir John, are part of that correſpondence: And, in fine, That the facts contained in Sir John Stewart's declaration, as to theſe things, are true, under the correction already mentioned as to La Marr's addreſs; for, it muſt be obſerved, that to his dying hour, Sir John Stewart never made any other correction of his declaration whatſoever.

In examining the evidence of any averment, built upon one's own proper fact and deed, the ſimplicity of the ſtory told deſerves attention; for truth is ſimple, and has no need of diſguiſe. A ſtory, to gain credit, ought to be, 1*mo*, Probable; 2*do*, Attended with

with no inconſiſtencies; *3tio*, Without covering or concealment; *4to*, There ought to be no attempt, by falſe or indirect means, to ſupport it; *5to*, It ought to be uniformly told, and maintained, not by the words only, but by the actions of thoſe concerned. When theſe concur, the ſtory deſerves great regard, and there are ſtrong preſumptions for the truth of it. But, when theſe are reverſed, when a ſtory told is improbable, inconſiſtent, full of myſtery, ſupported by falſe means, not uniformly told, nor uniformly maintained; theſe are legal preſumptions againſt the truth of it, and deſtroy, at leaſt weaken, the *præſumptio hominis* which ſhould ſupport it. In ſuch a caſe, the attention will be rouſed to weigh the evidence of the ſtory in the niceſt balance, and not to truſt to general averments, or general preſumptions, for the truth of it.

In applying theſe maxims to the cauſe before me, I cannot heſitate to refuſe my aſſent to the truth of the propoſition already mentioned; and am ſorry to ſay, that I think the reaſons of reduction are well ſupported. And as many of my objections to the truth of that propoſition ariſe from the general complection of the cauſe, and the *res geſta*, which

which cannot lye, I ſhall begin with them: For, as to the parole-evidence, where each party charges perjury againſt the witneſſes of the other, when I come to that, I ſhall not inſiſt for full credit to all the witneſſes upon either ſide.

I obſerve, therefore, in the *firſt* place, that the defender's ſtory is improbable.

That a lady of Lady Jane's age, ſo near to the period of her delivery, and in her firſt child, ſhould leave Aix-la-Chapelle, travel to Leige, thence to Sedan, from thence to Rheims, and from Rheims to Paris, without abſolute neceſſity, is to me extremely improbable: That, in this journey, ſhe ſhould linger eight days at Sedan, and near four weeks at Rheims, when her reſolution was to go on to Paris, and her delivery faſt approaching, is ſtill more ſo; and that ſhe ſhould drop her maids at Rheims, at the time when ſhe ſtood moſt in need of them, and when they could have been carried to Paris at the expence of a few livres, is not to be believed.

It is to me equally improbable, that Lady Jane ſhould have concealed her being with child ſo carefully, as it is ſaid ſhe did. Was not her being with child the accompliſhment and crown of all her wiſhes, the very end and motive

motive which had led her to give her hand to Colonel Stewart? Why then conceal it? She had wrote to the Duke of Douglas in April 1748, acquainting him of her marriage, and of the happy conſequences which might be expected from it. After this, why conceal her ſituation from any body? And yet, among all her correſpondence, ſhe does not acquaint one of them that ſhe was with child, even when ſhe is going to Paris in order to be delivered.

ALTHO' ſhe had dropt her maids at Rheims; yet, at Paris, ſhe hires no ſervants, nor any attendants whatever. Though carried thither in order to have the beſt aſſiſtance which France could afford, ſhe is put into the hands of an old ſurgeon to a Walloon regiment, or, as the defender himſelf allows, into the hands of a perſon of no character. When ſhe arrives at Paris, ſhe ſtays four days in Godefroy's; during that time, ſhe takes no advice as to her ſituation, not even from Madam Godefroy; leaves Godefroy's, and goes to a lodging, which, after the moſt painful ſearch, cannot now be found, unleſs, as the defender aſſerts, we ſhould believe it to be the houſe of a *garde malade*. From this ſhe goes to another houſe, hired by Sir John

Stewart;

Stewart; there one child appears in a very ſingular manner; the other is ſent away with Monſieur la Marre; and though a child weak and ſickly, and Lady Jane, a lady remarkable for maternal affection, is not once ſeen by her for ſixteen months, that is, not till November 1749.

At this period, Lady Jane, Sir John, and Mrs Hewit return to Paris, in order to bring home this ſecond child: They leave their carriage and driver without the town, and go off in a hackney coach to an unknown houſe. They ſend for La Marr, in order to get the child; La Marr makes his appearance; they ſet out to bring the child; Lady Jane, taken ill with a headach, is carried into another unknown houſe, where ſhe remains with Mrs Hewit; mean time, Sir John goes and brings the child; and then they all ſet out in their return to Rheims.

As the defender's ſtory is, in theſe reſpects, improbable; ſo alſo, I obſerve, *ſecondly*, that, in other reſpects, it is inconſiſtent.

It is ſaid, that Lady Jane intended to have been delivered at Rheims, but left it, as no proper aſſiſtance for her delivery was to be got there. This information Mrs Hewit ſwears ſhe received from Madam Andrieux,

who had got her death by being unſkilfully delivered. But, in this fact, Mrs Hewit is contradicted by the ſon Mr Andrieux; and that Sir John and Lady Jane had no ſuch intention, appears clearly from Mr Hepburn's evidence, who depones, in a very pointed and preciſe manner, that, at Leige, Sir John told him he was to carry Lady Jane to Paris, in order to be delivered there. If then their deſtination was for Paris, Was it not inconſiſtent, in the higheſt degree, to ſtay eight days at Sedan, and near four weeks at Rheims, that is, from the 5th of June to the 2d of July; eſpecially after, as they ſay, they were informed, that no proper aſſiſtance could be had at Rheims, and that they were reduced to their laſt guinea?

Mrs Hewit ſays, that this information concerning the want of proper aſſiſtance at Rheims, ſhe received from Madame Andrieux. But, What ſays Lady Jane in the account of this matter given by her to the late Counteſs of Stair, as deponed to by her daughter, the Honourable Mrs Primroſe, a witneſs above all exception, and who depones with the greateſt air of candor? "The morning after "I came to Rheims, ſays ſhe, a Lady of that "place deſired to ſee me. I ſent anſwer, that

"I

"I was fatigued with my journey, was ſtill "in bed, and could ſee no body." The lady ſent word, that it was a matter of conſequence ſhe had to tell me. Upon this ſhe was admitted, ſhe begged pardon for intruding, ſaid it was a matter of conſcience. She had heard I had come there with an intention of lying in; but ſhe was bound to tell me, that there was no perſon in that city capable of doing the office of a midwife. I ſaid, that I had ſent away my coach, and that my finances were too low to proceed further. But the lady's arguments were ſo pathetic, that ſhe perſuaded me to take a poſt-chaiſe, in which Mrs Hewit and I went to Paris.

And, upon Lady Stair's obſerving, that Paris never was without Britiſh people of credit, who ought to have been at her labour, conſidering her age, and the enemies ſhe had with her brother; and that her labour ſhould have been in a royal manner, alluding probably to the ſtory of the Empreſs Conſtantia (words ſo ſenſible, and ſo much in the character of Lady Stair, that I think I could almoſt ſwear to their identity). Lady Jane anſwered, "That, ſays ſhe, was not in "my power, as I was not half an hour, or

"an

"an hour and a half in Paris, before I was "delivered."

As to leaving the maids at Rheims, Mrs Hewit ſays, they were left for want of money, and that Sir John and Lady Jane had only one guinea when they arrived at Paris: That they endeavoured to perſuade their banker to advance a little money on the credit of Lady Jane's penſion; but in vain. So they wrote to Monſieur Andrieux for a ſupply; and this ſupply arrived on the very day of Lady Jane's delivery. And in this Sir John Stewart agrees with her. But this fact turns now out clearly to be falſe. For the money ſent by Monſieur Andrieux was not received by Sir John till the 26th of July. And this being the caſe, I would gladly know, how they ſatisfied former ſcores at Godefroy's, Le Brun's, &c.

Mrs Hewit ſays, that ſhe could not keep Lady Jane in bed after the ninth day; ſhe had wrote ſo to the maids at the time: Surely ſhe could not then be miſtaken. But, after Sir John Stewart's examination, ſhe ſeems to have been ſtartled; and therefore writes a letter to the Reverend Mr Harper, dated 11th January 1763, (but which ſhe did not deliver till the 15th of March thereafter), wherein

wherein ſhe tells him, " That ſhe was in a " miſtake in declaring that it was the tenth " day after Lady Jane was delivered, that " they left the houſe of Madame Le Brune; " for it was the ſixth day." It would appear to me, that Mr Harper had ſome ſuſpicions as to Mrs Hewit's intention in writing him this letter, by his accuracy in marking on the back the preciſe day upon which he received it.

THE accounts given of the nurſes are alſo full of inconſiſtencies; but I ſhall not enter upon them.

I proceed to obſerve, in the *third* place, That in this whole affair, Lady Jane Douglas and Sir John Stewart affected myſtery throughout. Their very marriage is concealed from many of their countrymen, whom they had occaſion to ſee; and even, when the time of Lady Jane's delivery is at hand, when Sir John and ſhe are ſetting out from Rheims to Paris for that purpoſe; when they are procuring recommendations from Monſieur Maillefer, a man of character, the Syndic at Rheims, to Monſieur Godefroy, who was to receive them at Paris; yet even, from this Monſieur Maillefer do they carefully conceal that Lady Jane was with child, or that

ſhe

ſhe was going to Paris in order to be delivered. This appears from the letter of recommendation wrote by Monſieur Maillefer to Monſieur Godefroy, and is confirmed by Monſieur Maillefer himſelf. He is not permitted to ſee Lady Jane; to him ſhe is ſaid to be indiſpoſed, while, at the very time ſhe receives viſits from an Abbè Hibert, and is daily walking about in his company. Nay, the letter of recommendation from Monſieur Maillefer to Monſieur Godefroy proves more. It proves, that they uſed falſe pretences for their journey to Paris: " Comme il aura " quelques emplettes a faire a Paris, je lui ai " dit qu'il pouvoit s' addreſſer a vous, comme " etant fort connoiſſeur, et que vous ne ſuf- " frirez pas qu'on le trompat." A ſtrange way this of recommending a Lady juſt going to be delivered.

During their ſtay at Paris, they not only conceal their being there from their countrymen; they even conceal it from Chevalier Johnſton their correſpondent, their friend, and couſin to Mrs Hewit. Did ever Sir John Stewart, in any other place, on any other occaſion, or at any other period of his life, neglect or forſake the company of his countrymen? Was he not in uſe to herd

with

with them, eſpecially with ſuch of them as were at this time to be met with at Paris? Was there no Scots coffee-houſe in Paris? Did Sir John never go there? Why, or for what reaſon did he not? How is this conduct to be accounted for? But above all, when Sir John and Lady Jane were about to quit Paris, leaving a weak and ſickly infant behind them, to be nurſed at a village only three leagues diſtant from it; could any thing be more natural, than to have recommended this child to the care of Mr Johnſton, and to have entreated him to viſit it as often as convenient? Yet, no ſuch thing is done; not even, when after their return to Rheims, they acquaint Mr Johnſton of Lady Jane's delivery.

ANOTHER ſtrange concealment, while at Paris, was, dating their letters as from Rheims, which were truly wrote from Paris: That this was done deliberately, and with deſign to miſlead, appears from the after correſpondence with Mr Haldane and Lady Mary Hamilton; a correſpondence evidently tending to induce a belief, that Lady Jane and Sir John had gone no farther than Rheims, and that Lady Jane had been delivered at that place; for, in the whole of

that

that correſpondence, there is not any mention made of Paris.

It is alſo ſtrange, that notwithſtanding the many dark and myſterious circumſtances attending the accounts given of Lady Jane's delivery; notwithſtanding that Sir John and Lady Jane knew well that theſe accounts and theſe circumſtances were ſuſpected; yet ſtill, at no after period, did they ever give ſuch a detail of particulars as could give ſatisfaction upon this great point, or, in the event of their death, could avail their children; but choſe to reſt the proof of their ligitimacy upon general preſumptions, and that the *onus probandi* of the contrary lay upon their adverſaries. But this I will rather carry foreward to my next obſervation, *viz.*

To the falſehoods by which the defender's cauſe has been ſupported, and by which the objections againſt it have been attempted to be obviated.

And, 1*mo*, The cauſe of Lady Jane Douglas and Sir John Stewart their coming to Rheims, is not well ſupported: But, as I am not now talking of the proof, except in ſo far as it ariſes from real evidence, which cannot be contradicted, I obſerve,

2*do*, That

2*do*, THAT the leaving the maids at Rheims, when they could have been carried on to Paris at the expence of twelve or fourteen ſhillings, is a ſtriking circumſtance which remains to be obviated: The want of money, therefore, has been aſſigned as the cauſe of this. Lady Jane and Sir John are ſaid to have been reduced to their laſt guinea, and when their banker at Paris would not advance, they applied to Monſieur Andrieux. In this particular Sir John and Mrs Hewit's memories are ſo diſtinct, that they remember the very critical day when Monſieur Andrieux's money arrived, *viz.* the day of Lady Jane's delivery; and ſo Mrs Hewit wrote to the maids at the time: Yet this, we have already ſeen, is altogether falſe. But the falſehood was abſolutely neceſſary; for, at the time when this fact was averred, no mention had been made in this proceſs of Godefroy or his houſe. It was believed, that Sir John and Lady Jane had, before the delivery, reſided only in one houſe. By Mrs Hewit's evidence, they went directly to La Brune's; yet this houſe behoved to be cleared off before leaving it: Other expences alſo about the time of the delivery fell to be incurred; and, for paying theſe, money was requiſite: And it was re-

quiſite alſo, that this money ſhould arrive in time for that purpoſe.

And, as it is falſe that they received the money ſent by Monſieur Andrieux ſooner than the 26th, ſo it is equally falſe that they were in want of money when they arrived at Rheims; for it is in evidence, that they carried with them from Aix-la-Chapelle, a letter of credit upon Paris for near 2000 livres, which they actually received upon the 6th of July, four days before Lady Jane's delivery; and this letter of credit was ſo conceived as that they could have drawn the money at Rheims, if neceſſary.

3tio, As it was given out, that they came to Paris on purpoſe to procure Lady Jane better aſſiſtance in her delivery, it was incumbent on Sir John to give ſome account what aſſiſtance they did actually procure, and who was the midwife who delivered Lady Jane.

And here it is to be obſerved, that Sir John was always diſtinct and pointed as to his deſcription of La Marr; firſt, in his note to Mrs Napier, and next in his judicial declaration. In his note given to Mrs Napier, as early as the year 1756, he ſtiles La Marr a Walloon, and ſays, that for ſeveral years he had been ſurgeon to a regiment: He likeways mentions the

name

name of Colonel Fontaine oculiſt to the invalides at Paris, and tells Mrs Napier, that Fontaine was the perſon who introduced him to La Marr. Theſe things he confirms in his judicial declaration, with the addition of ſundry other particulars; and theſe things he never amended, nor, to his dying hour, ever retracted or contradicted.

And how was Sir John's declaration taken? In the moſt ſolemn and deliberate manner. It took up three days: Sir John had full time given to recollect every particular of the ſtory; he was allowed to correct, to retract, and to explain, upon an after day, what he had declared upon the day preceeding; and in one word, was treated with the greateſt candour. He was indeed ſomewhat deaf; but, to obviate any inconvenience which might thence ariſe, the queſtions aſked were given to him in writing, one by one, and he was allowed time maturely to conſider them, before he gave his anſwers.

With reſpect to his account of La Marr, as given in this declaration, he never pretended to amend or contradict it, except as to his addreſs, which in his after oath he ſwears La Marr gave him; although in his declaration he had ſaid the contrary. The reaſons of

this

this correction are too obvious; and yet, after all the deliberation and ſolemnity with which this declaration was taken, after all the opportunities given to Sir John to retract, explain, amend, and correct it; after he had done ſo in one or two articles; yet, after all this, the defender, who ſays he is the ſon of this Sir John Stewart, and values himſelf upon his acknowledgment, is pleaſed to maintain, that his father's declaration, in many points, is falſe and untrue, and that no regard ought to be paid to it.

4to, THE forged letters, ſaid to have been written by La Marr to Sir John Stewart, mentioned in Sir John's declaration, at once ſhew the falſehood of that declaration, and the ſhameful and illegal attempts made to ſupport the defender's ſtory, and to obviate objections againſt it. The forgery of theſe letters was committed early, and at a time when the Delamarre, whom the defender now ſays was the true accoucheur, was alive, and that fair and genuine letters to prove that fact could have been procured from him. The laſt of the four letters mentioned in Sir John's declaration, as written to him by La Marr, appears to have been brought to Sir John in Lady Jane's preſence, and to

have

have been read and explained by her to Mrs Glaſs, *&c.*

But upon theſe letters, perhaps, I may touch again, when I come to conſider the evidence adduced by the defender.

5to, It was neceſſary for Sir John and Lady Jane to obviate the many ſtrong and ſtriking objections to their conduct after the birth. Nothing could have been eaſier than to have done this, had their ſtory been true. Truth is ſimple, and generally carries conviction along with it. At any rate, it is uniform; but the ſtory told by Sir John Stewart was not ſo; and therefore labours under ſuſpicion: And this leads me to obſerve,

In the *fourth* place, That the ſtory told by Sir John Stewart of the defender's birth was by no means uniformly told, nor uniformly maintained. In the courſe of Providence, a falſe tale is often detected by the tellers.

As to Lady Jane's account of this event, we have none given by her, further than what paſſed in her converſation with Lady Stair, a converſation which, we have already obſerved, turns out to be falſe in every particular. But, with reſpect to Sir John, we have his declaration and his oath; and as to theſe, they are, in ſome particulars, contradicted

dicted by Sir John himſelf, and in others are given up by the defender as untrue.

By Sir John's oath and declaration, Lady Jane's delivery is ſaid to have happened in the houſe of Madam le Brune: But, in the note given by him to Mrs Napier, it is ſaid to have happened in the houſe of Madam Michell. Strange! that, in the year 1756, there ſhould have been ſo great a failure in Sir John's memory. Indeed, Sir John's behaviour, when he gave this note to Mrs Napier, is very remarkable, and deſerves attention: For, when preſſed by Mrs Napier to tell her in what houſe the children were born, and who were preſent and aſſiſtant on that occaſion? Sir John anſwers, That ſo many years had paſſed, and ſo many misfortunes had happened to him, ſome of which he enumerated, that he could not be ſo diſtinct in names as he could wiſh: That, for different reaſons, Lady Jane had been obliged to change houſes about the time of her lying in; one houſe was full of buggs; another houſe was ſmoaky; ſo that he could not ſay what preciſe houſe the children were born in; but he would conſider of it at home, and make a note of theſe circumſtances. And when ſtill preſſed by Mrs Napier to make a memorandum of ſuch

things

things as he was ſure of, he accordingly gives her a memorandum; and, *inter alia*, ſets down Madam Michelle's houſe as the place of delivery. This ſeems to me to be the *origo mali*; and here I begin to ſee the finger of Providence pointing to the diſcovery of the impoſture. It is not ſufficient to alledge here forgetfulneſs or miſtake; it was too early to miſtake in the 1756. It is true, that, in an after-converſation with Mrs Napier, Sir John mentions Le Brune's as the houſe where Lady Jane was delivered: But as it is not clear that this ſecond converſation happened, until he knew that inquiry had been made at Madam Michelle's, and that his former ſtory was diſproved, I can pay no regard to it. It is alſo very material to obſerve, that the ſcroll of the letter from Mrs Hewit to the Duke of Douglas, ſo accidentally found, mentions Madam Michelle's houſe as the place of delivery. Strange! that both Sir John and ſhe ſhould fall into the ſame miſtake.

But, how is it poſſible to account for the conduct of Lady Jane and Sir John Stewart, after they knew that the legitimacy of their children was ſuſpected? Eaſy would it have been at that time to have put the matter be-

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yond all queſtion. A letter by poſt would have done it. If that was not ſufficient, a more formal inquiry might have been made; yet, in place of this, a few declarations only are got from Aix-la-Chapelle, and theſe merely relating to Lady Jane's pregnancy. No application is made for any proof from Paris, the principal ſcene of action, and which at once could have put the matter out of all doubt. Indeed, they afterwards ſaw the propriety, or rather the neceſſity, of clearing up this affair, and gave different reaſons to juſtify their ſtrange conduct with regard to it; but, in vain, none of them are ſatiſfactory. At one time, Lady Jane doubts how far the making ſuch an inquiry would be conſiſtent with her honour. At another time, ſhe laments the want of money to carry it on. To Mrs Menzies ſhe boaſts, that ſhe had evidence of the birth in her pocket. And, at a late period of her life, in a converſation with Mrs Greig, ſhe ſhelters herſelf under a legal preſumption; and tells Mrs Greig, that if any body called her childrens legitimacy in queſtion, they behoved to prove the contrary. Mrs Hewit, indeed, talks more boldly upon this ſubject: Walter Colvill, ſoon after the birth, had informed her of the

ſuſpicions

ſuſpicions concerning it; but ſhe ſeems to deſpiſe theſe ſuſpicions; and roundly tells him, that the birth was too well proved to admit of any doubt.

All theſe circumſtances of improbability, inconſiſtency, concealment, falſehood, and vacillancy, are extremely ſtriking; and altho' I do not argue upon them as concluſive; yet ſurely they are more than ſufficient to awaken the attention, to lead us to examine things with accuracy and preciſion; to demand proof, and not to reſt upon general preſumptions.

And this leads me to conſider what proof has been brought by the defender in ſupport of his averment.

The firſt material fact, upon the part of the defender, is to prove the exiſtence of the accoucheur, Pier La Marr; for, if there was no La Marr, it is impoſſible to believe one jotta of the whole ſtory.

The hiſtory of La Marr, as told by Sir John Stewart, and never contradicted, is, That he was a Walloon, and ſurgeon to a Walloon regiment, remarkable for his ſkill in midwifery: That, in the year 1721, Sir John became acquainted with him at Leige, and was introduced to him by Colonel Fontaine:

That, when Sir John was at Paris by himſelf, in June 1748, he accidentally met with La Marr, and they renewed their acquaintance: That La Marr was there at that time *ſur une affaire épineuſe*, and was to be found at the Thuillieres, or the Luxembourg, in certain particular walks which he named, and at certain times of the day: That Sir John, for the ſake of cheapneſs, engaged this La Marr to deliver Lady Jane; which he did accordingly: That the youngeſt child of whom Lady Jane was ſo delivered, was entruſted to La Marr's care for ſixteen months; during which time, he regularly correſponded with Sir John upon that ſubject: And as to the letters from La Marr to Sir John produced in proceſs, Sir John averred, That two of them were originals, and two of them copies; in one of which letters La Marr ſays, that he had been ten months in Naples after the year 1748.

THIS account is altogether unſupported by any evidence; and however circumſtantiate it may be as to Sir John's firſt acquaintance with La Marr, his knowledge of his profeſſion, manner of renewing acquaintance, writing to him, &c. it is impoſſible to believe it. Failure in memory may excuſe miſtakes as to leſſer matters, or trivial circumſtances, but

but cannot palliate errors in capital points. Indeed, the defender himſelf does not believe it; he has therefore bent his whole force to prove, that not this La Marr, but another Delamarre was the accoucheur who delivered Lady Jane, although it ſtands proved, that this Delamarre was no Walloon, but a native of *Montreuil ſur Mer*, was only ten years old in the 1721, had never been ſurgeon to a Walloon regiment, had his conſtant reſidence at Paris, and was never out of it after the year 1748. Further, there is no evidence that this Delamarre was beſpoke or could be beſpoke as accoucheur for Lady Jane; and ſtill leſs probability, that, when Lady Jane had travelled ſo far to procure the beſt aſſiſtance, Sir John would beſpeak for her a low operator at the Hotel Dieu.

INDEED, according to the defender's own account, he ſeems to have taken no great care of his patient; for, if it was he who recommended Le Brune's, and knew that Lady Jane was to remove from thence ſoon after her delivery to another houſe, it is ſtrange, what Mrs Hewit ſays, that ſhe never ſaw La Marr viſiting Lady Jane but once after her delivery. If it was he who provided the bad nurſes, ſtrange that he ſhould take

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no further nor better care to provide good ones. But what proves beyond contradiction, that this Delamarre was not the accoucheur, and that the ſtory of his delivering a great foreign lady does not, and cannot apply to Lady Jane, is the time when this is ſaid to have happened. It happened, ſays Menager, while Delamarre was in the Hotel Dieu. It happened, ſays Gilles, before the year 1748. It happened, ſays Cocquerell, before February 1748; for, in that month, I was married. I had left the Hotel Dieu about two months before my marriage; and La Marr had left it about a year before me.

This article of the time appears to me very material, clinches the whole, and proves, that the ſtory told by Delamarre at the Hotel Dieu could not relate to Lady Jane Douglas.

But how did Sir John Stewart ſtumble upon the name of La Marr? How came he to pitch upon this name, as the name of the accoucheur who delivered Lady Jane? Perhaps Sir John was acquainted with this Delamarre, knew him as a merry companion, and pitched upon his name to help forward his ſtory, but gave ſuch a falſe deſcription of

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the other particulars concerning him, as might be ſufficient to prevent diſcoveries, and to obviate after inquiries. For, is it poſſible for any mortal to believe, if this Delamarre had truly been the accoucheur who delivered Lady Jane, that Sir John Stewart would have forged the letters from him which are now produced, when, at that very time, Delamarre was alive, was reſiding at Paris, and, in courſe of poſt, Sir John might have had letters from him? Delamarre lived till the year 1753, and the letters produced were forged in the year 1752.

With reſpect to theſe letters, the defender's ſtory of this Delamarre proves their falſehood in a ſtrong manner; and, if they are falſe, and falſe they are admitted to be, even by the defender, What becomes of the ſuperſtructure they were intended to ſupport? They are the chief, if not the only written evidence on the part of the defender. They appear to me to have been the proofs which Lady Jane boaſted to Mrs Menzies ſhe had in her pocket. They alſo ſeem to have been the documents which Lady Jane carried to Douglas-caſtle, to convince the Duke of Douglas. They were mentioned by Sir John to Mrs Napier; they were explained by La-

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dy Jane to her ſervants; they were produced to the jury; they were printed with the ſervice; yet theſe are forged, and, in my opinion, forged by Sir John. Is it in nature to believe, that Sir John Stewart would have forged falſe letters from La Marr, if, at the expence of a poſtage from Paris, he could have had letters which were true?

Before diſmiſſing Sir John Stewart's declaration, permit me to obſerve the ſtrange and unaccountable conduct of the defender with regard to it. He talks of his filiation, of the acknowledgement of his parents, of his habite and repute, &c. His father is examined, the perſon who beſt can tell the circumſtances of his birth, whoſe inclination, whoſe intereſt, and whoſe duty it is to ſay every thing that can ſupport it. The examination is gone about in the faireſt, in the moſt ſolemn, in the moſt candid manner poſſible: But no ſooner is it taken, than the defender rejects it, maintains it to be falſe, endeavours to have it ſuppreſſed, inſiſts that it can be no evidence, and, when your Lordſhips juſtice had ordered it to be conſidered as evidence, he appeals from that ſentence to a higher court; though, for reaſons beſt known to himſelf, he afterwards drops it.

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Did any of your Lordſhips ever read or hear of ſuch a conduct? I confeſs I never did.

THE *ſecond* material fact upon the part of the defender is to prove the exiſtence of a Madame le Brun, in whoſe houſe Lady Jane was delivered; for, if there was no Madame le Brun, it is impoſſible to believe one jot of the ſtory.

HERE again the ground ſlips from under my feet: There is not more evidence of the exiſtence of a Madame le Brun than there is of a Pier la Marr. No ſuch perſon can be found; even no ſuch name, I mean of Madame le Brun who kept a hotel, occurs in the capitation-rolls of any kind.

THE defender is fain to ſuppoſe, that the Madame le Brun, in whoſe houſe Lady Jane was delivered, was a *garde malade*. This however is incredible: It was never once inſinuated by Sir John or Mrs Hewit, not even in the letter wrote by Mrs Hewit to the maids, though a circumſtance remarkable, and which, in theſe letters, fell naturally to be mentioned.

SIR JOHN hints as if ſhe had been recommended by Godefroy: This is falſe: The proof now points as if ſhe had been recommended by La Marr. Had this been ſo, Sir John could

could not have forgot it : But it was not ſo: The *res geſta* belies it: Even Menager himſelf never knew any lady of character carried to be delivered in ſuch a houſe, one lady in a maſk excepted.

If La Marr had recommended Le Brun, how comes he not to have appeared ſooner upon the ſtage, and to have been better known to Lady Jane and Mrs Hewit? Mrs Hewit, who attended Lady Jane, ſwears, that previous to the delivery, ſhe had no converſation with Lady Jane about the perſon who was to deliver her; nor did ſhe ever ſee Pier la Marr until ſhe ſaw him in Lady Jane's room at the time of her delivery; nor did ſhe ſee him after, except once, when he called to inquire after Lady Jane and the defender. At what time, therefore, did he recommend Madame le Brun? The thing is incredible.

The Le Brun living on her income in the houſe of Travers, *rue de la Comedie*, cannot be the perſon pointed at. The deſcription does not apply, and the defender cannot be allowed to found on an allegation ſo vague, ſimilar in nothing but the name, when he has brought no evidence to ſupport it. An inlying was a circumſtance too material to have eſcaped the obſervation of the people of the houſe;

houſe; neither would it have eſcaped the ſagacity of the defender's adviſers to have made an inquiry concerning this matter when the woman was alive: But it is plain to me that the defender has catched at the ſimilarity of the name, and by that ſimilarity means to ſupply a blank in the proof, which otherways he cannot account for.

A *third* material fact upon the part of the defender, is to prove the exiſtence of Madame Michell, and that Sir John and Lady Jane lodged in her houſe.

And it is true, that Sir John and Lady Jane did lodge at Madame Michell's; and though the 8th of July is marked in the *livre d'inſpecteur* as the day of their entry; yet, it appears to me, that they entered upon the 18th; for Michell's people ſwear, that the marking of Fluratl and his company belongs to Sir John Stewart and his company; and that they were the only Britiſh people at that time in the houſe.

There are ſeveral circumſtances which happened at Madame Michell's which deſerve to be mentioned.

And, *firſt*, There is no appearance of Pier la Marr at Madame Michell's. The people

of that houſe do not ſeem to have known any thing about him.

Secondly, THE ſecond child, Sholto, is never heard of at that houſe.

Thirdly, THE defender does not appear immediately on their going there, nor till after the *enlevement* of Mignon's child.

Fourthly, THE people in that houſe ſwear, that when the defender was brought, he was brought from St Germain, the very place where Sir John, in his declaration, ſays he went to ſeek for a nurſe to him. Indeed, as to the nurſes, the accounts given are full of contradictions. I will not run through them.

THE *laſt* material fact upon the part of the defender, and which ought to have been aſcertained without the leaſt ſhadow of ambiguity, is the day of Lady Jane's delivery; and this day the defender poſitively ſays was the 10th day of July 1748. One thing is evident, that if Mrs Hewit ſpoke true, the day of delivery behoved to be at leaſt nine days before their coming to Madame Michell's; for ſo writes ſhe to the maids, that Lady Jane could not be kept in bed after the ninth day. This indeed may bring the day of delivery to the 10th; and yet, how to reconcile this let-

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ter to the maids with her after letter to the Reverend Mr Harper, I know not.

But indeed as to this point, *viz.* That the day of delivery was the 10th day of July 1748, we meet with insuperable difficulties.

And, in the *first* place, in all the letters wrote by Sir John and Mrs Hewit upon the 10th of July, there is no mention made of Lady Jane's delivery. The defender is aware of the force of this objection; and therefore insists, that although these letters bear date upon the 10th; yet they were actually wrote upon some day preceeding. But where is the evidence of this? The letters themselves bear to be wrote upon the 10th, and must be supposed to have been so, unless the contrary is proved. But the contrary is not proved. If a latitude of this kind is to be allowed; if mere supposition is to be held sufficient to destroy evidence such as this, all possibility of detection would be at an end.

But, *2dly*, There is a letter from Mrs Hewit to the maids, bearing date the 22d of July 1748, from which it appears, that she had wrote them a former letter upon the 11th; and yet that former letter had made no mention of Lady Jane's delivery: How is this to be accounted for? Mrs Hewit herself saw the

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force of this objection; and therefore endeavours to obviate it, by ſaying, in her letter already mentioned, of the 22d, that her former letter, though dated upon the 11th, ought to have been dated upon the 10th; and that this miſtake had happened through hurry. In the former caſe, the defender maintained, that the letters dated upon the 10th ought to be dated upon the 9th, otherways he ſeems to acknowledge they ought to have made mention of Lady Jane's delivery. Here again he inſiſts, that a letter dated the 11th ought to have been dated the 10th. If ſo, Why did not this letter make mention of Lady Jane's delivery? How are theſe things to be reconciled?

In the *third* place, Sir John wrote to the Earl of Crawfurd upon the 10th of July; ſo the letter bears. In this letter alſo, there is no mention of Lady Jane's delivery; on the contrary, Sir John ſays, that the happy hour was looked for daily. How is this taken off? Sir John ſeems to have perceived it; and therefore, in his next letter to Lord Crawfurd, upon the 22d of July, he ſlily inſinuates and ſays, that his former letter was of the 6th, not only in direct contradiction to the date of the letter itſelf, but alſo to the date of the

letter

letter to Mr Florentin, in which it was inclosed.

In the *fourth* place, Sir John, in his letter to Mrs Hepburn of the 6th of August, mentions his having wrote her upon the 10th of July preceeding; and adds, that Lady Jane had been brought to bed the evening of that day; yet Mrs Hewit swears, and in her letter to the maids says, that Lady Jane was uneasy during the whole night preceeding her delivery; that about eleven in the forenoon, she turned extremely ill; and it is acknowledged by all of them, that she was not long in labour. So that, if she was delivered at all, she must have been delivered in the forenoon.

In the *fifth* place, It cannot but appear extraordinary, that although Lady Jane is said to have been delivered upon the 10th; yet no letters were wrote notifying this event to any mortal, not even to her female friends or the maid-servants, sooner than the 22d. This appears to me extremely singular, and, I am persuaded, must do so to every person who hears me. Lady Jane appears to have married Sir John Stewart with a view to bring an heir to the great estate and noble family of Douglas. Both Sir John and she were well advanced in life, and could not

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be ſuppoſed capable of having many children. Lady Jane, in a foreign country, and far from her friends, was ſafely delivered of two boys: Was it not natural then for Sir John and her to haſten to convey the news of this happy event to their friends? Is it poſſible to believe that Mrs Hewit would not do it to the maid-ſervants? and yet, no ſuch intimation is given. This is evident, not only becauſe no ſuch letters are produced, but that it appears from Lady Jane's pocket-book, that no letters were wrote betwixt the 10th and 22d.

And thus, with reſpect to the day of Lady Jane's delivery, every thing is doubtful and dark; every thing is myſterious and affected. Some particulars are given up as untrue, under the ſofter name of miſtakes; others are unnatural and unſupported.

But one thing ſtill remains. What ſays the purſuer to the day of delivery? What evidence has he brought? or has he brought any, to ſhew, that the 10th day of July 1748 neither was nor could be the day of Lady Jane's delivery? Yes, the purſuer has brought evidence upon this point, and evidence which appears to me to prove, much more clearly than could have been expected, that the whole ſtory of Lady Jane's delivery in

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the houſe of Madame le Brun upon the 10th of July 1748 is fictitious and falſe; for that, at that period, Sir John, Lady Jane, and Mrs Hewit reſided in the hotel kept by Monſieur Godefroy; and that there was in that houſe, not only no delivery, but no appearance of any.

I will not take up the time of the court, in recapitulating the manner in which Monſieur Godefroy's books were kept. One thing is clear, that books were kept; and though I ſhall not call them *per ſe* full evidence; yet they are ſtrong adminicles, as being made up long ago, and without any view to ſupport this cauſe. I will not enter into all the objections ſtated againſt them on the part of the defender. I think the preſumptions are in favour of the books; and that I am bound to pay them great regard; eſpecially when ſupported, as they are in the ſtrongeſt manner, by the direct teſtimony of Godefroy and his wife.

It is true, the name of the perſon and his company, to whom the accompt of the 4th of July belongs, was entered blank in the book, and continues ſo; yet is ſo rivetted by circumſtances, as to add faith to the oaths of Godefroy and his wife, who ſwear that it was o-

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pened for Sir John Stewart; and the way how it came to be opened blank is accounted for from Monſieur Maillefer's letter to Godefroy, in which he recommends Sir John Stewart and his Lady, but without telling him their names.

By this accompt, begun upon the 4th of July, the firſt payment made by Sir John Stewart to Monſieur Godefroy appears to have been made upon the 8th of July, a day or two after they got the money from Taſſin; which, by the bye, is an additional proof of the falſehood of the ſtory of their having firſt got money from Monſieur Andrieux.

The number of perſons for whom this accompt is ſtated tallies exactly with the number of Sir John's company; ſo does the article of the wine, and ſo does the day upon which it commences; for it is confeſſed on all hands, that Sir John, Lady Jane, and Mrs Hewit entered into Godefroy's houſe upon the 4th of July. If then this accompt does not relate to Sir John Stewart and his company, where is the accompt which does? But Godefroy and his wife ſwear, That this accompt does relate to Sir John Stewart. Why, or for what reaſon ſhould we not believe them? I cannot ſuppoſe them perjured. I ſee not the leaſt evidence

dence of it; on the contrary, Godefroy's ſwearing ſo candidly as he did, from memory, concerning the letter which he received from Monſieur Maillefer, in my apprehenſion, ſays much in his favour.

As to the two enlevements, though not by themſelves ſufficient, yet I cannot get them out of my mind. Strange, ſingularly ſtrange it is! that they ſhould co-incide ſo exactly with the events in queſtion.

As to the enlevement of Mignon's child, it is clearly proved, that ſuch enlevement happened in July 1748; and though I do not think myſelf under any neceſſity to maintain, that the defender is that child; yet it appears to me a ſtrong fact, in the ſcale of evidence, that a child ſhould be carried off by a foreigner, under ſeveral circumſtances correſponding to Sir John and his ſtory, particularly as to the time; for, by the delay of the feaſt of St Clair that year till the 22d of July, it appears to me, that the date of the enlevement of Mignon's child muſt either have been the 11th or the 18th of July; and the laſt of the two ſeems moſt probable.

The co-incidence of the other enlevement of Sanry's child is not leſs extraordinary. This happened in November 1749; at this

time Sir John, Lady Jane, and Mrs Hewit were again in Paris: Surely, if they had no concern in either of theſe enlevements, never were people more unlucky. There is no evidence that an enlevement at Paris is an ordinary event, or that it happens frequently. Strange, that Sir John and his company ſhould have been there at times ſo ſuſpicious and unfortunate! Sanry's child is proved to have been carried off by foreigners: Theſe foreigners three in number, having no attendants, the age of the child exactly agreeing with the ſuppoſed age of Sholto. Theſe circumſtances correſpond to Sir John Stewart and his company; yet it is not the *minutiæ* of the ſtory which move me. In a circumſtantiate evidence, circumſtances muſt be laid together. A ſeparate link in the chain may bear a challenge; and yet the whole remain firm and impregnable.

As to the way in which this cauſe has been conducted by the gentlemen on both ſides, I do not ſee any reaſon for blame, either upon the one ſide or the other; though there had been ſuch due, yet it would not have varied my judgment; but I ſee none due. And as to the cry raiſed againſt the purſuer for having varied his ground, his doing ſo may ſhew ſpi-

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rit, as it does, but cannot influence the determination; in a labyrinth ſo dark and intricate, it was no wonder that the falſe lights hung out on the part of the defender ſhould often miſlead him.

THE witneſſes are ſaid to be low people: They are ſo; but they were not of the purſuer's chuſing: They were choſen by the defender's ſuppoſed parents: The purſuer was obliged to follow them: He could examine no other.

BUT what could move Lady Jane to commit ſo great a crime as is here ſuppoſed? What could influence her to play a part ſo criminal, and to continue it to the laſt?

THAT Lady Jane was anxious to have children appears from her converſation with Mr Hepburn; and that this was her intention in marrying Sir John Stewart, appears from her letter to the Duke of Douglas. What other motive on earth could ſhe have for marrying him? When once ſhe had put on the maſk, ſhe was under a neceſſity to wear it. She had ſaid, that the defender and Sholto were her children. Common ſenſe, of which ſhe had a large ſhare, led her to behave to them as ſuch; otherways her actions would have given the lie to her words; and it is

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eaſy to ſee which of them would have been beſt believed. The death-bed declarations in this cauſe do not move me: When crimes are committed, the committers rarely chuſe to confeſs, if by concealing they can eſcape that infamy which otherways would purſue them. Lady Jane could not but ſee, that, when the Rubicon was paſt, there was no retreating. Had ſhe been tempted to have divulged a ſecret ſo important, the conſequences would have been, infamy on her own memory, and capital puniſhment on her aſſociates. That in Sir John's judicial declaration many things are falſe, cannot be denied. Between an oath and a declaration there is little difference; and yet Sir John, upon his death-bed, does not confeſs them; and tho' he makes a death-bed declaration, takes no notice of any of them.

Lady Jane's pregnancy is the great argument inſiſted in on the part of the defender. I admit that it is a ground of doubt; but it can never outweigh my ſtrong conviction ariſing from evidence ſo circumſtantiate as that which I have already obſerved. One thing is ſtrange, that Lady Jane's attendants ſwear to her pregnancy as ſo remarkable, that one would think no body, with their eyes open,

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but would perceive it. Mrs Hewit particularly mentions the ſize of her breaſts as well as belly; yet we ſee even women did not perceive it until it was told them. At Rheims, Abbé Hibert ſpeaks of a pregnancy which could not be diſcovered, except when Lady Jane wanted a hoop. Lieutenant M'Lean ſaw it not; Querengal ſaw it not, until he was told of it; the company in the ſtage-coach ſaw it not.

As to the miſcarriages, I like them not; they are too numerous; and, upon the whole, I am for ſuſtaining the reaſons of reduction.

LORD STRICHEN.

I AM of a very different opinion from that juſt now given from the chair. The proof of pregnancy ſtrikes me ſo ſtrongly in this cauſe, that I own I cannot get over it. I ſee a ſtrong proof of it, even at a period when the marriage of Sir John Stewart and Lady Jane Douglas was not diſcovered. I lay a great deal of weight upon the Earl of Crawford's letter to the Duke of Douglas upon this ſubject. Lord Crawford would not have told a lie for the whole eſtate of Douglas. I cannot but think, that pregnancy may be proved ſo as to infer an abſolute certainty of the fact. It has been ſaid, that the proof of Lady Jane's Douglas's pregnancy depends chiefly upon eye-ſight. Why, my Lords, don't we owe half our knowledge to the eye? Is it not by the eye we acquire our knowledge of aſtronomy, the effects of the moon, the change of tides? We know the progreſs of the ſeaſons by the obſervation of our eye-ſight; and why may not the advance-

advancement of pregnancy be aſcertained by ſimilar obſervation? I ſee it proved beyond controverſy, that Lady Jane gradually increaſed in her ſize. Iſabel Walker depoſes to this ſo explicitely, and I believe, with ſo much honeſty, that I own I cannot get over it; eſpecially when we have joined to this a poſitive proof of Lady Jane's capacity of having children. In my conſcience I believe Lady Jane Douglas was with child. Now I cannot ſtop; what is the natural conſequence of pregnancy? Delivery. If Lady Jane was pregnant, it is clear, that ſhe muſt have been delivered, or elſe a miſcarriage muſt have happened, which it was undoubtedly incumbent on the purſuers to prove; as the pregnancy, once fully aſcertained, lays the preſumption for a full birth. This being the caſe, I cannot think that the defender is bound to prove his own birth. This muſt reſt upon the acknowledgment of his parents, and upon their uniform *tractatus* or treatment of him as their ſon. It is incumbent upon the purſuers to diſprove the birth by clear and poſitive evidence; and none ſuch, in my opinion, have they been able to bring. Their ſtory is ſo unnatural and ſo improbable, that I own it will not go down with me. The defender has one wit-

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neſs ſwearing poſitively that ſhe was preſent at his birth. He has an uniform *tractatus parentum*, a variety of circumſtances corroborative of the truth of his birth; ſo many circumſtances, indeed, that I own they ſpeak ſtronger to my mind than would a number of witneſſes ſwearing to their having been preſent at the birth. When the ſtory of the impoſture, ſet forth by the purſuers, (which I cannot help thinking highly improbable), is compared with this, we ſhall ſoon find the balance incline to the ſide of the defender. Let us examine the ſtory of the purſuers, and ſee if they have probability on the ſide of their hypotheſis. Is it credible, that when Lady Jane and Sir John were ſo poor, that it is proved they could ſcarcely maintain themſelves, is it credible, I ſay, that they ſhould add to this poverty, by bringing upon themſelves the burden of maintaining other peoples children, and that too, with the danger of ſo much guilt as that of committing the crime of *partus ſuppoſitio?* Is it credible, that when one child would have ſerved their purpoſe, they would have burdened themſelves with two? Is it credible, that they would go to Paris, without any perſon to aſſiſt them in the commiſſion of ſo dangerous a crime? And,

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what is ſtronger than all this, is it credible, that after they had got the impoſture of the firſt child accompliſhed, and knew what a dreadful puniſhment they muſt ſuffer, if detected; is it credible, I ſay, that they would have remained ſo long in Paris, where they might be eaſily found out by thoſe who might be in ſearch of them? Yet this is the ſtory of the purſuers; and, after they leave Paris, where do they go? To Dammartin, juſt in the neighbourhood; and where next? to Rheims; to the very place where they were moſt likely to be diſcovered. I own this will not go down with me. It was ſurely much more natural for them to have left France altogether after having committed ſo great a crime. But not only do they remain quietly and peaceably at Rheims for the ſpace of fifteen months, where they were always in danger of being convicted, but they even go back to Paris a ſecond time in the year 1749, again to run ſo dreadful a riſk, and in order to pick up a poor weakly child. Can I believe this? I own I cannot. There is another circumſtance too which I take into conſideration, which is, that, as Lady Jane Douglas was, at this time, undoubtedly capable of having children, would ſhe be guilty of two

ſuch impoſtures, when the conſequence might be to deprive her own children of their birthright? The ſecond child indeed (when they did find him) correſponds exactly to the accounts which they had given of him before they ſaw him, or knew any thing about him. Such is the ſtory as ſet forth by the purſuers; ſurely a moſt improbable one. I own it will not go down with me. On the other hand, the conduct of Sir John Stewart and Lady Jane Douglas is very conſiſtent with the notion of a true birth. Much has been ſaid of the falſe accounts given by Sir John Stewart concerning the particulars of this birth; and the inference drawn from Sir John Stewart's account of the matter is, that the defender is not his ſon. But I humbly apprehend, that had Sir John, at the time of his declaration, even acknowledged, that the defender was not his ſon, that this would not have been ſufficient to have ſet him aſide after he had attained the poſſeſſion of his eſtate, in conſequence of his own acknowledgement of him as his ſon. Upon this point, I refer to the great Lord Stair, who expreſſes himſelf in the following words: "Filiation is preſumed "from marriage, whereby the children are "preſumed to be the lawful children of thoſe

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" who are proved to have been married, " which is yet more pregnant and favourable " on the part of the children, to give them " the right of aliment and ſucceſſion, and is " the probation of the marriage betwixt " thoſe who are preſumed parents, which is " ſo ſtrong a preſumption, that the mother " acknowledging another father than he that " is married to her will not prejudice the " children; much leſs will the aſſertion of the " father, that the children are not his, tho' " he condeſcend upon another to be the true " father; yet, if both the married perſons do " acknowledge, that the child is not procreate " betwixt them, but by another as a father, " who ſhould alſo acknowledge the ſame, " and own the child, it would elude the pre- " ſumption; but, if both married perſons had " owned and treated the child as theirs, the " concurring teſtimonies of all the three " would not prejudice the child in the right " of ſucceſſion to his reputed father and mo- " ther."

We ſee then, that upon this great authority in law, that had Sir John and Lady Jane both poſitively declared, that the defender was not their ſon, after having treated him uniformly as ſuch for any length of time, he

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muſt nevertheleſs be maintained in the poſſeſſion of his eſtate. If then, the poſitive declarations of parents would not be ſufficient to deprive the defender of his eſtate, ſhall we deprive him of it, from only ſuſpicions ariſing from any miſtakes and contradictions which may appear in Sir John's account of the matter?—I repel ſuch reaſons of reduction.

I ſhall now make a few obſervations upon the proof brought by the purſuers, no part of which, excepting that of Monſieur Godefroy's books and his oath, is totally inconſiſtent with the truth of the birth; that is to ſay, excludes the poſſibility of it. All the reſt of the proof is merely of the negative kind, which will ſeldom be allowed to redargue direct poſitive teſtimony. The purſuers ſay there is no Pierre la Marre, nor no Madame le Brun found. Againſt this negative proof, we have the direct and poſitive teſtimony of Sir John Stewart and Mrs Hewit, both of whom concur in ſwearing, that Lady Jane Douglas was delivered of twins in the houſe of Madame le Brun; that La Marre was the accoucheur; and that Mrs Hewit was one of the witneſſes to, the delivery. This of itſelf is enough; for though people thus poſitively ſworn to had not been found at ſo great a diſtance of time, as this

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proceſs has been brought ſo late, I could not give it againſt the defender. But the defender has done more: He has ſhewn clearly, that there was in the year 1748 a La Marr an accoucheur in Paris; that he delivered a foreign Lady of advanced age of twins, who he ſaid would be people of great rank and wealth in their country; that the one of them was ſtrong and healthy, the other weak and ſickly: The defender has alſo ſhown, that there was at this time a Madame le Brun. Taking all theſe things together, can I doubt that the ſtory told by Sir John Stewart and Lady Jane Douglas is true? The purſuers lay great ſtreſs upon Godefroy's books, together with the oath of him and his wife, and aſſert, that they have thereby proved an *alibi* from the 4th to the 14th of July; during all which time Lady Jane, being in the houſe of Godefroy, could not be delivered on the 10th in Madame le Brun's. I muſt here obſerve, that we ought to have had the books themſelves produced by the purſuers; and that the producing a notorial copy of them is not enough. If Godefroy was purſuing even a trifling debt, it would not be enough. But, however, let us look into the entries made in theſe books, we ſhall ſee ſo many blanks, ſo much indiſtinct-

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neſs and inaccuracy, that, without believing implicitely in the memories of Monſieur Godefroy and his wife, we cannot pay any regard to the books. Godefroy and his wife, indeed, have ſworn poſitively, that the blank article of the 4th of July does relate to Sir John Stewart and his company. But in this, it appears to me, they are very probably both miſtaken, and the proof by their oaths ſingly ſuppletory of their books, which, I ſee, are liable to ſo much error, will not be ſufficient to ſet aſide the whole evidence, direct and circumſtantial, which the defender has brought in ſupport of his birth.

It remains for me to make a few obſervations on ſome circumſtances of which we have heard a great deal. It has been objected, that Lady Jane, ſoon after her delivery, was ſeen going abroad and jaunting about Paris. As to this I obſerve contradictory evidence; but ſuppoſe it true, that ſhe was ſeen going abroad; what then? it was not till the 17th day after her delivery. Much has been ſaid as to Sir John and Lady Jane's concealment at Paris. Why, my Lords, I don't know; they are now dead; I cannot explain the reaſons of their conduct, nor can the defender; but what is this at beſt? Much ſtreſs has been laid upon

on an alledged detection of falſehood on the part of Sir John Stewart and Mrs Hewit, in ſaying, that they were in want of money at Paris. It is in proof that Sir John had letters of credit for a pretty conſiderable ſum: But, my Lords, I remember a ſtory of a man in high rank at London, who was accuſed of embezzling the public money. In order to ſupport this accuſation, it was ſaid he had a great deal of money in his hands; for he had built a magnificent houſe and made very fine gardens: Ay, ay, ſaid he; but how do you know that my workmen are paid? Now, my Lords, how do we know that Sir John Stewart's debts were paid? We do not know how much of the ſum contained in theſe letters of credit was Sir John Stewart's own. Do we not all know the character of Sir John Stewart, a thoughtleſs, diſſipated, extravagant man? Why, he might have been owing the greateſt part of this money, and had little free in his pocket by the time he got to Paris. That they were in want of money when in Paris, is poſitively ſworn to by both Sir John and Mrs Hewit. That it may have been ſo, I can eaſily believe; it will account for many things in their conduct which may now appear very odd to us.

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As to the two enlevements, none of them apply to Sir John Stewart. It is clear that the defender cannot be Mignon's child; for Mignon's child had fair eyes, and the defender is proved to have had black eyes when he was produced at Rheims. The eyes of a child could never change from fair to black in ſo ſhort a time as in going from Paris to Rheims. Sanry's child had as little connection with Sholto. Sanry's child, at the time it was carried off, could both walk and ſpeak; Sholto could do neither, even after he was brought to England.

Upon the whole then, my Lords, I am clearly of opinion for repelling the reaſons of reduction, and aſſoilzieing the defender.

LORD

LORD KAMES.

I Propoſed to have given my opinion at a late period of the deliberation, becauſe I wiſhed to hear others, and to be as ripe as poſſible in a cauſe ſo intricate and involved; and indeed, when I came into court yeſterday, I was prepared to give my vote and no more, as nothing further appeared neceſſary; and I confeſs I would ſtill incline to give my vote ſingly. But ſince I am now called on by your Lordſhip, I ſhall ſtate ſhortly what occurs to me, without pretending to go through the whole *mare magnum* of circumſtances in this cauſe.

THERE are different views in which the preſent queſtion may be conſidered. In the *firſt* place, I ſhall ſuppoſe every thing at this moment entire, and that Mr Douglas were applying to be ſerved heir to the Duke of Douglas; would I in that caſe, as a juryman, find ſufficient grounds to ſerve him? The caſe is intricate; and I admit, that the arguments which came with ſo much energy from the chair, made great impreſſion upon me, as a

juryman ſerving Mr Douglas, and had I been called on recently to give my voice, I ſhould have been almoſt overwhelmed with the weight of them; but I have had time to deliberate upon the circumſtances, and I feel that they are enervated and fly off.

One general remark occurs, and is to be kept in view in examining this cauſe. Facts are ſet forth, to appearance unaccountable, and which create ſuſpicion and doubt, becauſe they cannot be explained. But how are we ſure that every difficulty of this kind would not evaniſh, if we knew the whole extent of the facts? Great allowance muſt be made for the lapſe of time and death of witneſſes. Dropping the man-ſervant at Leige was once founded on as a moſt ſuſpicious circumſtance; but accidentally the whole fact has been diſcovered, and it comes to nothing. This ſhews, that a fact or circumſtance may be doubtful, merely becauſe one half of it only is known.

In other inſtances, facts wear a double face, and may be urged with equal plauſibility on either ſide of the queſtion: For example, Lady Jane's loitering upon the road before reaching the intended place of delivery: This, in one view, may ſeem unaccountable,

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if ſhe was with child: But, on the other hand, if ſhe had no child, and if an impoſture was reſolved on, there was no occaſion to loiter. This, and every other ſcheme would have been ſo laid, as to avoid the leaſt handle for ſuſpicion. Where falſehoods are intended, great care is taken to diſguiſe them.

THERE is a *third* claſs of circumſtances, which have the appearance of being weighty; but when conſidered and ſcrutinized, the argument founded on them is diſcovered to be inconcluſive. For example, the ſervant maid Iſabel Walker was left at Rheims. This, at firſt ſight appears ſuſpicious; becauſe, why leave her at Rheims, if it was not to conceal from her what was intended to be done at Paris? Yet Iſabel Walker was a fit woman to be truſted. She muſt have committed the moſt glaring perjury before your Lordſhips, in ſupporting the cauſe of the defender, and in vindicating the memory of her deceaſed miſtreſs, if the pregnancy and birth were not real. She was therefore a moſt proper perſon to be uſed as an accomplice in any fraud; and, if we can ſuppoſe, that ſhe has gone ſuch lengths in the affair ſince Lady Jane's death, ſhe certainly would not be leſs ſcrupulous during her life, and when in her ſervice.

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But ſuppoſe we allowed the fulleſt weight to all theſe circumſtances urged for the purſuers, the whole of them muſt go for nothing, if the pregnancy of Lady Jane Douglas is eſtabliſhed. The purſuers ſay, that the evidence of her pregnancy is falſe. I differ from them in opinion. I think the evidence on this head is complete; I have no notion of evidence more complete; and I dare not ſay that all the witneſſes are perjured. I always expected, that ſome evidence would have been attempted by the purſuers of a miſcarriage ſubſequent to the pregnancy, and that the ſcheme of impoſing on the world would have been dated only from that period. But I ſee no ſuch thing in evidence; and therefore I muſt neceſſarily yield to the proof brought by the defender.

For theſe reaſons, were I here ſitting as a juryman to determine whether the defender ſhould be put in poſſeſſion or not, I would give my voice for ſerving him, though, with doubt and diffidence, as the caſe is indeed the moſt intricate and ſingular that has at any time occurred, much more ſo than any ſet forth in the *Cauſes Celebres*.

But we are not now in ſo ſtrait a caſe: Matters are greatly altered: The defender is eſtabliſhed in the poſſeſſion of his eſtate as

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the ſon of Lady Jane Douglas: Not only has he the *tractatus* in his favour; but he has been ſerved heir to the Duke of Douglas: He has obtained the King's charter; and he inherits the ſucceſſion of a noble family. He muſt continue in the poſſeſſion which he has obtained according to the legal forms of this country, until full proof is ſhown that he is ſuppoſititious, and that a wrong verdict has been given in his favour.

Every decree muſt be held *pro veritate* until it is reduced; and, in this caſe, the ſtrongeſt and moſt convincing proof is neceſſary to defeat the ſervice of the defender. The proof which has been brought for this purpoſe is inſufficient. I cannot be prevailed on to think, that the whole facts ſworn to on the part of the defender are falſe and fictitious. What touches me moſt is the forgery of the letters; for forged they certainly appear to be. But I cannot give ſo much weight, even to this circumſtance, as to make it preponderate and defeat the whole evidence that appears in favour of the birth. Were I indeed to ſee it under Sir John Stewart's own hand, that the whole circumſtances of the birth were a fiction, I would at once give up the point: But this I do not ſee. It was wrong in Sir John to

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write theſe letters; but his having wrote them is not neceſſarily inconſiſtent with the truth of the birth. We muſt take along with us the circumſtances in which they were wrote. Sir John was then in jail. Something perhaps, like one of the *piæ fraudes* of old, was done at a time when he could not have acceſs to better proof. The real matter of fact could afterwards be explained.

I cannot forfeit the party of his birth-right, becauſe his father was guilty of an imprudent act. The purſuers have no right to demand this. They themſelves were guilty of a moſt unjuſtifiable ſtep in raiſing the Tournelle proceſs. This was ſimilar to ſtabbing a man in the dark; and their conduct in that particular has been juſtly condemned. I am far from inſinuating, that the gentlemen concerned in it meant any thing wrong; they had convinced themſelves of the juſtice of their cauſe; and they thought every means lawful which could tend to the eſtabliſhment of the impoſture. This ſhows that men are ſometimes led to do things wrong in themſelves without any criminal view, but in order to ſerve purpoſes which they imagine to be good. Upon the whole, I am for repelling the reaſons of reduction.

LORD

LORD AUCHINLECK.

I HAVE conſidered this bulky cauſe with all the attention that I poſſibly could, and I am not ſurpriſed that your Lordſhips ſhould differ in opinion, where there is ſuch a variety of matter before you, two huge volumes of proof, and two moſt accurate, ingenious, and laborious memorials.

MY Lords, contrary to my common cuſtom of never reading law-caſes in time of vacation, I have beſtowed a good deal of laſt vacation upon this cauſe. But though I made very full notes, I reſolved not to form a deciſive opinion till I ſhould be ſure that I was not, as it were, drawn off at a tangent, but had the whole of the cauſe under my view. After much labour when I came to town, I did form an opinion; yet, I ſtill wiſhed for further evidence; and in this view, I ſeconded the motion made from the chair for the re-examination of Iſabel Walker. She was re-examined: She anſwered diſtinctly, pointedly, and coherently, and confirmed the humble opinion I had formed, which, I own, ſhe would

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have ſhaken, had ſhe anſwered in a different manner. She was examined by the purſuers for two whole days; and examined by them, not for information, but, if poſſible, to get her to contradict herſelf. She ſtood it all, and never but once loſt her temper; and in ſhort, the whole of her behaviour fully ſatisfied me that ſhe was ſpeaking the truth.

I come now to tell your Lordſhips why I have formed my opinion for the defender.

I will firſt mention a few general principles. In all queſtions of filiation, which are queſtions of the greateſt importance, ſceptical people may ſuggeſt innumerable doubts, as ſceptical people can render every thing uncertain. They may talk of the infidelity of a wife, or of the infidelity of a nurſe, who may change a child, ſo that a man cannot be certain of his offſpring: But, my Lords, it is the ſpirit of our law, and it is the ſpirit of a wiſe law, to diſregard ſuch poſſible caſes, and to look for a legal certainty, not a certainty in the abſtract. Strong inſtances of what I am ſaying frequently occur before this houſe. A man may have the misfortune to be married to a woman of infamous character; to a woman perhaps, whom he knows to be a proſtitute; and yet, the children born of that

woman

woman muſt be maintained by him. He is fixed down to be the father of them, if he has been within the ſeas the ſtated time. It is the genius of the law to lay down general rules by which we are to judge. Were it not for ſuch rules in the caſe of filiation, we ſhould be in a very unhappy ſtate of uncertainty, not knowing what queſtions may be moved againſt our children after we are gone.

WITH regard to filiation, I hold it to be a rule in law, that if a huſband and wife own a child as theirs, they are to be believed; and this acknowledgement of parents is *probatio probata* in favour of that child, if *direct* contrary evidence is not brought; and the longer this acknowledgement has ſubſiſted, the greater evidence ariſes in favour of the child, and the ſtronger the proof muſt be to get the better of it.

IN the caſe before us, it is not diſputed that the defender was uniformly acknowledged by Sir John Stewart and Lady Jane Douglas, as their ſon; and it was not ſuch an acknowledgement as in the caſe of Kinnaird, where all that was ſaid was, that the Lady had brought forth twins. They were immediately challenged; the fraud was immediately

diſcovered. But here there is an acknowledgement which carries the ſtrongeſt evidence to me. Sir John and Lady Jane, for a courſe of years, ſhow the warmeſt affection for their children; when any thing ails them, we find her fainting and ſhowing every mark of the moſt tender concern; and this not oſtentatiouſly diſplayed, but ſeen by accident by perſons of the firſt character, who have depoſed to it; and there was one circumſtance which I thought very important, and with regard to which I wanted to be ſatisfied by Iſabel Walker, which was, if theſe poor people (for poor they were, though of rank and quality), I ſay, my Lords, if theſe poor people, amidſt all their difficulties, ever repined at the expence occaſioned by theſe children? She anſwered, they never did; and (though it is not taken down), ſhe added, that on the contrary, they conſtantly expreſſed the greateſt love and fondneſs for them. My Lords, I confeſs, this circumſtance weighs very ſtrongly with me; for had theſe been ſuppoſititious children, I cannot believe, but that Sir John and Lady Jane would have, at ſome time or other, diſcovered that they had brought upon themſelves the burden of taking care of two children not their own; and yet, here is a woman

who

who was conſtantly with them, even in their moſt unguarded moments, and ſhe never perceived the leaſt appearance of any ſuch thing.

Such is the *ſtatus* or *ſtate* of this defender; and I do not think that he, who is a ſtranger to all the various facts now before us, can be anſwerable for any conduct of his managers. He is intitled to plead every thing; he follows out his defences as well as he can; if he fails, he cannot help it. Had he been a party in what is now charged againſt his parents, the caſe would have been different. When a perſon is brought to trial as a criminal, his very looks and his manner of ſhaping his defence will prove againſt him. But here, if the defender proves his filiation, it will not hurt him, though his other proof may be defective or liable to exception. And, my Lords, were this defender now before me, deſiring to be ſerved heir to Lady Jane Douglas, I, as a juryman, ſhould think it my duty to ſerve him.

Now, what has the other party proved? Here again I muſt be allowed to ſay a word or two in general. I fairly own, that, in ſo great a cauſe, I wiſhed to ſee a full and clear, as well as a fair proof. I wiſhed, that the cauſe had ariſen at a time, when we could have

thought

thought there were no by-motives. But when was the challenge brought againſt this defender? Not till after he had defeated Duke Hamilton in point of law. That being the caſe, ſurely the purſuers were called upon to bring their challenge in the moſt formal, orderly, and unſuſpicious manner.

Now, it is moſt material for your Lordſhips to obſerve, how the proceſs was conducted. Juſtice to this defender obliges us to give all attention to this; for it is a key to the evidence againſt him, and to the defects in the evidence for him. Inſtead of applying to this court for a warrant to have a proof taken, where the witneſſes might give a fair and unbiaſſed evidence, what were the proceedings of the purſuers? A mock criminal proceſs (for as it could have no iſſue, it deſerves no better name) was inſtituted before the Tournelle; and this mock proceſs was backed with a *monitoire important*, which treats Sir John Stewart and Mrs Hewit as already convicted of the crime of ſuppoſition of children. They were not named indeed; but was there a woman in all France who did not know who they were by the deſcription given, as much as if they had inſerted their names?

Now,

Now, I ſay, here the purſuers were aiming at a moſt undue advantage, which was accordingly moſt juſtly condemned by this court, and by the houſe of Lords. Theſe proceedings were not condemned ſolely becauſe they were unprecedented, but becauſe it was foreſeen they would pervert evidence: That they would diſcourage thoſe to appear who could tell the truth, and would ſerve as an inſtigation from the biſhop to all the people in Paris to bring faggots to burn theſe convicts.

This monitoire had a ſtrange effect. It weakened the memories of ſome, it ſtrengthened the memories of other witneſſes. And, my Lords, this is no random-aſſertion; it was what I always believed would happen; and now there is full evidence of it. I ſhall ſelect a few proofs of it from theſe bulky volumes. The Houſe of Lords ordered a production by theſe purſuers, from which we are enabled to ſee a good deal into this cauſe. In one of the pieces produced, to wit, Mr Andrew Stewart's journal, we find, that, when that gentleman converſed with Miſs Louiſa Hibert, ſhe told him, that Lady Jane had much the appearance of pregnancy, and appeared to be five months gone with child. This was

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the account that young woman gave, when uninſtructed. But, when the ſame Miſs Louiſa Hibert is called as a witneſs after the Tournelle proceedings, ſhe ſwears ſhe obſerved no marks of pregnancy. Another inſtance equally ſtriking, is that of Francois La Marre, brother to Pierre la Marre. In Monſieur Danjou's firſt note, we find, that, upon examining this Francois, he was told by him, that his brother Pierre the accoucheur was in correſpondence with Madame le Brun, and that he himſelf knew her. In Monſieur Danjou's ſecond note, we find Francois telling this agent of the purſuers, that the other party had been with him, and that he had informed them of all that he knew, except as to Madame le Brun. This ſhows, that Francois la Marre was, by this time, pretty well diſpoſed to conceal what might favour the defender, and that he was informed what was proper for the purſuers intereſt to conceal; and, when he comes to be examined, he ſwears directly the reverſe of what he told Monſieur Danjou. Another inſtance is, that of Madame Michell. It is ſtated by the purſuers, in one of their French memorials, that ſhe ſaid Lady Jane had all the appearance of a woman newly brought to bed: But, after the Tournelle proceſs and monitoire,

monitoire, ſhe minces down the matter, and ſays only, that Lady Jane had an *air malade*. Theſe inſtances convey to my mind full evidence of the baneful effects of theſe French proceedings. I fairly own, that, if I could believe the purſuers witneſſes, who were brought to ſwear after the Tournelle proceſs, I ſhould believe there was no proof of an appearance of pregnancy. For I ſhould have Miſs Hibert, who had the beſt occaſion to obſerve it, ſwearing ſhe obſerved none. Nay, I I ſhould have Madame Sautre, who, to make dead ſure of it, meaſures Lady Jane: But, after the glaring circumſtances which I have mentioned, can I give any credit to ſuch evidence?

And here, on the appearance of pregnancy, I cannot help mentioning Godefroy and his wife, who are repreſented by the purſuers as prodigies of memory, ſurpaſſing very far old Scaliger. They mind *minutiæ*, the very colour of Sir John's coat, fifteen years after they had ſeen him; yet both concur that they obſerved no marks of pregnancy about Lady Jane; and yet it is fixed, beyond poſſibility of cavil, that ſhe had the appearance of pregnancy, whether real or aſſumed, is of no moment in this argument; and the purſuers agents in

France

France were ſo ſatisfied of her having had the appearance of pregnancy, that, in their plaints to the Tournelle, they expreſsly ſet forth that Lady Jane aſſumed theſe appearances. But, after the monitoire, it ſeems to have been thought it was making ſure work to prove ſhe had not even the appearance; and ſo theſe witneſſes have ſworn.

THERE is one branch of this huge proof where I expected to have got ſomething that I could lay my hand upon, ſomething of written evidence, and that was the books. But, when I look unto them, why it is a battle of books, a fair battle, the books of different inns contradicting each other; nay, ſome of them contradicting themſelves. Such is my general view of the evidence brought by the purſuers in this great cauſe, except what I ſhall ſay by and by as to the conduct of the parties.

MY Lords, we have here a full and ſtrong filiation of this defender; and I moreover ſee a variety of proofs, which could have come out for him, had it not been for theſe wrongous proceedings in France.

Now let us conſider more particularly what is here brought againſt the defender's filiation. It may be reduced to two heads: *1ſt*, Proofs excluſive of the real birth: *2dly*, Circumſtances

ſtances which look like preſumptions againſt it. Under the *firſt* head, there are but two articles, Lady Jane's not being pregnant and the *alibi* at Godefroy's; for as to the age of Lady Jane, that is now given up. Her capacity of having children is proved beyond a doubt; though I think ſuch a proof was hardly neceſſary. And I cannot help obſerving, now that the age of Lady Jane is given up, that it was upon her age alone that all the ſuſpicions againſt her were at firſt founded. As to the pregnancy, none of your Lordſhips will diſpute that Lady Jane had the appearances of a woman with child; and that is ſufficient to defeat any pretence that the purſuers have for pleading that ſhe was not pregnant. For, in this whole maſs of proof, there is not a grain of evidence againſt the real pregnancy, but the teſtimonies of Miſs Hibert, and ſome others, ſwearing they ſaw no appearance of pregnancy; teſtimonies that merit no regard.

As to the *alibi* at Godefroy's, on the 10th of July, that, no doubt, if proved, would be deciſive of the cauſe: But I fairly own, after all I have read upon this article, I think the purſuers have totally failed. This reſts on the teſtimony of Godefroy and his wife, the

keepers of a very much frequented inn, ſwearing to facts that happened fifteen years before. I do not know theſe people. I do not ſay they are perjured; I am unwilling to believe there is perjury where I can avoid it; but I think it is very clear, they have got their memories refreſhed, as Miſs Hibert and Francis La Marr got theirs leſſened.

GODEFROY and his wife have been miſled by their books: They find in their *livre de l'inſpecteur* Colonel Stewart and his lady; and they find in their *livre de depenſe* a blank article for three perſons: They ſee no article in their *livre de depenſe* for two, and no article in their *livre de l'inſpecteur* for three; ſo they compound matters and fill up this blank with Colonel Stewart and his company. It is acknowledged, that there are ſome people marked in the police-book that are not marked in the *livre de depenſe*; and all thoſe who come at night and go away in the morning are not entered in the books; ſo that the books were only kept as a charge againſt ſuch as did not pay their bills, but run accounts; ſo, if a perſon came there, and paid every day, he never would enter the books. Such books therefore, kept ſo irregularly, were very improper helps to aſſiſt their memories. But there is

another

another argument againſt theſe books in this caſe, and I think a ſtrong one: It is acknowledged, that Sir John and his family did not dine at the *table d'hote*, but in their own apartment. Now, all I ſhall ſay is, that Sir John had better fortune than ever I had, if he was entertained as cheap in his own apartment as if he had gone to the *table d'hote*, and taken a ſhare of what was going along with the *marchands* and all ſorts of people that came to the inn. People who eat in their own apartment are entertained at a higher rate, and to be ſure it muſt be ſo; therefore, there is no probability that this blank article, which is according to the rate of the *table d'hote*, can be the account of Sir John Stewart. Upon theſe grounds, my Lords, I think there is no evidence excluſive of the birth.

THE ſecond head of the purſuers evidence is a number of circumſtances which are urged as preſumptions; as Lady Jane's making a long journey to Paris when ſhe was big with child; ſhe and her huſband chuſing to live by themſelves in ſo private a manner; their writing letters from Paris, and dating them at Rheims; two enlevements happening at ſuch critical periods; La Marr and Le Brun

not

not certainly diſcovered; and laſtly, letters forged as from Pierre La Marr.

WITH reſpect to theſe circumſtances, it will occur, that they relate to the conduct of two very extraordinary perſons; and ſome of them things which were not ſpoken of when Sir John Stewart was alive; ſuch as the letters being dated at Rheims, which was not inſiſted on when he was examined; we may ſay the ſame thing, as to why he did not call on his countrymen? It is difficult to account for theſe circumſtances; yet I have endeavoured to form ſome reaſons for ſuch conduct, and I think natural ones; for I do believe Sir John Stewart was at that time miſerably poor. It is nothing to me, that he had a bill along with him for about 2000 livres. What was ſuch a ſum as 2000 livres to Sir John Stewart? We all know the character of the man, and we all know he could have got ſome good people to eaſe him of it at a ſitting. I ſay, my Lords, they were at this time crying for want, and writing home to the Duke of Douglas, begging a ſupply from him. Now, it would occur to them, if we date our letters from Paris, the Duke will ſay, Here this woman has left Rheims, and is gone to Paris, forſooth; to ſend money to ſuch people,

would

would be throwing it into the ſea. After they got to Paris, Lady Jane became ſenſible that ſhe had done a fooliſh thing, as ſhe had no occaſion to go thither. She had ſet off from Rheims in a panic, as women in her ſituation often do take panics; but ſhe was too near her delivery to go back again; ſo it was neceſſary for her to remain there till after the birth. In the mean time, ſhe was anxious that this expedition ſhould be concealed from the Duke, at leaſt till ſhe ſaw if he would be prevailed with to ſend her any money; therefore the letters were dated at Rheims; therefore Sir John Stewart, tho' fond of his countrymen, abſtained from ſeeing them upon this occaſion; therefore were they ſo fearful their being at Paris ſhould get air, that they would not even truſt Mr Johnſton.

As to the enlevements, as they are not brought home to Sir John Stewart, they are nothing to the purpoſe. It is ſaid, that Sir John and Mrs Hewit differ much in the account which they give of the nurſes; I can lay no ſtreſs upon that. I have had ſeveral nurſes in my family; but I confeſs I can give little or no account of them, except indeed of ſome of them who are my penſioners, and very little even of theſe.

I own it appears ſomewhat ſtrange, that Sir John Stewart and Lady Jane Douglas, though informed of the ſuſpicions which had been raiſed with regard to their children, did not act the rational part, and take the moſt proper methods to put the matter beyond doubt; for although I have ſaid, that, according to the ſound and fixed principles of law, an imperfect proof will not deſtroy filiation, ſtill I think that it is the duty of parents to remove any ſuſpicions.

But, my Lords, inſtead of indulging in theory, let us conſider what is the conduct of mankind in real life: No doubt, we are to preſume they will act the moſt rational part; but do we find them always doing ſo? I am afraid, my Lords, if no other conduct was to be believed but what is rational, the actions of mankind would be reduced within a very ſmall compaſs. I can give a tolerable inſtance from the preſent caſe: Duke Hamilton was found by this court to have no intereſt at all in the Douglas eſtate; one would have thought, that it was the moſt prudent ſtep for him to have appealed this queſtion, and get it aſcertained, whether he had a claim here, ſo as to make any thing of this ſuit in caſe the defender ſhould loſe it. His tutors, however, thought otherwiſe; and accordingly Duke Hamilton

has

has been laying out immenſe ſums of money upon this cauſe, without knowing whether he ſhall ever get a ſhilling by it; for, if Mr Douglas were out of the field, he has the ſame plea to maintain with others wherein he was beat by Mr Douglas. I don't think this was a prudent or proper ſtep; yet we are ſure, from theſe volumes, that ſo was done.

But there is another point as to the conduct of this cauſe, which appears to me to ſtrike deep, and I have not ſeen any attempt upon the part of the purſuers to explain or excuſe it: And I muſt beg liberty to ſtate this more fully, becauſe it has upon my mind the greateſt weight, and makes me ſay without heſitation, no regard is due to the proof brought by the purſuers.

Your Lordſhips have it aſcertained by proof, nay, admitted by the purſuers, that when they firſt ſet out, and for a very long time after, they affirmed, that Lady Jane could not be delivered on the 10th July in the houſe of Madame le Brun, becauſe ſhe and Sir John were at that very time in the houſe of Michell; for there did they then fix the *alibi*, which they would now make us believe was in Godefroy's: And, how was this *alibi* to be proved?

ved? by Michell's book, which the purſuers agents had carefully peruſed. Very well: In what manner was this proof to be laid before us? If the book had been as ſet forth, to be ſure, by producing it before the commiſſioner who took the proof: But in place of that, very ſingular ſteps were taken; firſt the purſuers got the book locked up in the Tournelle, whereby the defender, and all but themſelves, were debarred acceſs to it; and then they produced one Duruiſſeau, a perſon with many ſounding titles, ſo to be ſuppoſed a gentleman of truth and honour, and he is made to give account of this book, which, to be ſure, was then intended to be laid before this Court, in place of the book itſelf. I will beg leave to read his evidence to your Lordſhips; it is the only one I ſhall read. He ſays, "That the ſaid Michell having put in the "hands of the deponent his ſaid regiſter of "furniſhed lodgings, which commenced in "the month of October 1746, the depo-"nent did prove the ſtate thereof, and then "put it in the hands of the ſaid Monſieur "Buchot, who took the charge of it all, a-"greeable to the minute of proceedings "which the deponent made out thereupon "the 8th November 1762; which minute be-

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" ing now ſhown to him, he acknowledges
" that the whole of it is wrote by his hand,
" and ſigned by him, and the ſame is now of
" new ſigned by the deponent, as relative to
" his depoſition; and alſo by the commiſſion-
" er. Depones, That the article concerning
" Monſieur Fluratl a Scotſman, and his fami-
" ly, entered the 8th July 1748, (the ſaid date
" of the day and year being in figures upon
" the ſaid regiſter), did not appear to the de-
" ponent to be anyways ſuſpicious, ſo much
" the rather that there was the *viſa* of the ſaid
" regiſter before and after the article in que-
" ſtion, by the inſpecteur of the quarters
" charged with that department; and that
" the leaf on which this article is wrote, as
" well as all the other leaves of ſaid regiſter,
" were ſigned at the top of the firſt page of
" each leaf by Maitre du Blon, one of the de-
" ponent's brethren, who ſigned the ordi-
" nance, which is at the beginning of the ſaid
" regiſter. Interrogated for the defender, de-
" pones, That the deponent does not perfectly
" remember if the *viſa* which are put before and
" after this article, are of the ſame month with
" the article; but remembers there are, upon
" the ſame leaf on which this article is wrote,
" and ſubſequent thereto, ſome other articles

" wrote, of which the deponent does not re-
" collect the number; neither does the depo-
" nent recollect if the *visa* of the inspecteur
" does immediately follow the article of
" Monsieur Fluratl, or is put after one or se-
" veral other articles; *but he is certain*, that
" there is a *visa on the same page* on which the
" article in question is wrote. Depones, so
" far as he can remember, That the article
" which goes before that of Monsieur Flu-
" ratl, is of *a date anterior to that of the 8th*
" *of July*: That the deponent remembers to
" have asked at Michell, Of whose writing
" was the article of Monsieur Fluratl? and
" that *Michelle answered* the deponent, That
" this article was neither of his writing nor
" that of his wife; and that he presumed, *that*
" *it was of the person who called himself Fluratl*:
" That the book of furnished lodgings, which
" Michell brings to the deponent every
" month since the deponent had the depart-
" ment of that quarter, that the deponent
" may inspect the same, and make out from
" it the list which he sends to the lieutenant-
" general of police, is posterior to the year
" 1750: That the deponent never saw the book
" which the said Michell had for the use of
" the commissaire for the year 1748. De-
" pones,

"pones, That the article concerning Fluratl "appeared to the deponent to be of a hand-"writing *diſtinct* and *different* from all the ar-"ticles both upon that and the next page: "That, ſo far as he can remember, that ar-"ticle appeared to him to be of a writing "*very well formed*, and that it was the beſt "wrote of the articles on that page, or on "the next."

Now, my Lords, here is ſubſtantial evidence indeed for the purſuers, and ſuch as would have been deciſive of the cauſe, had we agreed to judge upon ſuch evidence, which the purſuers agents in France appear clearly to have imagined we would do, elſe they never would have adduced this witneſs to ſwear concerning this book. But afterwards, being better inſtructed and informed, that the court would not regard the evidence of a witneſs, ſwearing concerning the particulars contained in a book, when the book itſelf was kept out of the way by them; and ſwearing, that Michell's book would contradict every thing Duruiſſeau had ſaid, they at once abandoned their plea of *alibi* at Michell's, and took up with Godefroy's; after which Michell's book is brought out to contradict an allegation that it had been vitiated,

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which it indeed contradicted; but it opened a moſt ſhameful ſcene of perjury in this Duruiſſeau. When his oath is compared with the book, he ſwears, "That he is certain, that "there is a *viſa* on the ſame page on which the "article in queſtion is wrote. So far as he "can remember, that the article which goes "before that of Monſieur Fluratl is of a date "*anterior* to that of the 8th of July: That "Michell ſaid, that this article was neither of "his writing, nor that of his wife; and that "he preſumed that it was of the perſon who "called himſelf Fluratl: That the book of "furniſhed lodgings, which Michell brings "to the deponent every month, is poſte-"rior to the year 1750: That the depo-"nent never ſaw the book which Michell "had for the uſe of the commiſſaire for the "1748: That the article concerning Fluratl "appeared to be of a hand-writing diſtinct and "different from all the articles both on that "and the next page. It appeared to be of a "writing very well formed, and that it was "the beſt wrote of the articles on that page "or on the next." Every one of which are groſs falſehoods. This, then, is an oath intirely calculated to impoſe upon your Lordſhips; therefore, my Lords, when I clearly de-

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tect a witneſs for the purſuers, and one of the moſt reſpectable of them in point of rank, brought foreward to ſwear the groſſeſt falſehoods, What am I to think? And can I deprive the defender of his name and his birthright upon the faith of a proof ſo carried on? I admit, that there is no ſuch deciſive evidence againſt the teſtimony of Godefroy; the reaſon of which is, that he ſwore from blank books at the diſtance of fifteen years; but had his books been regular, I verily believe the *alibi* at Godefroy's would have been found of a piece with that at Michell's.

As to La Marre's letters, one of my brethren touched upon *piæ fraudes* being ſometimes made uſe of, as the monks long ago made uſe of legends, to ſupport a good cauſe; which, to be ſure, is not juſtifiable, but yet won't make truth falſehood. Take theſe letters in the worſt light you pleaſe, they are certainly equalled on the part of the purſuers by this oath of Duruiſſeau.

I had a great many other particulars to have mentioned; but the diſtreſs I am under from a ſevere cold, has ſcarce allowed me breath to go ſo far; ſo muſt break off.

Upon the whole, as the defender has been now nineteen years in poſſeſſion of his ſtate, and

and fourteen of theſe before any challenge was brought; as his filiation by the acknowledgement of parents is full and complete, and is corroborated by the poſitive teſtimonies of unexceptionable witneſſes; and as the purſuers have taken moſt unjuſtifiable ſteps to bring evidence againſt him, and to diſable him from making his additional evidence ſtill more complete, I am clearly of opinion that he ought to be aſſoilzied.

LORD

LORD COALSTON.

AS ſo much has been wrote upon this ſubject, it would be very improper for me, in delivering my opinion, to run over the whole of the arguments which have been urged by both or either of the parties; and therefore, without entering minutely into particulars, I ſhall content myſelf with ſtating ſhortly the chief grounds upon which my opinion is founded; and, though an immenſe load of proof has been brought on both ſides; yet it appears to me, that the important queſtion now in iſſue between theſe parties, will fall ultimately to be determined upon principles of law, which are of the higheſt importance to the whole ſubjects of this kingdom.

BY the laws of this country, in order to entitle any man to be ſerved heir to his predeceſſors, it is not neceſſary for him to bring direct evidence of his filiation, or of the particular circumſtances attending his birth. If that were the caſe, no ſervice could ever proceed. It is impoſſible, in the nature of things, for

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any man to prove, by direct evidence, that he was begotten by his reputed father; and by the death and abſence of witneſſes, it is even in moſt caſes impoſſible to prove, by direct evidence, that he was born and brought forth by his mother. I even will adventure to ſay, that of the numerous audience which now hears me, there is not one of an hundred who can prove the circumſtances attending his own birth; therefore, I hold it to be a ſettled point, upon which the whole property of this kingdom depends, that, in order to entitle one to be ſerved heir to his predeceſſor, nothing more is neceſſary, but to prove, that he, and thoſe through whom he connects his claim, have been acknowledged by their parents, or have been habit and repute the children of ſuch parents.

I do not mean to ſay, that ſuch proof may not be defeated by contrary evidence. What I mean is only this, that where a ſervice hath proceeded upon ſuch grounds, it is held as legal proof of the filiation, and muſt ſtand good till ſuch time as it is defeated by contrary evidence.

And therefore, to apply what has been ſaid to the preſent caſe; as the defender's ſervice contained clear evidence that he had

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been uniformly and conſtantly acknowledged by his parents; and as the truth of his birth was never doubted in France, the place where he was born, nor even at home, was there ever any thing like a general belief of the reports which were thereafter induſtriouſly propagated? So I cannot have the leaſt doubt, that the burden of the proof lies on the purſuers to prove their alledgeance, that the defender is an impoſtor, and not the true ſon of Lady Jane Douglas.

And as it can admit of no doubt, that the burden of the proof lies on the purſuers; ſo it is equally clear, that they cannot prevail without bringing the cleareſt and moſt convincing proofs in ſupport of their alledgeance.

In ſhort, the proofs muſt be ſuch, and cannot be leſs than would have been neceſſary to have convicted Sir John Stewart and Lady Jane Douglas of the *crimen ſuppoſiti partus*; it being impoſſible for the court ever to find, that the defender is an impoſtor, without firſt ſuppoſing that his parents had been guilty of that infamous crime.

If ſuch proofs would have been neceſſary, though the defender had proved no more but the acknowledgement of parents, much

ſtronger proofs muſt be neceſſary where the defender has proved his filiation by poſitive and direct evidence.

In the *firſt* place, it is proved beyond diſpute, that Lady Jane Douglas, though advanced in years, was yet in ſuch a habit of body as to be capable of having children, both before and after the birth of the defender; which alone makes it highly improbable, and indeed ſcarcely credible, that ſhe would be guilty of this impoſture, whereof the conſequence might have been to exclude her own children.

2*dly*, It is proved, as ſtrongly as the nature of the thing can admit of, that Lady Jane was pregnant during the uſual time before the birth of the defender. This is proved by the oaths of Mrs Hewit, Mrs Glaſs, and alſo by the accounts which Effie Caw gave of the matter extrajudicially before her death; and as theſe three perſons attended Lady Jane during the whole period of her pregnancy, and had conſtant and immediate acceſs to her perſon at all times; ſo the cauſes of knowledge they have given, and the circumſtances they have depoſed to, are ſuch that they could not poſſibly be deceived: At the ſame time, their evidence is ſtrongly ſupported,

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not only by the oath of Mrs Hepburn of Keith, who has given a very ſtrong *cauſa ſcientiæ*, but alſo by Mrs Greig, Miſs Primroſe, the nuns in the convent at Aix-la-Chapelle, and numbers of others who were intimately acquainted with, and had daily opportunities of ſeeing Lady Jane, and who have all of them depoſed to all the appearances of pregnancy; and the direct and poſitive evidence of theſe witneſſes cannot be invalidated by the negative teſtimony of the purſuers witneſſes, who were abſolute ſtrangers to Lady Jane, and had only acceſs to ſee her occaſionally. I ſhould have thought it much more ſtrange, if, at the diſtance of ſeventeen years, they had ſworn to appearances of pregnancy in a perſon whom they had never ſeen before that time; therefore I muſt again repeat what I have already ſaid, that the proof of the pregnancy is as ſtrong as can poſſibly be brought in any caſe. And indeed this does not ſeem to be much diſputed on the part of the purſuers: The only method by which they attempt to evade the force of this argument is, by ſaying that the appearances of pregnancy might have been fictitious, and that even Lady Jane herſelf, and all about her, might have been deceived.

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But I can by no means admit the validity of that anſwer; for, when the whole ſymptoms and appearances of pregnancy are proved, the pregnancy muſt be preſumed real, unleſs the contrary is proved; and therefore, as in this caſe the purſuers have not attempted to prove either that Lady Jane was under any deception, or that ſhe had put on feigned appearances of pregnancy, by all the rules of law, it muſt be preſumed, that the appearances were the natural effects of a real pregnancy, till ſuch time as the contrary is proved.

But, *3dly*, As I am clear the pregnancy is proved, ſo the defender has brought a proof of the actual delivery, as ſtrong as could well be expected, and indeed, ſtronger than moſt men could bring at ſo great a diſtance of time. I admit, that this part of the proof reſts chiefly upon the evidence of Mrs Hewit and Sir John Stewart. But then, it is material to obſerve, that they were the only perſons then in life who were preſent at the birth: And this *penuria teſtium* was owing to the fault of the purſuers, in not bringing the proceſs recently, as it ought to have been. At the ſame time, the evidence of the delivery is ſtrongly ſupported, not only by the

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entry in Lady Jane's pocket-book, which proves the connection between them and Pierre la Marr; but alſo, and more eſpecially, by the circumſtantiate evidence founded upon the evidence of Monſieur Menager and Madame Garnier, whoſe oaths check in and tally ſo exactly with the hiſtory given by Mrs Hewit and Sir John, that it gives me full conviction, that the foreign lady, mentioned in Monſieur Menager's oath, was Lady Jane Douglas; that the defender was left in the cuſtody of his parents; and that his twin-brother Sholto is the very child who was delivered over by Pierre la Marr into the hands of Madame Garnier, and who remained in her cuſtody till he was carried home by his parents in the year 1749.

And, as the accidental manner in which theſe two witneſſes, Menager and Garnier, were diſcovered, adds greatly to the weight of their evidence; ſo, when I conſider the oaths of Meſſ. Morand and Moreau, joined with Monſieur D'Anjou's account of his converſations with Francois la Marr, I am convinced in my own mind, that this part of the evidence would have come out much ſtronger, if Meſſ. Giles and Francois la Marr had told out all they knew of the matter;

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and I ſhould have had a better opinion of the conduct of the purſuers in this cauſe, if their operators in France had not ſo induſtriouſly concealed from your Lordſhips what they had learned from Menager, and Giles, and Francois la Marr, at a very early period of this cauſe.

If there were any defect in the evidence as to any of the particulars I have mentioned, the different parts mutually ſupport and add weight to each other; for, as the delivery could not have happened without ſuppoſing a previous pregnancy and capacity of having children; ſo, on the other hand, if the pregnancy is once ſuppoſed, the delivery muſt neceſſarily follow, and muſt be preſumed. If Lady Jane was pregnant when ſhe came to Paris, ſhe muſt have been delivered; and if ſhe was delivered, it muſt be preſumed to have been of the defender, as the purſuers have brought no contrary proof concerning the birth. And as the circumſtances previous to the birth add great weight to the proof of the actual delivery; ſo it is further aided by the evidence brought of circumſtances ſubſequent, ſuch as the reconvaleſcence at the houſe of Michell, and at Dammartin; the tender affection and concern which Lady

Jane

Jane uniformly ſhowed to theſe children, till the time of her own death, which, in the opinion and belief of the witneſſes, was occaſioned by the diſtreſs of mind ſhe felt upon the death of the youngeſt child; and as this child is proved to have had a likeneſs to his mother ſo ſtriking, as to be taken notice of almoſt by every perſon who ſaw them, this is an additional circumſtance, which ſtrongly corroborates the other proofs of the filiation.

The purſuers have found it neceſſary to object to the credibility of Mrs Hewit, Mrs Glaſs, Mrs Hepburn, and have indeed uſed great freedoms with almoſt all and each of the witneſſes adduced for proving the pregnancy and delivery; but it appears to me, that this bold attack is injurious to the witneſſes, and altogether unmerited. The characters of Mrs Hewit and Mrs Glaſs have been proved by witneſſes to be unexceptionable; and when they were examined in preſence of the Court, they emitted their depoſitions in ſuch a manner as gave me full conviction, that they were conſcious of the truth of the facts to which they were depoſing. And as nothing has been ſaid to the general characters of the other witneſſes, ſo I cannot figure to myſelf

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any reaſon or intereſt which could induce them to depart from the truth; and though, in relating ſuch a multiplicity of facts, there are ſome trifling variations and miſtakes; yet this was natural, and could not but neceſſarily happen, when witneſſes were depoſing from memory alone to ſuch a multiplicity of facts which had happened at the diſtance of ſeventeen years. Theſe variations and miſtakes, which are only about accidental circumſtances, are ſo far from detracting from the credit due to theſe witneſſes, that, on the contrary, with me, they add weight to their teſtimonies; as it ſhows, there was no combination among them to depart from the truth.

Upon the whole of this part of the argument, the proof of the defender's filiation ſtands ſecure upon three different grounds: *1ſt*, The legal preſumption founded on the acknowledgement of parents, joined with his being generally habit and repute their ſon; *2dly*, The clear proof which has been brought of Lady Jane's pregnancy, from which an actual delivery muſt be preſumed; and, *3dly*, The direct proof of the actual delivery, as adminiculated and ſupported, not only by the marking in Lady Jane's pocket-book, but

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alſo by the oaths of Monſieur Menager and Madame Garnier, and the other witneſſes who concur with them. And, when to all this I add the other circumſtances ſubſequent to the birth which have been already mentioned, and more eſpecially, that irreſiſtible evidence which ariſes from the many letters which paſſed between Sir John and Lady Jane relative to theſe children, it appears to me, that it is impoſſible to bring a proof of filiation ſtronger than what has been brought in this caſe,

It remains only now to add a few words on the nature and import of the proofs brought by the purſuers. And here I begin, with obſerving, that they do not pretend to have brought any direct evidence of the impoſture. It is only inferred from a variety of circumſtances, from which the impoſture is endeavoured to be eſtabliſhed; and although I do admit, not only that all manner of crimes may be proved by circumſtances, but alſo, that in ſome caſes direct evidence may be defeated by circumſtantiate proofs; yet I muſt beg leave to lay it down as a principle, in which the moſt important intereſts of mankind are concerned, that a direct proof of concluſive facts, by credible witneſſes, can

never be defeated by a proof of circumſtances, which are neither incompatible with, nor contradictory to the direct proofs.

If this important principle ſhall ever be ſhaken, I do aver, that the moſt innocent perſon can have no ſecurity for his life, his liberty, or his property.

It is well known, for inſtance, that the crime of theft is ſeldom or never proved by direct evidence; but it is generally inferred from circumſtances; ſuch as, that the ſtolen goods were found in the cuſtody of the priſoner; that being in indigent circumſtances, he could give no rational account how he came by them; that he had prevaricated in an extrajudicial examination; or that he had attempted to fly from juſtice.

These circumſtances taken together are always held ſufficient to infer the crime. But this notwithſtanding, if the priſoner ſhall prove, by *credible* witneſſes, that the goods had come into his poſſeſſion in any lawful manner, all the circumſtances of ſuſpicion I have mentioned will go for nothing, and would yield to the direct evidence brought for the priſoner: For this plain reaſon, that a direct proof of *concluſive* facts by *credible* witneſſes cannot be defeated by a proof of circumſtances,

circumſtances, inconſiſtent with the direct proofs.

THE application of this to the preſent caſe is obvious. Here the defender has proved his filiation, not only by the legal preſumption founded upon the aknowledgement of his parents, but alſo by the direct evidence of *credible* witneſſes, ſwearing to concluſive facts, which conſiſted with their own knowledge, with reſpect to which they could not be deceived. Whereas, on the other hand, as the pregnancy has been already eſtabliſhed, as well as Lady Jane's capacity of having children, it will be found, that the whole of the circumſtances proved, or attempted to be proved by the purſuers, one only excepted, are of ſuch a nature, that they are neither incompatible with, nor contradictory to the proofs brought by the defender.

THE only circumſtance which I admit to be inconſiſtent with the proof brought by the defender, is the ſuppoſed *alibi* at the houſe of Godefroy on the 10th of July 1748. But as this is utterly inconſiſtent with the purſuers original plan, by which they reſted their whole cauſe on an alledged *alibi* at the houſe of Michell on that very day; ſo it appears to me, that the proof now brought of an *alibi*

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at the houſe of Godefroy is utterly inſufficient; it reſts wholely upon the oaths of an innkeeper and his wife ſwearing, at the diſtance of 17 years, to fill up an entry in their books, which is blank in the name, and when, at the ſame time, they have been obliged to confeſs, that they have no remembrance of the figure of the perſon to whom this blank article is ſuppoſed to relate; and when they were alſo obliged to confeſs, that from memory alone they were not able to fill up one other blank article in their whole books.

For theſe reaſons, and others, which have been fully mentioned by my learned brother who ſpoke laſt, I am of opinion, that no concluſive argument can be drawn, either from Godefroy's books or from his oath; at leaſt, none ſufficient to defeat the poſitive and direct proofs brought by the defender.

The other circumſtances proved, or attempted to be proved by the purſuer, are noways contradictory to the proofs brought by the defender.

He is not obliged, eſpecially at this diſtance of time, to account for every thing that may appear ſingular in the conduct of his parents; ſuch as their leaving Aix,

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and going to Paris; their leaving the maids at Rheims; their dating their letters at Rheims, when they were truly wrote at Paris, and their neglecting to provide nurſes before the birth of the children. At the ſame time, in the memorial given in for the defender, very probable reaſons have been aſſigned for all and each of theſe particulars, as well as for their neglecting to take the moſt proper methods of aſcertaining the birth and legitimacy of their children.

It is poſſible, that Lady Jane had not been fully informed of the malicious reports that had been ſpread againſt her own honour, and the birth of her children; and it is proved, that ſhe had been adviſed, that theſe precautions were unneceſſary; and that the burden of the proof would lie on thoſe who ſhould afterwards diſpute the birth of her children. At the ſame time, in fact, it appears, that ſhe was actually in the courſe of providing ſuch proofs; but was prevented from completing them by her death, which happened after the affidavits from Aix had been wrote for, and before they arrived.

And thus it is impoſſible for the defender now to account for the miſtakes which Sir John has fallen into in that part of his declaration which relates to Pierre la Marr; yet I don't

don't ſee how that can affect the preſent queſtion. The important point, that a Pierre la Marr did ſerve as accoucheur to Lady Jane Douglas, does not reſt upon the declaration of Sir John Stewart, but is proved by the oath of Mrs Hewit, and ſtrongly corroborated, not only by the entry in Lady Jane's pocket-book, but alſo by the oaths of Monſieur Menager and Madame Garnier, and the other witneſſes who concur with them, which have always carried full conviction to my mind on this part of the evidence.

The like obſervations may ſerve for an anſwer to another argument founded on the four letters which were produced in the ſervice as from Pierre la Marr. The hiſtory of theſe letters, or with what view they were wrote, is not ſufficiently explained from any thing of the proof. What appears to me the moſt probable, is the conjecture thrown out by the defender's counſel, that Sir John having miſlaid the original letters, had made out theſe copies from memory, and had ſent them to Lady Jane as the originals. But whatever might have been the view of making out theſe copies, there is no evidence, that they had ever been uſed, either by Sir John or Lady Jane; and though they had, it

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does not occur, that ever that could have had any effect to defeat the clear and positive evidence which has been adduced by the defender.

And as to the two enlevements which have been so much insisted on, though the witnesses adduced by the pursuers, after the instruction they had received from the Monitoire, and by the memorials which had been dispersed by the agents for the pursuers, have strained hard to give them a resemblance to the story of Sir John Stewart and Lady Jane Douglas; yet, after all, it appears that they have failed, both as to the time and as to the description of the persons; and, if the pursuers had meant to found on that part of the evidence, they should have rendered it compleat by confronting the witnesses with Sir John Stewart and Mrs Hewit, which they were called upon to do by the depositions of some of the witnesses, who have deponed, that they are sure they would still know the persons by whom these enlevements were committed.

Upon the whole, therefore, of that part of the argument, the detached circumstances founded on by the pursuers are not such as to form a chain of evidence, inconsistent with the

the ſuppoſition of the defender's filiation. The utmoſt length they can be carried, is to be conſidered as grounds of ſuſpicion; but as none of theſe circumſtances are either incompatible with, or contradictory to the poſitive and direct proofs brought by the defender, they can be of no avail in the preſent queſtion.

If indeed I could bring myſelf to think, without evidence, that the whole of the witneſſes who have ſworn to the pregnancy and birth, had knowingly perjured themſelves, I ſhould then be inclined to liſten to the arguments founded on the ſuſpicious circumſtances urged by the purſuers. But, as I ſee no reaſon to ſuſpect the veracity of the defender's witneſſes, ſo I cannot allow the direct and poſitive evidence given by them to be defeated by a proof of circumſtances which are not contradictory to what has been ſworn to by the defender's witneſſes.

If ſuch inconcluſive proofs ſhould be laid hold of to defeat the legal preſumption founded on the acknowledgement of parents, and, which is ſtill more, the direct and poſitive evidence of filiation which has been here brought by the defender, I will venture to ſay, that no man will be ſecure in the enjoyment of

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his property; for the innocent miſtakes of witneſſes ſwearing to remote facts, will always furniſh the ingenuity of counſel with arguments ſufficient to raiſe ſuſpicions againſt any man's birth, which, from the nature of the thing, and penury of witneſſes, muſt be always attended with ſome degree of obſcurity.

If any man who now hears me were called upon without premonition, as Sir John Stewart was, to condeſcend upon the circumſtances of his own birth, or that of his children; let him be interrogated ſpecially upon the time when, and the place where the birth happened, on the witneſſes who were preſent, and the midwife who performed the delivery, upon the landlady of the houſe, and ſervants of the family, and I will adventure to ſay, he will either be unable to condeſcend at all, or, if he does condeſcend, he and the witneſſes will fall into miſtakes, in which they will contradict one another. If he attempts to prove the pregnancy by witneſſes, however unexceptionable, he will be told that the appearances of pregnancy are always fallacious; other witneſſes will be found ready to ſwear that they did not obſerve it, and the ingenuity of counſel will be at no loſs to find

other grounds of ſuſpicion; ſuch as imprudent journies, changing of ſervants, neglecting to provide nurſes, and other ſuch circumſtances as have been laid hold of in this caſe.

If ſuch ſuſpicions and conjectures ſhall be held ſufficient to prove a birth ſuppoſititious, no man will have any ſecurity, ſo long as there are witneſſes in life who know any thing concerning his birth. But happy it is, that the property of mankind does not ſtand on ſo precarious a footing: They ſtand ſecure upon that important principle of law, That the legal preſumption, founded on the acknowledgement of parents, eſpecially where, as in this caſe, it is corroborated by poſitive and direct proofs of filiation, cannot be defeated, either by the innocent miſtakes of witneſſes, or by a proof of inconcluſive facts, which are not inconſiſtent with the legal preſumption or direct proofs brought on the other ſide.

These are the reaſons which induce me to think, that the proofs brought by the purſuers are by no means ſufficient to defeat the legal preſumptions joined to the poſitive and direct proofs brought by the defender; and I am ſtrongly confirmed in this opinion, when I conſider the improbability of the

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whole of the hypothesis laid down by the pursuers; That persons of birth and character should at once plunge themselves into a crime of so infamous a nature, when, at the same time, they behoved to see with certainty, that they could reap no benefit from it: That Lady Jane should have been guilty of this imposture at a time when she was herself capable of having children: That she and Sir John should concur together in the absurd plan of giving out that they had two children, when in fact they had only one: That after they were possessed of one strong healthy child, they should be running through the streets of Paris seeking a poor weakly child; and that, after all, by a miracle, they should find one who was the express picture of Lady Jane, and who answered exactly to the descriptions they had uniformly given of him in all their letters to their friends. These circumstances, when taken together, and joined with many others which might be mentioned, such as their loitering unnecessarily at Paris so long after the crime is supposed to have been committed, and their afterwards returning to Rheims, the very last place they had been in before they went to Paris, appear to me so highly improbable, that though no

direct

direct proofs had been brought by the defender, I ſhould have thought the whole of the hypotheſis laid down by the purſuers utterly incredible.

Upon the whole, the queſtion before the Court is not, Which of theſe two parties has the beſt right to the eſtate of Douglas? even that is a queſtion of ſome importance; but the queſtions before us are of a much more important and ſerious nature. The *firſt* queſtion is, Whether the defender, the lineal heir and repreſentative of one of the firſt families in Europe, is to be not only forfeited of his eſtate, but deprived of that rank and condition of life which he has been in poſſeſſion of ſince the time of his birth? The *next* queſtion neceſſary to be determined, is, Whether Mrs Hepburn of Keith, Miſs Primroſe, Mrs Hewit, Mrs Glaſs, Monſieur Menager, and Madame Garnier, and the whole other witneſſes who have ſworn to the pregnancy and delivery of Lady Jane, are to be held, in all time coming, as infamous and perjured witneſſes? And the laſt queſtion neceſſary to be determined, is, Whether Sir John, who had hitherto maintained the character of a man of honour; and whether Lady Jane Douglas, who is proved by the depoſitions of all the witneſſes,

witneſſes, as well as by the more infallible evidence of her own letters, to have been one of the moſt accompliſhed Ladies of the age in which ſhe lived, and, at the ſame time, poſſeſſed of ſentiments of religion, honour, and virtue, ſuperior to what moſt of the human race are capable of: I ſay, the queſtion is, Whether this Lady, poſſeſſed of theſe high qualities, ſhall be declared, by this court, to have been guilty of an infamous crime, for which, if ſhe had been brought to trial, ſhe would have been condemned to ſuffer a capital puniſhment? I do not know in what light Lady Jane's letters may ſtrike your Lordſhips; but, for my own part, I never can read them without being fully ſatisfied of two things: *1ſt*, That the perſon who wrote theſe letters could not be guilty of the crime that is here laid to the charge of Lady Jane Douglas; and, *2dly*, That the perſon who wrote theſe letters muſt have been the mother of theſe children.

In ſuch a caſe, where the characters of parties, and of ſuch parties, were ſo deeply concerned, it might have been expected, that the purſuers would have taken no ſteps which were not ſtrictly warranted by the laws of

their

their country. But, inſtead of this, it appears, that the moſt unjuſtifiable ſteps have been taken, and ſuch as had never been attempted in any former caſe. The publication of the Monitoire behoved neceſſarily to raiſe an undue impreſſion againſt the defender; and the particular deſcription which was there given of times, places, and perſons, was the very beſt method that could be contrived for inſtructing the witneſſes; as, on the other hand, the ſham proceſs before the Tournelle (which was carefully concealed from this court at the time when Sir John Stewart's declaration was taken) was the moſt effectual method of ſhutting out all information from the defender, and of tying down the witneſſes, when they came afterwards to be examined, to repeat the ſame ſtory they had at firſt told on an examination *ex parte*.

I cannot expreſs to your Lordſhips the horror I felt in my own mind, when I firſt heard of theſe proceedings, and the indignation I had when I ſaw the interpoſition of the French King procured to garble a commiſſion iſſued from this court.

THESE things appeared to me utterly inconſiſtent with the ideas I had hitherto formed

formed of a fair and impartial trial. I then thought, and I do ſtill think, that the conduct of the purſuers deſerved a moſt ſevere animadverſion from this court; and though your Lordſhips did not think proper to proceed to ſtrong meaſures in this cauſe; yet I am hopeful, that the ſtigma which has been put upon theſe proceedings, firſt by this court, and afterwards by the Houſe of Lords, will effectually deter others from falling into the like irregular practices in time coming. This ſeaſonable interpoſition of both courts, will probably ſecure others from ſuffering by ſuch illegal proceedings. But that will not repair the wrong done to the defender. I do not chuſe to repeat what has been already ſaid by one of my brethren. But, when I ſee ſome of the witneſſes adduced for the purſuers proved to have been guilty of groſs and wilful perjury, and others of them concealing upon oath facts highly material for the defender, which they had freely ſpoke out in the previous examination by the purſuers; it throws a ſlur upon the whole of the witneſſes adduced by the purſuers, and ſhows, but too clearly, that the illegal proceedings of the purſuers, and the inferior

agents

agents employed by them, have had too much influence in this case.

UPON the whole, I am clear, that the reasons of reduction are not proved; and therefore I am for assoilzieing the defender from the reduction.

LORD

LORD BARJARG,

IN delivering my opinion in this cauſe, it is not neceſſary to reſume the whole facts, nor proper to repeat the arguments fully and elegantly ſet forth in the memorials on both ſides. It is ſufficient to trace the great outlines of the cauſe, and to mention the moſt material facts upon which the judgment muſt depend, with the evidence brought in ſupport of them, and the conſequences which ſeem to follow from that evidence.

THIS being an action for reducing the ſervice of the defender, as called by the laſt ſettlement of the late Duke of Douglas to ſucceed to his eſtate, under the character of *heir whatſoever* of the late Marquis of Douglas; and it being admitted, that the late Marquis left no ſurviving iſſue but the late Duke and his daughter Lady Jane, and that the Duke himſelf died without leaving any iſſue, the final determination of the cauſe muſt turn upon the queſtion, Whether there is now before the court proper and ſatisfy-

ing evidence, that the defender is the eldeſt or only ſon of Lady Jane? If he is, the ſervice will be ſupported: If he is not, it will fall to be reduced by the judgment.

BEFORE proceeding to examine the evidence, it is proper to take notice of a preliminary queſtion much inſiſted upon by both parties, *viz.* On whom the *onus probandi* lies in this action? I do not think that the argument held by either ſide will apply to the preſent caſe.

FEW general rules will apply indiſcriminately to every circumſtantiate caſe. This caſe is attended with very peculiar circumſtances, ſome of which I ſhall afterwards have occaſion to take notice of; therefore I do not think it ſufficient, on the one hand, for the defender to ſay, he will ſtand upon the poſſeſſion of his ſtate and his filiation, ſupported by the verdict of the inqueſt in the ſervice, till they are diſproved and removed by a direct proof on the part of the purſuers: Neither, on the other hand, do I think it ſufficient for the purſuers to *deny*, that the defender is the ſon of Lady Jane Douglas, and to alledge they are not bound to prove a negative. I think it is incumbent on them to point out the defects of the evidence already

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produced in the ſervice, and to alledge and prove facts that are relevant to take off the effect of it; and that the defender, on his part, is bound to ſupport the evidence already brought, and bring what further proof is neceſſary to take off the force of the purſuers alledgeances, ſo far as they are proved; and that the court will judge according to what appears to be the reſult of the whole.

The firſt material fact conteſted upon the proof, is the pregnancy of Lady Jane Douglas.

I think the appearances of pregnancy upon Lady Jane, while at Aix-la-Chapelle and at Leige, are as fully proved as the nature of the thing will admit, by witneſſes not ſubject to any degree of ſuſpicion, concurring with the evidence ariſing from the declaration of Sir John Stewart, and the depoſitions of Mrs Hewit and Mrs Glaſs. From the time of leaving Leige till the period aſſigned for the delivery, it is more feeble, ſuch as would admit of great doubts, if it ſtood unſupported by the other evidence. But as that may be accounted for, from the indifference and inattention of ſtrangers, during the ſhort time they had occaſion to ſee Lady Jane, and the little reaſon they had to ſuſpect her being in

that

that ſituation, from the circumſtance of her travelling equipage, and not taking avowedly and conſtantly the character of a married woman; I incline to think it not inconſiſtent with the evidence of pregnancy at Aix and Leige, and ſo not to exclude the poſſibility of a delivery, if ſupported by probable evidence.

But appearances of pregnancy, if nothing further is proved, afford only a preſumption, and not any real evidence of an actual delivery. The poſſibility and frequent occurrences of deceptions, eſpecially in an advanced period of a woman's life, beſides the riſk or danger of a miſcarriage, to which Lady Jane was certainly much expoſed by travelling, bad roads, crouded machines, early hours, and other circumſtances appearing from the evidence, concur to make ſome evidence, at leaſt, of an actual delivery neceſſary on the part of the defender in this cauſe.

It is remarkable, that neither party have brought any evidence, but that of Sir John Stewart, Mrs Hewit, and Mrs Glaſs, of what paſſed during the nine days Lady Jane reſted at Sedan; and it is ſtill more remarkable, that Mrs Glaſs's evidence, upon all her examinations, concurs in proving Lady Jane to have

been

been ill, and in danger of a miſcarriage at Rhetel, having made but one day's journey from Sedan, though ſhe had no complaints upon her arrival there, nor during her ſtay at that place. The whole evidence concurs to ſhew, that, from that time foreward, Lady Jane had no uneaſineſs or threatenings of a delivery, until the time actually aſſigned for her being delivered of the twins; all which render it moſt eſſential to the deciſion to attend particularly to the evidence of the moſt material fact to the iſſue of this cauſe.

It depends upon evidence, which I incline to divide into two claſſes: *1ſt*, The teſtimonies of Sir John Stewart and Mrs Hewit, with the letters produced for the defender, either received from the accoucheur or wrote to others by them and Lady Jane on that occaſion: *2do*, The teſtimonies of Menager and Madam Garnier, relative to Lewis Pierre Delamarre, with ſuch evidence as has been adduced concerning a Madame le Brun. I mention only Menager and Garnier, without the other witneſſes who concur with them in many facts, for a reaſon to be afterwards aſſigned. It is with much regret that I am obliged to acknowledge, that neither of their teſtimonies, taken ſeparately, appear to me

ſatisfying

ſatisfying evidence of the delivery, and that, taken jointly, they are inconſiſtent with each other.

SIR JOHN STEWART's account of La Marr and his letters muſt certainly be given up; and Mrs Hewit's teſtimony on that point ſtands very much connected with it. Lady Jane too ſeems to have had a reliance on that correſpondence. But I ſhall think it a favourable circumſtance for the defender, if the court are of opinion that none of the jottings in the pocket-book apply to any of the four letters produced; at the ſame time, it is unlucky that no others have been preſerved, the rather that Mrs Glaſs has, in ſome meaſure, connected the credibility of her teſtimony with the receipt of a letter from La Marr.

THE evidence of Menager and Garnier, I cannot diſbelieve, in ſo far as they prove the exiſtence of Lewis Pierre Delamarre, a ſurgeon, firſt in the Hotel Dieu, afterwards practiſing in a low ſphere, who was not at Liege, or in the army, though Sir John ſays he knew him there, nor in Italy, where the letter produced bears him to have been: That he alſo delivered women who were deſirous from neceſſity to conceal their offſpring; and, in that train of buſineſs, may

probably

probably have delivered both ſtrangers and women of faſhion; or, at leaſt, that he was diſpoſed to boaſt that he had done it, in order to raiſe his reputation, and promote his buſineſs. In all theſe facts, Menager and Garnier are ſupported by the teſtimonies of Mr Giles, and other witneſſes, who I don't obſerve ſubject to any degree of ſuſpicion. But it is remarkable, that theſe two witneſſes alone concur in the circumſtance of *twins*, which is the only one that applies the evidence effectually to ſupport the defender's plea; and that, without it, the other facts may be eaſily ſuppoſed true, though La Marr had not delivered Lady Jane Douglas. I am unwilling to ſuppoſe, that this circumſtance was wilfully adjected by theſe witneſſes; but at the diſtance of time, it may be conceived they may have talked themſelves or been reaſoned into a belief of a ſingle word ſaid by La Marre to them, which makes their evidence of ſo much more conſequence in this cauſe. And, on this point, I cannot help being ſomewhat affected by a circumſtance much inſiſted upon, on behalf of the defender, *viz.* that there ſeems ſome reaſon to think, that even Mr Giles, when firſt brought to ſpeak on that ſubject extrajudicially,

extrajudicially, ſeems to have been led by the interrogatories to make an anſwer which made the perſon who took it down in writing think that La Marre had mentioned twins to him. But when he came to be examined, in a ſolemn judicial manner, and was aware of the conſequence of his being certain of La Marr's having mentioned twins, he denies it, or even that he had ſaid ſo. From Giles's character, I cannot diſcredit his evidence upon oath, nor avoid giving it the preference, in ſo far as it muſt be contraſted, either with Menager or Garnier, or with a report, tho' in writing, by a third party of what he ſaid *extrajudicially.* With this I muſt join, that it is clear from the proof, La Marre had been turned out of the Hotel Dieu, at the inſtance of this ſame man Mr Giles, long before Lady Jane's arrival at Paris; and it is not eaſy to believe, that, after Mr Giles was advanced to a higher ſtation in the houſe, he would be frequenting the collations in the *chambre de gardes* of the young ſurgeons of inferior rank, eſpecially when La Marre was of the party, as he had particular reaſon to diſclaim his converſation, and the company he kept there, while in the houſe. I think there is alſo ſome reaſon to believe, that Me-

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nager was himſelf with the army, at the period aſſigned for Lady Jane's delivery. So that Menager's, ſo far as it relates to La Marre's account of a delivery, muſt refer to a different delivery at an earlier period. All which leaves me unſatisfied with the evidence with reſpect to Louis Pierre Delamarre.

It is next material to conſider the evidence with reſpect to Madame le Brun, her houſe and family; which to me is not more ſatisfactory than that concerning La Marr.

Abstracting from the evidence of Sir John and Mrs Hewit, any evidence we have of a Madame le Brun, tends to make her a ſick nurſe employed by Louis Pierre Delamarre, with whom ſhe and her daughter ſeem to have been particularly connected, and to have met generally at the Hotel Dieu, while he was attendant there. The credibility then of this branch of the evidence ſeems to be ſubject to moſt of the objections that are urged againſt what is ſaid by Menager with reſpect to Louis Pierre Delamarre; with this addition, that allowing it to be free of theſe objections, it does not appear that ſhe had ſuch a houſe as could accommodate the company, or, as Sir John and Mrs Hewit ſay, Lady Jane was

delivered in; nor is there any other evidence that ſhe was delivered in her houſe.

I muſt therefore conclude, upon the whole evidence on this point, that it does not at all afford me ſatisfying proof that Lady Jane was delivered by Pierre la Marr, or in the houſe of Madame le Brun.

WITH the defect of evidence on the part of the defender, I find myſelf obliged to join the evidence on the part of the purſuers, That Sir John, Lady Jane, and Mrs Hewit, were at Godefroy's inn at the time aſſigned for the delivery at Le Brun's. I cannot help being deeply affected by the evidence of Godefroy and his wife, ſupported by evidence ariſing from their books, which is not, in my opinion, removed by the objections ſtated on the part of the defender. At firſt ſight I was much moved with the irregular appearance of theſe books; but the more I have attended to them, with the objections and anſwers, I have been the more inclined to think they ſupport the oath of Godefroy and his wife, and prove Sir John and Lady Jane to have been at their houſe till the 14th of July incluſive.

I muſt admit, that from the nature of this evidence, and the whole circumſtances taken together, it does not exclude a mere poſſibi-

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lity that the fact may have been otherways: But, as in every part of human life, we are obliged to act upon probabilities, and ſeldom or never can command real certainty; ſo in our duty as judges and jurymen, we muſt proceed upon the moſt probable evidence, and cannot reject it upon a mere poſſibility of the fact being otherways. And this argument appears to me to be unanſwerable, if the intereſt of Sir John and Lady Jane were only at ſtake; as the cloud which now hangs over and obſcures our eyes might have been prevented or withdrawn by them; how far it is equally applicable againſt the defender, I ſhall afterwards have occaſion to examine. And, if it is ſo, the purſuers muſt be allowed to avail themſelves of the circumſtances proved upon their part, that there were two children carried off from their parents, at ſuch time, and under ſuch circumſtances, as ſuit moſt ſurpriſingly with the appearance of the defender and his brother, with Sir John and Lady Jane.

I do not think this part of the purſuers evidence altogether free of exceptions; nor do I think it ſufficient to bring theſe enlevements directly to Sir John Stewart and Lady Jane; but, from the joint evidence of the whole, I think

think it proved, that the two children were taken under ſuch circumſtances, and at ſuch times, as might apply to and fill up theſe very blanks in the defender's evidence with facts which ſupport the purſuers plea, if the identity of the perſons had been fixed, which was a thing next to impoſſible as the ſcene lies, and little leſs than a miracle could have brought it about. One obſervation I muſt beg leave to add on the part of the defender's evidence, and ſhall be happy to ſtand convicted, if I am wrong; it is Mrs Hewit's letters to the two maids from Paris, which fell to have been wrote frankly and ſimply, without any degree of affectation, or more than a narrative of the moſt material facts; yet many of the material facts are omitted, ſuch as would have contributed to give light to the cauſe, and they ſeem to *be crouded* with a great variety of leſs material, though very probable circumſtances, ſeveral of which appear from other parts of the proof not to be founded in truth: This weakens the credibility of the whole, as it ſhows invention was at work.

In fine, upon a general view of the whole facts brought in evidence, it does not appear to me, that there is any proof of Lady Jane's delivery;

delivery; but, on the contrary, a ſtrong preſumptive evidence, that ſhe was not, and could not be delivered at the time, in the place, or by the perſon condeſcended on by Sir John and Mrs Hewit; in which event the ſervice cannot be ſupported.

THE great doubt that has occurred to me in forming this opinion, ariſes from what I have already mentioned, *viz.* that, though the evidence may be ſufficient to affect the intereſt of Sir John or Lady Jane, who muſt have had it in their power to have removed the weight of many of the objections to the defender's plea, if ſuch objections are not founded in truth, and as they themſelves have given riſe to all the darkneſs that now hangs over this cauſe, by a moſt unaccountable conduct, and took no effectual meaſures to remedy this miſconduct, when the conſequences began to appear, and were repreſented to them by others; whether the force of this evidence, or rather the defects of it, ſhould have the ſame weight againſt the defender, who is a third party, blameleſs of all the guilt or miſconduct that can be alledged againſt Sir John or Lady Jane, and as much at a loſs to diſcover the truth or the evidence of it as the purſuers, and at the ſame time, in poſſeſſion of a ſtate by his filiation and

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the acknowledgement of parents, which the action tends to deprive him of, and as the evidence does admit of a poſſibility of his being Lady Jane's ſon; whether or not he is intitled to avail himſelf of that to ſecure him in the poſſeſſion of his eſtate, and the conſequences.

But, *1mo*, If a poſſibility only had been founded on at the ſervice, it ſurely would not have procured a verdict of the inqueſt in his favour, independent of habit and repute. *2do*, Habit and repute in this caſe appear from the proof not to have been uniform or uninterrupted, ſo as to give a full poſſeſſion of a ſtate which was controverted even by the Duke of Douglas to the laſt period of his life. And, *3tio*, It can only ariſe in this caſe from the acknowledgement of the parents, attended with all the circumſtances now brought out in evidence, which taken together do not allow it to have the full effect attributed in ordinary caſes, where a public and regular marriage, open cohabitation, and acknowledgement of man and wife, reſidence in the midſt of relations and thoſe who are ſuppoſed to attend to what paſſes in the family, and may have an intereſt to diſcover any falſehood: A pregnancy and a delivery under ſuch circumſtances,

ſtances, under the hands of known and ordinary operators, where nothing wrong has been ſuſpected or alledged at the time, every thing muſt be preſumed and held to be right in all time coming, till the contrary be made evidently appear. In ſuch a caſe, habit and repute, and the acknowledgement of parents muſt have full weight; the peace and ſecurity of ſociety depend upon it.

But I am afraid the principle will not apply to this caſe, and that the intereſt of the defender cannot be diſtinguiſhed from that of Lady Jane and Sir John; on that footing, if his plea hangs only on the credibility of their acknowledgement of him, it muſt be affected by whatever impeaches their credit, or deſtroys the belief of the innocency of their conduct.

The defender inſiſted much, that there were no motives for Lady Jane and Sir John's committing this crime; that, on the contrary, they had rather motives not to commit it. And, *2dly*, That Lady Jane's affections and conſtant attention to the children appeared in the ſtrongeſt manner from her letters.

With reſpect to the motives, theſe can only be gueſſed at, even when the characters and diſpoſitions of the parties are known. It is almoſt

moſt impoſſible that motives can be proved. The characters of mankind are extremely difficult to be known: They are very ſeldom agreed upon, but are different with different people.

HOWEVER, frugality or foreſight don't appear, either in the characters of Sir John or Lady Jane; otherways the engaging with a family and a lady of quality, whom Sir John muſt have known did not live within her own income, was as improper for himſelf, and for her too, as the taking the additional burden of two children.

AGAIN, with reſpect to Lady Jane Douglas, her being cruelly plunged at once into the complicated diſtreſs, ariſing from their joint ſituation, appears to have been the cauſe of her death.

WE muſt not therefore expect proper motives of conduct from perſons of all characters.

THERE are unaccountable things in moſt characters, and it is impoſſible to aſſign proper motives for every action. For inſtance, in a poſtſcript to one of Lady Jane's letters to Sir John, ſhe inquires, if he had got Mrs Hewit's ſpectacles ſet in ſilver, although it appears from the letter itſelf, that they were

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at that time in want of money. This, tho' a trifling incident, ſerves to ſhew how difficult it is to aſſign motives for an action.

As to Lady Jane's letters, ſo full of affection and attention to the children, I do not think it is difficult to account for them: They were ſuitable to her ordinary character: She was ſurely under an obligation to provide for thoſe whom ſhe had taken from their parents, and who had no other but her to depend upon: She muſt have been under a ſtrong ſenſe of the ſituation ſhe had brought them into, and duty concurred with humanity to make her treat the defender as her ſon, though he truly was not ſo.

I am ſtrongly impreſſed with that humanity, that would make every feeling heart deſire to find evidence that the defender was her ſon; therefore it is with the greateſt regret that I muſt conclude, that I cannot find that evidence; but muſt give my opinion for ſuſtaining the reaſons of reduction.

LORD ALEMOORE.

AFTER all the pains I have beſtowed upon this cauſe, I have no difficulty to give my opinion in conformity with that laſt given, and in conformity with that firſt of all given from the chair. As to the opinions yeſterday delivered upon the other ſide of the queſtion, the regard they deſerve made me again examine the grounds of that opinion I am now to give; and, after viewing their arguments in all their force, I found my ſentiments rather confirmed than ſhaken: Yet, in forming this opinion, I confeſs I met with ſome difficulty ariſing from the art and ingenuity of the defender's counſel. They at firſt puzzled me; in one page, ſetting out with a ſuppoſition; in the next, ſwelling it to a probability; in the third, eſtabliſhing it as a demonſtration. But I cannot approve of them, when I ſee them treating too ſuperciliouſly every argument produced on the part of the purſuers; and, inſtead of attacking the whole of the purſuers proof as a long circum-

cumſtantiate train of evidence, of which every link hangs upon another, centering in one point, they have endeavoured to ſhake the force of this combined evidence, by taking every circumſtance ſeparately; and after attempting to ſhew, that not any of them ſingly amounted to a concluſive proof, they finiſh every ſeparate attack with an exclamation: "Yet "this is the ſtrength of the purſuers cauſe."

But it is not in this manner the evidence is to be taken to pieces; it is the great lines and their combinations by which we are to judge; and however much I was ſtartled by the ingenuity of the defender's counſel, yet as often as I took in view the connected chain of evidence, as often did I return to the opinion I am now to deliver.

Some points of law have been attempted to be brought into this cauſe; but to little purpoſe. This is not a cauſe which falls to be decided upon ſubtile points of law; it is a jury-cauſe; a fact to be proved or diſproved, of which every perſon as well as a lawyer, all who now hear me, all who can attend to the proofs, are equally capable of judging, and will judge of thoſe that judge it.

Great weight has been laid upon the defender's ſervice, and the poſſeſſion he attained

ed in consequence of it. I do not arraign the verdict of that jury that served him heir. They judged upon the evidence that was then before them; and, had I been one of them, I should probably have been of their opinion.

The defender has reapt all the advantages of that service: He obtained his charter and seisine; he got into possession of this great estate; by which, and by the assistance of a generous Lady, he has been enabled to employ every mean of defence. I am glad he got possession of the estate; for I should have been very uneasy under the necessity of judging in this important and complicated cause, had not the defender contended upon equal terms of affluence with his competitors.

But what can that service avail now in the present circumstances, when the immediate tendency of this action is to bring it under your Lordships review, in order to its being reduced, and set aside, if contradicted, or not sufficiently supported by the whole evidence now before us? When the decrees of inferior courts are brought under reduction before this court, the decisions of the inferior judges are of no weight in themselves; your Lordships determine in them as if they were original actions. The same thing holds in the reduction

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of ſervices, with this difference only, that in regard the proceedings in ſervices are generally had without contradiction, and are founded upon the ſlighteſt proofs, they are, of all inferior decrees, the moſt eaſily reduced. Services were, in former times, brought under reduction before what was called a grand jury, conſiſting of forty-five jurors. Theſe grand juries have, for a long time, been laid aſide; and this court came in place of the grand jury, and muſt proceed upon the ſame principles with all other juries. A ſervice may be challenged, either upon the inſufficiency of the proof originally brought, or upon new proof brought before the court, in order to invalidate and ſet aſide the former proof. In all ſuch caſes, your Lordſhips are in uſe to determine upon the fact, upon a complex view of the whole evidence, relying upon your own judgment, without paying any deference to the opinion of the former jury, who may have proceeded upon evidence incomplete, partial, or corrupted. And thus lately, in the caſe of Tullyallan, your Lordſhips reduced a ſervice upon new proofs brought before this court, which you found to be more pregnant than the proof which

had

had been brought in the ſervice; and therefore ſet aſide the ſervice.

No ſmall weight has likewiſe been laid upon the defender's filiation, or the acknowledgement of his parents of him as their ſon, and it has been ſaid, that ſuch acknowledgement is all that any of us have for our birthright. I ſhall admit the force of this argument to its juſt extent. It is a preſumption in favour of the child ſo acknowledged. But all lawyers have agreed, that it is no more than a preſumption, liable to be ſet aſide by contrary proofs, or even by ſtronger preſumptions. And I muſt be allowed to obſerve, that the acknowledgement of our parents is not the only thing we have to ſupport our birthright. There is generally a ſtrong concomitant circumſtance goes along with it, which gives complete force to the acknowledgement; that is, a proper and well founded habit and repute, an uniform acknowledgement, not only by parents, but by the relations of the family, their connections, and the uncontradicted voice of the neighbourhood and country. This defender indeed has the acknowledgement of his parents; but he is deſtitute of that general fame, that uncontradicted opinion of his country, which gives the due force and effect to ſuch acknowledgement,

knowledgement. It is evident from the proof, that the ſuſpicions of his birth were coeval with the accounts of it. I ſhall not here ſtate the proof at large upon this point; but ſhall only touch upon ſuch circumſtances, which, as proceeding from the defender's firſt and beſt friends, muſt appear moſt ſatisfactory.

Upon Lady Jane Douglas's death, this defender, when an infant, and left deſtitute by all his relations, was moſt generouſly and charitably taken under the protection of Lady Schaw, who indeed acted the part of a mother to him. But was Lady Schaw, notwithſtanding her generoſity to the defender, free from ſuſpicions as to his birth? No: She never could baniſh from her mind the doubts and ſcruples which had naturally ariſen in the breaſts of many upon this event: She deſires her grandchild, Mrs Napier, to converſe with Sir John Stewart, and procure from him what information ſhe could get, *that they might unravel this dark ſtory.* Mrs Napier accordingly applies to Sir John. He, at firſt ſeemed to have adopted Lady Jane's plan, of avoiding all explanation of particulars, and pretended, that he was an old man, had gone through many adventures and misfortunes,

and

and had changed ſo many houſes, that he could not ſay in what houſe Lady Jane had been delivered; but, when hard preſſed, he was at length prevailed upon to give a note in writing of the particulars; and this ſeems to have been the very firſt time that he gave any particular account of that tranſaction. But did he then mention the houſe of Madame le Brun as the place of delivery? No, he aſſerted poſitively, that it was in the houſe of Michell.

Upon obtaining this note from Sir John, Lady Schaw deſired Mrs Napier to write to France to inquire into the truth of Sir John's ſtory. She accordingly wrote to Lady Frances Stewart to deſire Sir James Stewart to inquire into the particulars; at the ſame time, begging Lady Frances not to talk too much of attempting this proof, *leſt a failure of ſucceſs ſhould make things leſs clear than they are.* Does this ſhow a conviction in Lady Schaw or Mrs Napier of the truth of the defender's birth? Is it not rather a demonſtration, that they entertained doubts and ſuſpicions of the whole ſtory?

How does Sir James Stewart expreſs himſelf upon this occaſion? He writes to Principal Gordon at Paris, and ſends him Sir

John's

John's note as *a clue to unravel the dark ſtory of the birth of Lady Jane Douglas's children.* Principal Gordon makes the reſearches, finds out the houſe of Michell, and writes back, that he had got no ſatisfaction; and that his inquiries rather contradicted Sir James Stewart's information.

Does not Lord Cathcart, the grandſon of Lady Schaw, depoſe, "That he believed the "doubts which had been entertained of the "reality of Lady Jane's delivery proceeded "from the *myſtery and concealment which at-* "*tended it.*"

In what caſe did ever ſuch ſuſpicions attend a real birth?

The filiation therefore of the defender in this caſe, can amount to no more than a preſumption of the ſlighteſt kind, and cannot obſtruct us in the leaſt from giving due attention to the full circumſtantial evidence, conſiſting of all the facts and circumſtances which may have any connection with this affair. It is my duty then as a judge, to weigh the whole evidence on either ſide, and to form my opinion according as the one or other ſcale of evidence ſhall preponderate.

In this view, I ſhall endeavour briefly to

ſtate the foundation and principal circumſtances on which my opinion is formed.

I ſhall not follow Lady Jane in the courſe of her journey through Holland and Germany, but ſhall take her up at Rheims, and conſider the tranſactions from that period in the moſt favourable light for the defender, that is, from the accounts given by Sir John Stewart and Mrs Hewit; and I cannot help thinking, that the ſtory told is ſo ſuſpicious, and ſo hard to be reconciled with the common ſenſe and experience of mankind, that it is ſufficient of itſelf to diſprove the reality of Lady Jane's delivery at Paris, even without the aid of the proof brought by the purſuers. But when to the incredibility of that tale ſhall be added, the connected chain of circumſtantial evidence brought by the purſuers, totally ſubverſive of it, I can no longer heſitate, but muſt yield to the conviction that the whole was an impoſture.

Lady Jane, after having aſſumed the appearance of pregnancy at Aix-la-Chappelle, Liege, and other places, (this pregnancy I ſhall take particular notice of afterwards), at laſt arrives, in the eighth month of her pregnancy, at Rheims, one of the moſt populous towns of France, where there is an univerſity, and

many

many ſkilful accoucheurs and mid-wives. There could ſcarcely be a place more proper than this for Lady Jane's waiting the expected event, where ſhe had an opportunity of getting the ableſt aſſiſtance, beſides the company and attention of ſeveral of her countrymen there, to whom ſhe daily appeared, and had made herſelf very acceptable: Notwithſtanding of theſe advantages, Lady Jane, after loitering away a whole month at Rheims, at laſt, when the critical period was to have been very near, ſets out for Paris in the common *diligence*, attended only by Sir John Stewart and Mrs Hewit, leaving behind her the two ſervant maids, whom ſhe could not be a moment without from the time of her leaving Britain till then.

Is it poſſible to give any ſatisfactory reaſons for ſuch ſtrange proceedings, or to reconcile them with common prudence and attention? But, as in every other impoſture, ſo in this, a tale muſt be told, and motives muſt be aſſigned to ſatisfy the curioſity of inquirers. It has been pretended, that Lady Jane left Rheims, becauſe ſhe had been informed, in a ſtrange manner, by a Lady who came to her the morning after ſhe arrived there, that there was no proper aſſiſtance to be had in

that

that place; and that ſhe herſelf had ſuffered in child-bed upon that account: And the reaſon aſſigned for Lady Jane's not taking her maids with her was, that they had not, at that time, money to defray their expences.

THE futility of theſe pretenſions muſt appear at firſt ſight: Who can believe there was not able aſſiſtance to be had at Rheims? The greatneſs of the place, as well as the proofs before us, demonſtrate the contrary. The Lady who has been pretended to have given the terrifying advice, could, from the circumſtances, be no other than Mrs Andrieux; and yet it is in proof, that though that Lady had had many children, ſhe had never ſuffered in child-bed.

As to leaving the maids behind for want of money: What mighty ſum, pray, would it have coſt to have carried theſe maids in the *diligence* to Paris? No more than ten or twelve ſhillings; and the expence of keeping them in family at Paris muſt have been leſs than that of boarding them at Rheims.

BUT this excuſe of want of money is not only inſufficient in itſelf, but clearly proved to be falſe; for Sir John Stewart had then in his pocket a good bill for about two thouſand

livres,

livres, which he could have taken money for either at Rheims or at Paris, and which he actually received payment of a few days after his arrival at Paris.

THE motives alledged for Lady Jane's leaving Rheims having been ſhewn to have been falſe and affected; one muſt naturally ſuſpect that ſome deſign or fraud was here carrying on, which muſt be concealed from the public eye: Every circumſtance contradicts a real pregnancy and expectation of delivery; every circumſtance coincides with a pretended one.

HAD Lady Jane been really pregnant of a child of ſo many hopes and expectations, it is impoſſible that ſhe, or any woman of common prudence, or even inſtinct, could have acted in the manner ſhe did. Had Rheims been the place of her deſtination, ſhe would not have left it, without any neceſſity, juſt upon the eve of her delivery. Was Paris the place intended where to depoſite her precious burden? Would ſhe have wantonly loitered at Rheims for more than a month, and till within a very few days of her time, and then, in theſe critical moments, undertaken a journey of three days to Paris of the moſt imminent hazard to herſelf and the child,

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in a common jolting carriage, expoſed to the view and to the caprices of a variety of unknown fellow-paſſengers, confined to hours and ſtages, and, what is of all moſt aſtoniſhing, unattended by theſe maids, who, during her whole three years reſidence abroad, except at this particular juncture, appeared to have been ſo neceſſary to her as to have been in a manner part of herſelf?

On the other hand, if a pretended birth was in view, a long reſidence at the place where the ſcene of delivery was to be laid was dangerous, and might have expoſed her to the knowledge and inquiries of her countrymen, or even to be marked and attended to by ſtrangers: Therefore it was not proper to go to Paris till within a few days of the delivery; neither had ſhe any thing to fear from the inconveniencies of a long journey in a ſtage-machine: And as ſecrecy and concealment were eſſential, the attendance of her maids muſt, upon this particular occaſion, have been troubleſome and dangerous. Mrs Hewit, her old confident, was alone ſufficient to carry on and bear witneſs of this ſcene of delivery.

In this unaccountable manner does Lady Jane leave Rheims; and on the 2d of July, upon

upon the eve of her delivery, ſet out for Paris, for a three days journey, in a common *voiture*, with a variety of unknown paſſengers, and without any perſon of experience to aſſiſt her, in caſe of theſe accidents which might naturally be ſuſpected. Theſe paſſengers all noted Lady Jane, but could not recollect the ſmalleſt appearance of pregnancy in her during that long journey. Upon the 4th of July, Lady Jane, Sir John Stewart, and Mrs Hewit arrive at Paris, and put up at the Hotel de Chalons kept by Monſieur Godefroy, a man of character and agent for the city of Rheims, to whom they carried a letter of recommendation from Mr Maillefer ſyndic at Rheims.

Let us now take a view of their tranſactions at Paris, ſtill ſtating them in the light moſt favourable to the defender, from the evidence of Sir John Stewart and Mrs Hewit. They ſtaid in Monſieur Godefroy's till the 8th of July; they then removed to the houſe of Madame le Brun, where, upon the 10th of July, Lady Jane was delivered of two boys by the aſſiſtance of Pierre la Marr, a Walloon ſurgeon, and in preſence of Madame le Brun, her daughter, and the maid of the houſe; that

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the eldeſt was a fine healthy boy; but as Lady Jane did not chuſe to beſpeak a nurſe, leſt ſhe ſhould not have a living child, he was unlucky in his nurſes, having, in a few days, had four or five of them, (for by the inconſiſtent accounts given by Sir John and Mrs Hewit, it is not eaſy to ſay how many he had): That Sholto the youngeſt boy was extremely weak, and not expected to live; for which reaſon, after being *ondoyed* by Pierre la Marr, he was relinquiſhed to his care to be ſent to the country, or where he pleaſed; who accordingly ſent him off three or four leagues from Paris: That Lady Jane had a ſurpriſing recovery, inſomuch, that Le Brun's houſe being infeſted with bugs, ſhe was, in 8 or 10 days, ſo well as to be removed from Le Brun's to the Hotel d' Anjou kept by Madame Michell: That ſhe did not carry the eldeſt boy to Michell's with them, but went next day, and brought him with his nurſe, to whoſe care they had intruſted him for two or three days upon account of their removing from Le Brun's: That at Michell's, this nurſe likewiſe was found to be without milk; whereupon Madame Michell got Madame la Favre to nurſe the boy, who kept him till he was carried from Dammartin: That Lady Jane ſtaid in Michell's till the end of July;

but

but was ſo tender and delicate, that ſhe never ſtirred abroad: That ſhe then went to Dammartin, a village about 7 leagues from Paris, for better air, till the 14th Auguſt, when Sir John, Lady Jane, and Mrs Hewit returned to Rheims, carrying the eldeſt boy with them, but leaving the ſecond, who continued ſo weak, that they durſt not tranſport him: That during all this ſtay in and about Paris, neither Lady Jane nor Sir John ſaw any of their countrymen, ſeveral of whom were then in Paris, not even Mrs Hewit's relation Mr Johnſtone, who had been their fellow-traveller and conſtant companion in Holland, and then reſided at Paris: That Lady Jane never, or but once, ſaw Pierre la Marr before he brought her to bed, and but once after that: That Lady Jane never ſaw Sholto all the time ſhe was about Paris, nor till ſhe returned thither in November 1749.

SUCH is the hiſtory of this great event given by Sir John Stewart and Mrs Hewit; and it is believed, the like of it will not be found amongſt the annals of mankind. Let us take a view of this ſtory. Sir John Stewart applies to Mr Maillefer, a man of conſequence at Rheims, for his letter of recommendation to Mr Godefroy at Paris. What would have

been the natural purport of this application, had the pregnancy been ſo palpable at Rheims, as has been pretended, or had a real delivery been expected at Paris? Why certainly, that, as Lady Jane was going to Paris in order to procure the beſt aſſiſtance in her delivery, Mr Godefroy and his wife would be as ſerviceable to her as poſſible on that important occaſion. How inconſiſtent with this is Mr Maillefer's letter produced by Mr Godefroy? It bears no more, than that, as Sir John and Lady Jane were to lodge at his hotel, and propoſed to make ſome *purchaſes* at Paris, Mr Godefroy and his wife would give them their aſſiſtance in ſuch purchaſes. Thus was Lady Jane's ſituation concealed, not only from Mr Maillefer, but likeways from Mr and Mrs Godefroy, who, notwithſtanding the ſeveral days reſidence of Lady Jane in their houſe, never had the ſmalleſt idea of her being with child. No inquiries made from them, as to accoucheurs, nurſes, or proper accommodation for Lady Jane's delivery; though it is plain, from their own ſtory, that they had no opportunity of getting any information in theſe particulars from other hands. Can any thing be more extraordinary?

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In this ſituation, they pretend they left Godefroy's upon the 8th of July, and went to Madame le Brun's, where Lady Jane was delivered on the 10th, and where they ſtaid till the 18th or 19th, when they removed to Madame Michell's. Here comes the critical period of this extraordinary hiſtory. This is the ſcene, where your Lordſhips, and all mankind will expect, nay, demand the cleareſt light, and moſt ſatisfying evidence. The nature of the thing will make you expect it: The importance of the event will make you demand it. Of all the incidents in the lives of the three actors, none could be ſo intereſting, none could be ſo full of circumſtances capable of making the deepeſt impreſſion, and which muſt have been rivetted on their memories till their lateſt breath. In ſuch a caſe, who will not expect a ready and ſatisfactory anſwer to theſe ſimple queſtions? Where is the houſe of Le Brun? What was the landlady? What is become of her and her daughter? Who was the famous accoucheur of Paris, who delivered Lady Jane, and for whoſe aſſiſtance ſhe undertook ſo perilous a journey from Rheims to Paris? What were the names of the various nurſes the el-

deſt

deſt boy had before he went to Michell's? Whither was the poor weak boy Sholto carried the moment he was born? How amazing then muſt it be, that, in none of theſe particulars, can your Lordſhips, through this voluminous proof, receive the leaſt ſatisfaction; and that, inſtead of the ſunſhine which was expected to enlighten this ſcene, nothing but darkneſs reſts upon it! Madame le Brun, her houſe, her daughter, her maid, all have eſcaped the moſt painful reſearches of both parties, aſſiſted by the accurate police-books of the city of Paris. All is vaniſhed like an inchantment in a romance. The fact is, no ſuch houſe ever exiſted, where Lady Jane could be delivered, which is the only poſſible reaſon that can be given why Lady Jane, who has been traced in every place where ſhe reſided, during her three years travels abroad, has here left no track behind.

As to the accoucheur, it is agreed, no accoucheur of any character or reputation was ever thought of on this occaſion. In what a ridiculous light does this ſingle circumſtance put Lady Jane's pretence of hurrying to Paris to get the ableſt aſſiſtance? But who was the accoucheur? for one of ſome ſort or other

ther was neceſſary to fill up the drama. Why Pierre la Marr, ſays Sir John Stewart; Pierre la Marr, ſays Mrs Hewit. What was this Pierre la Marr, and whence came he? "I "know nothing of the matter," ſays Mrs Hewit. "I never ſaw him till he came to de- "liver Lady Jane. Sir John Stewart beſpoke "him." But, ſays Sir John, "I will tell you "who this Pierre la Marr was. In the year "1721, I was made acquainted with him at "Liege, by one Colonel Fontaine, who told "me La Marr was a Walloon, and ſurgeon to "a regiment lying at Liege, and that he "dealt a little in midwifery. This La Marr "I never ſince ſaw or heard of till at this "time I met him one day by accident walk- "ing in the Thuilleries; and immediately it "recurred to me, that this old acquaintance "would be a very proper hand to deliver Lady "Jane." Well, where did La Marr lodge in Paris? he would certainly give you a direction. "No: He would not let me know: "That he could not do it ſafely, as he only "came occaſionally to Paris upon an *affaire* "*epineuſe*; but that I might meet him every "day walking in the Thuilleries, or the "Luxembourg." But what if Lady Jane had been ſeized in the night-time? how could

you

you have got La Marr? "O! in that caſe, I "muſt have called another." But how did you get La Marr, when Lady Jane was taken ill? "He happened to call that morning, "and finding her out of order, he remained "till ſhe was delivered." This is the account given of the accoucheur, and of the delivery of Lady Jane Douglas; and the only account of it that can be admitted to the end of time; becauſe it is judicially given by the only perſon that could know any thing of the matter, and by the perſon whom the defender muſt call his father.

THE whole of this tale of Lady Jane's delivery is ſo abſurd and incredible, that it would be loſing time to review the ſeveral circumſtances of it in detail. I deſire no more than that any man, who can for a moment diveſt himſelf of prejudice and prepoſſeſſion, will recollect this ſtory, and ſay, if he can conceive motives or circumſtances which could compel Lady Jane to ſubmit to ſuch a ſcene of danger, diſtreſs, and miſery, as if ſhe had been abandoned by mankind, or caſt upon a deſert coaſt. Did not, in this conjuncture, her age, her expectations, every conſideration that was dear to her, call upon her

her to take all the aid and all the comforts which her condition required? There was nothing to prevent her from enjoying every poſſible conveniency: She had no occaſion for concealment, after her appearances of pregnancy had been publiſhed in ſo many places: Money ſhe did not want: Friends ſhe had abundance of in Paris. Beſides, in what court of Europe could Lady Jane Douglas, in ſuch circumſtances, have been deſtitute, not only of reſources, but of the nobleſt ſupport? Who then can believe that Lady Jane was here occupied about a real delivery? It is impoſſible to give credit to it: As for myſelf, who can boaſt of no inſpiration, nor pretend to any ſupernatural lights, but muſt judge by the common feelings of humanity, I muſt conclude, that this birth had not the leaſt foundation in truth; that it is all a fiction and an impoſture.

I ſhall now follow Lady Jane to the houſe of Michell, where ſhe emerged from her obſcurity, and where her conduct was expoſed to the light, and is proved by all the people in that houſe. Sir John, Lady Jane, and Mrs Hewit came there upon the 18th or 19th of July, no more than eight or nine days after her delivery; for this weighty reaſon, that

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Le Brun's was infested with bugs, but without any child or nurse. They went away next day to fetch the child, and returned with him and his nurse; the child having been for two or three days intrusted out of their sight to the care of the nurse.

THUS we see Lady Jane abandon her youngest boy the minute he came into the world, in a weak dying condition, to the charge of, God knows whom, this notable Pierre la Marr; and her eldest boy soon thereafter sent away from her for some days under the care of his nurse. And for what reason? Because they were to remove to the house of Michell, as if it was so difficult a matter to remove a child and his cradle with themselves, who had so little other baggage. And what was this nurse they put such confidence in? The most low, poor, miserable wretch that can be figured, without milk, without cloaths, and branded with the King's mark as a thief. What tender-hearted mother will say, that these were the real children of Lady Jane Douglas?

THERE is little occasion to take further notice of Lady Jane during her stay at Michell's and afterwards at Dammartin, except as to that assertion of Sir John and Mrs Hewit,

Hewit, that Lady Jane, who recovered ſo ſurpriſingly as to be able in eight days to remove from Le Brun's to Michell's, continued ſo tender and delicate at Michell's that ſhe never ſtirred out while there. This is flatly contradicted by ſeveral perſons in Michell's houſe, who depoſe to Lady Jane's having one day made a tour through the ſquares of Paris; and to her having gone another day as far as Verſailles, walked in the gardens there, and returned to Paris. I ſhould be willing to let this paſs for a miſtake, were not I ſoon to diſcover a reaſon for the aſſertion.

I come now to a circumſtance, which has from the firſt made a deep impreſſion upon my mind, and I am affraid cannot eaſily be effaced. The conduct of Sir John, Lady Jane, and Mrs Hewit, with reſpect to the youngeſt boy: We have ſeen him given up from his mother's womb to La Marr to be ſent to the country. Let us for once ſuppoſe his weakly condition might have required this ſacrifice; but how is it poſſible to account for the behaviour of Lady Jane, whoſe affection to theſe children has been ſo much boaſted of, to this poor forlorn infant, after he was diſpoſed of, or rather expoſed, in ſuch a manner. He was given up to La Marr, whom they did

not know where to find or inquire after. La Marr again ſent him to ſome nurſe in the country; but who ſhe was and where they lived, they knew not. And what is of all moſt amazing, neither did Lady Jane, Sir John, or Mrs Hewit go to ſee or inquire after this child during all their ſtay at Paris and Dammartin: So that Lady Jane returned to Rheims, without ever caſting her eyes upon this poor child, whoſe weak and deplorable condition would have redoubled the affection of any mother. I here appeal to the feelings of nature and humanity, if any mother could behave ſo to her own child? It is impoſſible that Lady Jane Douglas could have been ſuch a monſter. And there is but one poſſible way of accounting for her indifference, which is, that ſhe had then no child to ſee.

It was to palliate this conduct of Lady Jane that Mrs Hewit depoſed, that Lady Jane was not able to go abroad whilſt ſhe ſtaid at Michell's: But the clear proof of her expedition to Verſailles, and her ſurvey of Paris, confute this aſſertion; and above all, her journey to Dammartin ſhews her ability to have paid a viſit to her child, if ſhe had one.

I ſhall juſt mention one or two circumſtances more in the conduct of Lady Jane, which appear irreconcileable with a real delivery.

It is proved and admitted, that, from the 10th of July, the day of the birth, to the 22d of that month, there were no letters wrote, nor any notification given to any perſon whatever of the great event of the delivery. This was the moſt important juncture in Lady Jane's life, and in a manner the criſis of her fortune. The firſt ſentiments of the heart would have been to proclaim it to all her friends and all her acquaintance. How is it poſſible then to give a reaſon for concealing this wonderful turn of good fortune for twelve days? This could not poſſibly have happened in the caſe of a real delivery. Upon the 22d of July indeed, there are no leſs than ſix letters wrote to different perſons imparting the glad tidings. But there is a ſtrange fatality in the defender's cauſe, that ſcarce a circumſtance of it appears without ſome blots of ſuſpicion. Who would not expect that all theſe letters would be dated from Paris? yet, ſtrange to tell, they are every one of them dated from Rheims, and calculated to make the world believe, that Lady Jane was delivered

vered at Rheims. And they had that effect. In a plain honeſt tranſaction, what could be the uſe or the intention of ſuch dark myſterious proceedings?

Of a piece with the former is the concealed manner in which Sir John and Lady Jane lived at Paris. They did not diſcover themſelves to any of their countrymen there, though ſome of them were of their moſt intimate acquaintance. This proceeding was ſo contrary to their natural diſpoſitions, and to their practice in all the other places of their travels, that it cannot fail to raiſe ſuſpicions of their deſigns at that period.

Thus I have taken a review of Lady Jane's tranſactions from her arrival at Rheims in May, and during her reſidence at Paris, and till her return to Rheims about the middle of Auguſt 1748, as they have been ſet forth by the moſt unexceptionable witneſſes for the defender, Sir John Stewart and Mrs Hewit, and I muſt acknowledge, that the ſtory, even as told by them, can, by the common rules of judging of evidence, gain no credit from me. I have tried every circumſtance; but every circumſtance is full of ſuſpicion. The ground is every where ſo hollow and unſound,

ſound, that I cannot find a place whereon to reſt a foot. So that, upon the defender's own plea, I ſhould have little heſitation to give judgment againſt him.

But, when to this is added the poſitive proofs brought by the purſuers, conviction becomes compleat. The firſt of theſe I ſhall mention, is, the evidence ariſing from the houſehold-books of Godefroy, ſupported by the clear and poſitive teſtimonies of Godefroy and his wife. It is an agreed point, that Sir John, Lady Jane, and Mrs Hewit, arrived at Godefroy's upon the 4th of July. Accordingly, we find in Godefroy's houſehold-book, an article inſerted of that date, which can be applied only to Sir John and theſe two ladies. This account is regularly and daily continued from the 4th to the 13th of July incluſive: Whence it is clear, that this company muſt have remained conſtantly in Godefroy's houſe till the 14th of July. This book being written evidence, honeſtly and fairly made out when the tranſactions happened, can be liable to no ſuſpicion, and cannot lie. And, in confirmation of the book, we have the poſitive evidence of Godefroy and his wife, depoſing to their remembrance of Sir John and the two ladies, to the accu-

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racy of his books, and to many other corroborating circumſtances.

THIS pointed and poſitive evidence at once contradicts and deſtroys the tale told by Sir John and Mrs Hewit, of their removal from Godefroy's to Le Brun's upon the 8th of July, and of Lady Jane's delivery there upon the 10th. It has been before obſerved, how ſuſpicious that ſtory was in itſelf, and that no ſuch houſe as Le Brun's could be inveſtigated. Here we have a direct proof of its falſehood. Lady Jane was not at Le Brun's upon the 10th of July; ſhe then reſided at Godefroy's; and as it is certain there was no delivery, nor appearance, nor hint of it at Godefroy's, the conſequence is unavoidable, that Lady Jane could not poſſibly be delivered upon the 10th of July; which at once unhinges the whole ſtory of the birth.

THE defender's counſel have done great honour to this weighty evidence of Godefroy's books, and plainly diſcovered the preſſure they felt from it, by exerting all their ingenuity in cavilling at the depoſitions of Godefroy and his wife, and in attempting to diſcover miſtakes and inaccuracies in their books. But, notwithſtanding all their efforts, the teſtimonies of Godefroy and his wife,

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ſupported by their books, and their books ſupported by their teſtimonies, muſt remain a piece of evidence too ſolid to be deſtroyed or ſhaken by the flimſy attacks of over-nice and unſatisfactory criticiſm. The characters of Godefroy and his wife have always been fair and unimpeached. Why then are they to be ſuſpected of falſehood? And the houſhold-book, upon which the defender's counſel made a ſeparate and diſtinct attack, did, by the accurate inveſtigation which that attack provoked the purſuers to make, ſhine out in a light more ſatisfactory and more authentic than could at firſt have been expected. What ſolid reaſon then can be given for withholding credit from the evidence of Godefroy and his books; eſpecially, as they eſtabliſh facts which are not contradicted by any contrary evidence? Had the defender brought any probable evidence that Lady Jane removed from Godefroy's upon the 8th of July, and had been delivered in Le Brun's upon the 10th, there might have been room for canvaſſing and weighing the oppoſing evidence. But, when no ſuch contradictory proof is brought, and where there is no trace of a Le Brun's where Lady Jane could be delivered, Why ſhould I refuſe my aſſent to the e-

vidence

vidence of Godefroy? Here I have, for obvious reaſons, thrown aſide the ſtory told by Sir John and Mrs Hewit. It is a period wherein they ought naturally to have been ſupported by the ſtrongeſt collateral evidence; and yet, in this period, they are deſtitute of all aid and aſſiſtance, and reſt ſolely upon their *ipſe dixit*. To thoſe who can be ſatisfied with that ſort of evidence, this muſt indeed appear a clear cauſe for the defender.

THERE ſtill remains a period of four or five days from the 14th of July, when they left Godefroy's, till the 18th or 19th, when they came to reſide at Michell's, wherein Lady Jane has not been traced. It is evident, however, from the nature of the thing, that in that ſhort ſpace, ſhe could not have had a delivery, and have been ſo well recovered as ſhe appeared to be when ſhe came to Michell's. What was the occupation of Sir John and Lady Jane during this dark period, muſt be extracted from the nature of the thing, and from the proof. Every fact and circumſtance has ſhowed the impoſſibility of a real delivery; and therefore that ſuppoſition muſt be laid out of the queſtion. Let us next try how far the circumſtances of this period will correſpond with an impoſture, and a plan of introducing

introducing ſuppoſititious children. In this view it was impoſſible that Lady Jane could think of removing from Godefroy's, where there was no appearance of either pregnancy or delivery, directly to Michell's, where ſhe aſſumed the character of a Lady juſt recovered from child-bed, and the mother of a child ſome weeks old. This would have hazarded a direct and immediate detection. Some time, therefore, behoved to interveen, and ſome dark and ſecret place muſt be fallen upon to baffle all inquiries, before ſhe could venture to appear in Michell's in the condition ſhe did.

It has been aſked, How Lady Jane could, in this ſhort time, pick up the child that ſhe brought to Michell's? I ſhould not think myſelf bound to give a poſitive anſwer to this queſtion; becauſe it is enough to me, that I am ſatisfied the child was not the child of Lady Jane. But even here the proof has not left us in the dark; for it clearly points out, not only that a child might have been procured in that time, but that a child, every way correſponding to the child of Lady Jane, actually was picked up in that very period. I will not trouble your Lordſhips with a minute inveſtigation of the proofs re-

lating to the enlevement of Mignon's child. It is clear beyond dispute, that at this very time, the infant son of Mignon, of three weeks old, was, under fair pretences, carried off from his parents by a gentleman and a lady, foreigners; the gentleman, by the description of the witnesses, not a little resembling Sir John Stewart. Here then is proved the possibility of a child's being picked up in the time when Sir John and Lady Jane were in hiding; not to say the probability of this being the very child which Lady Jane put upon the world as her own.

How like to a child picked up in this manner was the child which Lady Jane brought to Michell's? It had the appearance of a child three weeks old, and was attended by a drab hastily picked off the streets, to serve a sudden emergency, who acted the part of a nurse, but without that essential requisite, milk in her breasts. Mrs Hewit, indeed, has attempted to excuse this extraordinary appearance of the nurse, by saying, that Lady Jane would not bespeak a nurse before her delivery, lest she should have a dead child; and that the child was at first unlucky in his nurses. But this is too thin a disguise. What mother was ever sure she was to bring forth a

living

living child? and yet, What mother ever neglected to provide a nurſe? Beſides, if Lady Jane was not certain of bringing forth a living child, Why did ſhe provide childbed linen at Rheims, and yet neglect to provide a nurſe at Paris? Theſe things do not agree. And ſurely, it was a hard fate, if in ten days, they could not find out a better nurſe for the child than that one who firſt made her appearance at Michell's. Madame Michell, in an hour's time, found out Madame Favre, an excellent nurſe.

THE enlevement of Mignon's child leads one to purſue the hiſtory of Sholto, the ſecond ſon. I have already taken notice of Lady Jane's neglect, or rather deſertion of him from the moment of his birth, when he was given over to La Marr in a dying condition. As ſhe returned to Rheims without ſeeing or inquiring after him; ſo ſhe continued at Rheims above a year longer without getting any intelligence of him; for, all the pretended correſpondence with La Marr about him is clearly diſproved by the palpable forgery and falſehood of theſe letters from La Marr. It is impoſſible to perſuade any one endowed with the ſmalleſt ſhare of the common ſentiments of humanity, that Lady Jane could thus abandon her real offſpring. How ſhe came at

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laſt to get poſſeſſion of a ſecond boy, may be gathered from her ſecond remarkable journy to Paris in November 1749, and from the incidents of that period as they appear in evidence.

In November 1749, the three confederates, Sir John, Lady Jane, and Mrs Hewit, give out, that they were to go to Paris to bring home Sholto. There was no hazard in this avowal. For, if they found a boy proper for their purpoſe, it was well. If not, the death of Sholto, an event for which all their friends were prepared, by the conſtant repreſentation they gave of his weak puny condition, would have made every thing eaſy. They got the uſe of Mr Rutlidge's carriage to perform this journey. But in this expedition, as in the former, every thing muſt be dark, myſterious, and concealed. Their coachman muſt not know where they put up in Paris; that might be a mean of tracing them. Therefore they ſtopt at an inn, without the barrier of Paris, left their carriage there, with an injunction to the coachman, to wait till they ſhould return and take him up; and they went into town in a hackney-coach. Here they remained for eight or nine days; and having got their

child,

child, as they ſay; but whether from La Marr or the nurſe, Sir John and Mrs Hewit are not at one; they, without ſeeing or inquiring after any of their acquaintance, take up their carriage where they left it, and return to Rheims exulting in their ſucceſs. Such is their ſtory. But how is it ſupported? Juſt in the ſame manner, and not a whit better, than the great event of the delivery at Le Brun's. Nothing but their own aſſertion. When one deſires the ſatisfaction of ſome collateral circumſtances, and inquires what part of Paris, what hotel did they put up at? or what ſort, and how many were the people in the houſe? he meets with the ſame negative anſwer as formerly: They know nothing at all of the matter. Every thing of that kind has eſcaped their memory.

WILL not all this myſtery and intention to ſhut out the light, naturally incline one to caſt his eyes on ſome other tranſactions of this period that have been diſcovered? Who can abſtain from reflecting upon the enlevement of Sanry's child, which is proved to have happened juſt about the time of this journey to Paris? The perſons who carried off this child, were a gentleman and two ladies, foreigners, as in the caſe of Mignon. They inquired

quired for a young male-child; and after viewing ſeveral, at laſt made choice of a boy 18 months old, and of a delicate make. The diverſity of ſize and ſtrength of children at that age, would eaſily make ſuch a child paſs for one of 16 months, and thus coincide with the delivery in July 1748. They got poſſeſſion of the child by charitable pretences, but carried him off next day, without the knowledge of his parents; and he was never more heard of.

The coincidence of theſe two enlevements with the hiſtory of Lady Jane's two ſons, the one an infant of three weeks old, carriey off in July 1748, the other a boy of eighteen months, carried off in November 1749, and the rarity of ſuch accidents at Paris; (for, by the defender's attempt to prove the contrary, it is manifeſt, that no ſuch enlevements had happened at Paris for many years before and ſince that time); muſt appear very extraordinary, not to ſay miraculous, even to thoſe who are inclined to give credit to Sir John and Mrs Hewit's account. But what effect muſt it have upon thoſe who ſee ſo many other grounds of ſuſpicion?

The laſt piece of poſitive evidence upon the part of the purſuers which I ſhall take notice

notice of, is the forged letters from La Marr: Theſe letters were indeed firſt produced in the ſervice as evidence for the defender. They were found in Lady Jane's ſtrong box after her death, and acknowledged by Sir John. But, upon the palpable diſcovery that was made of their falſehood and forgery, the defender ſaw it was full time to deſert them. This very circumſtance brings them over to the other ſide as a part of the poſitive evidence of the purſuers. For ſurely nothing can tend more to the detection of an impoſture, than to ſhow, that the ſupports upon which it chiefly depended, are falſe and fabricated. It is impoſſible to paliate ſo clear a proof of deceit under the gentle name of a *pia fraus*. I deteſt all fraud as impious and wicked; nor can I eaſily be convinced of the truth and honeſty of a cauſe where ſuch impoſitions become neceſſary to its gaining credit.

Thus have I ſtated the circumſtances upon which I have chiefly fixed my opinion. It would be improper for me to encroach further upon your time, by taking particular notice of all the arguments that have been urged for the defender. I ſhall beg leave juſt to touch a few of them.

Much

MUCH have I heard of the Louis Pierre Delamarre, whom the defender would now ſet up as the accoucheur of Lady Jane, in oppoſition to the Pier la Marr, ſo ſtrongly aſſerted, and ſo particularly deſcribed by Sir John Stewart; and that upon no better authority than the ſtory told by Menager, a perſon of no name or reputation. The incredibility and inconcluſiveneſs of that evidence has already been pointed out from the chair. One thing is manifeſt, that Menager's account is a direct pointed contradiction of all the circumſtantial hiſtory given by Sir John Stewart of his Pier la Marr. I cannot help deploring the hard fate of the defender, who is reduced to the cruel dilemma of taking refuge under ſuch an evidence as that of Menager, at the expence of declaring to the world, that his father, in this material circumſtance of his own birth, deſerves no faith or credit. This is a deſperate ſituation indeed!

I did not expect to hear ſo much weight laid upon the pregnancy of Lady Jane. It has been puſhed ſo far, as to be held a concluſive evidence of the delivery. I will not enter upon the proofs of this pregnancy, nor diſpute, that Lady Jane appeared to many

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as a woman in that condition; only I muſt obſerve, that in this, as in all other parts of their evidence, Mrs Hewit and Iſobel Walker have ſhot beyond the mark; and by ſwearing, that Lady Jane was ſo extremely bulky and unweildy, have expoſed themſelves to be contradicted by all the other obſervers.

How eaſy was it, and how little artifice did it require in Lady Jane, after ſhe had declared her marriage, and after the ſignificant whiſpering of her maids to every body they met, to perſuade thoſe that ſaw her in foreign parts, that ſhe was with child. They could have no ſuſpicions; eſpecially, as ſhe was always taken, by her looks, to be ten years younger than ſhe really was. But I muſt reject the conſequence that has been drawn from theſe appearances. It is ſaid, that, as the pregnancy is proved, the delivery muſt be preſumed as a neceſſary conſequence. I cannot aſſent to this. Had the propoſition been inverted, and if it could have been ſaid, that the delivery had been proved, therefore an antecedent pregnancy muſt be preſumed, I could have underſtood it. And indeed, had they proved a delivery, I would have ſuppoſed the pregnancy without evidence. But the other argument I think a falſe one; be-

cauſe thoſe ſkilled in the profeſſion of phyſic have declared, that all the ſymptoms of pregnancy are fallible, and that there is no other criterion of a real pregnancy, but a ſubſequent delivery. Where is that proof of a pregnancy in this caſe? Beſides, does not common experience, hiſtory, and our law-books, inform us, how eaſy and how frequent the ſimulation of pregnancy has been? As a real delivery is ever uſhered in by a preceeding pregnancy, ſo a feigned delivery muſt acquire credit from a ſimulated pregnancy. Fiction muſt always hide itſelf under natural appearances. In the ſeveral inſtances laid before us of the crime of *ſuppoſitio partus*, the appearance of pregnancy was ſtill aſſumed to give credit to the delivery. And who will ſuppoſe, that Lady Jane was leſs acute than the ladies of high rank who have trode before her in the ſame path?

TERRORS have been hung out, and imaginary dangers to the ſtate and birthright of the people, have been painted as reſulting from the purſuers ſucceſs in this cauſe. But theſe are merely the offspring of fancy and invention. It is morally impoſſible, that, in a true honeſt birth, ſuch a total want of unſuſpected poſitive evidence to ſupport the birth

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ſhould coincide with ſo many proofs and circumſtances to contradict it, as occurs in the cauſe before us. Innocence, therefore, has nothing to fear. The guilty indeed may be alarmed. But it is for that purpoſe, that crimes are inveſtigated and puniſhed.

The affection which Lady Jane ſo remarkably diſplayed towards theſe children, after her return to Britain, has been made a topic of declamation. But, for my part, I cannot diſcover what other conduct ſhe could conſiſtently have held, ſuppoſing the children were fictitious. I can eaſily account for this ſhew of affection, whether it is conſidered as natural or artificial. On the one hand, ſhe had abſolutely and irrecoverably deprived theſe children of the tender care and ſupport of their real parents, and muſt have been conſcious, that, by her unjuſtifiable act, they became totally dependent upon her. And, as under her eye, they would begin to liſp the tender words of pappa and mamma, and would touch her heart with all the tender endearments and affection of true children, Lady Jane muſt have been devoid of all generous and tender feelings, had not a reciprocal affection been kindled in her breaſt towards theſe poor innocents. Daily experience

rience diſcovers equal degrees of parental affection ſtirred up in the hearts of nurſes, and of ſuch as have had the care and tuition of the children of others from their early years. I ſhould not much wonder, therefore, if Lady Jane's love of theſe children had been genuine and unaffected. On the other hand, if ſhe did not really feel theſe emotions which were ſo natural, her behaviour muſt, in every reſpect, have been the ſame as if ſhe had felt them. This, after the ſteps ſhe had taken, became not a matter of choice, but of neceſſity; having once declared to the world, that theſe were her children, there were *veſtigia nulla retrorſum*; ſhe behoved to carry on the diſguiſe whatever it might coſt. She could not remit her attention in any one article, without an evident riſk of detection, of infamy to herſelf while alive, and of reproach to her memory after death. All this, Lady Jane was too wiſe not to foreſee, and too able not to act her part to perfection.

THE characters of Lady Jane and Sir John have been much inſiſted on. Their characters! But they are both dead. They have been joined together as equal in this reſpect, and I ſhall not ſeparate them. No body who

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knew them intimately, can be at any loſs to pay the regard due to this circumſtance.

I cannot conclude, notwithſtanding all I have ſaid, without teſtifying the warmth of my feeling for the young gentleman the defender. He is brought into a moſt unhappy ſituation, not from any fault of his own, but by the folly and imprudence of others. I re-rejoice at the good fortune he has had in the patronage of ſome eminent and worthy perſons. I hope, whatever may be the event of this cauſe, his merit will ſecure theſe, and increaſe their number. But ſuch tender ſentiments muſt have no effect with me in the character in which I now ſpeak. In duty to myſelf, to juſtice, and to my country, I muſt give my judgment according to the dictates of my heart; and I am of opinion, that the reaſons for ſetting aſide the ſervice of the defender are founded in law, and ſufficiently proved.

LORD

LORD ELIOCK.

MY ſentiments in this cauſe ſo perfectly coincide with thoſe of my brother who has juſt now given his opinion, that I might well excuſe myſelf from ſaying any thing more, than barely to declare my aſſent to the concluſion, by giving my vote for ſuſtaining the reaſons of reduction. But as this cauſe is of great importance to the parties concerned, and has excited the attention of the public in an uncommon degree, I think it incumbent upon me to give the reaſons of the opinion I have formed, upon the moſt attentive conſideration of the proof I was capable of. I do not however, think it neceſſary to take up the time of the court with entering minutely into the proof; but ſhall confine myſelf to ſuch particulars as appear to me to be the moſt material, and which chiefly induce me to be of opinion for the purſuers.

THE queſtion in iſſue is not a point of law, but a fact, *viz.* Is the defender the ſon of Lady Jane Douglas, or, is he not? This fact

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is matter of proof; and it is upon the proof of it now before us that we are to determine. It requires little ſkill in law to judge in this cauſe: Any man of underſtanding and of an unprejudiced mind, is capable of giving as juſt a deciſion as the moſt experienced lawyer. Had this proof now before us been adduced at the ſervice of the defender, the jury then impannelled muſt have decided upon it. We now, in the reduction of the ſervice, are to determine as the great jury of the nation.

It is ſcarce neceſſary to ſay any thing upon the queſtion, *cui incumbit probatio?* for, as it was incumbent on the purſuers to prove their condeſcendence, a proof was alſo neceſſary on the part of the defender. He might indeed have reſted his plea upon the proof brought in the ſervice; at the ſame time, he was at liberty to bring further proof in ſupport of his claim. Accordingly, a proof has been adduced by both parties, the import of which falls now to be conſidered.

It is admitted, that the acknowledgement of parents, and even *habit and repute* are not *probatio probata*; they are only *præſumptiones juris*, not *juris et de jure*. They may be redargued by contrary evidence.

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As this is the firſt thing that occurs in conſidering the proof, I muſt beg leave to ſay a few words upon what I take to be the import and meaning of *habit and repute*, in queſtions of filiation. As to the acknowledgement of the parents, and what effect it may have in the preſent queſtion, that will fall to be taken notice of afterwards, when we come to conſider the accounts given by them of the defender's birth.

In common caſes, where a proof of filiation or propinquity is neceſſary, as it is on the brieve of mortanceſtry, parole-evidence of *habit and repute* is accounted ſufficient; and juſtly ſo; for it may be, and ſometimes is, the only proof that can be brought. But then, What do the witneſſes depoſe to? It is to public notoriety, to univerſal, uncontradicted, and common fame. If there is no public notoriety of the claimant's birth, no *communis et conſentiens fama*, there can be no proof of *habit and repute*. I have ſaid, that in common caſes, a proof of *habit and repute* is juſtly deemed ſufficient; for, when a birth happens in a family, it is not concealed and made a ſecret of; on the contrary, it is immediately notified to the relations and friends of the parents; the child is preſented to and acknow-

ledged

ſledged by them; and upon their teſtimony and public obſervation *habit and repute* is founded. But when a child is produced to the world, of whoſe birth there is no public notoriety, where there is no *communis et conſentiens fama*, there can be no proof of *habit and repute*. If a queſtion of filiation ariſes in ſuch a caſe, it muſt depend entirely upon the truth or falſehood of the account given by the ſuppoſed parents, or by thoſe who produce the child, how it is to be decided. The acknowledgement of the parents is not of itſelf ſufficient; for, as by their refuſal to own a child really theirs, they cannot deprive him of his birth-right, neither can a falſe acknowledgement confer a right where there is none by birth.

The agents for the defender ſeem to have been ſenſible of this; for at his ſervice they did not, as in common caſes, reſt their proof upon *habit and repute*, but brought a variety of other evidence, both parole and written, to ſupport his claim.

The defender was produced to the world by Sir John Stewart and Lady Jane Douglas as their ſon; but, as he is acknowledged to have been born under ſuch circumſtances, that no friend, no relation, no acquaintance, indeed,

that no perſon whatever, ſo far as can be diſcovered, (Mrs Hewit only excepted), was privy to, or had acceſs to know any thing of the birth, there could be no notoriety, no *communis et conſentiens fama*: His filiation depends entirely upon the accounts given by his ſuppoſed parents.

SEVERAL witneſſes indeed have depoſed, that the defender was *habit and repute* the ſon of Lady Jane Douglas; and that they, the witneſſes, believed him to be ſo. But it is evident, that their teſtimonies reſt entirely upon the accounts given by Sir John and Lady Jane. On the other ſide, it is in proof by many credible witneſſes, that the defender was not univerſally acknowledged to be the ſon of Lady Jane Douglas: That, ſo far from there being a *communis et conſentiens fama* of the truth of his birth, there were doubts and ſuſpicions entertained concerning it, which were almoſt coeval with himſelf: That theſe doubts and ſuſpicions were early imparted to Sir John and Lady Jane; and in particular, there is clear evidence, that the Duke of Douglas, till upon the eve of his death, never acknowledged the defender as his ſiſter's ſon; nor did he ever admit him into his preſence.

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In conſidering this cauſe, therefore, I think that *habit and repute* is out of the queſtion; the defender was not poſſeſſed of ſuch *habit and repute* as could ſupport his filiation, without farther evidence.

A variety of proof has accordingly been brought by the defender, in order to ſhow, 1*mo*, That Lady Jane Douglas, though in the fiftieth year of her age, was capable of having children; 2*do*, That ſhe was actually pregnant previous to the time aſſigned for her delivery; and, 3*tio*, That ſhe was actually delivered of the defender and his twin-brother upon the 10th day of July 1748.

As to the firſt of theſe articles, I ſhall ſay very little; as, indeed, I can hardly think it a matter of proof. Though it be not impoſſible, that a woman at the age of fifty may bear a child; yet, in the common courſe of nature, it is very unuſual, conſequently highly improbable: And I cannot aſſent to the propoſition, that if ſhe was capable of having children; *ergo*, why not have them? *A poſſe ad eſſe non valet conſequentia.* At any rate, the extreme rarity of ſuch an event happening would naturally put a woman, who found herſelf in thoſe circumſtances, upon her guard, and induce her to behave

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in ſuch a manner as to obviate every poſſibility of a doubt; whereas, in this caſe, the behaviour of Lady Jane was quite the reverſe, full of myſtery and concealment.

GREAT weight has been laid upon the ſecond article of the defender's proof, that Lady Jane was pregnant previous to the time aſſigned for her delivery; from which it is inferred, that ſhe muſt either have born a child or miſcarried, which laſt is not pretended to have happened.

SEVERAL witneſſes have depoſed, that Lady Jane had to them the appearance of being with child; and that they believed her to be ſo. Mrs Walker and Mrs Hewit, in particular, have ſworn pointedly to this; the one has ſaid, that, in the ſeventh month, ſhe was ſo unwieldy that ſhe could not go to bed without aſſiſtance; and that ſhe never ſaw a woman with child bigger: The other ſays, that Lady Jane, in the eighth month, was ſo remarkably big, that every body thought her with twins. That this deſcription muſt be highly exaggerated, is evident from the accounts given by other witneſſes, who had occaſion to ſee Lady Jane at the time, and expreſsly depoſe, they took no notice of her pregnancy, till they were told of it. The

two

two landladies where ſhe lodged, Madame Scholl, and Madame Gilleſen, likewiſe Lady Wigton, are of this number; at the ſame time, all the witneſſes agree as to the very unuſual dreſs which Lady Jane conſtantly wore, even in her room.

If the inference made by the defender neceſſarily followed from this proof of pregnancy, there could be nothing more to ſay; he muſt prevail. But, in my opinion, the conſequence does not neceſſarily follow: If a woman has born a child, there muſt have been an antecedent pregnancy; but before the truth of the converſe of this propoſition can be admitted, it is abſolutely neceſſary to maintain, that every appearance of pregnancy, or what a witneſs takes to be ſo, is real, and that the perſon who has ſuch appearance is truly with child. That, I believe, will not be ſaid; even where there is no deceit, a woman may have every appearance, nay, moſt of the ſymptoms uſually attending a real pregnancy, and yet not be with child. It is well known, that many, even the moſt experienced perſons, have been deceived in this reſpect. The amount therefore of all this proof of Lady Jane's pregnancy, is no more than the opinion of the witneſſes, who only

depoſe

depoſe to appearances, which, whether real or affected, they had no acceſs to know. As to the evidence of Mrs Hewit and Mrs Walker, I own I can give no credit to their teſtimony in this matter, as it will appear, in conſidering the reſt of the proof, that they deſerve none in any other article.

As, therefore, the whole of this proof of Lady Jane's pregnancy (ſuppoſe even Mrs Hewit and Mrs Walker to be credible witneſſes) amounts to no more than opinion; when the conduct and behaviour of Lady Jane is conſidered, there can remain little doubt, indeed, there remains none with me, that there was no real pregnancy in the caſe. Her conduct and behaviour were utterly inconſiſtent with her being actually with child. In February 1748, when ſhe muſt have been far advanced in the fifth month, ſhe had not the appearance of being with child; ſo far from that, ſhe then denied her marriage to Lady Katherine Wemyſs, and complained of the report as an injury; and Lady Katherine, who had acceſs to ſee and converſe with her every day, believed her. If we look into Mrs Walker's oath, where ſhe depoſes to the converſation ſhe had with Mrs Tewis, prior to this period, Lady Jane

muſt

muſt have known, that ſhe was then with child; and, if theſe converſations were true, it is incredible, that Lady Jane could have behaved in the manner ſhe did to Lady Katherine Wemyſs.

In the month of April, when the marriage was made known to the Duke of Douglas, and that it was likely to prove fruitful, What was Lady Jane's conduct then? She is ſaid to have been ſickly and ailing, when ſhe found herſelf to be with child. Did ſhe conſult with any phyſician, ſurgeon, or midwife? Were any preparations made for her delivery? No: Mrs Tewis indeed, who ſeems to have been much in Lady Jane's confidence, is adviſed with; and, by her means, an application is made to Count Salm, for the uſe of the caſtle of Bedbur in the neighbourhood, where it was thought ſhe might lie in more commodiouſly than at Aix-la-Chappelle. But, inſtead of waiting for his anſwer, they leave Aix-la-Chappelle in an abrupt manner, and ſet out on a long and tedious journey. Is this a conduct that any woman in the eighth month of her pregnancy would have had? Lady Jane, if ſhe did not chuſe to lie in at Aix-la-Chappelle, had the offer of the caſtle of Bedbur, where ſhe could be well accommodated,

modated, and where ſhe could be viſited by her friends and acquaintance. If ſhe was to move, therefore, to any other place, it was natural to think ſhe would come to Britain. At any rate, as we have it from herſelf, that her view in marrying was to give an heir to the noble family of Douglas, ſhe ought not to have retired to a corner to be delivered. She knew, that ſhe did not ſtand on good terms with her brother, and that every imprudent ſtep ſhe could take might be interpreted to her diſadvantage. But every conſideration, both of convenience, ſafety, and prudence, is neglected; and a journey to Rheims undertaken. The reaſons given for this are, the expence of Aix, on account of the congreſs, and that there was no proper help to be had there. Neither of which reaſons are true; for there were ſeveral ſkilfull perſons to be had there; and, if Aix was become more expenſive (though the landlady ſwears ſhe did not raiſe the rent of her lodgings on account of the congreſs, which was begun long before this period), ſhe might have lain in at Bedbur at no expence; beſides, the journey was an unneceſſary expence, more than the addition of ſtaying at Aix could be. As for the reaſons given

ven by Lady Jane to her friends here in Britain, that ſhe intended to go to Geneva or Switzerland on account of religion, and for cheapneſs; theſe are affected indeed, and ſeem calculated to make them believe ſhe was taken ſhort at Rheims contrary to expectation. I cannot help here obſerving, that the zeal Lady Jane expreſſes for the proteſtant religion has an odd appearance, when contraſted with the other parts of her conduct, both while at Aix-la-Chappelle, and at Rheims.

What happened on the journey is of little moment, tho' there are ſeveral inconſiſtencies in the account given of it; and the ſtory told by Mrs Walker of Lady Jane's illneſs, and being likely to miſcarry at Rhetel, I think diſproved by the oath of the gentleman who travelled with them from Charleville.

It is in proof that they arrived at Rheims on the ſixth or ſeventh June; they ſtay there near a month moſt unneceſſarily, if they intended to proceed further. And, upon the 2d of July, when within eight days of her delivery, does Lady Jane Douglas ſet out in the ſtage-coach for Paris, Sir John and Mrs Hewit in company, leaving the two maids at Rheims. Lady Jane, when in health, had kept two maids to attend about her perſon;

ſhe had carried them with her in all her journies at a conſiderable expence; yet now, when their attendance was more neceſſary than ever, at a time when every woman wiſhes to have ſome known females about her, this lady, who, according to Mrs Hewit and Mrs Walker's evidence, was ſo big, that ſhe could hardly ſtir, and could not ſo much as go to bed without aſſiſtance, after ſitting up all night, walks on foot at two o'clock in the morning to the ſtage-coach, and goes to Paris without any ſervant or attendant.

When I conſider the whole of this behaviour of Lady Jane, it appears to me not only inconſiſtent with, and contradictory to the idea of her being pregnant, but ſtrongly indicates a deceit and a concealment of what ſhe was going about. No perſon of common underſtanding, and Lady Jane did not want that, could have behaved in this manner, had there been a real pregnancy; but it is juſt ſuch conduct as might be expected, if unfair things were meant.

This conduct, however, is endeavoured to be accounted for. The reaſon given for leaving Rheims is, that, two or three days after their arrival there, Lady Jane, in a converſation with Mrs Andrieux, about what aſſiſtance

ſhe

ſhe could have in the place, was told by her that they were ignorant as brutes in that reſpect; "and that ſhe, Mrs Andrieux, had had "one child, in the birth whereof, by their un-"ſkilfulneſs, ſhe had contracted a diſeaſe, which "had rendered her incapable of having more "children." Mrs Hewit depones, She was preſent at the converſation, and ſays, "That ſhe "has been informed that Mrs Andrieux did die "of that diſeaſe." Iſobel Walker ſwears to the ſame, and ſays, ſhe had it from Madame Andrieux, after Lady Jane's departure for Paris. Is this account in itſelf credible? It certainly does not agree with what Lady Jane told to the Counteſs of Stair. But, had the ſtory been true, why ſtay for near a month after at Rheims? But the whole is proved to be falſe. There could have been proper aſſiſtance got at Rheims; and the ſtory of Madame Andrieux is diſproved by the oath of her ſon. But if it was proper to leave Rheims, why not take the maids along with them to attend Lady Jane? The reaſon for not doing ſo is ſaid to be want of money. Sir John, Mrs Hewit, and Iſobel walker concur in this, that they were reduced to a ſingle louis when they arrived at Paris. Had this been really the caſe, as they muſt have expected to get money at Paris, it was no

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reaſon for leaving the maids; the louis d'or would have done more than defray the expence of their paſſage, and their maintenance at Paris, where their help would be wanted, would have coſt little more than it did at Rheims. But this ſtory of want of money is alſo a falſehood: It is in proof, that Sir John had then in his pocket a letter of credit on Paris for near 2000 livres, which he could have taken up at Rheims, had he pleaſed. In fact, he received it at Paris two days after his arrival there. But, to make the ſtory go the better down, another falſehood is added, That they expected money on coming to Paris; but being diſappointed, Sir John applied to a banker for an advance upon Lady Jane's penſion, that would become due at Lammas; but being refuſed, he was obliged to write to Mr Andrieux for a credit for L. 30, which he ſent him: That the money was paid *upon the very day Lady Jane was brought to bed*; and then, as all was over, it was needleſs to ſend for the maids. This is a very pointed ſtory, ſolemnly declared by Sir John, and ſworn to by Mrs Hewit and Mrs Walker. They all agree in the circumſtance of the time of payment, and give that as the reaſon why the maids were not ſent for. Iſobel Walker ſwears, that Mrs Hewit wrote her this at the time; yet it is a

falſehood,

falſehood, and a falſehood which muſt have conſiſted with their knowledge. Iſobel Walker ſwears to a converſation ſhe had with Madame Andrieux on the ſubject, which is inconſiſtent with Mrs Hewit's letter ſhe ſays ſhe received; it is impoſſible to account for this by a *non memini*. We have here three perſons ſwearing pointedly to a fact which is not true. From the manner in which they tell the ſtory, it ſeems to have been meant as a circumſtance to ſupport the account given of the birth. The letter of credit was not ſent from Rheims by Mr Andrieux till the 24th, and the money was paid at Paris on the 26th July.

From the whole, I conclude, that it is not only not probable that Lady Jane was pregnant, but likewiſe her conduct renders it incredible. What faith can be given to witneſſes who, whenever they come to depoſe to facts which can be diſproved, are found to have ſworn to falſehoods, and which it muſt have conſiſted with their knowledge were ſuch?

As therefore habit and repute is out of the queſtion in this caſe, and the proof brought of Lady Jane's pregnancy is not ſufficient (to ſay no more of it) to eſta-

bliſh the defender's birth, his filiation muſt depend upon what happened at Paris, where Lady Jane arrived on the 4th July 1748, and is ſaid to have been delivered of twins upon the 10th of that month.—Let us examine how that matter ſtands.

As there are no perſons known who could give any account of this delivery, but Lady Jane herſelf, Sir John, and Mrs Hewit, recourſe muſt be had to them for it; and they all three concur in placing it upon the 10th of July.

Lady Jane was dead before this proceſs was brought; but it does not appear that ever ſhe, even in her lifetime, though often ſpoke to on the ſubject, entered into particulars with any body; ſhe contented herſelf with general declarations; even within a few days of her death, when talked to by Mrs Greig, who waited upon her, of the propriety of having ſome evidence of the defender's birth, ſhe reſted upon this, *that if any body doubted of the birth, they muſt diſprove it.* It is in proof, that the doubts and ſuſpicions entertained of the birth of the defender, were early known to Lady Jane, and ſhe had ſuffered much on that account: It was eaſy for her to have procured authentic certificates of her delive-

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ry, if real: She was called upon to do ſo by every tie that could influence a parent; yet ſhe never endeavoured to procure ſuch certificates; even upon death-bed ſhe leaves her child to defend his birth upon a point of law. Does this convey the idea of affection to her children? Would any mother have behaved in that manner? Is ſuch conduct conſiſtent with human nature?

THE reaſon commonly given by Lady Jane for this her conduct was, that it was doubting her honour. If her honour was doubted, it was incumbent upon her to clear it; and it was eaſy for her to do ſo, had her delivery been real.

YET we ſee, that Lady Jane and Sir John were not quite ſo eaſy and unconcerned on this head as they pretended to be: We ſee them, in the year 1750, very anxious to procure evidence that might be of uſe to their children. They write to Madame Tewis, deſiring certificates of Lady Jane's pregnancy when at Aix-la-Chappelle, which they got; but which never made their appearance till this proceſs.

IT appears alſo, that they were at much pains to diſprove a letter ſaid to have been wrote by Count Douglas to the Duke of Douglas, though ſuch letter never exiſted. When

Grindlay,

Grindlay, their landlord at London, repreſented the propriety of getting certificates of the birth, Lady Jane's anſwer was, *She had not money to go or ſend to France for them.* Theſe certificates, if they could have been had at all, might have been procured with as little trouble, and at as little expence, as was beſtowed upon diſproving the letter of Count Douglas. In ſhort, Lady Jane ſeems never to have given any perſon ſhe converſed with ſatisfaction on this ſubject.

In all her letters, ſhe obſerves the ſame conduct; ſhe always keeps to generals. She contents herſelf with ſaying, ſhe was delivered on the 10th July 1748. But neither place nor witneſſes, nay, not even the town, is mentioned; inſomuch that their moſt intimate acquaintances, to whom the account of her delivery was recently communicated, did not know the birth was at Paris. Sir William Stuart, and Mr Johnſtone, though both at Paris at the time, believed, till long after, that it had been at Rheims. In her letter to the Duke of Douglas ſhe keeps in the ſame generals; ſhe mentions the date without any more, and her letter is dated from Rheims, though wrote from Dammartin. The people at Rheims alone knew the ſcene of action

was

was at Paris; from them it could not be concealed. But no perſon there was intereſted to make any particular inquiries. It is remarkable, that even in her pocket-book, where many very immaterial events and trifling particulars are carefully entered, the birth of her children, the moſt intereſting incident of her life, is ſet down in the ſame general terms, "Archibald and Sholto were born 10th July 1748," without one word of addition.

Mrs Hewit, in her accounts of Lady Jane's delivery, appears to have been as general. In her letter to the maids of the 22d July, ſhe mentions indeed a *Doctor*, but names him not, but no other perſon, no houſe or ſtreet where they lodged, no landlady as preſent. Mrs Walker ſays, that, upon aſking Mrs Hewit the name of the ſtreet after their return to Rheims, ſhe could not tell, as not underſtanding French. In her oath in the ſervice, ſhe remembered the name of the man-midwife was ſomething like La Marr, the name of the landlady ſhe could not remember; but, on her ſecond examination, Le Brun and Michelle being named by the Lord Preſident, ſhe then could not only recollect, but diſtinguiſh them exactly. But it is re-

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markable, that in the ſcroll or copy of the letter to the Duke of Douglas which was found after her death, and is of her own hand-writing, and which is wrote of purpoſe to vindicate Lady Jane's character, and to convince him of the reality of her delivery, ſhe tells his Grace, that Lady Jane was delivered in Michell's, and that ſhe was ready to ſwear to it. At the ſervice Mrs Hewit depoſed, that after the 10th day they were obliged to carry Lady Jane to other lodgings on account of bugs. In her letter to the maids of the 22d July, when ſhe could not be miſtaken, ſhe writes, that Lady Jane could not be kept in bed after the ninth day, by reaſon of the violent heat; but does not mention any change of lodgings. And, in her letter to Mr Harper, which was wrote upon peruſal of the ſervice, ſhe ſays, they changed lodgings after the ſixth day. This is a ſtrange correction; and yet, ſhe is very poſitive in it, though it contradicts her letter to the maids. In this letter too, ſhe mentions Le Brun's twice, though, on her ſecond examination, ſome months afterwards, ſhe could not recollect any French name. Had there been only one true tale to be told, ſuch different accounts could not have been given.

SIR

SIR JOHN's accounts of the birth, in all his letters, and in his converſation, ſo far as appears, were of a piece with thoſe given by Lady Jane and Mrs Hewit. The day is mentioned, 10th July 1748, but not a word more; no houſe, no ſtreet, no witneſſes, no accoucheur, no, not ſo much as the town. On the contrary, his letters, though wrote at Paris, are all dated from Rheims. The firſt time it appears that he ever mentioned any particulars was, when puſhed by Mrs Napier in the year 1756; I ſay puſhed, for he ſeems to have been unwilling to enter into particulars. Then it was he gave her the note in which the houſe, witneſſes, and accoucheur are named. But what houſe? Michell's! The uſe Mrs Napier made of this note, and the reſult of the inquiries made in conſequence, appear from her oath, and from the letters of Lady Frances Stewart, and principal Gordon. They gave no ſatisfaction; there had been no delivery at Michell's. In Mrs Napier's ſecond converſation with Sir John, (which I think is plain from her oath, and from the other circumſtances which are in proof, muſt have been after ſhe had received Lady Frances Stewart's letter), inſtead of Michell's, he ſubſtituted Le Brun's, as the houſe where La-

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dy Jane was delivered. And this is the first time that the name of Le Brun ſeems ever to have been mentioned. It is to be found in no pocket-book, in no letter; no witneſs that has been examined ſays, that ever the name of Le Brun was heard of before this period. And here I muſt obſerve, that, in my opinion, the note exhibited by Mr Charles Brown could not be among thoſe got from Mr Orr. Thus did Sir John vary his tale very eſſentially in the ſpace of a few months, in the very way Mrs Hewit did; for I think it appears, from the letter itſelf, wrote by Mrs Hewit to the Duke of Douglas, that it muſt have been wrote about the time of Mrs Napier's inquiries; for it plainly alludes to Stockbrigs, and mentions him as dead. He died in July 1755.

The next account given by Sir John, is in his judicial declaration. It was ſolemnly emitted, in preſence of your Lordſhips. He was not hurried or teized in any ſhape; he was deſired to give, and did give, deliberate anſwers to every queſtion; he was deſired to recollect himſelf, and to amend any thing in which he might ſuſpect he was miſtaken; and, in fact, he did, upon recollection, make ſeveral amendments. In that declaration, he

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gives a circumſtantial account of the delivery, of the ſeveral changes of lodgings, of the witneſſes preſent at the birth, *viz.* Madame le Brun, and her daughter; and particularly, gives the hiſtory of Pierre la Marr, the accoucheur, of his correſpondence with him while he had the child Sholto under his care, and of the letters produced at the ſervice, ſaid to be from La Marr.

The account given by Sir John of this La Marr is pretty ſingular. He was, it ſeems, an old acquaintance, whom Sir John had known at Liege in 1721; he was a Walloon, had been ſurgeon to a regiment, and was a ſkillful accoucheur. This man Sir John, who, as he has ſaid, was ſo anxious to have the beſt help for Lady Jane at her lying in, that he made a journey from Rheims to Paris in order to beſpeak an accoucheur, before he would carry her thither; this man, Pierre la Marr, did Sir John meet by accident; and recollecting that he was a ſkillful accoucheur, engaged him to bring Lady Jane to bed. Upon which he returned to Rheims, and carried Lady Jane to Paris. How came this man to be at Paris? Was he eſtabliſhed there as an accoucheur? No: He was at Paris *ſur une affaire epineuſe.* Where did he reſide in Paris?

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He refuſed to tell his lodgings, becauſe he was there *ſur une affaire epineuſe.* Where was he to be found, when he ſhould be wanted? He was to be found at particular hours in certain walks of the Thuilleries, or the Luxembourg. Did Lady Jane ever ſee him before ſhe was delivered? Yes, ſays Sir John, I introduced him to her after our arrival. Did Mrs Hewit ſee him at that time? I cannot ſay; probably ſhe might, as ſhe was always with Lady Jane. Suppoſe Lady Jane had been taken ill in the night, How was La Marr to be found? in that caſe, I muſt have called another. In what manner was he called to Lady Jane? She was taken ill in the forenoon of the 10th July; La Marr happened to call by accident that morning, and ſo brought her to bed. What ſays Mrs Hewit to all this? Had ſhe any converſation with Lady Jane about the accoucheur before the delivery? No: Did ſhe ever ſee La Marr? Never till he came to bring Lady Jane to bed. How came he then to attend? Upon Lady Jane's being taken ill, Sir John went out at ten o'clock, and brought him with him.

This ſtory is very circumſtantial, very pointed. But is it probable? is it credible? I cannot believe it; becauſe it cannot be true.

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It is founded upon a manifeſt falſehood, a falſehood that is admitted, *viz.* upon the ſtory of Sir John's journey from Rheims to Paris to beſpeak an accoucheur. He made no ſuch journey; he ſtaid at Rheims till the 2d July, when they all ſet out for Paris together. Indeed, ſuch journey would have been abſurd, as it is well known, a ſkilfull accoucheur can be procured at Paris at any time, and upon the ſhorteſt notice.

THIS and many other particulars in Sir John's declaration are endeavoured to be accounted for by a *non memini.* Sir John, it is ſaid, was old and infirm, his memory failed, no wonder then he ſhould miſtake at ſuch a diſtance of time. But failure of memory cannot apologize for Sir John. It is poſſible that the particular circumſtances attending a fact, or even the fact itſelf, may be forgot; but want of memory will not make one tell a ſtory that never happened, and recount a fable; that muſt proceed from another cauſe. But, was Sir John's memory failed? It did not appear upon his examination that it was. He was indeed ſomewhat deaf; and for that reaſon, the ſeveral queſtions were given him in writing, one by one, that he might conſider them, and give a deliberate anſwer;

which,

which, as I ſaid before, he did do, without hurry or confuſion. Beſides, it appears from the two letters he wrote ſoon after this period, the one to Mr Maillefer at Rheims, the other to Mr Clinton, that his memory was good, indeed ſingularly ſo; he even recollects Madame Guy, the hatter's wife who executed their commiſſions at Paris. His calling for La Marr's letters the day after which he had been interrogated upon them, and correcting what he had formerly ſaid, with regard to which of them were originals and which copies; his fixing upon the letter of 1752 as genuine, and being poſitive, that it was of La Marr's hand-writing, is a very good proof of his attention to what he was about. Can it be ſuppoſed, that Sir John Stewart, who was ſo much intereſted in the queſtion, who had been twice interrogated by Mrs Napier upon the ſubject, who, when the Ducheſs of Douglas had deſired an account of the matter from him, had wrote her accordingly, who was preſent at the defender's ſervice, and probably was conſulted with about it, and who was in habits with, and in uſe to viſit Mrs Hewit; can it be ſuppoſed, is it credible, that his memory could be ſo much failed as to forget the moſt

capital

capital circumſtances of ſo very intereſting and, at the ſame time, ſo ſimple a fact, as the delivery of his wife and the birth of his children? To make up for the defect, he has forged a ſtory in ſupport of it. His letter to the Ducheſs of Douglas ſhows, that he had no true account to give: He contents himſelf with appealing to perſons, and deſiring her to make inquiries, which never could remove the ſuſpicions. Lady Jane's pregnancy at Aix-la-Chapelle is what he inſiſts upon; and he goes ſo far as to name Lord Blantyre as a witneſs, though, it is certain, that his Lordſhip had not ſeen Lady Jane from July 1747 till September 1748.

But the journey to Paris and the ſtory of La Marr is not the only falſehood in Sir John's declaration. The letters ſaid to be from La Marr are another, and of a deeper dye; they are a downright forgery: Truth can only be told one way, and requires neither falſehood nor forgery for its ſupport.

It was urged in the pleadings for the defender, that ſuppoſing Sir John to have been guilty of falſehood, and ſuppoſing La Marr's letters to be forged by Sir John, the defender could not thereby be affected; he could not for any crime of Sir John be forfeited

of his birth-right. But the learned counſel did not advert, that the only foundation of the defender's claim is the acknowledgement of his parents, and the account they have given of his birth. Sir John avers that the defender is his ſon, and that he was born in ſuch and ſuch circumſtances; that averment is founded upon falſehood, and endeavoured to be ſupported by forgery. The conſequence is evident.

Sir John, Mrs Hewit, Mrs Walker, all concur in ſaying, that La Marr correſponded with Sir John by letters; that while they were at Rheims, he wrote regularly once or or twice a-week; and yet, of all the letters thus wrote, not one has made its appearance; in place of the whole, we have got four fabricated ones. Another remarkable circumſtance attending theſe forged letters is, that they were in Lady Jane's cuſtody at her death; they were found in her trunk, left with George Lindeſay, and produced by him upon oath at the ſervice. She therefore muſt have known of the forgery: What convinces me of this is Lady Jane's converſation with Mrs Menzies, when ſhe told her ſhe had proof of the birth of her children, by letters

from

from the phyſician, in her pocket. This converſation happened ſome little time before Lady Jane went to Douglas. Join to this Lady Jane's letter to the Duke from Douglas-mill, in which ſhe has this remarkable expreſſion, *That if he would ſee her but for a few moments, if ſhe did not convince him of her innocence, ſhe would ſuffer any puniſhment.* What did ſhe mean? How could ſhe convince him in a few moments? She muſt therefore have had evidence to produce. By Grindlay's oath and other evidence, it is plain, ſhe had no atteſtations or certificates of the birth of her children. She told Mrs Menzies ſhe had letters from the phyſician; theſe forged letters are found in her cuſtody. Theſe muſt therefore have been the evidence ſhe intended to ſhew to the Duke. What tends to confirm this is the account given by Mrs Walker of the letter received by Sir John from La Marr in 1752. Sir John ſays, this letter was in anſwer to one he had wrote La Marr, deſiring him to give an account of the birth of the children. Mrs Walker depoſes, ſhe heard it read, but knows not how, or by whom it was delivered. But Mrs Hepburn depoſes, that, in a converſation with Mrs Walker in the waiting-room, before

before they were called in to be examined at the ſervice, Mrs Walker told her, that ſhe herſelf delivered the letter to Sir John: That he read it, ſaid it was a letter from La Marr; and "damned him; and ſaid, What! was he proving to him that he had brought Lady Jane to bed? and threw the letter in the fire; That Lady Jane immediately ſnatched it out, wiped it, and put it in her pocket; ſaid to Sir John, why was he angry at the man? the letter might be of uſe ſome time."

I ſhall not take notice of the other circumſtances attending Lady Jane's delivery, as given by Sir John and by Mrs Hewit in their letters and depoſitions. We have ſeen how they varied in their accounts, and in what manner they agreed in changing the ſcene of action from Michell's to Le Brun's. The accounts given by them of the nurſes are contradictory and irreconcileable. A tale is told by Sir John to ſupport his ſtory, and falſe letters produced to confirm it. Even as to the day of delivery, the 10th July 1748, which is the only thing they have not varied in, in order to prove that, they invent a circumſtance which is not true, viz. the receipt of the money ſent by Mr Andrieux on that very day; and Mrs Walker

likewiſe

likewiſe depoſes to this circumſtance and to her having received a letter from Mrs Hewit, informing her of it at the time; though it is plain, from looking into the letters from Mrs Hewit to Mrs Walker, that no ſuch letter could ever have been wrote. If to all this we add the behaviour of Lady Jane, Sir John, and Mrs Hewit at the time, it is impoſſible for me to give credit to the ſtory of the defender's birth. I am convinced, that the whole is a concerted tale, and an impoſture. Could Mrs Hewit have wrote a letter to the maids on the 11th July, and not only not mention Lady Jane's delivery the day before, but tell them ſhe was very well? Would Sir John, on the 10th, have ſat down quietly to write five or ſix letters, had Lady Jane, as they ſay, been ill all the night preceeding? and would ſhe have been employed in jotting down ſuch an inſignificant incident in her pocket-book? It is ſaid, that Mrs Hewit's letter was really wrote on the 10th in the morning, and Sir John's letters on the 9th; but Mrs Hewit's correction of the date is exceedingly ſuſpicious; eſpecially as we ſee Sir John making a ſimilar correction of the date of his letter to Lord Crawford, by ſaying, *In my laſt of the 6th*; and plainly referring to that of the 10th:

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That Sir John's letters were wrote on the 10th, is evident from one of them; *viz.* that to Mrs Hepburn; for, in his next to her, he ſays, *Lady Jane was delivered,* &c. *on the evening of the laſt day I wrote you.* Suppoſing Lady Jane to have been delivered on the 10th, is it probable that no intimation of it ſhould be given to any perſon, nor one letter wrote to a friend or acquaintance, till the 22d? Sir John could not have concealed ſo joyful an event for twelve days.

It was ſaid for the defender, that however Sir John and Mrs Hewit may differ in trivial circumſtances, they agree in the capital article; and their differing in ſome collateral circumſtances is of no moment: Memory is fallible.

This plea is not available here. It is true, they agree in the capital article, that Lady Jane was brought to bed on the 10th of July 1748; but in every circumſtance attending it they have varied and diſagreed. Is it a circumſtance of no moment in what place Lady Jane lay in, and who were preſent at the birth? In theſe they have varied and ſhifted the ſcene. From the beginning, there was an apparent concealment. Sir John had many acquaintances at Paris at the time; and yet

he

he had no communication with any of them. He kept his being there a ſecret from all his friends with whom he correſponded; all his letters are uniformly dated from Rheims, though written at Paris.

SINCE the houſe of Madame le Brun has been fixed upon as the place where Lady Jane was delivered, and ſhe and her daughter have been named as witneſſes to the birth, it was natural to inquire where Le Brun's houſe was, and what ſort of people ſhe and her daughter were. Michell's houſe is well known and was ſoon found out; but whereabouts was Le Brun's ſituate? Truly Mrs Hewit knows not; becauſe ſhe could not remember French names; and Sir John can tell no more, than that it was in the Fauxbourg St Germain, on the left hand as you go from the Pont-neuf by the Rue de la Comedie to the Luxembourg. This is a very general deſcription, and it looks ſomewhat odd, that Sir John, who could very well recollect the names of the tavern and coffee-houſes he frequented at Paris, and the ſituation of them, ſhould totally forget the houſe where his lady was brought to bed: The event was intereſting to him; he had come to Paris for that purpoſe; the landlady and her daughter were

witneſſes

witneſſes to the birth; he remained, it is ſaid, ten days in the houſe after; and yet he not only forgets where the houſe was, but totally forgets the names of the perſons. We have ſeen at what time, and in what manner he recollected the name of Madame le Brun. But who is this Madame le Brun? As Sir John, Lady Jane, and Mrs Hewit lodged in her houſe, and as there were other lodgers beſides, ſhe muſt have been ſubject to the police; the officers muſt have viſited her houſe; ſhe muſt have been liable to the capitation-tax. The whole quarter of the town named by Sir John has been carefully ſearched; no Madame le Brun is there to be found; no ſuch woman in the books of police; no ſuch perſon in the capitation-rolls. Had ſuch a perſon as deſcribed by Sir John and Mrs Hewit exiſted, ſhe muſt have been found out, eſpecially by the capitation-rolls, which ſeem to be accurately kept, and are made up every four months. It is ſaid that Madame le Brun was a *garde malade*; that ſuch people are not ſubject to the police; and that beſides, ſome perſons, ſuch as Swiſs, are exempted from the capitation, and many perſons eſcape notice. But this Madame le Brun the *garde malade* will never anſwer. Theſe *garde malades* are perſons

who

who perhaps have a ſingle chamber where low women, ſuch as the wifes of footmen, or poor mechanics, can be accommodated; and ſo far as I can learn, no perſon of any condition ever went to ſuch a place to lie in, but when there was reaſon for concealment. Lady Jane Douglas ſure had no reaſon to lie in privately and conceal her delivery. But, by Sir John, Lady Jane, and Mrs Hewit lodging in the houſe, by there being other lodgers beſides them, by Madame le Brun's keeping a ſervant or ſervants, which they ſay ſhe did, ſhe muſt have both been ſubject to the police, and liable to the capitation; conſequently muſt have been found out. The few inſtances brought of ſome low people who eſcaped the capitation by fraud, ſhow the accuracy and exactneſs of the rolls. The fraud was ſoon detected.

From the whole of the proof on this head, I muſt conclude, that the Madame le Brun mentioned by Sir John and Mrs Hewit never exiſted; conſequently that Lady Jane was not brought to bed in the houſe of a Le Brun.

That no perſon anſwering to the deſcription given of Pier la Marr by Sir John Stewart has been diſcovered, is certain and acknowledged; and indeed, it was impoſſible there ſhould;

for I take Pier la Marr to be entirely ſuch another imaginary perſon as Madame le Brun. Had Sir John's journey from Rheims to Paris been true, and had he met with ſuch a man as this Pier la Marr, is it poſſible to conceive, that Sir John could have propoſed, or that Lady Jane could have agreed, to commit herſelf to the care of ſuch a perſon? Or, if ſhe had, Can it be believed ſhe would have intruſted one of the children to the care of a perſon who was a ſtranger in France, who was only occaſionally at Paris upon ſome particular affair, and would probably return to his own home ſo ſoon as that was over? It is not only improbable, but may be deemed impoſſible: No perſon endowed with the ſmalleſt degree of underſtanding, could have acted ſuch a part.

This Pier la Marr, therefore, is given up by the defender, and another ſubſtituted in his place, who may be ſuppoſed to have delivered Lady Jane in 1748. One Monſieur Menager a ſurgeon has been examined upon this head, and much weight is laid upon his oath. That there was a ſurgeon at Paris in the year 1748 of the name of Louis Pierre Delamarre, is proved; but that this perſon ſhould have been the accoucheur who deli-

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vered Lady Jane, cannot be. The La Marr who attended Lady Jane was a Walloon. He had been ſurgeon to a regiment before 1721, and was then a noted accoucheur. This French La Marr was born at *Montreuil ſur mer* in Piccardy in 1711, had ſerved in a barber's ſhop in Paris in the 1734, was afterwards an attendant at the Hotel Dieu for ſome years, and an acquaintance of Monſieur Menager, and never was either ſurgeon to a regiment, nor out of France. The ſtory told by Monſieur Menager, and now adopted by the defender, is, that in the year 1747 or 1748, La Marr imparted to Menager, that he was engaged to bring to bed a foreign Lady, who had come from beyond ſea, and who was advanced in years: That La Marr deſired his, Menager's aſſiſtance; which, however, he did not give: That La Marr afterwards told him, that the Lady was delivered of twins, one of whom, being weakly, was committed to his care, and of whom he had the charge for ſeveral months: That La Marr told the ſtory in the *chambre de garde à l'Hotel Dieu*, in preſence of Monſieur Gilles, Monſieur Mélé, and others: He ſays la Marr was connected with a Madame le Brun, who kept one of his depots, of which he had ſeveral: That he did not know where Madame le Brun lived,

but

but judged it was in the *Quartier de St André des arts*, becauſe he ſaw La Marr often turning to that hand. La Marr told him particularly, that he had been beſpoke for bringing that foreign Lady to bed before her arrival at Paris. The other gentlemen have been examined: They agree that La Marr told them that he had brought to bed a Lady who came to Paris to lie in privately: That the converſation happened in the *chambre de garde*, where La Marr then attended. Now, it is certain, that La Marr was diſmiſſed from the Hotel Dieu in the year 1746, or beginning of 1747; and the gentlemen then preſent never ſaw him there afterwards; therefore this accouchement performed by La Marr cannot apply to Lady Jane Douglas. None of theſe gentlemen knew any thing of La Marr's connection with a Madame le Brun, nor of the other particulars mentioned by Menager. It is plain to me, from the whole oath of Menager, that he has either been inſtructed, or has wantonly volunteered, by adding circumſtances to the ſimple ſtory told by La Marr in 1746, to accommodate his oath to Sir John Stewart's declaration. In point of time, the ſtory told by La Marr cannot agree to Lady Jane; neither can it agree to her,

her, that La Marr was bespoke before she came to Paris; for, though Sir John has said so, yet that is now given up; and the story of Madame le Brun, and her living in the *Quartier de St André des arts*, is artful enough, as that is the Quarter of the Fauxbourg St Germain which is upon the left hand going from the *Pont-neuf* by the *Rue de la Comedie.*

THIS Louis Pierre Delamarre, therefore, could not have been the accoucheur of Lady Jane Douglas; and I think the oath of Mr Menager does no credit to the cause. Had there been a surgeon alive at Paris in 1750, who delivered Lady Jane, (and this La Marr was alive at that time), and a landlady who was witness, would not Sir John and Lady Jane have applied to them for certificates of the delivery properly authenticated, instead of writing to Mrs Tewis at Aix-la-Chappelle for attestations of Lady Jane's pregnancy, which could signify nothing? They seem then to have been anxious to secure the birth of their children from being challenged. It would have cost no more trouble to have procured unquestionable evidence, if the fact was true, than it did to procure Mrs Tewis's declaration.

HAD the proof brought on both sides rest-

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ed here, I ſhould, for the reaſons I have given, been of opinion for the purſuers. On the part of the defender, there is nothing to ſupport his filiation, but a tale big with abſurdity and contradiction. The behaviour of his ſuppoſed parents inconſiſtent with his being truly their child, their averment founded on falſehood, and ſupported by forgery: I ſay, had no further evidence been brought in this cauſe, I muſt have been of opinion for reducing the ſervice. But, when we conſider the poſitive proof that is brought of the place where Lady Jane and Sir John reſided at the time aſſigned for the delivery, all dubiety muſt vaniſh. Sir John and Mrs Hewit have ſaid, that Lady Jane was brought to bed in the houſe of Madame le Brun on the 10th July 1748. But neither of them can tell where that houſe was. On the contrary, there is the ſtrongeſt evidence that the nature of the thing can admit of, that no ſuch houſe, and no ſuch landlady exiſted. It is proved and admitted, that, on coming to Paris, they lodged at the Hotel de Chalons till the ſeventh or eighth of July. Mr Godefroy and Mrs Godefroy who kept that hotel, have ſworn poſitively, that they intended indeed to have moved on the 8th; but that, on pretence

tence of the other lodgings not being ready, they continued to lodge at his houſe till the 14th. Godefroy has exhibited his accompt-book, in which the accompt of their expence during their ſtay in his houſe is ingroſſed; and to that accompt, as relative to Sir John and his company, he and his wife depoſe. Lady Jane brought forth no child during her ſtay in the hotel de Chalons: She reſided there from the 4th to the 14th of July 1748. This evidence, therefore, is excluſive of the poſſibility of the defender's birth on the 10th July in the houſe of Madame le Brun.

It has been objected, on the part of the defender, to this evidence of Godefroy's, 1*mo*, That it is not credible, that Godefroy and his wife, who have kept a public-houſe ſo much frequented, could, after ſo many years, recollect the time Sir John and Lady Jane ſtaid with him in 1748; 2*do*, The accompt being blank in the title, cannot be applied to Sir John Stewart, but may relate to any body elſe. 3*tio*, At any rate, it cannot aſford a ſufficient cauſe of knowledge; for, as there are many other accompts in the book blank in the name, and Godefroy does not remember to whom they relate, he is not to be believed, when he applies this account to Sir John Stewart.

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In my humble opinion, there is nothing in theſe objections: For, in the *firſt* place, it is not more incredible, that Godefroy ſhould recollect the particulars he ſwears to, than that the other witneſſes who have been examined in this cauſe ſhould do ſo; many of whom have depoſed to facts and to converſations, which were as liable to be forgotten as this. It is certain, that Godefroy recollected Sir John particularly. He remembered, that he had been recommended to him by Mr Maillefer at Rheims; and, though the letter he received on that occaſion was then fallen by, it has been ſince recovered and produced, and vouches for his memory. In the *next* place, as to the particular time of Sir John's being at Godefroy's houſe, he does not ſwear altogether from memory: His anſwer to the queſtion is: It will appear from my book at what time he entered, and when he went away; and the book is produced. It does not much import, that the title of the accompt is blank; had the name of Sir John been there (as probably it would have been, if Mr Maillefer had mentioned the name in his letter), there could have been no doubt; and I do not think it an extraordinary effort of memory, that Godefroy, who lodged ſuch a company

company of ſtrangers, recommended in a particular manner to him, ſhould recollect, that ſuch an accompt related to theſe perſons; eſpecially as Sir John returned alone to his houſe ſome little time after, and ſtaid four days; and the accompt for that time with Sir John's name ingroſſed, is in the oppoſite page of the book to the accompt in queſtion. Beſides, it is not poſſible to explain how, or from what circumſtances, a perſon may recollect a fact. We ſee here, that Godefroy had conſiderable aids to his memory; and there is not one ſingle circumſtance in the proof which contradicts what he has depoſed, excepting Sir John's declaration and Mrs Hewit's oath. But neither of them pretends to know where the houſe was, in which they ſay they lodged on the 10th July. As to Godefroy's not being able readily to ſay, to whom the other blank accompts in his books did apply; I do not think this an objection of any moment to his evidence. It may be, that he would have recollected, had there been ſuch ſpecial circumſtances to recall things to his memory as there was in this caſe. But whether he could or not, it will not follow, that therefore he has ſworn falſely as to Sir John

Stewart. Had there been in proof any ſort of evidence that Sir John was in another place at the time, and, if it had been doubtful which to give credit to, the import of the evidence on either ſide would fall to be conſidered and compared together. But, when it cannot be ſhown, that Sir John was in any other houſe, to diſcredit the evidence of Godefroy, who aſſerts he was in his, upon ſuch an objection as this, that it is not probable he could remember the fact, becauſe he may have forgotten other facts which have no relation to it, is out of all ſight. Godefroy and his wife are proved to be perſons of good fame; they ſeem alſo to be in affluent circumſtances for people of their ſtation; and it does not occur what poſſible temptation they could have to ſwear to a falſehood. Godefroy told the ſtory the ſame way from the beginning, and to every one who made inquiry at him. We have the teſtimony of Madame Guy for this, who being employed for the defender went to his houſe to interrogate him, when he ſhowed her his book, and pointed out the accompt therein, as relative to Sir John Stewart. In a word, it appears to me, that Godefroy and his wife are candid and credible wit-

neſſes;

neſſes; they have depoſed to a fact which they had acceſs to know. There is not a ſyllable of evidence in the whole proof (except the tale told by Sir John and Mrs Hewit) which is inconſiſtent with or contradicts what they ſay; and I can ſee no reaſon why they ought not to be believed. This then to me is deciſive of the cauſe; for, if Lady Jane was not delivered on the 10th July 1748 in the houſe of Madame le Brun, as it appears ſhe was not; becauſe on that day, and for ſeveral days before and after, ſhe was not at Le Brun's, but at Godefroy's, where ſhe was not delivered of any child; it follows, as a neceſſary conſequence, that the defender is not her ſon.

THERE are many other particulars in the proof which I do not think neceſſary to ſay much upon; I ſhall only mention ſome of them.

IT is ſaid, that the ſuſpicions of the reality of the defender's birth were raiſed and propagated by the friends of the family of Hamilton: That the reality of the birth was never doubted of abroad by any body; and that it is not probable Sir John and Lady Jane would have carried a child, procured in the way it is ſaid the defender was, to Rheims, where there was ſuch danger of detection.

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As to the ſuſpicions entertained in this country, it does not appear to me that there is any proof from what they aroſe, or who propagated them; nor do I think it of any importance to inquire from whom they proceeded: Certain it is, that they were early entertained, and that Lady Jane and Sir John were informed of them in a few weeks after the birth was notified in Britain. It does not indeed appear, that any ſuſpicions were entertained at Rheims: Sir John and Lady Jane were ſtrangers there; no body was intereſted to inquire; and it would not readily occur to doubt of a thing one had no concern about. As to the danger of detection, there was, no doubt, a riſk; but that riſk was not great, as matters were managed; for it does not appear that more particulars were mentioned at Rheims, ſo as to lead to a diſcovery, than were communicated to friends in Britain to whom the event was notified, if the people at Rheims believed the birth to have happened at Paris, at the ſame time that their acquaintance at Paris, as well as their friends in Britain, were kept in the dark as to that particular.

It is ſaid, that there does not appear any motive that could induce Sir John and Lady

Jane

Jane to commit the crime they are charged with, and that their character puts them above all ſuſpicion of being guilty of ſo wicked an action; beſides, they were in ſuch ſtraits for money, that it cannot be ſuppoſed they would take the charge of two children, not their own, when they could hardly ſubſiſt themſelves.

In my opinion, character has little to do in the matter, where the queſtion is, Whether a fact be true or falſe? And as little is it neceſſary to aſſign motives which might induce a party to act. If a crime is charged and proved, it is no defence to ſay, that the party had ſuch a character, and the motives are not aſſigned: The truth of the fact charged muſt ſtand upon the evidence brought, whatever may have been the character of the party accuſed. In the preſent caſe, I think the fact proved; though, if character were to be taken into conſideration, I do not think that of the parties concerned appears in the moſt amiable light. I do not mean the opinions of ſundry of the witneſſes, that they thought ſo and ſo, I ſpeak of the conduct and behaviour that is proved. As to motives, I have ſaid, it is not neceſſary to aſſign them: Indeed, it is often impoſſible; becauſe it is

impoſſible

impoſſible to dive into the minds and thoughts of men, which are ſo various that the ſame reaſon will frequently move different men to act quite different and contrary parts: But, from the proof before us, there appears to have been ſome motives which might influence Sir John and Lady Jane: They ſeem both to have had an expenſive turn; and, as they fell upon many expedients to get money, it is more than probable, their ſtrong motive was to procure a ſettlement from the Duke of Douglas. We do not ſee any application made to him till the marriage was notified, with a hint that it was likely to prove fruitful. Lady Jane till then ſeems to have been ſatisfied with the L. 300 a-year, which her brother allowed her, and which was regularly paid. But, after that time, he is applied to for a ſettlement, and their friends are earneſtly ſollicited to ſupport the application. By the letters to Lord Milton, it appears, that if fair means did not prevail, there were others ſuggeſted which might be ſufficient to induce his Grace to comply. And if this was a motive, as it ſeems to have been, it affords at the ſame time an anſwer to the argument uſed for the defender, ariſing

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from the expence of keeping ſuppoſititious children when they were in ſuch ſtraitened circumſtances.

THERE is great weight laid upon the affection ſhown by Lady Jane to the children; which, beſides being depoſed to by ſeveral witneſſes, appears from the letters which paſſed between her and Sir John while at London.

IT is indeed in proof, that Lady Jane ſhowed much affection to the children; and in theſe letters her expreſſions are full of tenderneſs. But her actions contradict her expreſſions. Lady Jane's behaviour with regard to the youngeſt child is ſuch as a tender parent could never have had. This child is repreſented as ſo very weak at his coming into the world, that it was neceſſary for the accoucheur to beſprinkle him; a thing that is never done but in the moſt extreme neceſſity, and moſt eminent danger of death: Yet this very weakly child, who, it was thought, could not live if not ſent immediately to the country, was never once inquired after by Lady Jane: She never ſaw him till he was ſixteen months old: This ſurely was not the part of a tender mother. That ſhe knew of his weakly condition, appears from her let-

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ter of the 6th Auguſt to her brother. If ſhe could not go to ſee the child herſelf while at Paris, Sir John or Mrs Hewit might have gone to inquire after him: It is not pretended Mrs Hewit ever went; and I think it pretty evident that Sir John was as great a ſtranger; for had he been in uſe to viſit the child, he muſt have known where he was kept, and could have found out the place without the aſſiſtance of La Marr; which, however, he ſays he could not do. It is pretended they often heard of him by means of La Marr: Had that been ſo, it might ſatisfy them perhaps, while at a diſtance; but will not account for the neglect and indifference ſhown during their ſtay at Paris. There is a circumſtance which here occurs, and which ſhould have been mentioned before, *viz.* the name of *Sholto* given at this time to the child: No name is ever given at an *endoyment*, and it is only in the letter of 6th Auguſt, that Lady Jane deſires her brother's leave to name the one child Archibald, the other Sholto, which is evidence, that neither of them had at that time any name. And this ſerves alſo to prove the forgery of La Marr's letter of 1752, in which he names the youngeſt child *Sholto-Thomas*, though he was not baptiſed by that name till after they

had

had been ſome time in England in 1750. This behaviour of Lady Jane convinces me, that there was more of affectation than reality in her expreſſions of tenderneſs. Beſides, it was natural for her to be on her guard, and to behave in ſuch a manner as not to betray the ſecret: Affection alſo might grow from habit; and it has a very ſingular appearance, that ſuch a number of theſe inſignificant letters as have been produced ſhould have been preſerved, and yet not one of the many letters ſaid to be wrote by the accoucheur ſhould make its appearance. But what ſatisfies me perfectly on this head, is the whole of her conduct from firſt to laſt. It was in her power, if ſhe was really the mother of theſe children, to have removed every doubt and ſuſpicion as to their birth; it was her duty to have done ſo; ſhe never did it, or took any effectual ſtep to do it. The procuring of one authentic certificate of the birth, would have ſhown more love and affection to her children, than hundreds of letters wrote to Sir John, containing the tendereſt expreſſions.

After having ſaid ſo much, and delivered my opinion upon the point in iſſue, I ſhould not think it neceſſary to add any thing more, were it not that a proof has been endea-

voured to be brought of the way and manner in which theſe children were procured. Had nothing of this kind been done or attempted to be done, it would not influence the queſtion, nor alter my opinion. I think it proved, that the defender neither is, nor poſſibly could be the ſon of Lady Jane Douglas; whoſe child he is, or in what manner he was adopted by her and Sir John Stewart, is of little moment. It was, however, the duty of the purſuers to bring a proof of that, if in their power, though matters might have been ſo managed as to render it impoſſible to do ſo. As to the proof brought, whatever exception may be taken to the depoſitions of the Mignons in other reſpects, I think there is undoubted evidence, that Mignon's child was carried off by ſtrangers in July 1748, and before the 22d day of that month: That theſe ſtrangers were a man and a woman, who pretended they wanted the child only for a few weeks, to ſhow to a Lady newly delivered, but whoſe child had died. It is alſo undoubted, that Sanry's child was carried off in November 1749 by ſtrangers alſo, a man and two women, who lodged at the *Croix de Fer*, and who ſaid they were *Irlandois*. It is very ſingular, that both theſe enlevements ſhould

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happen at the preciſe time when Sir John and Lady Jane were at Paris, and ſhould be attended with ſuch circumſtances as muſt create the moſt violent ſuſpicion, that they were the perſons who carried off the children. As to Mignon's child, the circumſtance of the child's dreſs, depoſed to by Mignon, and confirmed by Madame Favre the nurſe, is remarkable. It is alſo remarkable, that Sir John and Lady Jane came to Michell's without any child; that the next day, when all the three went to bring the child, they brought it home and a nurſe along with it; but ſuch a nurſe as no child, even of the pooreſt perſon, ever was intruſted to, a poor beggarly thief, picked up in the ſtreets, who had no milk in her breaſts. The account given by Mrs Hewit of this matter is, that Madame le Brun had recommended a nurſe who ſtaid with them in her houſe while they continued to lodge there, but who was permitted to carry the child to her own houſe when they removed to Michell's: That Sir John afterwards going to ſee the child, found the nurſe drunk, and thereupon ſent the coach for Mrs Hewit, who went and brought him home: That they got a milk-woman in the neighbourhood to give him ſuck, till

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Sir John found a nurſe ſomewhere in the ſuburbs; but ſhe proving a bad one, and having no milk in her breaſts, was diſmiſſed, and the milk-woman again employed. This ſtory, told by Mrs Hewit, is incompatible with, and contradictory to what happened at Michell's, as depoſed to by Madame Michell, Madame Blainville, Madame Favre. Beſides, the ſtory is inconſiſtent; for, had the child been left with the nurſe they had while at Madame le Brun's, he could not have been famiſhed for want of nouriſhment; ſhe had ſuckled him, by their account, at leaſt for ten days, and though ſhe had been ſo abandoned as to be drunk, yet ſhe had milk to give the child. But it is in proof, that the child, when brought to Michell's, was in a pityful condition, quite famiſhed, and the nurſe they brought with them had no milk. This therefore could not be the nurſe formerly employed; and that they brought a nurſe with the child, is certain. Now, ſuppoſing the child thus brought to Michell's to be the child procured from Mignon, and who muſt have been ſecreted a day or two, he would naturally be in the condition deſcribed, almoſt dying of hunger, which Lady Jane's child could not have been, as he was, till that mo-

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ment, with a nurſe who had ſuckled him for ten days without any complaint. Beſides, the child brought was three weeks old at leaſt, as depoſed by Madame Favre. All theſe circumſtances are well accounted for on the ſuppoſition of this being the child got from Mignon; but will not apply to a child born by Lady Jane on the tenth of July. The time alſo agrees with the reſt of the proof; the enlevement happened exactly at the time when Lady Jane, Sir John, and Mrs Hewit, were ſecreted after they left Godefroy's on the 14th, and when none of them can give any account of themſelves, or ſay where they lodged. It is alſo very remarkable, that no notification was given of the delivery of Lady Jane, (though ſaid to have happened on the 10th), till the 22d July, which was after they had brought the child, in the manner we have ſeen, to Michell's.

As to Sanry's child, there was an actual theft; and the time when it happened is pretty nearly aſcertained to be when Sir John and Lady Jane were at Paris in November 1749. Sir John, when interrogated, can give no account where he put up during their ſtay at Paris at that time; and the incident of Lady Jane's headach, when they had ſet out

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to fetch their child, and of her and Mrs Hewit's being ſet down at a houſe they knew nothing about, till Sir John and La Marr brought the child, is ſomewhat ſingular. However, this is the ſtory told; but then, Sir John and Mrs Hewit do not quite agree in their accounts. Sir John ſays, he intended to ſtay only one night at Paris: That the firſt thing he did, was to inquire for La Marr, as without him he could not have found the child; and that La Marr came to them either that night or next morning. Mrs Hewit ſays, ſhe is poſitive La Marr did not come till the laſt day of their ſtay at Paris. Sir John and La Marr brought the nurſe and child to the houſe where they had left Lady Jane and Mrs Hewit; and the nurſe being paid by Sir John, ſays Mrs Hewit, by La Marr, ſays Sir John, they ſet out for Rheims next morning. The whole of this ſtory is moſt improbable, and, like the reſt, the parties do not agree in their accounts. There is a total failure of memory as to thoſe circumſtances from which the truth or falſehood of it could be aſcertained; and from the whole of the proof on this head, it is apparent, that this journey to Paris in 1749, is attended with the ſame marks of myſtery

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and concealment, that runs through the whole of their behaviour.

HOWEVER, in order to ſupport their account, there is adduced a witneſs, Madame Garnier, who is ſaid to have been the perſon who nurſed Sholto. But, upon comparing her oath with thoſe of the other witneſſes, and with the hiſtory of Lady Jane's delivery, it plainly appears to be ſuch an oath for proving the nurſing of Sholto, as Menager's is for proving Louis Pierre Delamarre to have been the accoucheur of Lady Jane: That this Madame Garnier had a child committed to her to be nurſed in 1748, may very well be believed; indeed, there is evidence of it; but that this child could be one born of Lady Jane Douglas on the 10th July 1748, and ſent either that day or next morning to her, is impoſſible. Every circumſtance contradicts the ſuppoſition; although there are ſeveral particulars ſworn to make it quadrate: Madame Garnier got this child when her ſon Jerome was ſix months old; ſhe nurſed him on Jerome's milk, and kept him eighteen months. Jerome is proved to have been born in March 1748: ſhe, therefore, did not receive her foſter-child till the month of September 1748, and kept him till February or March 1750. And this

this agrees with the manner ſhe ſays the child was brought to her, which was in a coach, and with torch-light, about nine o'clock at night. This might very well be in the month of September; but there was no neceſſity for torch-light on the ſtreets of Paris, in the beginning of July. Beſides, her account of taking the child from her does not agree with that given by Sir John and Mrs Hewit.

I ſhall not go through the particulars of the proof of theſe enlevemens; they are well known to all of your Lordſhips: The deſcription given of the perſons is not ſuch as of neceſſary conſequence to bring them home to Sir John Stewart; but, from every circumſtance attending them, and from the whole of the evidence, I incline to believe, that he was the perſon, though I do not found my opinion in the cauſe upon that: My opinion goes upon the improbability of Lady Jane's having been really with child; her whole conduct and behaviour contradicts the ſuppoſition; on the care taken by her and Sir John to withdraw from their acquaintance, nay, even from their ſervants, and not only to ſecrete and hide themſelves, but to conceal every thing moſt material to be known even from their neareſt friends; on the inconſiſtencies,

consistencies, contradictions, and falsehoods in the accounts given by Sir John and Mrs Hewit, supported by Mrs Walker, upon their neglecting to get proper certificates of the birth, which it imported them much to get, and which, we see, they were, in 1750, desirous to procure; and, instead of such, producing and using false and forged letters to supply the deficiency; and, lastly, upon the positive proof of Lady Jane and Sir John's being at Godfroy's on the day assigned for the birth, which is exclusive of the possibility of her being delivered of any child on the 10th July 1748. It is upon these grounds, that I am of opinion for reducing the service.

LORD STONEFIELD.

IN this caſe, I have had great difficulty. The bulk of the proofs, the prolixity of the pleadings, and the diffuſeneſs of the memorials, though artfully and ably wrote, rendered it not an eaſy taſk for me to collect the material parts of the evidence, and to bring it to a point. I was almoſt loſt in a labyrinth of proofs and arguments: But, on reconſidering it within theſe few days, with a view to adviſing the cauſe, I have formed the ſame opinion with that firſt delivered, and with thoſe delivered yeſterday.

IN the entry, I will take notice of one or two articles that have been brought into this queſtion; but which, I apprehend, do not belong to it.

I little expected to have heard any clamour again raiſed againſt the Tournelle proceſs, after the full and ſatisfactory account given of the nature of theſe proceedings in the purſuers memorial; much leſs did I expect to hear it compared to forgery and the deepeſt of crimes. The extravagance of this idea

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is a ſufficient refutation of it. It always appeared to me a regular and competent proceſs.

NEITHER did it occur to me that the conduct of the cauſe could be blended with the merits of it. The conduct of a cauſe may be wrong, and the cauſe itſelf may be right. Agents may have acted improperly: Let them account for their conduct; but I do not ſee how their conduct can affect the parties. This court will never forfeit a party of his right on account of the miſconduct of his agent. But, in the management of this cauſe, I ſee nothing reprehenſible in the conduct of the agents on either ſide; On the contrary, the conduct of the agent on the part of the purſuers appears to me to have been ſo fair, ſo candid, I had almoſt ſaid ſo impartial, that it does honour to himſelf and to his profeſſion. But theſe matters I only touch upon, they being foreign to the preſent queſtion.

BOTH parties ſeem to have pleaded the points of law in this cauſe too high; which, from their anxiety, is very natural, and what indeed very frequently happens. The purſuers argue, that a ſervice is of no avail when a reduction of it is brought: The defender, on the other hand, maintains, that it is a

barrier

barrier almoſt unſurmountable, *pro veritate habetur*, and that it requires the ſtrongeſt, direct, and poſitive evidence to reduce it. I ſubſcribe to neither of theſe opinions. Services are generally founded on circumſtantial and preſumptive evidence: As oppoſition is ſeldom made to them, they are often carried on in a ſlovenly manner, and generally are expedited without much inquiry or attention; for theſe reaſons they are, as Lord Stair expreſſes it, *eaſily reduced.*

In order to reduce a ſervice, it is only neceſſary to bring ſtronger evidence than that adduced in the ſervice: But a ſervice is ſtill of ſome avail; for it throws the *onus probandi* upon the purſuer of the reduction; and it remains unſhaken until he has brought ſuch ſtronger evidence in oppoſition to it. This evidence muſt not preponderate a *little* over the evidence brought in the ſervice, but it muſt do it *conſiderably*; it muſt carry conviction along with it, that the ſervice was erroneous, either from want of evidence, or as proceeding upon falſe evidence.

When the purſuer of the reduction has thus brought ſtronger evidence in oppoſition to the ſervice, the *onus probandi* is transferred to the other ſide. It is then incumbent on the

the defender to bring further evidence in ſupport of his ſervice; and this the defender has in fact admitted in this caſe; for he has brought additional evidence, and much ſtronger evidence than any adduced in the ſervice. He has produced a train of private correſpondence betwixt Lady Jane and Sir John, which have great weight in this cauſe.

THE firſt point to be conſidered is the proof of Lady Jane's pregnancy. The appearances of pregnancy are very ſtrongly proved by a number of perſons of character; but the contradictory evidence that is brought renders this circumſtance ſomewhat doubtful.

LADY JANE is repreſented by ſome of the witneſſes ſo big, ſo unwieldy, at Aix-la-Chappelle, at Liege, at Rheims, and other places, that it could not eſcape the notice of any perſon who had eyes: Yet, by the evidence of other witneſſes equally credible, it appears not to have been obſerved at all by ſome, and to have been but ſlightly remarked by others; particularly, in the laſt ſtages of the alledged pregnancy, when it ought to have been moſt obſerved, had it been real: Thus at Rheims, and at Paris, and on the road, there is ſcarce any evidence of its having been obſerved.

SOME

Some circumſtances in the conduct of Lady Jane about this period, render her pregnancy much ſuſpected. We find her, when it is ſaid ſhe was four months gone with child, denying her marriage to her friend and acquaintance, Lady Katharine Wemyſs; yet, about the ſame time, expoſing her pregnancy to nuns and ſtrangers. We find her leaving Aix-la-Chapelle, when near her ſuppoſed time of delivery, without any cauſe; when, on the contrary, ſhe had great reaſon to have remained in that part of the country, till after her delivery, as then ſhe was on the eve of procuring an offer of the Count Salm's country-houſe to ly in at, which ſhe had ſolicited, and which was a ſituation to be wiſhed for by her for her delivery, in her then circumſtances. There ſhe might have been delivered in quietneſs and ſafety, by able aſſiſtance from Aix-la-Chapelle or Liege, at no expence for lodging, and at a ſmall one in other reſpects. Thus ſhe might have avoided the great expence, the trouble and danger to her, if pregnant, of a long and tedious journey. We find her concealing her intention of going to Paris, although her ſuppoſed errand thither was the pride of her heart. We find her travelling a long journey in very

ry uneasy machines, at late and early hours, and even on one occasion sitting up all night, when she scarcely had any time to reckon. We find her journeying, notwithstanding of her alledged illness at Sedan or Rhetelle, at such a rate, that Mrs Hewit was afraid she would have been delivered. We find her leaving her maid servants behind at Rheims on a false pretence of want of money, at a time when their attendance on Lady Jane would have been most useful and necessary, if there had been a real pregnancy. It is pretended, that she went to Paris in quest of able assistance to her in-lying; yet she leaves Liege and other places where good assistance was to be had. For this purpose, she made a very long journey; but it is not pretended, that any person of character was employed as an accoucheur. It is averred, that a low, unknown accoucheur was employed, and who was picked up very accidentally. These inconsistencies of conduct, and contradictions in the evidence, rather denote a feigned than a real pregnancy. But the evidence of pregnancy amounts only to a proof of the appearances of pregnancy. Such appearances are often fallacious, equivocal, and never certain, particularly in a person of Lady

Jane's

Jane's age. Women have been frequently deceived about their own pregnancy; much more eaſily then may others be deceived by ſuch appearances. This evidence, therefore, of a pregnancy is not concluſive. Appearances are never depended upon, in order to prove a real pregnancy; for that purpoſe, a further, and very particular inveſtigation is always inſiſted upon, when there is any doubt of a pregnancy, and when ſuch inveſtigation can be made.

On the other hand, the evidence brought on the part of the purſuers againſt Lady Jane's pregnancy, is only negative, and therefore not concluſive; but indeed, ſuch muſt neceſſarily be the nature of this evidence. It is almoſt impoſſible to prove, that a woman was not pregnant at any paſt period, when ſhe aſſerts that ſhe was then with child. The queſtion, therefore, whether Lady Jane was really pregnant or not, muſt depend upon the next capital point in the cauſe, *viz.* the proof of her delivery.

The accounts given of the circumſtances attending the delivery by Sir John and Mrs Hewit, the only witneſſes to it, are full of inconſiſtencies and contradictions; and therefore not to be credited: And the other evi-

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dence on this point tends to diſprove it. There is no evidence, except in their own family, that they gave out at Rheims that Lady Jane went to Paris in order to be delivered. On the contrary, when Sir John applied to Monſieur Maillefer for a recommendation to an Hotel at Paris, the pretence aſſumed was, *to make purchaſſes*, not that Lady Jane had occaſion for an accoucheur. Even her pregnancy was not known to Monſieur Maillefer. At Godefroy's, to whom they were recommended as perſons *intending to make ſome purchaſſes*, her prennancy was not obſerved; and it does not appear, that at Godefroy's they mentioned this purpoſe of their coming to Paris, *her being to lie in*. As they had no acquaintance at Paris, or, which amounts to the ſame thing, as they did not deſire to ſee any of their acquaintance there, it is almoſt incredible that they ſhould not have mentioned this purpoſe to ſome of the people of the Hotel. In ſuch a ſituation, they certainly would have applied to ſome of Godefroy's people for aid in finding out proper lodgings for Lady Jane to lie in at, and an able accoucheur. But their leaving Godefroy's without making any ſuch inquiries, and without any of the people of the houſe obſerving Lady Jane's pregnan-

cy, is a circumſtance ſtrange and unaccountable, on the ſuppoſition of a real pregnancy.

We have no evidence of what paſſed from the time of their leaving Godefroy's, till they make their appearance again a few days after at Michell's, except the account given by Sir John and Mrs Hewit; and it cannot be diſcovered where they were, or what was tranſacted in this period. No Madame le Brun has been found out, nor any of the witneſſes who are ſaid to have been preſent at the delivery, notwithſtanding that the utmoſt ſearch has been made for them; and notwithſtanding the accuracy of the books of police, by which probably they would have been found out, had any ſuch perſons exiſted. The account given by Sir John and Mrs Hewit, of the tranſactions of this period, are contradictory and unaccountable. Lady Jane never mentioned the place of the birth, or the name of the accoucheur. Sir John did not mention them till preſſed to it by Mrs Napier, then he named Michell's as the place of the birth, and Mrs Hewit ſeems to have concurred with him in mentioning Michell's to have been the place of the birth: Afterwards, they both concur in fixing the delivery to Le Brun's. The reaſons for this variation in their accounts are obvious on the ſuppoſition of an impoſture;

Mrs

Mrs Hewit wrote to the maids from Paris, that there was no keeping Lady Jane in bed after the ninth day from the time of delivery. In the ſervice, ſhe depoſed, that they left Le Brun's on the tenth day; and a few months after, upon full and mature recollection, ſhe corrected that part of her oath in a letter to Mr Harper the clergyman, and declared, that they left Le Brun's on the ſixth day after the delivery: That a woman of any condition ſhould go abroad the ſixth day, or even the tenth day, after her delivery, is very improbable; but that a perſon of Lady Jane's high rank, and of ſo delicate a frame, ſhould move from her lodgings ſo ſoon, is ſtill more extraordinary.

It cannot be credited, when they were at ſo much expence, and ſo much trouble to have Lady Jane properly taken care of at her in-lying, that ſhe would have put up with ſuch an Hotel as Le Brun's is repreſented to have been; a *depot* fit only for the accommodation of maid-ſervants, and the loweſt of the people.

It is in proof, that at Michell's they appeared without any child, and next morning they all three went out in a coach. Lady Jane, who is ſaid have been brought to bed

only

only ſix days before, as well as Sir John and Mrs Hewit, giving out that they were going to St Germains, to bring home a child they had there at nurſe: That they returned next day, bringing a child along with them, in circumſtances in no reſpect correſponding to the child of ſo affectionate a mother as Lady Jane is repreſented to have been. The child appears to have been quite ſtarved for want of food, and attended by a nurſe picked up in the ſtreets of Paris, who had no milk, and who was branded for a thief. They had no occaſion to pick up a nurſe in a hurry, as it is ſaid that Lady Jane went to her full time; and that there was no difficulty in procuring a good nurſe at Paris, is evident; for, in half an hour Michell's people procured a very good one, Madame Favre. Theſe circumſtances, with the contradictions and inconſiſtencies I have mentioned, anounce a feigned delivery, not a real one; a child procured by ſtealth, not the child of Lady Jane; and a nurſe picked up in the hurry of an enlevement, not one diligently and cautiouſly choſen to ſuckle the heir of Douglas.

THEIR conduct towards the children tend to confirm this conjecture. A day or two after Madame Favre was procured, ſhe was allowed

lowed to carry the child to her own houſe, where he remained for eight and forty hours, without Sir John, Lady Jane, or Mrs Hewit's going to ſee him, or even knowing where he was. This is extremely improbable on the ſuppoſition, that this child was really Lady Jane's. The other child, it is alledged, was committed to the care of a La Marr, and remained in the neighbourhood of Paris for eighteen months at nurſe, with a woman they had not ſeen; during which time, neither Lady Jane, Sir John, nor Mrs Hewit went to ſee him, although they continued at Paris, and in the neighbourhood of it, for more than a month after the pretended delivery, and an hour's drive was ſufficient for that purpoſe; nor does it appear, that they knew where he was; neither did any of their acquaintance, of whom they had many at Paris, go to ſee the child during all that time; none of them had a direction, by which they could find him out; not even the Chevalier Johnſton, Mrs Hewit's couſin, and who was an intimate acquaintance of Lady Jane and Sir John. Theſe circumſtances lead one to believe that there was no child of theirs at nurſe in the neighbourhood of Paris.

THE

THE account given by Sir John of La Marr, is full of falſehoods, improbabilities, and contradictions. Sir John's La Marr appears to be quite a different perſon from Louis Pier Delamarre, whom the defender now endeavours to ſubſtitute in place of Pier la MARR. The one is repreſented as an old man, the other is proved to have been a young man in the 1748. The one is repreſented as a ſtranger at Paris; the other is proved to have been a reſidenter there. The one is a Walloon; the other a Frenchman. Then it is proved, he was beſpoke for the delivery, before their coming to Paris, and that he was not beſpoke; that they had his addreſs, and that they had it not. How is it poſſible to find out truth, or to have any dependence on ſuch contradictory evidence?

NEITHER does Menager's evidence ſeem to aid the defender. He has probably taken the name of La Marr from the proceedings in this proceſs, and applied to it the account he gives of Louis Pierre Delamarre: He has adapted the circumſtances of an in-lying in the 1747 to this pretended one in the 1748. He has likewiſe borrowed the name of Le Brun from this proceſs. He ſays he was acquainted with her, but can give no account

of

of her. The ſame obſervations may be made on the evidence of Madame Garnier. She too has borrowed the name of Pierre la Marr from this proceſs, and applied it to Louis Pierre Delamarre. She has adopted the ſtory of the nurſing of Sholto to the circumſtances of her nurſing ſome other child. The time of the year in which the child was brought to her, and the age of the child, don't correſpond with the account given of Sholto: And though ſhe ſays, ſhe ſaw La Marr once every month while the child remained with her; yet ſhe cannot deſcribe his perſon.

Their concealment at Paris, even from the moſt intimate of their acquaintance, particularly from Chevalier Johnſton, is a very ſuſpicious circumſtance. Their dating their letters from Rheims, while they remained at Paris, is another ſtrange circumſtance. Their writing ſix letters on the 10th of July, without making mention of the delivery, or that Lady Jane had been ill the preceeding night, are not properly accounted for on the ſuppoſition of a real delivery. Their poſtponing to notify the birth for twelve days after it is ſaid to have happened, to any of their friends or relations, is a circumſtance not eaſily accounted for on the defender's ſup-

poſition

poſition of real birth. It is believed, this never happened to any lady of rank greatly inferior to that of Lady Jane.

THEIR having too many ſervants every where elſe, and none at all at Paris; their being very laviſh at Rheims on occaſion of the baptiſm, and very œconomical on both their journies to Paris, are circumſtances which tend to the ſame concluſion.

ALTHOUGH Godefroy's books, ſupported by the evidence of himſelf, his wife, and Madame Guy, would not alone be concluſive evidence in this cauſe; yet, when joined to the reſt of the proof, they do, in my opinion, carry conviction along with them, that Sir John, Lady Jane, and Mrs Hewit were at Godefroy's Hotel from the fourth to the fourteenth of July 1748.

BOTH enlevements ſeem to me to be fully proved. But the deſcriptions given of Sir John and the ladies, are too vague and uncertain to bring them home to them; however, they are of ſome weight, as they appear to be the only enlevements that have been perpetrated at Paris for many years back, and to have happened in the years, the months of thoſe years, and at the time when Sir Jane, Lady Jane, and Mrs Hewit were in

Paris.

Paris. Then the ages of the children correſpond to that of Lady Jane's alledged children. This coincidence of circumſtances is very ſurpriſing. The faint reſemblance that appears betwixt the ſwaddling cloaths of Mignon's child and the defender, is likewiſe of ſome weight.

THE after conduct of Sir John and Lady Jane tend greatly to ſupport the ſuppoſition of a fraud in this caſe. In a few weeks after the alledged birth of the children, they were acquainted of the ſuſpicions that were raiſed of theſe children being ſuppoſititious, and they ſeem to have been ſenſible of the propriety of removing theſe ſuſpicions, though they took no ſteps in order to do it, except ſuch as rather tended to confirm thoſe ſuſpicions. By return of poſt, they might have had authentic certificates of the birth of the children from La Marr and the people who were preſent at the delivery: But this they did not attempt. In place of which, Lady Jane applied to Madame Tewis at Aix-la-Chappelle, in order to procure proofs of the appearances of pregnancy, the moſt fallible evidence they could have brought; and the more ſo, that it is in evidence, that Lady Jane was not ſuppoſed to have been a-

bove two months gone with child, when ſhe changed her lodgings from Mrs Tewis's houſe. Had there been a real pregnancy, ſtronger evidence might have been expected from the houſes in which Lady Jane had lodged in after periods, of her alledged pregnancy, at Aix-la-Chappelle, Liege, Rheims, and Paris. Her neglecting to apply where better evidence might be had, preſumes a diffidence of the ſucceſs of any ſuch application. Their neglecting to procure authentic documents of the delivery at Paris, preſumes much more ſtrongly, that ſuch documents could not be obtained: Their being ſenſible of this defect, and their endeavouring to ſupply it by forging letters and certificates of the delivery from La Marr, is convincing evidence, that a real certificate could not be procured. Forgery and falſehood is never uſed to ſupport truth: It can ſtand on its own legs without any ſuch aid.

The whole evidence connected together, joined to the failure of proof on the part of the defender, brings conviction to me, that there was no pregnancy in this caſe, no delivery, no Le Brun, no La Marr, and no child of Lady Jane's at the Hauteborne.

The

The ſtrongeſt circumſtances in favour of the defender, are the letters from Lady Jane to Sir John. They indeed contain convincing teſtimonies of the moſt ſincere affection on the part of Lady Jane to the children; but they do not amount to a proof of the defender and his ſuppoſed brother's being her children. It has been often obſerved in the caſes of adoption and of nurſes, that women acquire, from the acquaintance and endearments of children, an affection for thoſe of other women, equal to maternal affection. Lady Jane had adopted theſe children. It was natural for her to conceive a great affection for them; and ſhe was bound by every tie of honour, of ſafety to herſelf, and humanity to the children, to ſupport the character ſhe had aſſumed.

A paſſage was, the other day, read from the Inſtitutions of Lord Stair, in which it is laid down as law, that the declaration of a father, aſſerting that a child is not his, whom he has treated as ſuch for ſome years, is not credited; although it is contrary to humanity to ſuppoſe, that a parent could be led to make ſuch an aſſertion, if the child was really his. If the law gives no weight to the declaration of a parent in ſuch a caſe, what

weight

weight ought we to give, in oppoſition to the ſtrong proofs already mentioned, to the declarations of the parents, in the preſent caſe, in favour of the defender, when they were bound by every tie of honour, of ſafety to themſelves, and humanity to him, to make ſuch declarations, even although he was not their ſon?

After having ſaid ſo much, it is unneceſſary for me to add, that I am of opinion for ſuſtaining the reaſons of reduction.

LORD

LORD PITFOUR.

THE cauſe now under your Lordſhips deliberation is of great importance, not only with reſpect to the extent of the ſubject in queſtion, but alſo in point of precedent. It affects one of the moſt valuable privileges of mankind, birthright, the foundation of every other privilege, of all the comfort that can be had in family, friends, relations, or ſociety; of the poſſeſſion of eſtates, honours, offices of dignity and truſt; and, indeed, of every other happineſs that can be enjoyed in this life. It is not to be expected, that the law would neglect to guard this valuable privilege, ſo as it might not be liable, on every occaſion, to be rendered uncertain and the poſſeſſor unſecure. The act of delivery is often tranſient, and over in a moment. Witneſſes are ſeldom called, and ſometimes cannot be had. For the moſt part, there are but few; ſo their evidence muſt be in hazard of evaniſhing in a very little time.

THIS

THIS evidence therefore could not be required by the law, to ſecure the ſubject in the moſt valuable of their privileges, on which all others depend. The law has provided another ſecurity; the *poſſeſſio ſtatus* is what every one has reaſon to rely upon, and to reſt ſecure, that the law will protect him in it, and will not allow him to be turned out of it, unleſs the cleareſt evidence is brought, that originally it was founded on falſehood and impoſture.

IT has been made a ſubject of diſpute, upon what this *poſſeſſio ſtatus* is founded? For my part, I can ſee no other foundation for it, but the acknowledgement of parents, ſupported by the *fama conſentiens*, or habit and repute of the place of the birth, where-ever it happens. If a child is born in a foreign country, and conſtantly acknowledged by the parents as their child, and this not contradicted, but uniformly admitted by every one in the country where he was born, this muſt, in the nature of the thing, be ſufficient to eſtabliſh the preſumption of filiation. It is certain, that, of all crimes, the *ſuppoſitio partus* is the moſt difficult to be perpetrated, and the moſt eaſy to be diſcovered; where-ever it is attempted, it cannot fail that ſome circum-

circumſtances will occur to create a ſuſpicion in the country where it happens; and where no veſtige of ſuſpicion occurs, the child muſt be held to be in poſſeſſion of the *ſtatus* in which he has been placed by his parents.

The *poſſeſſio ſtatus* is by itſelf ſufficient to relieve the poſſeſſor from bringing any evidence that may have periſhed by length of time. The evidence of ſo tranſient an act is, from the nature of things, liable to decay as time advances, by the death of witneſſes, failure of memories, and other accidents: But as it decays, the preſumption of law, founded on the length of poſſeſſion unchallenged, does gradually increaſe to ſupply its place, and to protect the poſſeſſor from ſuffering by ſuch unavoidable misfortunes. Did not the law ſtand ſo, no man could be ſecure againſt challenges brought to ſtrip him of every thing that is valuable in life, at a time when, from the courſe of nature, the poſitive evidence of the fact muſt be gone.

To apply this to the preſent caſe, great pains have been taken to inquire at every one who was in France at the time of this birth, and to learn the general belief which was had in that country, no leſs than twenty

witneſſes

witneſſes have been examined, who all declare that they never heard it doubted in that country. Nor have the purſuers, in all their laborious reſearches, been able to diſcover any one witneſs who could aver the contrary.

NOTICE has been taken of rumours raiſed in this country to the prejudice of the defender and his brother, very early after their birth; and indeed, if theſe rumours had been founded on any information from France, they might merit attention. But that is not alledged; they are founded on pretences, which now clearly appear to have been falſe and groundleſs; as particularly, a forged letter put into the hands of the Duke of Douglas, as having been wrote by one Count Douglas in France, alledging the children to be ſuppoſititious; and a diſcovery ſaid to have been made by the Counteſs of Stair to the ſame purpoſe. But theſe have been both refuted, and are now given up as falſe. The letter was diſcovered by Count Douglas, the ſuppoſed author; and Lady Stair did, in the moſt ſolemn manner, deny the aſperſions imputed to her, with great indignation againſt thoſe who had raiſed them.

ANOTHER

ANOTHER groundleſs impreſſion ſtirred up by the ſame means was founded on the age of Lady Jane Douglas, as if ſhe could not be capable of children, after ſhe had entered into her fiftieth year. But this has now, it is believed, no weight with any body. It is univerſally agreed, that as long as the *curſus menſtruorum* continues, every woman is capable of having children. It is not the preciſe year of the age, but the habit of the body, that determines that capacity. Two or three years, whether before or after fifty, makes no difference, if the *curſus* continue; and it is clearly proved, that they continued with Lady Jane in a regular manner, not only down to the pregnancy which preceded this birth, but alſo for ſome years after it, and that ſhe became again with child, and miſcarried, during her reſidence at Rheims, after the defender's birth.

IT is evident, therefore, that ſuch rumours, founded on falſe ſuppoſitions and falſe informations broached by deſigning people, to give the Duke of Douglas a bad impreſſion of his ſiſter, cannot derogate from the habit and repute, which was univerſal in the country where the children were born; elſe ſuch rumours would never be wanting, when a

powerful family has a view to the ſucceſſion, to which the child, by his birth, has a preferable title. Such rumours never gained any credit, except with the Duke, who was ſome time deceived by thoſe who had neareſt acceſs to him. They were deſpiſed by every one who had no intereſt to promote them; and accordingly, after the Duke had been moved by falſe ſuggeſtions to withdraw his ſiſter's annuity, his Majeſty was graciouſly pleaſed to interpoſe, as the common father of his people, and to beſtow upon her that relief for the ſupport of herſelf and children, which her brother had been miſled to deny her. Will it be ſaid, that the children, to whom his Majeſty ſhowed ſuch paternal goodneſs in providing for their education, as deſcended of a noble family, were habit and repute in the country as impoſtors, and held to have no connection with that family, whoſe merit recommended them to his royal protection?

And ſurely, it cannot be competent to the purſuers to controvert this *poſſeſſio ſtatus* in the defender, after they have neglected for ſo long a time to bring any action to interrupt it. Had they believed there was any truth in ſuch rumours, it was certainly competent to them to have brought evidence

thereof

thereof as ſoon as they got information; and that even without the late Duke's concurrence. But no ſuch thing was attempted, as they appeared to deſerve no credit. The defender was left in quiet poſſeſſion of his *ſtatus* for a long track of years, until at laſt they thought fit to raiſe the proceſs now depending.

THE defender, during all this time, had no remedy but to continue in the poſſeſſion of his birthright, which remained for ſo many years unchallenged; he could bring no action to declare his birth. Such action is not known in law; nor was ever raiſed in any caſe, ſo far as I can diſcover. It does not appear, what parties could be called in ſuch action, ſo as to make the decree an effectual *res judicata*. He has no remedy but to remain in poſſeſſion of the *ſtatus* in which he was born, until a challenge is brought.

THE purſuers have brought their challenge at ſuch a diſtance of time, as it muſt be preſumed, that the half of mankind are gone who were alive at the time of his birth, and to whom the circumſtances could be known. The defender, at this diſtant period, is called upon to prove, and to explain every circumſtance relating to his birth, and to the whole

conduct

conduct of his parents, and their friends and attendants, both antecedent and ſubſequent thereto; and the ſtreſs of the purſuers argument ſeems to be laid on this, that he has not fully explained every one of thoſe circumſtances, and that they have been able by ſtrength of imagination, and force of ingenuity, exerted to a higher degree than was ever before known in any caſe, to figure circumſtances to create ſome ſuſpicion as to the conduct of his parents, which he has not brought evidence to remove. If this manner of arguing is allowed, it is not eaſy to ſay who ſhall be ſecure againſt a challenge brought at a diſtant time. It ſuppoſes the law to arm itſelf againſt the birthright of the ſubject, and to render the rights that ought to be held moſt ſacred, the moſt precarious and uncertain. This may affect, not only the preſent generation, but alſo poſterity yet unborn, who will regrete the conduct of the judges that have firſt removed the barriers, by which their moſt valuable privileges were ſecured. It is in vain, that ſo much care is taken in ſecuring the liberty and property of the ſubject, if that which is the foundation of every other right

they

they can enjoy, is to be thrown altogether loose and uncertain.

It has been said, that the pursuers argument will not affect many of the present generation; they are generally born in this country, and their birth is so well established by the acknowledgement of all their relations and connections, that they can be in little hazard from such inquiries.

But as it is not easy to foresee what hazard may arise, even to those who think themselves secure, if full scope is given to imagination, and conjectures and suspicions are to be substituted in place of evidence; so it is to be hoped, we will never confine our concern to ourselves only and the contemporaries whom we know. How many British subjects are now in such a situation, that their children must be born in distant countries, very remote from great Britain? His Majesty's dominions are now happily extended over a large part of the globe: Many thousands of British families are settled in the colonies in America, Asia, and Africa, and many younger sons of good families are daily resorting thither in pursuit of their fortunes. They marry and settle there, and follow out their employments with strict œconomy,

moving

moving from place to place as their circumſtances and occupations may require. Theſe inhabitants in the colonies are daily increaſing in numbers, and may, in courſe of time, be nearly equal to thoſe in the mother-country. They are no more careful than others to call witneſſes to the birth of their children; nor, if they did, could they be able to preſerve them in life for any track of time. Their children depend upon the general ſecurity which the law has given to all mankind, that they are intitled to poſſeſs the ſtate in which they are placed by their parents, and acknowledged by the voice of the country where they were born.

If the birth of ſuch a child ſhould be challenged after he comes to man's age, upon the the devolution, perhaps, of an opulent ſucceſſion, would he be obliged to anſwer ſuch queſtions as have been put to this defender, with reſpect to the houſe where he was born, the perſons preſent, the viſits that were paid to his mother, every ſtep ſhe moved during her pregnancy, and after the delivery? Or, would he be obliged to account for every part of her conduct, why ſhe ſtaid ſo long in one or in another place; why ſhe told a thing to one perſon and not to another, *&c.* or, would

would his failure in giving evidence of any of thoſe circumſtances which happened before he was born, be urged as an objection againſt the birth? Or, would any ſtreſs be laid upon rumours which had been raiſed in Britain, poſſibly by the friends and dependents of a family who was next in ſucceſſion to the eſtate, and anxiouſly wiſhed to have him removed from the competition, even if the origin of theſe rumours could not be traced; far leſs when they are traced, and appear to be founded on falſe allegations and falſe ſuppoſitions, void of any foundation in reaſon or in truth?

If ſuch proceedings were to be allowed, the half of the ſubjects might ſoon be rendered inſecure of their birthright. But as they have never been allowed in the laws of any other country, it is hoped they ſhall not be introduced with us; but the legal ſecurity of the moſt valuable privileges ſhall be tranſmitted to future generations, as compleat as it has been enjoyed in former times.

In the argument upon the proof in this caſe, the natural order ſeems to me to have been inverted. Without attending to the unqueſtionable evidence of the pregnancy, care has been taken, in the firſt place, to muſter

ſter up every difficulty which imagination could ſuggeſt as to the circumſtances attending the delivery; of which, by the death of witneſſes, it is impoſſible, at this diſtance of time, that one half can be proved: And then the pregnancy has been ſlightly paſſed over as a point immaterial and inſufficient to overbalance the ſuſpicions moved to the delivery. But in order to a fair inveſtigation of the caſe, I apprehend we ought to take the fact as it ſtands; and firſt inquire whether there is a full and convincing proof of the pregnancy, and then conſider the evidence of the delivery, which is naturally connected with it.

As to the pregnancy, I muſt bid adieu to all judgment of evidence, if there is not an irrefragable proof brought of it in this caſe. It is not by one or two witneſſes only, which might have been ſufficient *poſt tantum temporis*, but a connected proof by no leſs than nineteen ſeveral witneſſes who depoſe to the many evidences of pregnancy they obſerved during Lady Jane's abode at Aix-la-Chappelle, at Leige, at Rheims, and the ſeveral places through which ſhe paſſed during that period. They are perſons of credit, and intirely diſintereſted in this cauſe. They could not, if they had inclined, have con-

conſpired

conſpired to invent the different gradual appearances which they relate in the ſeveral places and periods of the pregnancy, ſo as to be conſiſtent with one another; and therefore it is impoſſible to avoid giving credit to what they depoſe.

And as to the poſſibility of the witneſſes being deceived by appearances, *firſt*, I think it is hardly poſſible, that ſo many different witneſſes could have all concurred in a deception, as to the various appearance of the pregnancy throughout the different ſtages of it. *Next*, There is one appearance in which there could be no deception, *viz.* the motion of the child felt in the belly, which has been depoſed to by Mrs Glaſs, and is proved to have been alſo atteſted by Madame Tewis at Aix-la-Chappelle, and by Effy Caw, one of Lady Jane's chamber-maids. As theſe two laſt witneſſes died before the commencement of this action, I have no doubt, that the evidence that is given of what they declared while in life will be held as good evidence: It is the beſt that can be had, and it is owing to the purſuers that there can be no better. And as to Mrs Glaſs, to me, ſhe appears to have given the ſtrongeſt evidence of diſtinctneſs and integrity that ever I obſerved in any wit-

 neſs:

neſs: She has been four times examined in this queſtion; firſt before the jury in the ſervice, thereafter twice before commiſſioners appointed by your Lordſhips, at the ſuit of either party; and, laſt of all, in the beginning of this ſeſſion. As it appeared to the court, that her evidence was very material, it was propoſed from the bench, that ſhe ſhould be examined in preſence, that your Lordſhips might have an opportunity to judge of the manner in which ſhe emitted her teſtimony. The examination continued for two days, when ſhe was obliged to anſwer an immenſe number of queſtions put to her by the purſuers, not with a view to diſcover more of the truth, but to lead her, if poſſible, to contradict ſome parts of the evidence ſhe had formerly given. She anſwered every one of them in ſo ſatisfying a manner, as gave me the fulleſt conviction that every thing ſhe has depoſed is moſt ſtrictly agreeable to truth.

As the proof of the pregnancy ſeems to be irreſiſtible; ſo it appeared in the ſame light to Mr Andrew Stuart, the purſuers agent, who acknowledged to Mr Murray at Paris, in preſence of Sir William Stewart, "That he had all the proofs in the world of

"Lady

"Lady Jane's pregnancy, but none of her "delivery."

It has been ſaid, that though the proof of the pregnancy is very ſtrong, yet it is not abſolutely complete; and therefore ought not to be ſuſtained in this caſe. But this is directly contrary to the rules of law already laid down. If the evidence brought of the pregnancy is as ſtrong as could be expected at this diſtance of time, were it not half ſo ſtrong as it is, the law will hold it as complete. The law ſupplies the defect of evidence from the length of poſſeſſion of the *ſtatus*, where the challenge is long delayed, elſe no mortal could have any ſecurity againſt ſuch challenges.

In the preſent caſe, it appears to me impoſſible for any one, who reads the proof, to entertain a doubt of the pregnancy. I muſt believe, that when Lady Jane undertook the journey from Rheims to Paris, ſhe was big-bellied, ſo heavy loaden, that people who ſaw her coming up and down ſtairs could not fail to obſerve it without being told, as appears from the proof; and the queſtion is, What was her errand to Paris? Is ſhe going to buy children from the poor people there? Or is ſhe going to lay down her burden?

Every

Every one will make the anſwer for himſelf. For my part, I am of opinion, that the evidence of the pregnancy, when it is ſo convincing, is of itſelf, *poſt tantum temporis*, a preſumptive evidence of the delivery, as it is not pretended that any miſcarriage happened. When a pregnancy is carried to the laſt ſtage, it muſt reſult either in a miſcarriage or in a delivery, if the mother does not die before the time; and therefore I cannot have any doubt, that if Sir John and Mrs Hewit had been gone before the action commenced, as well as the other witneſſes to the delivery, the purſuers action muſt have been diſmiſſed upon the proof that has been brought of the pregnancy. The poſitive proof by witneſſes muſt neceſſarily fail and decreaſe by length of time; and the law would be deficient, if it did not interpoſe by fortifying the preſumption which naturally ariſes from the beſt proof that can be had at the time when the challenge is brought.

But here Sir John Stewart and Mrs Hewit were both alive, and have been examined by the purſuers in this cauſe, and they have given the moſt diſtinct teſtimony of Lady Jane's delivery in the houſe of Madame le Brun at Paris, upon the 10th of July 1748.

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They have firmly perſiſted in giving the ſame account upon oath after various examinations, which they have undergone at the ſuit of the purſuers. Mrs Glaſs concurs with them in every relative circumſtance that could conſiſt with her knowledge. The oaths given by them are confirmed by letters written by Mrs Hewit to Mrs Glaſs and Effy Caw, whom Lady Jane had left at Rheims, ſome of which are produced and others depoſed to. Thoſe letters could not be contrived for the purpoſe: They were not deſigned to be ſeen; nor could it be foreſeen at ſo diſtant a period that they would tally with the proof now adduced.

WHAT is now oppoſed to this evidence? It is ſaid, that Sir John was the contriver of the fraud, and that Mrs Hewit and Mrs Glaſs were *ſocii criminis*; and that they differ in the accounts they give of the fact; and therefore none of them are to be believed.

THE firſt objection founded on their acceſſion to the ſuppoſed crime reſolves into a *petitio principii*. If Pierre La Marrre and Madame le Brun had been alive, and adduced to give evidence, the ſame objection would have met them as well as every other witneſs who had been preſent at the birth; ſo it reſolves

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into this, that wherever a birth is challenged, no witneſs preſent can be admitted, becauſe preſumed to be all *ſocii criminis*. The purſuer is intitled to diſqualify them merely by his own averment.

WITH reſpect to the diſcrepancies alledged betwixt Sir John and Mrs Hewit, *&c.* they appear to be no other than what muſt ariſe from the natural failure of memory after a diſtance of time. To complain of ſuch diſcrepancies, is to complain that the memory of man is formed as it is; that impreſſions decay after a lapſe of time, and that in circumſtances immaterial, they decay very faſt, as they are little attended to, and take no deep root in the memory; and as this happens in every age, ſo it is much more remarkable in the advanced ſtages of life to which Sir John and Mrs Hewit had attained before they were examined. It would be next to a miracle, if perſons of that age ſhould concur exactly in the minute deſcription of every little circumſtance that had occurred ſixteen or twenty years before. It could not happen without a previous concert; and therefore, in my apprehenſion, ſuch diſcrepancies do not derogate, but rather confirm the truth of what they depoſe.

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An additional evidence alſo occurs from the death-bed declarations of Sir John Stewart and Lady Jane, who, with her dying breath, commended her ſon to the Providence of God, and declared her firm belief that he would take care of him. This kind of evidence is of little weight with many; but I own, it has always appeared to me in a different light. Notwithſtanding the progreſs of infidelity in this age, I take it to be more ſuperficial than real with reſpect to the diſbelief of a future ſtate. I believe there are few ſo hardened in their diſbelief, as to conſign their bodies to the grave in a thorough ſecurity of their future annihilation; or, at the laſt period of their exiſtence, when every other being is evaniſhed from their view, to dare to blaſpheme their Creator, the ſole arbiter of their future happineſs or miſery, as they are plunging into the dark abyſs of eternity. Theſe things ſurpaſs my belief, even where infidelity takes place.

But, in the preſent caſe, it is not alledged that Sir John ever ſhowed any appearance of infidelity or diſregard to religion. And with reſpect to Lady Jane, few inſtances have occurred, where ſuch evidence hath been given of a genuine and deep rooted piety, as few

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where it hath been ſo much put to the trial. A Lady of her high rank and education reduced by misfortunes to a ſtate of the utmoſt poverty and deſtitution, in want of bread to feed her children in the pooreſt manner, loaded with contempt and neglect, caſt off by her brother and all her friends, and her huſband unable, by his ſituation, to give her any aſſiſtance; yet, in this diſmal ſtate, ſhe never loſes a ſight of the goodneſs of divine Providence, and an acquieſcence in his diſpoſal, which ſhe believes to be the wiſeſt and the beſt. This appears from all her letters that have been recovered, which breathe nothing but a firm reliance on God, and reſignation to his will. A piety that ſtands the teſt of ſuch affliction, cannot be ſuſpected of diſguiſe; nor can I believe that a perſon habitually impreſſed with theſe ſentiments, would, after the moſt ſolemn approach to God that religion admits of, and when placed in the immediate view of death, which followed in a few days after, would at that awful period, aver a falſehood in his preſence, and in her laſt moments call upon his Providence to give ſucceſs to her unpardonable crime, and to perpetuate the conſequences of her guilt to ſtare her in the face to all eternity.

If any one can believe theſe things, they may; I muſt own they are to me inconceivable; nor can I avoid, for the ſame reaſon, laying ſtreſs upon Mrs Hewit's teſtimony; ſhe is proved to have been a perſon of ſtrict religion and piety. She lived long in great bodily diſtreſs, and under a near proſpect of death. She underwent ſeveral examinations, and always gave the ſame account of this birth, and adhered to it down to the laſt moments of her life. It does not appear to me that ſhe has declared any thing that is falſe; though ſhe may have fallen into many inaccuracies in the great number of queſtions that were put to her; which is no matter of ſurpriſe, conſidering her great age and infirmities, and the diſtance of time that has elapſed from the period at which the facts happened.

There is another chain of evidence that muſt weigh even with thoſe who do not rely much upon the check ariſing from the impreſſions of a future ſtate. A long ſeries of letters which have been recovered, from Lady Jane to Sir John, to the number of *fifty-ſeven*, and excerpts from above *a hundred* more, with ſundry anſwers ſent to her by Sir John, in which every ſentiment of their hearts is diſcovered to one another, in times of great

poverty and affliction, which was chiefly owing to the exiſtence of theſe children, by which her brother was irritated to withdraw her annuity, and ſhe had no fund left to afford them neceſſary ſubſiſtence. Had all this diſtreſs been originally owing to their own crime, it is hardly poſſible that ſome glimmering of the truth ſhould not have eſcaped throughout ſo long a correſpondence, which was not expected to be ſeen by any other eyes but their own; yet not the ſmalleſt veſtige of that kind appears: No repining word againſt any thing in their paſt conduct, as the occaſion of their diſtreſs: No complaint of the demands ariſing from the expence of the children; but, on the contrary, their whole concern taken up about them alone. Every thing that befals them carefully communicated by Lady Jane to Sir John, with all the affection of a moſt tender parent. When any thing ails them, ſhe is robbed of her reſt and eaſe. Her life is bound up in them; and accordingly, upon the death of the youngeſt, ſhe loſt her ſpirit, broke her heart, and died ſoon after.

If we could ſee into the ſecret thoughts of mens hearts, and diſcover their inmoſt receſſes, no doubt could remain as to their motives.

tives. Nothing can come nearer to this than the diſcovery that has been made: Every letter that paſſed between them, which they believed were never to be ſeen, and every word that paſſed between Lady Jane and her waiting maid, with whom ſhe lived in the moſt entire confidence. This appears from Mrs Glaſs's oath when examined in your Lordſhips preſence. A queſtion was put to her from the bench for that purpoſe, and ſhe depoſed, that ſhe never heard Lady Jane, Sir John, nor Mrs Hewit, repine at the expences occaſioned by the children; nor heard any expreſſion drop from any of them, nor ſaw any thing in their conduct, that led her to ſuſpect the truth of the birth. The reſtraint which the purſuers muſt ſuppoſe, to make this uniformity of conduct during a courſe of years agree with their hypotheſis, is inconſiſtent with nature. This is a real evidence againſt their plan, which I am not able to reſiſt.

It has been ſaid, that the whole account given by Sir John of Pierre la Marre, is now given up by the defender. Sir John ſaid he was a Walloon ſurgeon, whom he had ſeen at Liege in the year 1721, and was introduced to him by Colonel Fontaine; but the La Marre

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now diſcovered was a ſurgeon in Paris, and was no Walloon, but a Frenchman; nor could he have been introduced to Sir John at Liege in 1721, as he was then but ten years old.

But the only miſtake into which Sir John ſeems to have fallen in this account is with reſpect to the year in which he was firſt made acquainted with La Marre; which certainly could not be the year 1721, but muſt have been at ſome later period, when Sir John happened to be abroad. This was a natural miſtake for an old man to fall into, who had been frequently abroad, and did not diſtinguiſh exactly the ſeveral periods of time when he met with one company or another. But there is no reaſon to doubt, that Sir John has been in the right in the other particulars; that he has been introduced to La Marre by Colonel Fontaine, though in a later year than 1721. We ſee by La Marr's books, that there was a connection betwixt him and Colonel Fontaine, which makes this account very probable; and the purſuers themſelves fall into a miſtake, when they blame Sir John for calling La Marre a Walloon. He was born at *Montreuil ſur Mer*; which, though locally in *Piccardy*, lies upon the

the borders of *Artois*, one of the Walloon provinces; and, as Walloons are ſo named from their language, it was as natural to call him a Walloon, as to call one a Yorkſhireman, who had been born on the northſide of the River Tees, which ſeparates that county from Durham.

THE only error, therefore, in Sir John's account of La Marre lies in the time of his firſt acquaintance with him; which was no extraordinary thing in a man of great age, who had been ſo often abroad, and, being called upon in a hurry to anſwer in court, a vaſt number of queſtions, without any previous notice, might eaſily miſtake one year for another. It does not appear to me, that this error can have any effect upon the cauſe; as there is full evidence brought who this La Marre was, and of the occupation he then exerciſed in Paris. It is of no moment to the queſtion in iſſue, whether Sir John became firſt acquainted with him in the year 1721, or in any later year.

AND the evidence, on this head, appears to me ſo connected as to give full conviction, and ſtill the more, that a great part of it came to the knowledge of the defender's doers by mere accident, when they had no

view

view of making ſuch inquiry. In a converſation betwixt the Prince of Turenne and a French phyſician, the Prince told him, that his ſurgeon Mr Menager was acquainted with this affair. Mr Menager being called upon, gives a full account of La Marre, with whom he had been particularly acquainted for a great many years: That he was much employed as an accoucheur in Paris, though not privileged, which was probably the occaſion of his keeping his lodgings ſecret, as mentioned by Sir John; and particularly depoſes, that about ſixteen or ſeventeen years before his examination in 1764, La Marre had told him, that he had delivered a ſtranger Lady of quality of an advanced age of two male-twins, one of whom was very delicate, and entruſted to his care: That the Lady had come from Rheims to Paris; and this was her firſt delivery: That La Marre had a connection with Madame le Brun, who kept one of the lying-in-houſes, to which he recommended thoſe under his care: That this happened in the months of June or July; and it muſt have been in the year 1748. It could not be in the year 1747; becauſe Mr Menager was then along with the army.

THIS is confirmed by Madame Granette, La Marre's ſiſter-in-law, and by Mr Simoneau, and by Mr Giles, another ſurgeon to whom La Marre had alſo communicated this affair. Giles gave preciſely the ſame account of it with Menager, in his firſt converſation with Meſſrs Morand and Moreau: He told diſtinctly of the lady's being delivered of twins in the houſe of Madame le Brun; and that La Marre had the care of one of them, who was at Menilmontain; and this declaration was taken down in writing at his ſight.

BUT, before he was examined by the commiſſioners, his memory appears to have failed as to ſome of the particulars, though he found himſelf ſtill obliged to recollect the general ſtory of La Marre's having told him, that he had brought to bed a foreign lady of diſtinction, of whoſe child he had the charge, and reckoned, if it lived, it would be worth a great deal to him.

THE like accident appears alſo to have happened to Francois La Marre, the brother of Pierre the accoucheur. When he was firſt queſtioned upon this affair, he told the purſuers doers, as well as the defender's, that his brother was acquainted with a Madame le Brun, who lived in the Fauxbourg, St Germain;

Germain; but he afterwards thought fit to retract this upon his examination. Some influence would appear to have had the ſame effect on the memories of thoſe witneſſes, that was aſcribed by the ancient poets to the river *Lethe*.

OTHER evidence, however, remains that cannot be brought to diſſemble or falſify; an article written by Lady Jane's own hand, in her pocket-book, bearing that Sir John had wrote to Monſieur la Marre in September 1749; and letters that were found in La Marre's cuſtody after his death, mentioning the name of *Stewart*, which were burnt by his widow, as appears from a *proces verbal* produced by the purſuers. This pocket-book and letters could not be framed with a view to aſſiſt the defender's plea, and ſtrongly concur to ſupport the connection depoſed to by the above witneſſes.

AND this connection ſeems to be put out of doubt, by the diſcovery which has been made of Madame Garnier, the nurſe of Sholto, which alſo came out in an accidental manner. The account ſhe gives upon oath agrees in ſo many circumſtances with the caſe before us, that it ſeems impoſſible there can be any miſtake in it: She ſays, ſhe received a new-

born

born child from Pierre la Marre; and that he paid her the monthly allowance agreed for regularly as it fell due: That ſhe nurſed the child in the years 1748 and 1749: That it was a foreign child, and one of two twins, both males: That the linens and laces were made after the Engliſh faſhion: That the child was viſited by two gentlemen, one of whom ſpoke with a foreign accent, and was ſuppoſed to be the father: That the child was remarkably puny and weak when firſt brought to her, but grew ſtronger by degrees under her care: That when he was taken away, ſhe was told he was to be carried to a diſtance.

THESE facts are alſo confirmed by the teſtimony of Madame Boucaut, who ſwears that the child appeared to be newly born when brought to be nurſed, and that it was very puny and delicate, of which La Marre told her the reaſon, *viz.* that it was a twin: She alſo gives a deſcription of one of the gentlemen who came to viſit the child, very like to Sir John Stewart; and ſhe declares, that Madame Garnier nurſed the child for ſixteen or ſeventeen months.

THESE things give me full conviction, that La Marre was the accoucheur, and that Garnier was the nurſe of Sholto. It is all the

 evidence

evidence that can be had at this diſtant period of time, to which the purſuers have thought fit to delay their challenge; and it would have been no ſurpriſe if there had not been ſo much. I am not moved by the minute diſcrepancies which have been ſuggeſted by the ingenuity of the purſuers counſel, betwixt the circumſtances told by Menager and Giles, after he had reſolved to vary his firſt declaration; or, by Sir John and Mrs Hewit, ſuch as, with reſpect to the preciſe diſtance betwixt Garnier's houſe and Paris; whether ſhe was previouſly beſpoke by La Marre before the child was given to the nurſe or not; whether her huſband was a quarrier or a farmer, *&c.* Theſe, and many other critical obſervations, with the anſwers to them, have been over and over again laid before your Lordſhips; and to me they prove nothing but what I always knew, that when an inquiry into facts is delayed to a diſtant time, the memories of witneſſes, if honeſt, and not in concert, never fail to differ in minute circumſtances, which make no impreſſion; and any darkneſs ariſing from ſuch diſcrepancies muſt be conſtructed againſt the party who has delayed to bring the challenge, and not againſt the defender, whoſe birth-right has, for all

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that time, remained unquarrelled, and might have found evidence to remove and explain the difficulties, if the challenge had been brought in due time.

It is eaſy for me to conceive, that perſons advanced to the laſt period of life, as Sir John Stewart and Mrs Hewit were, would find their memories deficient in many circumſtances. But it is not eaſy to conceive, that ſuch a coincidence of circumſtances ſhould occur, as have appeared from the oaths of Monſieur Menager and Madame Garnier, and the other witneſſes who concur with them, unleſs the accoucheur of Lady Jane and the nurſe of Sholto had been truly the very perſons deſcribed by Sir John and Mrs Hewit.

The purſuers have broached a very extraordinary ſcheme in order to deſtroy the evidence of Madame Garnier: They will not allow that Sholto was in the poſſeſſion of Sir John or Lady Jane, until he was bought from Sanry in November 1749. This ſcheme appears to me to be abſolutely incredible. Had a *ſuppoſititio partus* been intended, and one child been actually bought in July 1748, as the purſuers ſuppoſe, what could tempt them to give out that they had got two children, when they

they had neither got nor knew of the ſecond for ſixteen months after? Yet, we ſee Lady Jane immediately wrote of the birth of her two ſons to all her friends, to Lady Charles Ker, to Lady Mary Hamilton, to Mrs Hepburn, to Madame Tewis, and to Mr Patrick Haldane. I am not able to perſuade myſelf that this could have happened, if Sholto had not then been actually exiſting and in her hands at the time; or, that ſhe would have deſired Lady Wigton to viſit the child in her way to Paris, and ſend her a particular account of his health, when no ſuch child was in being.

A ſtrong objection has been laid upon Le Brun's houſe, that it has not been pointed out by the defender. I ſee no conſequence from this. There may have been hundreds of widows living in Paris in the year 1748, whoſe houſes could not be pointed out at this day. It is agreed, that Sir John and his whole company ſtaid for nine days at Sedan in their way from Leige to Rheims; and though Sedan is but a ſmall place in reſpect of Paris, yet it has not been in the power of either party, by all their inquiries, to diſcover the landlady with whom they lodged there, nor any perſon who had ſeen her.

And as to what the purſuers undertook to prove, that there was no perſon of the name of Madame le Brun living in the Fauxbourg St Germain in the year 1748: They have apparently failed in it; for, by the proof it appears, that there were no leſs than four or five Madame le Bruns who lived there in the year 1748; although none of them are now to be found, nor any of them inſerted in the police-books. This is full evidence, that, in ſuch a diſtance of time, numbers of people, who actually had their reſidence at Paris, may diſappear, ſo as no accounts can be had of them; nor is there any myſtery in the thing. What number of widows who lived in the year 1748, are, ſince that time, either dead or removed to other places? and is it a wonder, that all their friends and acquaintances cannot now be diſcovered, ſo as to find out the accounts they have given of their ſeveral lodgers? Or can it be pleaded, as ſufficient evidence, that one did not lodge there, becauſe ſuch diſcovery has not been made? This would be plainly to invert the rule of law, and to oblige the defender, who has been ſo long in poſſeſſion of his ſtate, under the higheſt penalty, to bring a proof which has now become

impracticable

impracticable through the delay of the party who is insisting to divest him of his birth-right.

As to Godefroy's books, I can never think that a blank article can be proof of any thing, without further support; and that which is offered in this case from the oaths of Godefroy and his wife, who have adventured to fill up this article from memory, at the distance of seventeen years, has no weight with me; as I do not think such particularizing falls within the compass of any one's memory, far less of two innkeepers, who, as they acknowledge, have, during all that time, been in constant occupation by new returns of company in the way of their business, in so much, that all the rooms of their house, which contained no less than nineteen beds, were generally full, from the beginning of the year to the end of it. Such extraordinary recollection I cannot lay any stress upon; especially as it happened *ex post facto* beyond what occurred to them on their first examination; and, when I consider the dependence such innkeepers are under to the officers of police employed by the pursuers, who have it in their power, on so many occasions to ruin them, this tale, which is contradicted by the other evidence, appears

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to me in no ſtronger light, than a ſtory told by a ſlave at the inſtigation of his maſter.

And as to the two enlevements alledged of the children of Mignon and Sanry, I take the Mignons to be clearly perjured. And the ſtory told by the Sanrys, to be diſproved by the Curée de St Laurent's letter to the lieutenant of police, and the record entered in the police-books in conſequence thereof; from which it appears, that this enlevement did not happen till the end of December 1749, a month after Sir John and his family had left Paris, and ſet out for England; ſo that they could have no concern with it.

Upon the whole, I cannot have any doubt that the defender is the ſon of Lady Jane Douglas; and I ſhould be ſorry to ſee a precedent eſtabliſhed by this court, that might tend to ſhake the ſecurity of the birth-right of the ſubject.

LORD

LORD GARDENSTOUN.

THIS is certainly a very extraordinary caſe; it is a very compaſſionate caſe, in my opinion, and a very ſingular caſe, in this reſpect, that the purſuer, I mean the principal purſuer Duke Hamilton, has nothing to gain, and the defender has every thing to loſe.

I confeſs, I entertained an opinion, that the grounds of law and juſtice, upon which this great queſtion ought to be determined, were ſo clear and certain, that there would hardly be any room for difference in opinion, as to theſe points, among the judges of this ſupreme court: But in this, I now apprehend, I may have been miſtaken; becauſe your Lordſhips have already delivered different opinions as to the principles of law and juſtice on which this important deciſion ought to be founded.

I am ſenſible, that one in my ſituation has reaſon to be jealous and diſtruſtful of his own prepoſſeſſions. I have laboured to form an impartial opinion, and to guard myſelf againſt

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all prepoſſeſſions. I am clear, for the ſatisfaction of my own mind at leaſt, to declare, that the opinion I am now to deliver would have been my opinion, if this caſe, with all its circumſtances, had been ſent from Japan, or any remote nation upon earth, to be judged and determined here; and, without any further preamble or going about the buſh, I declare my opinion for the defender in this cauſe.

I am not to beat the wide and almoſt boundleſs field of evidence and argument contained in the bulky volumes before us; I propoſe only to ſtate ſuch circumſtances as appear to me to be material on either ſide, and ſuch arguments as have determined my own opinion.

BEFORE I proceed to touch the proofs, I will take the liberty to offer ſome few preliminary obſervations, which ſeem to me of great importance in judging this cauſe, and in balancing this evidence.

I muſt freely ſay, that I think it is a capital error to hold, that, in judging this cauſe, there are no principles of law, no rules of evidence to guide or direct us: That it is a mere queſtion of fact, and we muſt determine according to our ſeveral apprehenſions

of the moſt probable or convincing evidence on either ſide. In all queſtions of fact, eſpecially in a queſtion of this nature concerning birth-right, there are certain principles of law, certain rules of evidence, which have been adopted and digeſted by wiſe and impartial lawyers for the general ſecurity of mankind. Theſe we are bound to regard, and to apply with our beſt judgment to every particular caſe; otherwiſe the rights of men in ſociety will become uncertain; the power of judges will be arbitrary; a door will be open to partial deciſions in the greateſt as well as in the leaſt intereſting queſtions, and fancy or prepoſſeſſion may eaſily get the better of judicial rectitude. If this doctrine ſhall prevail, that we are not to regard any principles of law, or rules of evidence, in the determination of ſuch a cauſe, it is in vain that men who are raiſed to be ſupreme judges, have been trained with labour and expence to the erudition of law, that they have been taught the various principles and rules which muſt regulate different caſes for the general good, the ſafety and peace of nations and families combined in ſociety. At this rate, it is in vain that great lawyers and judges have compoſed volumes, or that we have ſtudied

thoſe

thoſe volumes on the nature and rules of evidence; for one great chapter in every book, or ſyſtem of law, is upon this ſubject of evidence *de probationibus*. Knowledge in the principles of law is peculiarly neceſſary to determine queſtions of birth-right; and for this reaſon, it is eſtabliſhed in the conſtitution of this country, that though in ordinary caſes ſervices are conducted before juries, and the right of birth is determined by their verdict; yet in difficult or uncommon caſes theſe ſervices proceed under the direction of this court; and in all caſes of birth-right, the verdict of the jury is ſubject to review, and may be ſet aſide by the judgment of this ſupreme court of law.

I therefore hold it as a ſacred part of my duty, in forming a judgment of this great queſtion, to borrow light, as far as I can, from the principles of law formed by wiſe men, and received by civilized nations, with no partial view to particular caſes, but with a general view to the good and ſafety of all men in ſociety: And as the foundation of my opinion in the preſent caſe, upon many great authorities which I have read, and which have been partly quoted to us, I lay down this propoſition, and hold as undoubted, That

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where a perſon has been acknowledged and entertained as the lawful child of certain parents, from infancy to a ſtate of manhood, where he has always paſſed by their name, and has been treated by the ſociety where he reſides in that character, he cannot be deprived of the birth-right which he derives from this *tractatus*, as the lawyers term it, without the moſt clear and concluſive evidence that he is not the child of the perſons who have ſo entertained and brought him up, but that he is the child of a different father, or of different parents. I agree to what was argued by one of your Lordſhips, that the defender's ſervice makes no odds in this caſe; that we ſit here as a grand jury, to review the ſentence of the former jury; and that we muſt judge and determine this queſtion on the ſame principles, and in the ſame manner as if it had originally come before us. But I do hold this to be a fundamental principle of a right judgement in the caſe, That the defender cannot be deprived of his birth-right, eſtabliſhed by acknowledgement of parents and long poſſeſſion, without the moſt clear and concluſive proofs. There muſt be no uncertainty, no room for computation of chances, with which the purſuers have entertained us; it

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muſt not be a dark caſe; it muſt be a clear caſe.

THIS propoſition, which appears to me of great importance in the preſent caſe, and in all queſtions of this nature, ſeems to be founded equally on the plain principles of humanity, of expediency, and upon the general principles of law and of juſtice, as well as the particular and direct authorities of lawyers, which I will not repeat from the defender's information.

THAT it is founded on the principles of humanity, every human breaſt muſt feel, when the preſent caſe is conſidered. It is no misfortune to be born in meanneſs or poverty of circumſtances; the world is all before ſuch men, where to buſtle and advance themſelves; and in my mind, he is more an object of envy, he enjoys life better, who raiſes himſelf by gradual and uncertain ſteps, he who advances himſelf to eminence or affluence by his own induſtry, merit, or good fortune, than he who poſſeſſes wealth or rank in the world by mere prerogative of birth. But the caſe before us is very different from either of theſe. Nothing in the hiſtory of mankind, or even in the fictions of romance, can more ſtrongly move compaſſion than to ſee an innocent child, trained

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up from infancy to manhood as the right heir of a noble family and a princely fortune, to ſee him ſtripped of theſe honours and of theſe rights without any fault or blame, to ſee him raiſed on the pinacles of life, and flung like a criminal, upon the hard level of the earth. This affords an object tragical indeed! And I may venture to ſay, that were the proofs ever ſo clear, certain, and concluſive, juſtice cannot inflict a harder ſtroke, nor can judges, compelled by irreſiſtible neceſſity of juſtice, give the blow without feeling the ſevereſt pangs of ſorrow.

That the proofs in ſuch caſes muſt be clear, certain, and concluſive, is alſo founded in the principles of expediency; But as this has already been well explained by ſome of your Lordſhips, I will not enlarge upon this point. It is manifeſt, public utility evidently requires, that judges adhere ſacredly to this principle; the quiet of families, the peace and ſecurity of crowns and kingdoms, are intereſted in it.

3dly, This principle is laid down by the greateſt lawyers in all nations, and is ſtrongly founded in juſtice. All ſound lawyers agree in this rule of evidence, that groſs frauds, eſpecially if charged againſt perſons of good

fame

fame or diſtinction, can only be proved *indidiciis indubitatis et luce clarioribus.* I cannot find Engliſh words ſtrong enough to expreſs the force of this maxim. If this rule of evidence holds in defence of a party charged as guilty of any groſs fraud, how much more muſt it hold, where the party againſt whom the challenge is brought is undoubtedly innocent, and againſt whom there can be no ſuſpicion of guilt. No lawyer ever diſputed, I am confident none of your Lordſhips entertain a doubt, that this rule of evidence holds univerſally in another queſtion of birth-right, which more frequently occurs in the world; I mean, in the queſtion of baſtardy. Though a man ſhould diſown the child of his wife; yet he is held to be the legal father, unleſs the moſt clear, certain, and concluſive evidence can be brought, that the child was begotten by a different father; in ſhort, the moſt convincing proofs to the minds of private men, who judge not by the principle of law, but by their own notions, of what may moſt probably be the matter of fact, will not ſerve. There muſt be an abſolute and natural impoſſibility, that the huſband is the father, otherways he is held to be the father, and the child's birth-right is ſecure up-

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on the ſame principles of law, expediency, and humanity, which I now maintain. It ſeems, therefore, to be a rule of law, demonſtrably certain, the obſervance of it, is of the utmoſt importance to mankind, That he who challenges a birth-right, which has been acknowledged by parents, and poſſeſſed for any conſiderable time by the child, muſt prove his challenge by unexceptionable, clear, and concluſive evidence. The *onus probandi* not only lies upon him, but the nature of his evidence muſt admit of no ambiguity or uncertainty. The laws of this, and all civilized nations, founded on wiſe and general views, for the quiet and ſecurity of families and individuals, give much ſtronger and greater effects to innocent poſſeſſion, even of the rights of other men. Undiſturbed poſſeſſion for forty years, by the laws of this country, will transfer the right of any man's land-eſtate to the poſſeſſor. The various ſhort preſcriptions of three, five, ten, and twenty years, are founded on the ſame principles. *Bona fide* poſſeſſion gives a man abſolute right to the rents and profits which he reaps from another man's property during that poſſeſſion; and by the laws in France, in the caſe now under conſideration, of an alledged ſuppoſi-

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tion of birth, a man's birth-right cannot be challenged after twenty years poſſeſſion, tho' it could be diſproved by the moſt clear and concluſive evidence. It has been argued indeed, and ſome of your Lordſhips ſeem to regard the argument, that, in this caſe, the poſſeſſion has been interrupted. But how has it been interrupted? By ſurmiſes, doubts, and ſuſpicions artfully raiſed. The origin of theſe ſuſpicions has been traced by the cleareſt evidence. I do not underſtand this ſort of interruption; as a judge, I cannot regard it; I think it can have no effect in law. God forbid, that the rights of poſſeſſion, undiſturbed by any legal act, ſhould be affected by intereſted or malicious ſuſpicions, or by mere ſurmiſes of any kind! If this ſort of interruption hold in the preſent caſe, it muſt alſo hold in the other ſpecies of controverted births, which I have mentioned in the caſe of baſtardy. There is no ſenſible diſtinction between thoſe caſes, no ſolid ground to vary the principles on which they are to be decided. Since the beginning of this wicked world, it has often happened, that the real, the natural father, and the legal father, are two very different perſons. The one may have been a King, the other a

 prieſt;

prieſt; the one may have been a lord, the other a ſquire of very humble note. It has much oftener happened, that miſguided jealouſy, or malicious ſcandal, has blotted the fame of innocent ladies. But without reaſoning upon this matter, would any court of juſtice, or ſhall we allow parties to rake up ſurmiſes and doubts, the talk of idle men at their cups, or of women at their tea-tables, to take away or diminiſh the legal effect of public poſſeſſion, or the acknowledgement of parents in ſuch caſes?

Having thus explained my thoughts at ſome length, upon this important propoſition, concerning the nature of legal and ſufficient proofs in ſuch caſes; I have only two other preliminary obſervations to offer, which I ſhall touch with greater brevity.

My *ſecond* propoſition I lay down, without argument, as it ſeems to be ſelf-evident and inconteſtable. It is this, That as this challenge of birth-right was not recently offered, but is now attempted at the diſtance of ſo many years, common juſtice will not permit that the defender ſuffer any diſadvantage by this delay. Every dark or uncertain circumſtance muſt be favourably interpreted for him; and moſt particularly, we muſt

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hold, that the evidence of what perſons, who are now dead, reported when alive, ſhall be regarded as living evidence; and, under this propoſition, I hold, that Madame Tewis, Effy Caw, and Pierre la Marre, are to be regarded as living witneſſes, in ſo far as there is credible teſtimony of what they ſaid when alive, touching the pregnancy or birth in queſtion.

I have a *third* preliminary obſervation to offer, which alſo ſeems to me of great importance in forming a right judgement of this cauſe. I ſee nothing done on the part of the defender, no illegal or improper ſtep taken to hurt his defence, or leſſen the credit of his evidence: But, on the other hand, I ſee a moſt weighty and ſolid objection which reaches a great part of the proofs for the purſuers. In ſhort, the Tournelle proceſs, and the Monitoire, were, in my opinion, moſt improper and illegal proceedings. But, before I go any farther in my obſervations upon this matter, I muſt avow, that I feel myſelf under the ſtrongeſt calls of truth and candour to declare, that I do not blame Mr Andrew Stuart for theſe proceedings. I am convinced that he acted from principles of integrity and good intention. I do regard and

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eſteem him as a man of honour. But what could he do in ſuch circumſtances as he was engaged in? Employed by Duke Hamilton's tutors, he went over to Paris, an utter ſtranger, and uninſtructed in one word of their language; though being of quick parts, he ſoon acquired it. He was not then in a ſituation to plan meaſures, or to proſecute inquiries by his own direction; and was therefore obliged to commit the whole management to French agents and lawyers. To magnify their merit, and from manifeſt views of profit to themſelves, among other unjuſtifiable meaſures, they adviſed and carried on this Tournelle proceſs, which can be conſidered in no other light than as an undue practice on the witneſſes. In this country, a ſimilar management would deſtroy the credit of any witneſſes, and draw the ſevereſt cenſures on the authors of it. This private and partial examination of material witneſſes upon oath, by the agents of one party, before a fair and judicial examination by both parties could be obtained, was a manifeſt mal-practice, and more prejudicial to a fair diſcovery of truth than ſuch a private examination in this country could have been; becauſe their oaths ſo illegally taken, and

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under ſuch an unfair examination, were conſidered in France as judicial oaths and legal evidence, which could not be cancelled. This was an indirect practice, which is always worſe and more dangerous than direct wrong. The pretence was, to try and puniſh Sir John Stewart and Mrs Hewit. A pretence manifeſtly falſe and affected. The real intention could not, in the nature of things, be any thing elſe but to tie the witneſſes by oaths to a tale which had been drawn from them under private and partial examination, by intereſted agents of one party. It is impoſſible to juſtify this proceeding, on pretence, that this was a fair trial and examination according to the laws and conſtitution of France. The laws of France, nor of any other nation would not have permitted ſuch a fictitious trial, if the civil queſtion had depended at the ſame time before their ſovereign courts. The trial was not a fair public trial; it was a contrivance of private agents, to anſwer moſt unlawful purpoſes. In this light were theſe proceedings conſidered in this court, and in the laſt reſort. When my ſentiments are expreſſed by abler or wiſer men than myſelf, I chuſe rather to uſe their words than my own. I remember well a ſtrong and

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ſignificant expreſſion from the chair, when thoſe proceedings were long ago under conſideration, " That this Tournelle proceſs " would hang like a milſtone about the necks " of the purſuers." And, without pretending to the ſpirit of prophecy, I do verily believe that it will ultimately prove ſo. I ſhall never forget what was ſaid by two great perſons upon this ſubject in a higher court. I well remember theſe remarkable words: " In " vain are judges wiſe and upright, if the " channels of juſtice are corrupted." The channels of juſtice were corrupted by theſe indirect Tournelle proceedings. The following words dwell upon my memory diſtinctly to this day: " I am loath to treat with any " diſreſpect the laws or conſtitutions of fo- " reign nations; but this I will ſay, that if " there was a bridge from Calais to Dover for " the Tournelle to walk over, I would fly to " the *ultima thule*."

THERE never was ſuch a Monitoire ſeen in France, except in the infamous caſe of Calas, which proved fatal to an innocent family. In this caſe, it was plainly calculated to inſtruct low witneſſes what evidence would ſerve, by minute and unneceſſary deſcriptions of perſons, places, and circumſtances, and to

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inflame the minds of all people, by declamatory ſtyle and falſe averments, that the crime of ſuppoſition was already clearly proved.

HAVING premiſed theſe general obſervations, which appear to me of great importance in forming a right judgement of this cauſe, I ſhall now proceed to offer my thoughts upon what ſeems moſt material in the evidence adduced by either party, and that with all poſſible brevity.

FROM the propoſition which I have aſſerted, and I think clearly proved, concerning the rule of evidence in ſuch caſes, I infer, that the proper ſtate of the queſtion is, If in this caſe there is a clear and concluſive proof of the ſuppoſition; can I lay my hand on my heart, and pronounce that the proofs are clear, certain, and concluſive? I declare I cannot: On the contrary, I think the proofs are very ſtrong on the part of the defender, and very ſufficient to maintain his right.

THE evidence adduced to prove the defender's filiation, if we allow it to be a credible evidence, is as ſtrong and ſufficient as can be expected in any ſuch caſe, where the lady is brought to bed in a foreign country, and the inquiry is made at ſo late a period. I ſhall firſt ſtate a ſummary of this evidence;

I ſhall then offer ſome obſervations on the force, connection, and credibility of it; and, laſtly, I ſhall deliver my thoughts on the objections to it, founded on the contrary evidence.

It is clearly proved, that Lady Jane, tho' advanced in years, was in that condition which infallibly denotes a capacity to have children. It is impoſſible there can be a more direct and poſitive proof of pregnancy, not by external appearances only, which muſt attend a real pregnancy, though, no doubt, they may be artificial and eaſily counterfeited; but this pregnancy is directly proved by inſpection, examination, and feeling of the perſon. The actual delivery is proved by two direct witneſſes called by the purſuers themſelves. Their evidence is confirmed by ſtrong collateral circumſtances, depoſed to by Doctor Menager, by the nurſe Garnier, by Madame La Marre's ſiſter, and by the books of La Marre, which prove an intercourſe between him and Madame le Brun. As the gradual progreſs of the pregnancy is proved, ſo is the gradual convaleſcence after the period of delivery. It is proved, that Lady Jane and Sir John entertained and brought up theſe children as their lawful children,

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and that they treated them, on all occaſions, with the moſt paſſionate and unaffected fondneſs. It is proved, (a circumſtance of irreſiſtible force), that in their private correſpondence for a courſe of years, they both expreſſed the moſt uniform, the moſt warm and tender concern for theſe children as their lawful children. It is proved, that the youngeſt of theſe children was the very picture of Lady Jane: That ſhe broke her heart with grief when he died: That, in her laſt moments, ſhe poured forth the moſt fervent wiſhes and prayers of a fond mother, and of a pious perſon, for the defender, as her only ſurviving child; and that Sir John, in his laſt moments, ſolemnly declared and affirmed the truth of the birth.

I ſhall now offer ſome obſervations on the material parts of this evidence.

Mrs Hewit's direct evidence of the pregnancy is confirmed by other witneſſes, of whoſe credibility there is no juſt ſuſpicion. The two maid-ſervants affirm the pregnancy as a matter of fact, upon the teſtimony of their ſight and feeling. It is proved, that they were the perſons who put her to bed and attended her at her riſing out of it. Iſabel Walker, a perſon of unblemiſhed cha-

racter, ſwears, upon repeated examinations, that ſhe ſaw her breaſts and belly very big: That ſhe ſhifted her and dreſſed her: That ſhe found her with live child. It is proved, that Effy Caw gave accounts to the ſame purpoſe when alive; and her evidence is the more credible, as ſhe quitted Lady Jane's ſervice from ſome diſpleaſure. Other credible perſons concur in giving direct evidence of the pregnancy without the leaſt ambiguity. Such are the teſtimonies of Madame Tewis, Mrs Hepburn, Madame Obain, Miſs Primroſe, and the Abbé Hibert. I can have no doubt, that pregnancy, like any other matter of fact, may be proved, to a moral certainty, and by evidence which will be a juſt and legal ground of belief. This I hold upon the authority of our law and of our practice. We have ſeen various inſtances of ſuch proofs in caſes of women condemned. The inſpection and report of ſkilful perſons is credited by the judges. It is the ground upon which they reſpite execution; and I never heard of any inſtance where ſuch reports have been found to proceed on a miſtake. The ſame proof was allowed and received in the civil law; as we find in the title *de inſpiciendo ventre.* An inſpection was appointed, and the eſtate, in

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the mean time, was put under adminiſtration for the benefit of the heir *in utero.* If then this matter is capable of a proof, it ſeems impoſſible, that there can be a more natural or credible evidence of pregnancy in the circumſtances of ſuch a caſe. When a lady is travelling in a foreign country, her pregnancy may be obſerved or overlooked by mere ſtrangers. By them it may be forgotten, or faintly remembered, after ſo great a diſtance of time: But her attendants, her domeſtics, her friends, either occaſionally contracted or by older connection and intimacy, perſons who knew the importance of the birth, would naturally make the cloſeſt obſervations, and hold it in remembrance. Such is the nature of the evidence in this caſe; and ſurely it is a credible evidence.

THE pregnancy being thus eſtabliſhed, gives force and credit to the proof of actual birth. I muſt transfer it to that article, and hold it as a concurring evidence of the actual birth. The ſtrongeſt of all natural and rational preſumptions is, that a woman who is certainly with child muſt certainly be delivered, if there is no pretence of a miſcarriage; and there is none in this caſe.

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THE actual birth is directly proved by Sir John Stewart and Mrs Hewit, witneſſes called by the purſuers themſelves.

THIS direct evidence is confirmed by a ſeries of correſponding circumſtances, depoſed to by the moſt credible witneſſes, or atteſted by writings which are admitted to be genuine.

DR MENAGER is a moſt unexceptionable witneſs. He is a gentleman of fair reputation; he made the firſt diſcovery to Mr Andrew Stuart himſelf; and, upon different occaſions, mentioned the material circumſtances to which he has depoſed, before he had any intercourſe or converſation with the mananagers and agents for the defender. His evidence is ſtriking. He was intimately acquainted with La Marre; ſays he was a man-midwife of good ſkill and practice: That La Marre ſeveral times mentioned to him as a ſingular caſe, the delivery of a foreign Lady in the 1748 at Paris: That the Lady was advanced in years: That ſhe came laſt from Rheims: That ſhe was brought to bed of twins: That he expected ſome time or other to have better payment than he had received: That one of the children was delicate, and was ſent to nurſe in the country, near Paris,

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and under his charge. This evidence concurs, in every material circumſtance, with the account given by Sir John; and as the inquiry is brought, at ſo remote a period of time, and after La Marre's death, I think it ſtrongly confirms the truth of Sir John's ſtory.

THE nurſe Garnier's evidence is alſo ſtrongly correſponding. She ſays, that about the time which anſwers to Lady Jane's delivery, a twin-child was brought to her to be nurſed: That he was a delicate child: That a ſtranger, whom ſhe believed to be the father, made viſits to him; and that this child was left under the care and charge of La Marre. At this time, ſhe lived in a village near Paris. By Sir John's account, the youngeſt child Sholto, being in a delicate and dangerous ſtate of health, was ſent to a nurſe who lived in a village near Paris, and was left under the care of La Marre: That ſuch a child, anſwering to the deſcription of Sholto, was kept and nurſed by Garnier at this very period, reſts not upon her evidence alone; it is confirmed by the teſtimony of her neighbours. If this child was not Sholto, the youngeſt twin, it is a thing altogether incredible, that the purſuers, with all the aids of their police, their Tour-

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nelle proceedings, and their Monitoire, would have failed to diſcover the true hiſtory of this child, and to make it appear, that he was the child of ſome other perſon.

The evidence of Madame la Marre's ſiſter, confirms the credibility of this evidence, that the child nurſed by Garnier was the youngeſt twin Sholto; and La Marre's books prove, that he was in the intercourſe of buſineſs with a woman of the name of Le Brun, in whoſe houſe the birth happened.

But the ſtrongeſt of all circumſtances to confirm the truth and reality of the birth, as depoſed to by Sir John and Mrs Hewit, are theſe: The ſtriking likeneſs of Sholto to Lady Jane; the affectionate behaviour of the parents on all occaſions; their private correſpondence, and their dying words.

Is it credible, that ſo many undeniable circumſtances tending to prove the truth of this direct evidence ſhould concur to ſupport a falſehood? Can we believe, that they picked up in the ſtreets of Paris, a child who anſwered exactly to the deſcription which they had always given of the youngeſt child left near Paris; and that this child ſhould, in the opinion of every perſon who ſaw him, prove to

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be the very picture of Lady Jane? During the whole courſe of their lives, from the time they brought theſe children to Britain, they were the objects of their care, and their only conſolation in various misfortunes and diſtreſſes. It is proved, that on every occaſion, Sir John acted as a moſt affectionate father, Lady Jane as an aſſiduous and paſſionately fond mother. It is hard to believe, that they could have kept on the maſk ſo conſtantly. They ſay indeed, that Lady Jane could diſſemble and play the hypocrite. If we were even to allow that theſe public teſtimonies of affection might have been artificial and affected; yet, it ſeems impoſſible to believe that this diſſimulation was carried on in a *correſpondence between them as ſecret as converſation itſelf.* Can I believe that Lady Jane played the hypocrite, when ſhe broke her heart for the loſs of her child Sholto? It is impoſſible to read the deſcription which Mrs M'Crabbie gives of her affection upon the news of Sholto's death, and to doubt that ſhe acted and behaved in the true and real character of a *diſtreſſed mother.* I know what hypocriſy is: It is a public profeſſion of piety or innocence, to cover private villainy or vice, or diſcredit the imputations of them. But that a confederate in a

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criminal courſe of life ſhould, in her moſt private communications with the very aſſociate of her crimes, breathe ſuch conſtant ſtrains of truth and innocence, ſuch continued expreſſions of love and maternal fondneſs for theſe children, is a thing unprecedented; a thing out of all nature and credibility. Nor can any one who knew Lady Jane perſonally, or by character, believe, that ſhe could affront Heaven in her laſt moments by falſe and diſſembled fondneſs to the ſurviving child, or by hypocritical prayers in the character of a true mother. There have indeed been inſtances of real criminals who have falſely profeſſed innocence to the laſt moments of a public execution, from various motives that might be accounted for. But the circumſtances in which Lady Jane died were very different. In her own chamber, in the private bed of death, ſhe was diſcovered by ſurpriſe in the laſt acts of devotion; and her prayers were directed to Heaven alone, to ſave and protect her only ſurviving child. Even ſetting aſide ſentiments of religion, nature will not ſuffer us to believe that this was hypocriſy.

THUS we have a ſtrong connected chain of direct and circumſtantial evidence to ſupport the

the defender's filiation, and maintain his defence. I ſhall now conſider the moſt material circumſtances and articles of proof, from which the purſuers are obliged to maintain a very bold and ſtrange propoſition, that all this evidence on the part of the defender is falſe and incredible.

Upon this head, I do agree to an obſervation made by ſome of your Lordſhips, that in conſidering the force of a circumſtantial evidence, we are to connect the whole circumſtances and weigh them together. But good ſenſe directs, and the nature of things requires, that we firſt conſider well the circumſtances ſeparately, before we can put them into the balance, or connect them with propriety; otherwiſe we ſhall be in great danger of misjudging, of allowing weight to evidence which is of no moment, or, perhaps, throwing pieces of evidence into the wrong ſcale. In ſumming numbers, we muſt not ſet down a figure where a cypher ſhould be. In weighing evidence, we muſt not put a circumſtance into the chain or to the balance, which, fairly and ſolidly conſidered, is in its nature light, uncertain, or of no conſideration. In ſhort, we muſt fairly eſtimate every particular before we give it a place in the total evidence; and we muſt be particularly cautious, leſt ſuſpi-

cions miſlead us to put a falſe conſtruction upon circumſtances. Like the jaundiced eye, ſuſpicion diſcolours the natural complection of circumſtances, and we muſt guard againſt it in judging.

I have laboured to form an impartial judgement of the circumſtances urged by the purſuers in this cauſe, and I muſt fairly and honeſtly confeſs, that there are ſome of theſe circumſtances, which, in my judgement, have no ſolid weight; and there are other circumſtances which I cannot treat as trivial or of no moment. I do not ſit here to plead cauſes, but to form a ſincere opinion, to the beſt of my judgement, on all matters before us, and to deliver that opinion with freedom, and without reſpect to perſons or parties. I ſhall therefore freely and plainly endeavour to ſtate theſe two claſſes of circumſtances, as they truly appear in my judgement.

THE *firſt*, and I think the moſt material article of the purſuers proof, is the evidence of Godefroy's books, as confirmed by himſelf and his wife. If we give credit to this article, it proves at once, that the whole ſtory of a real pregnancy and of a birth was falſe. Sir John, Lady Jane, and Mrs Hewit concur, from firſt to laſt, in affirming, that ſhe was

brought

brought to bed on the 10th of July in the houſe of Madame le Brun; but if Godefroy's books deſerve credit, the fact is, that they all continued to reſide in the houſe of Godefroy down to the 13th of July.

I own I can give no credit to this piece of evidence. In my conſcience, I believe it is falſe or erroneous, when I conſider the weight of evidence in the balance againſt it: And I will give reaſons which are fully ſatisfactory to my mind for rejecting this piece of evidence altogether. In the *firſt* place, with regard to this ſpecies of evidence, the nature of it is not very promiſing; nor does it ſeem to claim the infallibility which the purſuers aſcribe to it. A tavern-reckoning at the diſtance of near 20 years, extracted from books which are clearly proved to be full of razures, inaccuracies, blanks, and confuſions. It was material for a juſt defence and fair trial of this great queſtion, that theſe books, on which the purſuers found, as containing concluſive evidence of the impoſture, ſhould have been produced in court for our inſpection. But we owe this defect, among many others, to the memorable Tournelle proceſs. Theſe books are confined to the Tournelle, and muſt for ever remain there. Their founding on Godefroy's books as evi-

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dence, brings to my remembrance what lately happened: The executors of the noted Mother Douglas brought an action against several gentlemen of distinction, for payment of tavern-bills contracted in her house. We are not to presume that these gentlemen frequented such a house as Mother Douglas's: But even supposing that they took a fancy to go there, we are not to imagine that they would have come off without discharging their reckoning. *Secondly*, The whole evidence for the defender, which appears to me very strong, as I have already stated it, must fall a sacrifice to this single article, if it is true; a degree of credit I can never bestow on these books, nor on the testimonies of Monsieur Godefroy and his wife. *Thirdly*, Michell's book, his *livre de logeurs*, is allowed by the pursuers themselves to be erroneous, though he and his wife swear as positively to the verity of it as Godefroy and his wife have done to their book. Michell's book, as attested by the evidence of himself and his wife, bears the entry of Sir John and his family, at their house on the 8th of July, and that they continued in their house till their departure from Paris. I could never conceive how the pursuers should persuade us, that we must ascribe

infallibility

infallibility to Godefroy's *livre de depenſe*, and yet be ſatisfied, that the books of Michell, equally atteſted, are erroneous. It is clear to me, that of the two books, Michell's *livre de logeurs* has the beſt claim to credit; for this obvious reaſon, that, in the bill or reckoning of meat and drink furniſhed to ſtrangers for a few days, the dates are of no moment. If the articles are rightly ſtated, neither the land-lord nor gueſts have any intereſt to advert, if the dates are ſtated at all, or if they are accurately ſtated. But Michell's was a lodging-houſe; and as the payment of lodging is meaſured by the time, the date in that book is eſſential. And indeed, I cannot help obſerving, as a thing very ſingular in the conduct of the purſuers agents, that, for ſome time, they perſiſted in maintaining, that Michell's books were the moſt credible, and affirmed upon their authority, that Sir John and his family remained in Michell's houſe from the 8th of July, to their departure from Paris, which they held to be concluſive evidence, that Lady Jane could not be brought to bed in the houſe of Le Brun upon the 10th of July. But now they chuſe to abandon Michell's books, and aſſert the infallibility of Godefroy's, as

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if they were at liberty to dictate what proofs they would have us to believe. This is really a ſtrange ſort of reaſoning, not unlike the old tricking play of *odds I win, evens you loſe.* *3dly*, The teſtimony of both theſe witneſſes is tainted by the Tournelle proceedings. It is quite incredible, that Godefroy ſhould have remembered ſo many particulars as he mentions, without aid or inſtruction; and I can pay no regard to Madame Godefroy's teſtimony for two reaſons: *1ſt*, She perſevered long, and even in her examination before the Tournelle, in a moſt credible anſwer to all inquiries concerning this matter: That at ſo diſtant a period, and after ſuch a variety of intercourſes in her public way, ſhe could recollect nothing particular concerning theſe ſtrangers. In ſo far, therefore, as I find that on the great day of evidence, when ſhe comes to depoſe as a witneſs in this cauſe, ſhe all at once concurs with her husband in many particulars, to confirm the prodigious memory of her husband: I muſt fairly conclude, that her teſtimony deſerves no regard. *2dly*, Madame Godefroy is ſo far candid as to confeſs, that the blank article in their books is applied to Sir John Stewart and his family by mere conjecture. She owns, that, when

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ſhe applies a blank article in their *livre de depenſe* to a perſon, whom ſhe finds about the ſame time in their *Livre de l' inſpecteur*, it is a mere conjecture and uncertainty; which is ſufficient to diſcredit the evidence of her husband altogether, who preſumes to ſwear poſitively to this application. And this uncertainty of Madame Godefroy takes, from this boaſted piece of evidence, the eſſential characteriſtic of proper or legal evidence, which requires certainty, and admits of no conjecture, or even probability. *Laſtly*, There is another circumſtance which takes away all credit from Godefroy's teſtimony in this matter; he boldly and poſitively ſwears, that a blank account in his books, of articles furniſhed to a company down to the 13th of July, is applicable to Sir John Stewart and his family, and to no other perſons. Yet this is the ſingle inſtance of a blank article in the whole book which he can fill up in this manner, on fair trial, with the aſſiſtance of his *livre de l' inſpecteur*.

I have dwelt upon this piece of evidence, becauſe it is the ſingle article in the whole maſs of proofs which has any appearance of being concluſive. The reſt are detached circumſtances of ſuſpicion, rather than evidence;

dence; and these I come now to consider and treat with greater brevity.

The objection of Lady Jane's age is intirely removed by clear evidence, that she was in that condition which undoubtedly denotes a capacity of having children. The doctors do not differ on this point; they all agree, that women having these marks are undoubtedly in a capacity of having children, without distinction of age. I can therefore just as well believe, that a woman in this condition at fifty may have children, as that a woman at twenty-five may have children. The Roman law says, *Malitia supplet ætatem.* If the natural marks of ability in either sex are apparent, the age is no objection; but persons either under or past the usual age may have children.

The circumstance that Lady Jane concealed her marriage for some time has been put in the scale against the defender; I think without reason. To conceal the marriage as long as possible, was a prudent and rational conduct, from a fear of offending the Duke and losing her pension; an apprehension which the event proved to be well grounded; for the Duke did recal the pension soon after he got intelligence of the marriage.

It

It has always appeared to me inconceivable, that Lady Jane's endeavours to conceal the pregnancy, by wearing a hoop and loose dress, should be used as an argument against the reality of the pregnancy. This endeavour was a natural consequence of her unwillingness to discover the marriage as long as she could possibly conceal it from the knowledge of her brother. The popular opinion, perhaps with reason, is, that hoops were first introduced to hide unlicensed pregnancies: That a woman, who wanted to pass a false pregnancy on the world, should use the stratagem of a woman who wants to conceal a real pregnancy, is quite incredible and unprecedented; for, in the numerous cases quoted, there is no instance of this. And indeed, this seems to be one of those circumstances which is misplaced by the pursuers, and ought to be put in the balance of the defender's evidence; for this endeavour to conceal the appearances of pregnancy is naturally an argument that Lady Jane was conscious of a real pregnancy.

The journey to Paris is fully explained, and rationally accounted for. It was proper to leave Aix-la-Chappele, as the great resort

of the ſeaſon approached. That they did not wait for the permiſſion, which had been applied for, to lie in at a neighbouring great houſe, was certainly prudent, leſt it had not been obtained, or had come too late; as the owner lived at Vienna, and the application was not propoſed in proper time. Chevalier Douglas adviſed them to go to Paris. His advice was good, and thought ſo at that time: It was followed with all proper caution. They made ſhort journies, and long reſts: They ſtaid at Liege, I think, for five days; at Sedan for nine days, and at Rheims for a whole month.

That Lady Jane never called for aſſiſtance of perſons of profeſſed ſkill, either at Aix or on the rout to Paris, is a circumſtance which does not move me in the leaſt. How few of our Scots ladies, even in opulent circumſtances, call for aſſiſtance, if they hold out well to the laſt? Some very fine Engliſh ladies, who are delicate, and always in a fright, muſt have the doctor with them every hour of the day: They may think this circumſtance odd; but, I am ſure, our Scots ladies will not.

The objection, that Madame le Brun, in whoſe houſe Lady Jane is ſaid to have been delivered,

delivered, has never been diſcovered, ſeems to me of no great moment. That La Marre was connected with a woman of that name is proved from his books. It is no matter of wonder that ſhe cannot be found in ſo large a city at this remote period; eſpecially as it is proved, that no aid for this diſcovery could be had from the records; for by the regulations ſhe could neither be found in the police nor in the capitation-rolls. This is not the ſingle inſtance of perſons who cannot now be diſcovered, though they undoubtedly exiſted at that period of time. It is no more a matter of wonder or of evidence on either ſide, that Madame le Brun cannot now be found, than it is matter of wonder or of evidence that no trace can be found of the nurſe who firſt brought the child to Michell's. The coachman cannot be found who drove away the child of Mignon. The purſuers themſelves now admit, and ſay it appears from the evidence, that Sir John and his family were lodged in ſome houſe different either from Godefroy's or Michell's, for at leaſt five days; yet, with all the aids of police, Tournelle, and Monitoire, they have never diſcovered any other houſe where they lodged;

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ſo that, if they were not in the houſe of Madame le Brun, for any thing that appears from the evidence, they were no where: A concluſion which naturally and neceſſarily drives us to believe the evidence of Sir John and Mrs Hewit, that they really were in the houſe of Madame le Brun, though this perſon cannot now be found out.

MANY other circumſtances have been urged againſt the defender as matters of evidence, which appear to me perfectly innocent and inſignificant. The queſtion was aſked, Why did they leave Rheims and go to Paris? But this is really a very ambiguous circumſtance. If they had ſtaid at Rheims, the queſtion might then have been aſked, Why did they not proceed to Paris, where the beſt aſſiſtance could have been had in caſe of danger in the delivery? It was aſked, Why was ſo obſcure a man as La Marre employed in the important office of Lady Jane's delivery? I anſwer, That La Marre was a very reputable man in his profeſſion: And it appears from the evidence of Menager, that his aſſiſtance too was beſpoke in caſe of need. The queſtion was aſked, Why did they ſend away one of the children? Why did they not carry both of them to the houſe of Michell? The anſwer is quite ſimple and ſatisfactory,

tisfactory, That the youngeſt child, being from his birth very delicate and weak, was ſent to the country by the advice of the accoucheur. It was ſaid, Why did not Lady Jane, who is pointed out in the evidence as a moſt tender and affectionate mother, go to viſit her poor ſickly child Sholto during all the time of her ſtay at Paris? I anſwer, It can hardly be doubted that ſhe did make viſits to this child; tho' circumſtances of this nature may not be clearly proved at this time of day: Nor do I remember that this queſtion was put to any of the witneſſes.

I now come to mention, in very few words, another claſs of circumſtances, which I cannot conſider as altogether light or trivial, and which are not ſo well accounted for. I have never heard a good or ſatisfactory reaſon given why the ſervant-maids were left at Rheims. It ſeems ſtrange that the child Sholto was left ſo forelorn at Paris, recommended to no perſon of their acquaintance, excepting La Marre; and yet Sir John ſays he had no certain direction to find him. In ordinary caſes, indeed, it is no unuſual thing that children at nurſe are only ſeen by parents and phyſicians, or domeſticks, till they are brought home: But in the circumſtances of theſe parties, in a

foreign

foreign country, and removed at the diſtance of Rheims from Paris, it was certainly natural that they ſhould deſire friends on the ſpot to look after the child. I cannot help ſtill thinking it is a ſtrange circumſtance, not well accounted for, that, when Lady Jane was informed of ſuſpicions ſtirring concerning the birth of theſe children, ſhe carried her inquiries no further than Aix-la-Chappelle, at a time when the matter was recent, and ſatisfactory atteſtations might have been got from Paris. Sir John's account of La Marre is certainly odd; but I cannot conſider the particular of La Marre's letters in the ſame very unfavourable light as ſome of your Lordſhips have placed them. I cannot ſay, that in my ſenſe of this matter, there is a manifeſt forgery of theſe letters. When Sir John was examined, theſe letters were produced to him; he readily, and in a very natural manner, as I remember, ſaid, Theſe are not the original letters of La Marre; they are copies which were taken at my deſire by ſome perſon at London: Upon further conſideration, indeed, he ſaid, that he thought one or two of them might be originals; but he did not ſay this poſitively: It is, therefore, a very poſſible thing, that Sir John Stewart having been

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importuned by Lady Jane to ſend La Marre's letters to her when in Scotland, Sir John, who was one of the moſt careleſs and irregular men in the world, though a gentlemanny honourable man, may have miſlaid or loſt the true letters, and made up theſe from memory or from copies, to quiet Lady Jane. This, though ſuppoſition only, is as natural, and more conſiſtent with the circumſtances in evidence, and I am ſure it is more charitable, than the ſuppoſition of an actual forgery of letters which never exiſted; for it is in evidence, that Sir John did, upon various occaſions, receive and read letters from La Marre.

Though I allow that thoſe circumſtances are perplexing and not fully accounted for; yet, I muſt ſay, that there are two conſiderations, which, in my opinion, go far to remove the weight of them. In the *firſt* place, I conſider the ſingularity and ſtrange inattention of Sir John's character. One of the worthieſt men who ever gave evidence in any cauſe, I mean Mr Hepburn of Keith, has ſworn to Sir John's character, with a truth and *naivité* that muſt touch every body. He ſwears to the probity and honour of Sir John's character; and adds, "He could re-

"member

" member a joke well; but in other matters " he was apt to commit miſtakes, and to " ſpeak raſhly." Both this gentleman and his lady Mrs Hepburn concur in telling particular inſtances of Sir John's ſtrange inattention and want of memory in things that were not jocular. I muſt conſider Sir John's declaration and the other circumſtances of evidence, having at the ſame time in my mind a juſt impreſſion of his character; I muſt alſo conſider, that Sir John was examined in an unuſual manner, when he was afflicted with the infirmities of age and diſeaſe, without any previous condeſcendence, upon a vaſt variety of facts which had happened at the diſtance of many years. *Secondly*, I am bound to conſider, that as this inquiry is brought at ſo late a period, many circumſtances may now ſeem ſtrange, which would have been eaſily explained and accounted for, if this inquiry had been recently brought; and I am greatly moved with the circumſtance which was obſerved by one of your Lordſhips, concerning the man-ſervant. He was diſmiſſed by Sir John about the time when they left Aix-la-Chappelle, and proceeded on their journey to Paris. This was mentioned by the purſuers as one circumſtance of ſuſpicion; and had it not been explained,

plained, I ſhould certainly have conſidered it in that light: I ſhould certainly have ſet it down in the claſs of circumſtances which ſeem ſtrange, and which I cannot account for. But by mere accident, the wife of this man-ſervant was found out; and it is now in proof, that the fellow had been a deſerter from the French ſervice: That Sir John was unwilling to part with him; but, for the above reaſon, he would not venture to go into France with him.

I ſhall conclude with obſerving, that the defender's caſe will be ſingularly hard in two reſpects, if judgment go againſt him: *1ſt*, It cannot be ſaid, that he had a fair Britiſh trial for his birth-right; for my part, I can never think, that he has had a fair trial. I cannot be ſuſpected to mean any reflection on the proceedings of this court. In this court, he has had a fair and indulgent trial, from the firſt great act of juſtice, by which poſſeſſion of the eſtate was awarded to him, down to this day: But his trial has not been fair, in reſpect of the proſecutors conduct. I confeſs, it ſurpriſed me to hear an obſervation from one of your Lordſhips, that the conduct of the cauſe has no concern with

the merits of it, and that the proceedings of the Tournelle and of the Monitoire are improperly brought under conſideration when we are to determine this great queſtion of birth-right. The conduct of parties and their agents muſt always be conſidered in a queſtion of fact, if any improper means have been uſed to influence the evidence; otherwiſe bribery and downright corruption itſelf would not fall under conſideration when we judge of a proof. In this caſe, the arbitrary engines of France have been uſed to influence and pervert evidence. Theſe engines have been miſuſed; for, in France itſelf, ſuch a fictitious criminal trial could not have been tolerated; nor would they have ſuffered ſuch a Monitoire to have been publiſhed in any cauſe depending before the high courts of Paris. The defender's caſe will be ſingularly hard in another reſpect, that there is no inſtance ſimilar to this among the various caſes of *ſuppoſitio partus* which have been quoted. In theſe caſes, for moſt part, the trial was recently brought. In all of them, where conviction followed, the proof has been direct, clear, and concluſive. In no one caſe has it been found againſt the defender, where

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the proofs were ſuch as occur in this caſe: That a child has been brought up from infancy to manhood: That his birth has been proved by direct teſtimony of two witneſſes, confirmed by ſuch a variety of concurring circumſtances; confirmed by the cleareſt proofs of pregnancy, by inſpection of the moſt private correſpondence of the parents, and by their dying declarations: I am therefore clear for repelling the reaſons of reduction.

LORD

LORD KENNET.

IN this cauſe of great importance and expectation, it is reaſonable, that each of the judges ſhould deliver his opinion, with the reaſons upon which it is founded, for the ſatisfaction of the parties. But it is unneceſſary, and even improper in doing ſo, to go through the great maſs of proof, which lies before your Lordſhips, or to take notice of every argument which has been urged in the cauſe. The plan I have formed for myſelf is, to deliver my opinion, and to mention the chief points upon which it is founded. Several of theſe points have already been mentioned by your Lordſhips, who have ſpoke before me; however, it will ſtill be neceſſary to take notice of them, as the grounds of my opinion. But I ſhall do it as ſhortly as poſſible; becauſe I do not ſpeak with a view to perſuade any of your Lordſhips to embrace the opinion which I have formed; that is a taſk for which I do not think myſelf qualified; and though I were, I would not undertake

dertake it; becauſe it would be more agreeable to me, if thoſe who have formed a contrary opinion could convince me, that I ought to alter mine, as it is for ſuſtaining the reaſons of reduction.

THE points of law which occur in this cauſe, appear to me to be eaſily determined. The *firſt* is, Upon whom does the *onus probandi* lie? As to this, when one claims to be ſerved heir to his predeceſſor, he muſt prove his propinquity; but, in order to eſtabliſh this, no more is neceſſary, than to prove the acknowledgement of his parents, or that he was habit and repute to be their ſon, or habit and repute to be the heir of the perſon to whom he claims to be ſerved. The defender has already proved this in his ſervice, and has alſo done ſo in this proceſs of reduction. But this is not a *probatio probata*. It may be got the better of by contrary evidence; and it lies upon the perſons who object to the ſervice to bring this evidence. The crime of *partus ſuppoſitio* is not a common one; but inſtances of it have occurred; and it would occur more frequently, if perſons acknowledging one to be their ſon, were ſufficient to give him that character. It would, therefore, be dangerous to ſociety, if no contrary proof

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could be allowed of. And, if the acknowledgement of parents, or of ſuch as pretend to be ſo, eſtabliſhes a *præſumptio juris et de jure*, that the perſon ſo acknowledged is really their ſon, your Lordſhips, and the Houſe of Peers have proceeded very improperly in this cauſe, by allowing the purſuers to prove, that the defender was not the ſon of Sir John Stewart and Lady Jane Douglas. For why did you put the parties to the trouble and expence of ſo long a proof, if it can be of no avail after it is brought? The proceſs ought rather to have been diſmiſſed at the beginning. But no lawyer ever maintained ſuch an abſurd propoſition. For, as to this point, the law ſtands thus: That no perſon is bound to bring a direct proof of his birth. It is ſufficient for him to prove the acknowledgement of his parents, or the habit and repute of his being their ſon. This intitles him to that character, until the contrary is proved; and which may be proved by thoſe who have an intereſt. When I eſtabliſh theſe principles, I do not (as was hinted yeſterday) weaken the ſecurity which men have for their birth-rights, nor endanger the ſtate of thoſe who have been born in America, or in the moſt diſtant parts of the globe. For they

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are not obliged to bring a direct proof of their birth; and thoſe who object to it, muſt bring a clear and convincing proof of the impoſture. I do not mean ſuch a proof as convinces every one. It is ſeldom poſſible to bring ſuch a proof; but it muſt appear convincing to thoſe who are for reducing a ſervice.

THESE obſervations remove the objections which have been made againſt the lateneſs of bringing the action. The defender does not ſuffer thereby; becauſe he is not bound to bring a direct proof of his birth, as I have already ſaid; and it commonly will be more eaſy to detect a fraud, when the challenge is recently brought, than at a diſtant period. Happy had it been for this defender, if the purſuers had been more late in bringing their action. For, if Sir John Stewart and Mrs Hewit had been dead before the commencement of it, the reaſons of reduction would not this day have appeared ſo clearly proved. In paſſing, it may be obſerved, that the purſuers had no intereſt to bring the action till after the death of the late Duke of Douglas; for, till a ſhort time before that period, the defender was, by the Duke's ſettlements, excluded from ſucceeding to the eſtate of Douglas.

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The next point to be conſidered, is the kind of evidence which is ſufficient for reducing a ſervice; and as to this, I am of opinion, that direct evidence is not required; but that a circumſtantial proof is ſufficient for that purpoſe. Lawyers who have wrote upon this point of *partus ſuppoſitio*, have expreſsly ſaid ſo; and we have daily inſtances of men being tried for their lives, and condemned, on circumſtantial evidence. Occult crimes can ſeldom be brought to light any other way; and indeed, circumſtantial proofs are as convincing as direct proofs; nay, often more ſo; for in the laſt, there is more hazard of witneſſes conſpiring to ſwear to a falſehood. But, in a circumſtantial proof, where there are a number of witneſſes and circumſtances, having no immediate connection with each other; and yet, all theſe circumſtances pointing towards the ſame center; theſe muſt be fully as convincing, and make as ſtrong an impreſſion upon the minds of judges or juries, as any direct proofs whatever; and, in judging of circumſtantial evidence, the whole circumſtances ought to be taken together; for ſome of them, which may appear trivial by themſelves, may have weight, when joined to others.

I have conſidered and reconſidered the evidence now before us with all poſſible attention. At the outſetting of the cauſe I did believe that the defender was the ſon of Lady Jane Douglas. I had a prejudice in his favour; but it was a legal one. I was unwilling to believe that perſons of Sir John and Lady Jane's rank could be capable of committing the crime laid to their charge. In every caſe, the preſumption is for innocence; I therefore examined the proof brought by the purſuers with the utmoſt jealouſy, and that brought by the defender with the moſt favourable eye; and if, after all, I had entertained any doubt in my own mind, if I had but ſeen a probability that the defender was the ſon of thoſe who acknowledged him for their child, I would have been for aſſoilzieing him from the reduction: For I hold it to be a juſt principle, that it is better that a ſuppoſititious child get this eſtate, than that the ſon of Lady Jane Douglas ſhould be deprived of it. God forbid that this court ſhould diſinherit the ſon of Lady Jane Douglas! God forbid that I ſhould have a hand in diſinheriting the ſon of Lady Jane Douglas. But if it appears to me, as it really does, that the defender is not her ſon, I cannot, from motives of compaſſion,

give him that eſtate which belongs to others.

I come now to conſider the proof, and the *firſt* head of it is the proof of Lady Jane's pregnancy. As to this, it is certainly proved, that ſhe had the appearances of pregnancy; but all ſuch, from the nature of them, are fallacious. Women have often been deceived with reſpect to them; and when an impoſture is intended, they muſt be aſſumed in ſuch a way as to deceive others. Common ſenſe, as well as our law-books, teach this. There is a title in the civil law, *de ventre inſpiciendo*, in which rules are laid down for detecting ſuch frauds. The appearances of pregnancy are ſworn to by many witneſſes, who I imagine have ſworn truly. But why did they think that Lady Jane was with child? They have told us, becauſe ſhe was of a pale complection; that ſhe had frequent reachings and vomings; and on account of her bulk. As to the firſt two, it is proved, that ſhe was naturally pale, and that ſhe had diſorders in her ſtomach. And as to the laſt, ſhe behoved to aſſume the appearance of bulk, in order to carry on a feigned pregnancy. Sir William Stewart and his Lady, who ſaw Lady Jane at Aix-la-Chappelle in 1747, ſay, that they then thought her with child, becauſe

ſhe

ſhe looked pale, and had frequent vomitings; and yet it is admitted, that at this period, ſhe was not with child.

THERE are ſome particulars ſworn to by Mrs Hewit and Tibby Walker, with regard to the pregnancy, which are rather ſuſpicious. They ſay that Lady was ſo unwieldy when at Aix-la-Chappelle, that ſhe behoved to be helped into her bed, and to take the aſſiſtance of a ſtool or box for that purpoſe; and yet afterwards, when ſhe made her journey from thence to Paris by Rheims, ſhe could get into the coach without being lifted up, except only once at her outſetting from Rheims to Paris, yet the ſteps of thoſe machines are proved to be higher than her bed. Another ſuſpicious circumſtance ſworn to by theſe witneſſes, is the vaſt and remarkable bulk of Lady Jane; and yet, ſeveral witneſſes ſay, they did not diſcover, that ſhe was with child. This might be the caſe although ſhe really was ſo; but is not very conſiſtent with the account of the extraordinary bulk which theſe two witneſſes ſay ſhe had.

MRS HEWIT depoſes, that during their ſtay at Rheims before the delivery, Lady Jane ſeldom ſtirred abroad, on account of her unwieldineſs, and never was on the ſtreet but once;

once; and yet Abbé Hibert, who is by no means a ſuſpicious witneſs againſt the defender, ſwears, that he was with Lady Jane every day while ſhe was at Rheims before her going to Paris: That they daily walked out together when the weather would permit, and generally did ſo in a garden, the road to which was through the ſtreet. And Mr Querengal depoſes, That at that time he met Lady Jane three or four times upon the ſtreet. And that ſhe could not be ſo unwieldy as Mrs Hewit repreſented, appears from the oath of the mantuamaker who took her meaſure when at Rheims, and yet did not diſcover her being with child. Mrs Hewit has indeed denied, that any gowns were made or altered for Lady Jane when at Rheims, previous to her going to Paris; but this is diſproved by Tibby Walker, as well as by the mantuamaker; and Mrs Hewit's denying it, is a circumſtance againſt the defender.

The appearances, however, of pregnancy, is the ſtrongeſt part of the proof brought by the defender. And I was once in hopes that it might have been ſufficient for convincing me to form an opinion in his favour, notwithſtanding the other circumſtances proved by the purſuers; becauſe it is not alledged

that

that Lady Jane had a falſe conception, or was herſelf deceived; but that the appearances of pregnancy were aſſumed in order to impoſe upon others. I therefore thought, that if there was a convincing proof of her having a real big belly, it might go far to eſtabliſh a real pregnancy; and conſequently, a real delivery. For this purpoſe, I carefully examined the evidence of thoſe witneſſes who ſay they had acceſs to ſee her without her cloaths. The firſt of theſe is Madame Tewis; But, alas! we have only her declaration, and not her oath; and though people ought to be equally deſirous to tell truth upon a declaration as upon oath; yet, experience ſhows us, that this is not the common opinion of mankind; and therefore, the ſolemnity of oaths has been introduced by all nations, and in every age of the world, in order to diſcover the truth. Beſides, although Madame Tewis had ſworn what ſhe has only declared, I could have paid little regard to her teſtimony; becauſe ſhe has ſaid things which are not credible. She is indeed more modeſt when declaring before the notary; but Sir George Colquhoun and Captain Douglas ſwear, that ſhe declared to them, ſhe had often viſited Lady Jane in the morning before ſhe got

out

out of bed: That ſhe had frequently ſat down upon her bed-ſide, put her hand upon her belly, and found the child or children moving. Now, it cannot be believed, that Lady Jane would allow Madame Tewis to uſe ſuch freedoms with her. And the landladies with whom Lady Jane then lodged have ſworn, that Madame Tewis viſited her ſeldom; and that people did not get acceſs to Lady Jane when in bed. The next witneſs upon this point is Mrs Hepburn. I have no reaſon to ſuſpect her evidence; but ſhe did not ſee enough for aſcertaining that Lady Jane was truly with child. She came into her room one morning at Leige, when Lady Jane was putting on her cloaths, and though not then dreſſed, it would appear from Mrs Hepburn's oath, that ſhe had on a ſhort gown and petty-coats; at leaſt, Mrs Hepburn makes her obſervations from the ſize of Lady Jane's breaſts, and not of her belly; and it ſurely cannot be gathered with certainty from the appearance of her breaſts, that ſhe was with child. Upon this head I was willing to call in to my aſſiſtance the evidence which we have of what was reported by Effy Caw, one of Lady Jane's maids, who died before the commencement of this action. She ſaid, ſhe believed that

Lady

Lady Jane was with child; but ſhe has not ſaid upon what this belief was founded. And it appears from the oath of Tibby Walker, that Effy Caw did not ſee Lady Jane without her cloaths; for ſhe ſwears that ſhe herſelf was the perſon who aſſiſted Lady Jane to get out of bed, and dreſſed her in the morning; and that Effy Caw only aſſiſted to dreſs her before dinner.

The whole of this matter then comes to reſt upon the evidence of Tibby Walker; and I cannot look upon it as proved by this ſingle witneſs, eſpecially as ſhe is a very ſuſpicious one, and has ſworn ſeveral things which are not true; ſuch as the great bulk and unwieldineſs of Lady Jane, her threatening to miſcarry at Retel, and being ſo ill there, that ſhe went immediately to bed upon her arrival at the inn; and that ſhe, Tibby Walker, ſat cloſs by her bed-ſide all night; and yet it is proved, that both Tibby Walker and Effy Caw ſupped that night in the ſame room with the company who had travelled in the coach. She has denied that the mantuamaker took Lady Jane's meaſure at Rheims, though ſhe admits cloaths were altered for her there; and ſhe has ſworn many things in order to ſupport the truth of the letters ſaid to be from Pier la

Marre,

Marre, though it is proved they are forged; and ſhe has ſworn, that the laſt of them, which is dated in the 1752, was received by Sir John when ſtaying in Mr Murray's houſe in London, though it is certain he left that houſe in 1751; and what ſhe ſwears with reſpect to the converſation betwixt Lady Jane Douglas and the then Lord Advocate in 1752, is very ſuſpicious. Upon the whole, therefore, there is no proof of pregnancy ſufficient for getting the better of the circumſtances which have been proved by the purſuers, in order to eſtabliſh the impoſture: But, on the contrary, ſome of the proofs with reſpect to the pregnancy tend to create ſuſpicions of its not being a real one.

THERE are ſome ſuſpicious circumſtances in proof previous to Lady Jane's going to Paris; ſuch as her different pretences for leaving Aix-la-Chappelle, different places of deſtination mentioned, when about to leave it, and the falſe pretence for leaving Rheims on account of not having proper aſſiſtance there for her delivery; which I only juſt mention, becauſe they have already been taken notice of by ſome of your Lordſhips. But there is one circumſtance, which has not been mentioned,

tioned, and appears to me of weight; namely, That Madame Tewis, when ſhe believed Lady Jane to be with child, propoſed, by the aſſiſtance of her couſin, to obtain leave for Lady Jane to lie in at a country-houſe belonging to the Counte de Salme; for which purpoſe, a letter was wrote to the Count, then at Vienna. Had Lady Jane been truly with child, this was an excellent ſcheme for her; ſhe thereby got free of the expence of living at Aix-la-Chappelle, which was one of the reaſons for leaving it, and got free of the expence of hired lodgings. But Lady Jane did not think proper to ſtay until an anſwer came to this letter. Had ſhe been in a hurry to get to the place where ſhe was to be delivered, it might have been a good reaſon for her not waiting an anſwer to the letter, that ſhe was afraid to delay her journey until near the time of her delivery. But we do not find, that this was the caſe; for ſhe puts off ſome time at Leige, on her way to Rheims, and ſhe ſtaid a month at Rheims before ſetting out for Paris. I do not ſay, that theſe circumſtances are much by themſelves; but they have weight, when added to others.

LEAVING the maids at Rheims, when ſhe went to Paris to lie in, is a ſtrong circumſtance againſt her; as ſhe had been at the charge of having them about her in the ſeveral places where ſhe had formerly ſtaid, their aſſiſtance ſurely was more neceſſary, when ſhe was to be brought to bed. It has been ſaid, that this is a two-edged weapon, and cuts both ways; for, if Tibby Walker was an accomplice, ſhe ought to have been taken to Paris, in order to have given evidence of the birth. But, in the *firſt* place, ſuppoſing her an accomplice, it might have been dangerous to have taken her to Paris, leſt, upon an examination, and by croſs interrogatories, ſhe and Mrs Hewit might have contradicted one another. In the *next* place, perhaps Tibby Walker was not then an accomplice; they might be afraid at that time to truſt her with the whole of the ſecrets; and perhaps ſhe is not yet an accomplice, though her affection for the defender (which ſervants naturally acquire for children in the houſe with them) has led her to ſwear ſeveral things in his favour, which are not agreeable to the truth. The pretence for leaving the maids at Rheims, *viz.* the want of money, is alſo a ſtrong circumſtance againſt the defender;

defender; becauſe this pretence is a falſe one; for it is in proof, by written evidence, that Sir John had a credit upon Paris for near 2000 livres, and received the money two days after he arrived there.

The capital point is the delivery of Lady Jane. The defender is not bound to prove this; but, if thoſe who ſay they were his parents, or Mrs Hewit, who ſays ſhe was preſent at the birth, give contradictory or incredible accounts of it; or, if the accounts given by them are partly diſproved by credible witneſſes, theſe things muſt go a great length for eſtabliſhing the proof of the impoſture.

It has been ſaid, that the delivery is proved by two witneſſes, *viz.* Sir John Stewart and Mrs Hewit. If theſe witneſſes were altogether habile, their teſtimonies would go a great length againſt the circumſtantial evidence brought by the purſuers. But parents, or thoſe who ſay they are ſo, cannot be admitted as evidence in ſuch caſes; though, if they give a probable account of the matters, it will aid the defender; if they do not, it muſt have weight againſt him. But their oaths on that head cannot amount to a proof; otherwiſe, it would be an eaſy matter to impoſe a ſuppoſititious

pofititious child on the world; becaufe they would have no more to do, than to fwear to what they had alledged. Befides, even fuppofing, that twenty witneffes had fworn to the actual delivery, yet, if fhall be fhown, by internal or external evidence, that thefe witneffes have fworn falfely, the proof by thefe witneffes may be got the better of. This often happens in the courfe of judicial proceedings; your Lordfhips are often obliged to weigh evidence, when contradictory, and to confider which preponderates. If, therefore, the purfuers have proved, that Lady Jane, Sir John, and Mrs Hewit, have given inconfiftent, contradictory, and incredible accounts of this affair, and fuch as are in part difproved by other evidence, it muft go far for eftablifhing the impofture.

LADY JANE carefully avoided entering into particulars concerning her delivery in the many letters wrote by her upon the fubject, and in the converfations fhe is proved to have had concerning it. This of itfelf is a fufpicious circumftance. She never mentioned the houfe where, nor the man-midwife by whom fhe was delivered; and mentioned no circumftances concerning the birth, except once when preffed to it by Lady Stair;

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on which occaſion ſhe alledged, that ſhe left Rheims, becauſe ſhe could not get proper aſſiſtance there; of which ſhe ſays ſhe was informed by a ſtranger Lady, who called for her to give her that information the morning after her arrival at that place. This ſtory is ſo improbable that it is ſurpriſing a perſon of Lady Jane's underſtanding ſhould have told it; and it appears from the proof, that proper aſſiſtance might have been got there. And as an excuſe for her not having any of her country-folks in Paris preſent at her delivery, ſhe ſaid to Lady Stair, that ſhe was brought to bed half an hour, or an hour and a half after her arrival at Paris; though it is now admitted, that ſhe was ſix days at Paris before her delivery. It is true, this converſation of Lady Jane's is only ſworn to by one witneſs. But Mrs Primroſe, who ſwears to it is a Lady of ſuch underſtanding, honour, and integrity, that none can doubt what ſhe ſays.

Sir John ſays, that he went to Paris in ſummer 1748, previous to Lady Jane's going there: That he ſtaid ſeveral days in Mr Godefroy's, and at that time, beſpoke Pier la Marre. Mrs Hewit ſays, that Sir John did not go to Paris in ſummer 1748, previous to

Lady

Lady Jane's going there; and it is admitted he did not. Now, although there was no neceſſity for going previouſly to Paris to beſpeak an accoucheur, becauſe in ſuch a town, one could be found on a ſhort warning; yet, when Sir John tells falſehoods when examined concerning the delivery, and the circumſtances attending it, it creates a ſuſpicion, that the whole tale told by him is falſe.

Mrs Hewit ſays, that no nurſe was beſpoke previous to Lady Jane's delivery, and that Lady Jane would not beſpeak one, becauſe ſhe did not know if ſhe would have a living child. This is indeed ſingular; no lady is certain that ſhe will have a living child, but all hope for one, and in that view take care to provide a nurſe, even when living in their own country amongſt friends and acquaintance; and it was much more neceſſary to do ſo in a foreign country, and at a place where one had no acquaintance. An ingenious anſwer was ſuggeſted to this by one of your Lordſhips who delivered his opinion yeſterday, *viz.* that Pier la Marre had beſpoke the nurſe, whoſe name is Garnier: That Mrs Hewit did not know this; and as two children were born, when only one was expected, the weakeſt child

was

was given to her, and another nurſe behoved to be provided for the other child. But this ſuppoſition is contradicted by the proof; for Mrs Hewit, who was well acquainted with all Lady Jane's tranſactions, ſwears expreſsly, "That Lady Jane would not allow any nurſe "to be beſpoke before her delivery, becauſe "ſhe ſaid ſhe did not know if ſhe would "bear a living child." And Mrs Hewit, in her letter to the maids, dated 22d July 1748, giving them an account of the delivery, writes: "The children are two lovely creatures, but "the youngeſt very ſmall and weakly; ſo the "Doctor beg'd he might be ſent to the coun-"try, as ſoon as poſſible; your maſter and I had "to go not a little way before we got a nurſe "that we would part with him to; at laſt, we got "one of the cleaneſt beſt women you ever ſaw, "a farmer's wife." It was therefore Mrs Hewit and Sir John, and not Pier la Marre, who provided this nurſe for Sholto; and I will by and by ſhew, that whether Sholto was Lady Jane's ſon or not, he was not the child nurſed by Garnier. It is alſo obſervable, that Sir John and Mrs Hewit gave different accounts of the defender's nurſes; and even in Mrs Hewit's letters to the maids wrote from Paris, the accounts ſhe gives of theſe nurſes

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do not agree. Sometimes ſhe makes their number amount to four, ſometimes to five; ſometimes they are all good ones, ſometimes not: I only mention theſe things as circumſtances, to ſhew that ſcarce in any one particular do we find Mrs Hewit and Sir John agreeing in one ſtory.

Sir John Stewart, in his declaration, ſays that he did not know where to find Pier la Marr, except in the Thuilleries or Luxemburg garden. This is truly incredible; for what was to be done if Lady Jane had taken her pains in the night-time, or at a time of day when La Marre was not in theſe places? Sir John indeed thinks proper, in the oath he afterwards emitted, to correct what he had formerly ſaid, and alledge, that La Marre, on ſeeing Lady Jane's condition, told him where he lodged: But this correction cannot be credited; for Sir John had formerly ſaid, that if Lady Jane had taken her pains in the night-time, he behoved to have ſought for another accoucheur, though he did not pretend to know where any ſuch was to be got. He had alſo ſaid, that he did not know how to direct his letters for Pier la Marre when he wrote to him from Rheims; and therefore directed them to the care of the poſtmaſter. He alſo

ſaid,

ſaid, that on his return to Paris to ſee Sholto, he went to the Thuilleries in queſt of Pier la Marre; becauſe ſtill he did not know where he lodged. The pretence for La Marre's not telling where he lodged is incredible. He ſays it was becauſe he had come to paris about a thorny affair. But why could he not truſt Sir John with the place where he lodged, ſeeing Sir John pretends that he was intimately acquainted with him in the 1721? Could he not truſt him as well as the poſt-office people? Beſides, La Marre does not appear to have kept himſelf ſecret while at Paris; for Sir John ſays he walked daily in the Luxembourg and Thuilleries, and alſo appeared in the coffee-houſes.

ANOTHER circumſtance is, that, according to Mrs Hewit's account, Lady Jane had no ſick nurſe. Tibby Walker indeed ſays, that Mrs Hewit wrote to her, there was a ſick nurſe; and gives this as a reaſon why ſhe needed not be ſent for to Paris. One of the two muſt be miſtaken in this particular.

ANOTHER very ſuſpicious circumſtance is this, That according to Mrs Hewit, La Marre never came to ſee Lady Jane after her delivery except once. This is confirmed by Michell's people, who agree, that no accoucheur viſit-

ed her while in their houſe. This is indeed very extraordinary. The moſt eminent and beſt employed accoucheurs repeat their viſits to ladies after having delivered them; and it is not to be credited, that ſuch an one as La Marre would have taken ſo little care of Lady Jane, had he really delivered her. This circumſtance is the more extraordinary, that Pier la Marre is ſaid to have had the charge of Sholto; and ſuppoſing he had taken no care of Lady Jane after her delivery, why did he not come to tell her how the weak tender child Sholto was doing, either while ſhe reſided at Paris or at Dammartin?

WITH reſpect to the place of delivery, when Sir John was preſſed by Mrs Napier to give an account of it, he declined, ſaying he had forgot the names of places; at laſt, when hard puſhed by her, he condeſcended upon Michell's houſe as the place of delivery. Mrs Hewit, about the ſame period, writes to the Duke of Douglas, that Lady Jane was brought to bed in Michell's. Now, though Mrs Hewit might forget French names; yet, how came ſhe to condeſcend upon a wrong place, and on one as the place of delivery where it did not happen, and with which ſhe might be well acquainted, having ſtaid

more

more than a fortnight there? And when examined upon oath before your Lordſhips, ſhe ſaid, that when places were mentioned to her ſhe might remember them. If ſo, how came ſhe to fall into this miſtake with reſpect to the place of delivery? And after it appeared from the inquiries made by Sir James Stewart, in conſequence of a letter from Mrs Napier, that Michell's was not the place of delivery, Le Brun's was pitched upon.

ANOTHER ſtrong circumſtance againſt the defender is, That both Sir John and Mrs Hewit ſay, that neither Lady Jane nor Mrs Hewit ſtirred abroad while they were at Paris, until they went to Dammartin; and yet, we have the moſt certain proof, that they went to Verſailles about the 26th or 27th July; Madame Blainville, who went alongſt with them, ſwears to this. It is confirmed by the oaths of Madame Blainville's daughter, Monſieur and Madame Michell, and Monſieur Breval, and by the ſervants of Madame Gourey's houſe, to whom Madame Blainville told of the jaunt long before the commencement of this action; ſo that, if any fact can be conſidered as proved by the teſtimony of witneſſes, this is ſo. The defender has brought nothing to contradict this, but a certificate

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from Madame Gourey, in which ſhe writes, that ſhe does not believe Madame Blainville obtained leave from her to poſtpone her coming home to her ſervice for ſome days. But this extrajudicial declaration cannot contradict the direct evidence. If Lady Jane was really delivered of twins upon the 10th July, it is not probable, that ſhe could, upon the 26th or 27th of that month, take a jaunt of pleaſure to a place twelve miles diſtant from Paris, walk in the gardens there, and return to Paris the ſame day. But whatever be in this, can it believed, that, if ſhe had ſo much ſtrength, ſhe would not have gone to ſee her child Sholto, who is repreſented then to have been in a very low and weak ſtate, and reſiding near to Paris? One of your Lordſhips yeſterday obſerved, that perhaps Lady Jane did go to ſee him, only that the queſtion had not been aſked at Mrs Hewit. But this is a miſtake; for ſhe expreſsly depones, "That, "when Lady Jane and the deponent were at "the village near Paris, Sir John left it, and "went to ſee the boy Sholto (which, however, "Sir John himſelf denies); but that Lady Jane "never went to ſee him, either from Paris, nor "from this village, being weak." Mrs Hewit's denying the jaunt to Verſailles, is alſo a circumſtance

cumſtance againſt the defender. Want of memory will not excuſe this; for, as it was the only time ſhe ever was at that place, ſhe behoved to remember it.

THE next ſuſpicious circumſtance is the conduct of Lady Jane, Sir John, and Mrs Hewit, when at Michell's. They do not mention there, that they had been at Le Brun's, nor do they mention La Marre, or that Lady Jane had been brought to bed of twins: But ſay, they had a child in the country, of which Lady Jane had lately been delivered. Why did they not bring the child along with them in the coach, inſtead of ſending him to the nurſe's houſe in Paris, which they ſay they did? Why ſay, that he was ſomewhere about St Germains, if he was in Paris? And it is obſervable, that, when they went from Michell's to bring the child, they ſet out in the morning, and did not return until the evening of that day, or morning of next day, that it might be believed they had gone to the country for him. Madame Favre, the defender's nurſe, and Michell's people, all agree, that the child which they brought home appeared older than ten days.

ANOTHER extraordinary circumſtance is, That according to Sir John and Mrs Hewit's

account

account of the matter, Sholto was left under the care of La Marre, without their knowing to what place he was ſent, or the name of his nurſe, even though they did not know where La Marre himſelf lodged; and they behoved to find out La Marre, before they could find the child. What if La Marre had died, or had left Paris, where he only was occaſionally, according to Sir John's account? By what means would they, in theſe caſes, have found out their child?

ANOTHER remarkable circumſtance is this, That no body ever ſaw Sholto until he made his appearance at Rheims, altho' Sir John had acquaintance at Paris, and there was one Mr Johnſton there, a couſin of Mrs Hewit, who lay under obligations to Sir John and Lady Jane; he was made acquainted by a letter from Mrs Hewit of Lady Jane's delivery, after they had returned to Rheims, and yet was not deſired to ſee Sholto. Is it credible, that, if this child had then been in the neighbourhood of Paris, Mr Johnſton would not have been deſired to ſee him, and to write how he was thriving, and what care his nurſe took of him?

ANOTHER extraordinary circumſtance is, That Sir John does not remember where he

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lodged when he returned with Lady Jane and Mrs Hewit to Paris in November 1749, in order to bring Sholto from his nurſe; and they ſtay three days at Paris before they either go to the village to ſee the child, or order him in to them. Would a fond mother, who had not ſeen her weak child from the period of his birth, have acted in this manner? No; it is incredible.

The diſtance of time, or bad memories, may account for miſtaking or forgetting ſome particulars, but cannot account for ſo many as have been taken notice of; eſpecially as they regarded an affair in which Sir John was ſo much intereſted: When queſtioned by Mrs Napier, the diſtance of time was not ſo great. I had not the honour to ſit among your Lordſhips when Sir John emitted his declaration, but I have heard, (and am perſuaded from your Lordſhips juſtice) that he was examined by your Lordſhips with great deliberation; that he peruſed his declaration from time to time, and corrected ſome things in it: And the letters which he wrote to Mr Maillefer and Mr Clinton, immediately after his examination, ſhew, that he was abundantly allert and attentive to what he was doing. Mrs Hewit, when examined, did not pretend

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to have a bad memory, only that ſhe could not remember French names. On the contrary, when called upon in March 1765, in order to be re-examined, ſhe ſays, "That ſhe is "in ſuch a ſituation ſhe cannot tell what is "right or wrong at preſent; that it is hard "theſe queſtions had not been aſked two "months ago, when ſhe could have given "anſwers."

ANOTHER ſtrong circumſtance againſt the defender is, That altho' Sir John and Lady Jane were early informed when abroad, by a letter from Mr Colvill, of the ſuſpicions entertained in Scotland concerning the truth of the defender's birth; yet they took no care to remove theſe ſuſpicions, by procuring proper atteſtations of it. They were again informed of theſe ſuſpicions upon their arrival in England about the end of the year 1749; and yet they took no proper methods for clearing the truth, by procuring affidavits from La Marre and Le Brun. This circumſtance is the ſtronger, that they did not altogether diſregard theſe ſuſpicions, but ſent to Aix-la-Chappelle for declarations with reſpect to the appearance of pregnancy; and yet they did not do what would have been much more effectual: They did not attempt to get any atteſtations from La Marre,

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Le Brun, or others preſent at the delivery, of the truth of it, though theſe might eaſily have been obtained in the 1750, if Lady Jane had truly been delivered of twins.

It has been alledged, that Lady Jane would not apply for ſuch atteſtations, becauſe ſhe took it amiſs that her honour ſhould be called in queſtion; and ſhe was adviſed by the Lord Advocate, that ſuch atteſtations were not neceſſary, as thoſe who objected to the truth of the birth behoved to prove their objections. But, *1ſt*, Nobody of common prudence would, on a pretence of honour, have neglected a thing ſo much for the advantage of their children. *2dly*, It appears ſhe did apply for atteſtations, though not to the proper perſons. *3dly*, She did not get the advice from the Lord Advocate till 1752; ſo that could not regulate her conduct in 1750; and it is not probable, that ever the Lord Advocate gave ſuch an advice: He was a man of more underſtanding: Beſides, the matter might have been made eaſy, without ſending to Paris for atteſtations from La Marre, if Sir John had kept ſome of the many letters which, he ſays, he received from him when at Rheims, and which certainly he would have done, had he received any ſuch;

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eſpecially, when it is conſidered that he was made acquainted, when at Rheims, with the ſuſpicions then entertained in Scotland againſt the truth of the birth. Many letters, of much leſs importance, have been preſerved by Lady Jane and Sir John; add to this, that in place of getting an atteſtation from La Marre, or producing real letters from him, four forged letters as from him are produced. Truth does not ſtand in need of ſuch ſupports, and one who will be guilty of forging letters, may alſo be ſuppoſed capable of forging children; at leaſt, as none will commit a crime, unleſs he has ſome reaſon for ſo doing, Sir John would not have forged letters, if real ones could have been procured. If it ſhall be ſaid, that Sir John could not get letters nor atteſtations from La Marre in 1750 or 1752, becauſe La Marre was then in Italy for his health, it muſt then be admitted, that Louis Pierre Delamarre, whom the defender has now pitched upon as the accoucheur, was really not ſo; for it is proved, that he never went to Italy, but reſided at Paris till his death, and that he was alive in the 1752.

It has been ſaid, that the letters in proceſs are not forged, but copies from originals: But Sir John ſays, that ſome of them are

originals,

originals, and ſome of them only copies; and that he ſat beſide Mr Clinton while he copied them, that he might make them as like to the originals as poſſible; for which purpoſe they were written upon French paper, folded and ſealed: Alſo, if the letter in the 1752 be either an original or a true copy from one, Louis Pierre Delamarre did not deliver Lady Jane; for the writer of that letter ſays he had been Italy.

ANOTHER circumſtance againſt the defender is, that neither Madame le Brun nor the place in Paris where ſhe lived can now be diſcovered. The lateneſs of bringing this action may be ſome excuſe for this; but it is certainly a circumſtance againſt him, that, from the books of police, there appears to have been no perſon of that name who kept furniſhed lodgings at Paris in 1748. As to the ſuppoſition of her being a guarde-malade, that is not conſiſtent with her having different lodgers in her houſe, which Sir John and Mrs Hewit ſay ſhe had; nor is it probable, that Lady Jane would have put up in the houſe of a guarde-malade for her in-lying. To render this probable, it has been ſaid, that ſhe might do ſo for cheapneſs: But though it is true, that Sir John was often ſtraitened

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for money; yet this did not arise from his not receiving money, but from his not being an oeconomist. Lady Jane, at that time, enjoyed her pension of L. 300 *per annum* from her brother; and Sir John also occasionally received money from other people. It is in proof, that, on his arrival at Paris at this time, he received about 2000 livres. When he was possessed of this money, he surely would not, in order to save it, place Lady Jane in an improper house. He treated Monsieur Guenet in the journey from Aix-la-Chappelle to Rheims; and when he was so open-handed, he would not omit taking proper care of Lady Jane, when he had money to enable him to do it.

I do not think it conclusive against the defender, that Pier la Marre cannot now be found. He may have left Paris or died betwixt the time of Lady Jane's delivery and the taking of the proof. This is the fair argument for the defender. He is not bound to produce him; but I think the defender can draw no assistance to his cause from the discovery of a Louis Pierre Delamarre; for this man can by no means answer the description which Sir John gives of the Pier la Marre who delivered Lady Jane. The La Marre whom

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he deſcribes was a Walloon. I am not ſo well acquainted with the geography of that country, as to ſay how far one born in Montreuil may be conſidered as a Walloon; but ſurely the other circumſtances do not agree. The La Marre deſcribed by Sir John was about 60 years of age in the 1748: The other La Marre was then but 37. The one was a ſurgeon to a regiment with whom Sir John was made acquainted through the means of Colonel Fontaine when at Leige in 1721; and he was then intimate with him. The other never was a ſurgeon to a regiment, and in 1721 was only a boy of ten years of age. Sir John's Pier la Marre was only occaſionally at Paris upon an *affaire epineuſe*; the other had his conſtant reſidence there. The one afterwards went to Italy for his health; the other never went there. Sir John's bad memory will not account for theſe diſcrepancies: A bad memory might make him forget facts, but could never make him invent them.

THAT this Louis Pierre Delamarre delivered a foreign Lady at Paris, is proved by ſeveral witneſſes; but it appears from the proof, that Lady Jane was not this foreign lady, becauſe the delivery happened previous to the year 1748. Mr Menager, who endeavours to apply

apply this delivery to Lady Jane, admits, that La Marre told him of the delivery in the *Chambre de guarde* of the Hotel Dieu, in presence of Monſieur Melet and Monſieur Giles. Theſe two witneſſes agree with Menager in this; and add, that it was when La Marre reſided in the Hotel Dieu, as a ſurgeon there; and it is in proof, that he left the Hotel in December 1746. The evidence of Monſieur Giles has indeed been objected to; but no objection is offered againſt the evidence of Monſieur Melet; and there are ſeveral things in Menager's oath which ſhew, that he cannot be credited. Thus he ſays, that La Marre taught midwifery, and practiſed under Monſieur Menjon. This is diſproved by Menjon's oath. Monſieur Menager ſays, that La Marre ſigned his name *P.* and *Pier la Marre;* tho' it is not cuſtomary for French people to ſign by their Chriſtian names; and it is proved, by La Marre's brothers, and by the production of writings ſubſcribed by him, that he only ſigned *Delamarre.* It is evident, that Menager has ſworn to the ſubſcription as above, in order to ſupport the forged letters, which are ſo ſigned. Monſieur Menager ſays, that he himſelf was recommended to the Comte d' Argenſon, as his ſurgeon by Mr

Bagieu.

Bagieu. Bagieu ſwears, he never recommended any ſuch perſon. It is alſo remarkable, that although Menager ſays, that La Marre told him the foreign lady was delivered in Madame le Brun's houſe; and that La Marr deſired he might be ready to aſſiſt him at the delivery, if neceſſary; yet he did not tell him in what place of Paris Le Brun's houſe was in 1748; nor did he ever know it, though La Marre applied to him for his aſſiſtance. The reaſon of this is obvious. Menager durſt not mention the place, becauſe thereby the falſehood might have been detected; and though Menager ſays, that he knows there was a connection betwixt Pier la Marre and a Madame le Brun; yet La Marre's brothers ſwear, that they knew of none ſuch; and Sir John has ſaid that he thinks he was recommended to Le Brun's houſe by Monſieur Godefroy.

If it is diſproved, that this Louis Pierre Delamarre delivered Lady Jane, then the ſtory of Madame Garnier's having nurſed Sholto muſt fall to the ground; for it was this Louis Pierre Delamarre who gave the child to her to be nurſed; and, independent of that, I think it is clear, that Sholto was not the child nurſed by Garnier: For, *firſt*, Sir John ſays, that Sholto was ſent to be nurſed at

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a village two or three leagues from Paris on the road to Amiens. Garnier lived at the Hauteborne within one eighth of a league of Paris, on the road to Menilmontain. Sholto's nurſe was a farmer's wife, Garnier a quarrier's. Sir John and Mrs Hewit agree, that Sholto's nurſe came for him; but the child was brought to Madame Garnier. Mrs Hewit writes to the maids, that ſhe got Sholto's nurſe, and that ſhe was preſſed to go to Rheims with him. Garnier ſays, ſhe was beſpoke by La Marre, and never deſired to leave her own houſe. Garnier never heard the name of the child, or to whom he belonged; he has therefore been a concealed one. This was not Sholto's caſe; La Marre told Garnier, that the child ſhe was nurſing would one day be the richeſt in his kingdom. This could not be Sholto; for his elder brother behoved to be richer than he.

But, chiefly, the time of the year when nurſe Garnier got the child does not agree with the time of Sholto's birth: For Garnier ſays, her ſon Jerome was then ſix months, or ſix months and a half old, and he was born on the 20th of March; ſhe therefore received the child which ſhe nurſed in September, which agrees better to his coming with torch-light about eight or nine of the clock at

night,

night than the bringing a child in that manner in the month of July. This child ſtaid about 18 months with Garnier, and was taken away towards the ſpring: Sholto ſtaid only 16 months with his nurſe, and was taken away from her in November.

I only take notice of theſe things, to ſhew that the defender receives no aid from finding a Pierre la Marre, and nurſe Garnier: But they are not concluſive againſt him, as it is extremely poſſible that the Pier la Marre who delivered Lady Jane, (if ſhe had even brought forth children), and that Sholto's nurſe might not be found at ſuch a diſtance of time, and the defender is not bound to produce them; I do not, therefore, reſt my opinion againſt him on theſe things, but upon what I formerly ſtated, *viz.* The contradictory and incredible accounts given by Sir John and Mrs Hewit concerning the birth, concerning the man-midwife, the placing of Sholto they did not know where, no body ever ſeeing him till he made his appearance at Rheims; their getting no atteſtations from Paris concerning the delivery; producing no real letters from Pier la Marre, but producing forged letters in place thereof; and other circumſtances which I have already

taken notice of, and will not repeat; and upon what I have ſtill further to obſerve.

AGAINST theſe proofs and circumſtances which I have already taken notice of, the objections founded on the Tournelle proceſs and the monitoire, do not ſtrike; and notwithſtanding of theſe objections, I cannot altogether lay out of my view the proofs brought by the purſuers, which I am now to mention.

THERE is, in the *firſt* place, the proof of Sir John and Lady Jane's reſiding at Godefroy's from the 4th to the 14th of July; in which caſe ſhe could not be delivered in Le Brun's on the 10th of that month. This reſidence is expreſsly depoſed to by Monſieur Godefroy and his wife: That his memory is good, appears from his remembering the letter whereby Monſieur Maillefer recommended Sir John to him, before that letter was found; and he does not ſwear altogether from memory, becauſe he had his books to aſſiſt him. It is true, that the name is blank in the title of the accompt which he aſcribes to Sir John and his company; but he was aſſiſted to fill up this blank by the entry of Sir John in his houſehold-book on the 8th of Auguſt that year, where Sir John is expreſsly mentioned; and Mr Godefroy ſwears, that both accompts

compts relate to the ſame perſon: He was alſo aſſiſted by the *livre d' inſpecteur*, where Sir John is entered by name. The accuracy of the houſehold-book is eſtabliſhed by the inquiry which has been made into it for the ſpace of three years: It is admitted, that Sir John and his company entered to that houſe on the 4th of July, and ſtaid there for ſome days; and, if this accompt does not apply to them, there is no other in it that can. It agrees as to the number of three perſons, and their paying their bill on the 8th of July, and entering again on the 9th at night: And it is a proof of the goodneſs of Mr Godefroy's memory, that he even remembers the room in which they lodged; and I do not ſee it pretended, that he was miſtaken in this particular: His evidence is the more to be depended upon, that Mr Godefroy inſiſted confidently, that Sir John and his company reſided at his houſe during the above period, at a time when the purſuers agent did not believe he had ſtaid there; but inſiſted that he and his company had reſided in Michell's houſe from the 8th of July.

A great outcry has been made againſt the Tournelle proceſs; and it has been inſiſted, that the witneſſes who have been examined before

before that court cannot be credited. For my own part, I condemn that proceſs; I think it was improper to call a Britiſh ſubject before a court in France, to which he was not amenable. But I cannot ſee how that proceſs could be ſo hurtful to the defender, as is pretended. It has been ſaid, that the witneſſes were tied down, not to depart from the evidence which they had given before that court. But why is it to be imagined, that they ſwore falſely at firſt? It often happens, that witneſſes are examined in this country upon the ſame facts before different courts. As firſt before the Juſticiary or commiſſary-courts; and afterwards before the Court of Seſſion. But was it ever pretended, that they could not be received as witneſſes, or credited, becauſe they had formerly been examined before another court? Surely, no: The witneſſes examined before the Tournelle have been compared to ſlaves ſwearing under their maſter's laſh. But the compariſon ſurely was highly improper. For the parliament of Paris has long been conſidered as a reputable court. The members of it have often ſtood up for the liberty of the ſubject, ſo far as the conſtitution of that country would allow; and whatever may be the caſe with reſpect

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to ſtate-trials, I never heard, that, in private cauſes, the parliament acted partially, or unjuſtly, even betwixt the ſubjects of that country. What then could induce that court to deviate from the paths of juſtice in a foreign cauſe, in the event of which no Frenchman had any concern?

THE method of examination before that court has been objected to, as the *plaintes* are read over to the witneſſes, before their giving evidence, and becauſe they are examined without the preſence of the parties. But this objection does not much move me. In trials before the Juſticiary-court in this country, witneſſes have acceſs to ſee the printed indictments before they are examined; and the method of examining witneſſes differs in different countries. Here it is thought proper, that parties ſhould be preſent, and have acceſs to put queſtions, and croſs queſtions to the witneſſes. Abroad, in other places, as well as in France, it is thought more expedient for bringing out the truth, that none be preſent, except the judge, the witneſs, and the clerk. Truth may be come at both the one way and the other.

THAT all the witneſſes did not think themſelves tied down ſtrictly to adhere to what they

they had depoſed before the Tournelle, appears from the evidence of Madame Godefroy. For, when ſhe was examined before that court, ſhe did not remember Sir John Stewart. But, when afterwards examined before your Lordſhips commiſſioners, ſhe came to recollect his having ſtaid in her houſe, to which ſhe was probably led by peruſing the houſhold-books.

As for the purſuers not believing for ſome time, that Sir John and his company reſided in Godefroy's from the 4th to the 14th July; it is of no moment; they were naturally led to this, by Sir John's having ſaid to Mrs Napier, that Lady Jane was delivered in Michell's houſe on the 10th of that month; and by their finding an entry in Michell's *livre d' inſpecteur*, bearing, that Sir John was there on the 8th of that month. But it is now evident, that this was an error in writing the figure, which ought to have been the 18th. This tends to confirm the evidence given by Godefroy, rather than to weaken it, as it ſhews, that he had not been practiſed upon by the purſuers.

As to the Monitoire, I condemn the ſtyle of it. It deſcribes perſons and dates too particularly; but it does not ſtrike againſt that part of the evidence which I have juſt now mentioned;

tioned; and, if the purſuers have made out, that Sir John and Lady Jane remained in Godefroy's from the 4th to the 14th of July, it is deciſive of the cauſe.

But the purſuers proof receives an additional weight from conſidering what is in evidence concerning the enlevements of Mignon's child in July 1748, and Sanry's child in November 1749. That two children were taken away at theſe periods, cannot be doubted. If the evidence of taking away Mignon's child reſted entirely upon the teſtimonies of Madame Mignon and her huſband, I would lay no ſtreſs upon it; *1ſt*, becauſe ſhe hath ſworn falſely with reſpect to her ſeeing the memorials; and, *2dly*, becauſe of the improper ſtile of the Monitoire: But the evidence does not reſt upon their teſtimonies: The thing is proved by a great number of witneſſes, and is ſtrengthened by this, that, about the ſame time, propoſals were made for a child from Madame Charlan; but the child not accepted of, becauſe it was too old: The coincidence of the time when Mignon's child was taken away, with the time when the child ſaid to be Lady Jane's made his appearance at Michell's, is remarkable; and the time of the enlevement of Mignon's child is diſtinctly

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aſcertained by the time of keeping the feaſt of St Clare that year, and the day of the week on which the workmen at the glaſs-manufactory gave up their work. It is alſo remarkable, that two children were at that time wanted by the perſons who took Mignon's child, and that theſe perſons were foreigners.

THE enlevement of Sanry's child was diſcovered before publiſhing the Monitoire, and is proved by written as well as by parole evidence, *to wit*, the entry in the police-book. It is true, this entry bears date in January 1750. But this is of no weight; for the enlevement happened ſome time before that; and the entry mentions, that the child was taken away by Duvernes; and it appears from the police-books, that he lodged in the *Croix de Fer* 21ſt November 1749, which anſwers to the time when Sir John and Lady Jane were at Paris that year; and it is proved by witneſſes, that Duvernes only ſtaid a few days at the inn. It is alſo proved, that the child was a fair one; and that he was taken away by a gentleman and two ladies, who were foreigners.

THE proof of theſe two enlevements have great weight in this cauſe, when the circum-

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ſtances of each are conſidered: The firſt happens in July 1748, the other in November 1749. The only two periods in which Sir John and Lady Jane were at Paris together: The firſt is of a new born child, the other of one eighteen months old, by a gentleman and lady who pretended that they wanted to beſtow charity by bringing up a poor child; and yet ſearched till they found a boy about that age; and there are no other inſtances of enlevements of children in Paris in the memory of any of the witneſſes who have been examined; for though it is in proof, that about twenty-two years ago, a lady endeavoured to get a child, yet her attempts proved fruitleſs; and the other applications proved to have been made to midwives for children were by ſurgeons, who wanted dead ones to make experiments on.

THESE things, therefore, added to the accounts given by Lady Jane, Sir John, and Mrs Hewit, concerning the birth and the children, which are contradictory to each other, incredible in themſelves, and diſproved in ſundry particulars by many witneſſes, convince me that the reaſons of reduction are proved.

It has been objected, that if Lady Jane and Sir John had had a mind to ſteal a child, in order to impoſe upon the world, they would not have taken a puny one. I am of the ſame opinion; but it does not appear, that Sanry's child was of this ſort: But as they had not found two children in July 1748, it was neceſſary to give out that one of the twins was weakly, in order that they might have an excuſe for leaving him behind when they went to Rheims.

The death-bed declarations of Lady Jane and Sir John have been much inſiſted upon: But I do not ſee that Lady Jane made any ſuch. She, indeed, did not confeſs when on death-bed; but continued to ſhew great tenderneſs and affection for the defender at that time. This is proved by Doctor Eccles and others; but I ſee no evidence of any ſolemn declaration made by her; and when Mrs Greig preſſes her upon that occaſion, ſhe anſwers in point of law, That if any body doubted the birth of the defender, they behoved to diſprove it.

It is true, Sir John did emit a death-bed declaration in favour of the defender. I am deſirous to give great weight to what one ſays when on the brink of the grave. It is

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an awful period: But, alas! experience ſhews us, that people do not always attend properly to it, and venture, even when in that ſituation, to aſſert and declare things not conſiſtent with truth: I cannot therefore conſider Sir John's declaration as ſufficient for overturning the great weight of evidence which the purſuers have adduced in this cauſe.

It gives me great uneaſineſs that I have been obliged to deliver the opinion which I have now given: But it would give me greater uneaſineſs to deliver, as my opinion, any thing contrary to the real ſentiments of my heart. I feel for the defender; he is innocent; much do I feel for him: But, in a queſtion of property, I muſt give my opinion according to the evidence before me. I have no latitude; I cannot turn either to the right or to the left, without doing injuſtice; and as I think it is proved, that the defender is not the ſon of Lady Jane Douglas, I cannot give my voice for continuing him in the poſſeſſion of the eſtate of Douglas, by aſſoilzieing him from the reaſons of reduction.

LORD

LORD HAILES.

FROM the whole circumſtances of this proof, I am at length unwillingly induced to form this concluſion, that there is not ſufficient moral evidence of the defender's being the ſon of Lady Jane Douglas. We are not placed in a world of demonſtration; we muſt determine according to the probabilities of moral evidence; and they, I truſt, are not ſo fallacious as they have been repreſented.

In a cauſe of this nature, the character of the parties concerned muſt have conſiderable weight; and if I could perſuade myſelf that the character of Lady Jane Douglas was altogether ſuch as many of the witneſſes ſuppoſe it to have been, it would have much influence in favour of the defender.

But, I am ſorry to ſay it, there is evidence in court, that Lady Jane's real character was different from what it is ſuppoſed to have been; there is evidence that ſhe could aſſume appearances at pleaſure, and that ſhe had not that ſacred regard to truth which ſhe ought to have had.

Thus,

THUS, according to Madame Negrette, "She ſpoke ill of no body;" yet, in a letter to Mrs Carſe, ſhe pours out abuſe on her own near relations, for having reported what ſhe knew to be true, her marriage with Sir John Stewart.

SIR WILLIAM STEWART ſwears, "That "ſhe was particularly attached to the Preſby-"terian religion, and very ſtrict in the ob-"ſervance of it." Abbé Hibert ſwears, "That "ſhe ſeemed greatly to reliſh the doctrines "of the Roman Catholic religion." Theſe ſentiments are inconſiſtent; and yet I make no doubt that both Sir William Stewart and Abbé Hibert ſwore to the beſt of their judgment.

IN her letter to Mr Haldane, 6th September 1747, writing to borrow money from him, ſhe ſays, "I am ſorry to be obliged to acquaint "you, that the two ſeaſons here and that at "Spa have not altogether anſwered the inten-"tion of my journey; ſo am adviſed and de-"termined to try the waters of Carlſbad in "Bohemia, where I am in hopes of getting "perfect health." But, in her letter to Mr M'Kenzie, 10th October 1747, where ſhe writes to borrow money from him, and for a ſecurity to inſure her life, ſhe ſays, "Be aſ-

"ſured,

" ſured, travelling, with the waters of Aix " and Spa, has removed all my complaints; " and I want but to hear effectually from " you to be perfectly well." And again, 10th November 1747, " I do aſſure you my " health is very good, the Aix and Spa wa- " ters have removed my only former com- " plaints, which was lowneſs of ſpirits."

To her friends in Scotland ſhe mentioned her purpoſe of ſettling in Switzerland, where ſhe might have the free exerciſe of her religion; and yet, at that very time, ſhe was preparing to ſettle in the very heart of France, where ſhe could have no exerciſe of her religion at all.

When it ſuited her conveniency, ſhe did not heſitate to aſſert what I wiſh I could find a gentler name for than that of untruth.

Her noted letter to Mrs Carſe abounds with examples of this kind; and, by the way, that letter is a full confirmation of the evidence of a lady of character (Lady Catharine Wemyſs) who, I obſerve, is treated with too much freedom in the defender's memorial.

Her narrative to Lady Stair is another example of the ſame kind. Upon the evidence

of

of Mrs Primrose, I make no doubt that this narrative has been faithfully and conscientiously reported. Lady Jane told a most circumstantial story to Lady Stair, in which, it must be admitted, there was not a syllable of truth. How can this be reconciled with the exalted character of Lady Jane as described by many of the witnesses?

To say, that it is well known, that Lady Stair was dull of hearing, or may have mistaken Lady Jane, does not make Mrs Primrose's report the less credible. The defender, in speaking of a thing as *well known*, ought to have said, that Lady Stair was so deaf, as not to be able to hear distinctly a person talking with her singly and alone.

If Lady Stair was indeed so deaf, I desire to know why she came to be engaged, after the time of this conversation, as a mediatrix between two noble persons, upon occasion of an unhappy family-difference.

But why multiply examples of her art and insincerity? The defender has furnished a most striking example of it in the production of Lady Jane's letters, p. 851. 852.

She writes to Sir John, 8th August 1752: "I am now so far on my journey. Mr "M'Kercher is so good as to go a little way

" with

" with me, though I oppoſed it; he having " ſo much to do. I ſhall not write again to " you, dear Mr Stewart, till I arrive at E- " dinburgh; ſo do not be uneaſy and anxious, " I beſeech you. *I have no franks*; therefore, " won't put you to *unneceſſary charges*, which " I hate to do. Pray remember, that the " maxim of ſavingneſs is the plan we ought at " preſent to walk by; when I am in Scotland, " you ſhall hear often from me. I ſhall *then* " have *franks* enough."

SHE writes again 18th (Auguſt): " I am " now in my own country once more. The " people, as *we came along*, and here, ſeem, in " indulgence to me, to be highly delighted " with the children. Mr M'Kercher, in his " great civility and friendſhip, would give me " the convoy the firſt day. Mr Farquhar I " am obliged to alſo; he imagining the wine " I had taken would not ſerve out the way, " at his own expence, bought other four " bottles at a place he found it good."

SUPPOSE, that the queſtion in iſſue were, Did Lady Jane Douglas go to Scotland by land in Auguſt 1752? I deſire to know, whether a ſtrong argument for the affirmative, would not be drawn from thoſe letters? If there were any jottings of a ſhipmaſter,

or

or any memorandum of a cuſtom-houſe officer, from whence a preſumption might ariſe, that ſhe went to Scotland by ſea, would not the ſuperior evidence of thoſe artleſs letters, full of minute circumſtances, written by a Lady of honour, be oppoſed to the jottings or memorandums of low obſcure perſons?

NEVERTHELESS, the defender has produced a letter from Lady Jane to Sir John's ſon, dated 16th September 1752, which proves, beyond poſſibility of cavil, that ſhe made this journey to Scotland, not by land, but by ſea.

As to the many letters between Lady Jane and Sir John, which contain expreſſions of affection for the children: I admit their weight in the ſcale of evidence for the defender. With reſpect to them, I muſt, however, make the following obſervations.

It is not reaſonable to ſuppoſe, that any hint of an impoſture could ever have been ventured in thoſe letters.

MANY of the letters produced were written with the intention of being ſhown. This appears from the characters of perſons therein drawn.

IN none of the letters, is there the leaſt inſinuation of the reports ſpread concerning the children. Such reports had certainly reach-

ed the ears both of Lady Jane and Sir John; and they muſt have been ſenſibly affected with them, upon the ſuppoſition, that the children were their own. This muſt have been uppermoſt in their minds. It was natural for them to unburden themſelves to one another; and yet they never touch upon this ſubject.

From the whole ſtrain of the letters produced, it appears, that Sir John had obtained an amazing aſcendant over the mind of Lady Jane; and *this*, I am afraid, will afford a key to the whole conduct of the unfortunate Lady Jane Douglas.

Another argument in favour of the defender, ariſes from the proof of the pregnancy.

That Lady Jane had appearances of a woman with child, in the opinion of a multitude of witneſſes, cannot in fair argument be diſputed.

At the ſame time, I think, that many of the witneſſes, from one ſort of prepoſſeſſion or other, have repreſented thoſe appearances of pregnancy in too ſtrong a light.

In general, their ideas were formed upon the report of Mrs Hewit.

Captivated by the addreſs and inſinuation of Lady Jane Douglas, ſome of the wit-

neſſes

neſſes were ready to take every thing upon truſt.

MADAME SCHOLL ſuſpected, that Lady Jane was with child, after having learned her marriage. Her reaſon for ſuſpecting the pregnancy was, becauſe Lady Jane was *always ſo weak, delicate, and pale.* Had Dubois, her landlord at Utrecht in 1746, been told of the marriage, he might, for the very ſame reaſon, have ſuſpected the pregnancy.

MADAME GILLESSEN would not have obſerved the pregnancy, unleſs ſhe had been told that Lady Jane was with child. Madam Gilleſſen ſuſpected nothing till ſhe heard of her ſtays being widened. Now, Bleyenheuft ſays, from her books, that the firſt time the ſtays were widened was 25th April 1748; that is, in the ſixth month of the ſuppoſed pregnancy; it follows, that even in the ſixth month of the ſuppoſed pregnancy, Madame Gilleſſen perceived nothing.

MADAME MESBACH thought that ſhe was with child, becauſe ſhe had "*le viſage tiré et* "*l'air defaite.*" The ſame appearances might have been diſcerned in 1747 or 1749, when ſhe was confeſſedly not with child.

THE nuns at Aix-la-Chappelle, not very competent judges of ſuch matters, ſuſpected that

that ſhe was pregnant from the time of her firſt viſit to the convent. What was the date of the firſt viſit, does not appear from the proof; but as Lady Jane went to the convent to viſit Madame Martel, an old acquaintance, it is probable that her firſt viſit was ſoon after her arrival at Aix-la-Chappelle in April 1747, or ſoon after her return from Spa in the ſame year; and if ſo, then the nuns ſuſpected that Lady Jane was pregnant at a time when no marks of pregnancy could appear.

THE evidence of Madame Tewis goes too far; from that evidence it might naturally be concluded, that Lady Jane lodged in her houſe, while the pregnancy was well advanced; whereas ſhe left it in December 1747.

SOME of the witneſſes ſpeak of the great ſize of Lady Jane's breaſts, Madame Negrette of their hollowneſs; nothing can be more oppoſite than breaſts larger than ordinary, and "*la gorge plus enfoncée qu'a l'ordinaire*;" which of them am I to believe?

MRS GREIG may be a very honeſt evidence. I have no right to doubt of her honeſty; but ſhe is over-run with prejudices. Thus ſhe ſays, none of the French Ladies were like her own miſtreſs Lady Wigton, and

and none of the French children like the defender.

MISS PRIMROSE may be a very honeſt evidence; but ſhe is too apt to catch at circumſtances. Witneſs her remembring Pier la Marre as the name of the *accoucheur*, and Menilmontain as the name of the village where Sholto was nurſed.

THE multiplicity of miſcarriages throws a ſhade upon the evidence of the pregnancy.

WHAT authority is there for doubting, that Mrs Hewit told Madame Negrette of a miſcarriage in Holland? Mangin's double miſcarriage is now given up. The miſcarriage mentioned by Madame Rutlidge is alſo given up.

MADAME RUTLIDGE cannot mean the ſecond miſcarriage mentioned by Mangin, as the defender ſuppoſes; for Mangin has fixed upon a certain date, namely, about two months and a half after the former one, that is, about February 1749. Now, Mangin was diſmiſſed from the ſervice in April 1749, as appears by Madame Mayette's evidence, (and Lady Jane's pocket-book); but Madame Rutlidge did not ſee Lady Jane till June 1749; ſo that Madame Rutlidge's miſcarriage and

Mangin's

Mangin's ſecond miſcarriage cannot be the ſame.

THE miſcarriage mentioned by Mrs Maitland, cannot have been the one at Rheims, unleſs by changing the time, place, and perſons therein mentioned.

THE defender ſuppoſes, that Mangin, a married woman, miſtook the *catamenia* for a miſcarriage. Why may not Iſobel Walker, a virgin, have made the ſame miſtake?

IF the queſtion were as to proving the poſſibility of Lady Jane's being with child, from the evidence of miſcarriages, Would not what has been obſerved ſhake the foundations of that evidence? Are the evidences of the pregnancy leſs ambiguous?

FURTHER, I obſerve from the letters written by Sir William Stewart and Lord Dumbarton, unknown to each other, that ſome very extraordinary and intereſting event was hoped for and expected, from the birth of a child of Lady Jane Douglas and Colonel Stewart. May not this have made the idea of the pregnancy to be entertained with more facility and eagerneſs of belief?

THERE is an additional reaſon which inclines me to believe, that the appearances of pregnancy have not been ſo extremely remarkable

markable as ſome of the witneſſes repreſent them; and that is, their having eſcaped the obſervation of many witneſſes, and thoſe not the leaſt credible in this bulky proof.

SUPPOSE that the following had been the only witneſſes examined, What is there in their depoſitions which ſhew that they obſerved the marks of pregnancy about Lady Jane Douglas?

1. LADY CATHARINE WEMYSS, as credible a witneſs as any of the nuns, had frequent occaſion to ſee Lady Jane from November 1747 to the 10th of February 1748; yet ſhe ſaw no appearance of pregnancy.

2. MR FULLERTON of Dudwick, who knew her formerly, and who was informed of her marriage, ſaw her in April and May 1748, and was the bearer of her letter to Mr Haldane, 12th May 1748; and yet he perceived nothing.

3. LADY WIGTON, her intimate friend, ſaw her daily during the month of May 1748; and yet made no obſervations herſelf; ſhe truſted to the report ſhe heard from others.

4. GUENET travelled with her for days together in a ſtage-coach, about the beginning of June 1748. This man is a notary, and his evidence is as minute as if he had

been

been engaged *à dresser un proces verbal*; he appears to have been abundantly inquisitive and forward, not to say impudent; and yet he observed nothing of pregnancy.

5. Young Mr Andrieux had repeated opportunities of seeing her in June 1748; he has the rare felicity of being applauded by all parties; and yet he observed nothing.

The same is the case of Major-General M'Lean, who sometimes visited in her house during that period, and who saw her set out for Paris. He is a gentleman of known and established reputation.

I say nothing of the Demoiselles Hibert and Mademoiselle Sautrè; for their credit is questioned, because they answered as witnesses upon a citation of a court of law in their own country, which they could not disobey.

But the other witnesses must be considered as worthy of credit; for they never knew the horrors of the *Tournelle*, nor heard the thunder of the *Monitoire*.

I desire to know, whether the evidence of all and every one of those credible witnesses would prove, that they had observed even the apparent marks of pregnancy in Lady Jane Douglas; and yet their observations

must

muſt have reached from the very firſt weeks of the ſuppoſed pregnancy till within eight days of the ſuppoſed delivery at the full time.

If ſuch be the caſe, I cannot imagine that the appearances were ſo violent, and indeed ſo exceſſive as they are deſcribed by others of the witneſſes, and particularly by Iſobel Walker and Mrs Hewit.

Could I give full credit to Iſobel Walker, the evidence in this cauſe would be more *in æquilibrio*, and it might be more difficult to determine on which ſide the balance inclined. But I cannot help conſidering her as a witneſs partial and deeply prejudiced. I ſhall mention the circumſtances which ſtrike me moſt ſtrongly.

I dwell not on ſmaller circumſtances, ſuch as her endeavouring to make Mr James Johnſton paſs for a perſon little connected with Sir John Stewart and Lady Jane Douglas; her ſaying, that Lady Jane explained La Marre's letters to her in Engliſh, at the time when ſhe herſelf certainly underſtood French; her converſation in German with Madame Gilleſſen, and in French with Madame Andrieux: Her want of memory as to the converſations which ſhe had with Mrs Hewit,

concerning the tranſactions at Paris; and her amazing want of curioſity in never reading the evidence of Sir John Stewart and Mrs Hewit, though it was put into her hands.

THERE are three particulars which convince me, that Iſobel Walker is partial, and deeply prejudiced.

1. WHEN formerly examined, ſhe ſwore, "That ſhe had occaſion *frequently* to ſee Lady "Jane's *naked breaſts* and *belly*, both before lea-"ving Aix-la-Chappelle, and after they came "to Rheims; and that the deponent has had "her hands upon Lady Jane's *naked belly*, and "found her with live child; and that this ſhe "would depone, if ſhe was going to ſtep "into eternity, whatever *wretches* may ſay to "the contrary."

THIS is poſitive indeed, and aſſerted with an uncommon degree of aſperity; nevertheleſs, when examined *ex officio* by your Lordſhips, ſhe ſays, "*That it was not Lady Jane's* "*naked belly that ſhe felt*, when ſhe found the "child move, but above her ſhift, as ſhe "thinks." So that the material epithet *naked* is left out. How is this to be reconciled with the poſitive and ſolemn averment which ſhe formerly made?

SHE

She adds, " That before her feeling the " child in Lady Jane's belly, ſhe never had laid " her hand on the belly of any other woman " with child, or found the child move; and " that ſhe thinks, it was only at one time, " that ſhe felt the child move."

If Iſobel Walker is right in the æra, at which ſhe ſuppoſes this to have happened, when ſhe mentions it as happening juſt before the widening of the ſtays, then it was juſt before the 25th of April 1748, that is, in the ſixth month of the ſuppoſed pregnancy.

Now, Is it not wonderful, that ſhe ſhould not have had any occaſion to make the like obſervation, during all the months of May and June; *ſhe*, who was conſtantly employed in dreſſing Lady Jane, and in aiding her to go into bed, by means of a box ſeven or eight inches high?

Is it not alſo improbable, that Lady Jane's ſituation ſhould, even at that time, in the end of April, have been ſo little determined, that there remained a doubt, whether ſhe was troubled with bile, or was a woman far advanced in her pregnancy?

Supposing, that Iſobel Walker had fixed upon a more early æra for this ſingle and ſolitary obſervation; this would vary, but not

not remove the improbability; the consequence would be, that she felt a slight motion like that of a pulse beating; but did not feel the more frequent, and more violent motion of twins, while the proper period for delivery was approaching.

She does not make her narrative the more probable, by saying, that Lady Jane wore no bed-gown. I greatly doubt the fact: There is something in Mrs Hepburn's evidence that seems to contradict it; nor can it well be believed, that Lady Jane, who complained excessively of cold weather, and who was certainly indisposed with vomitings, did nevertheless wear no bed-gown.

Be this as it will, I cannot see how this motion of the child should have been felt but once; or how a person who never had had occasion to feel any thing of the same nature, should have been so positive in her averments.

2. Isobel Walker has sworn that she received the letter from Mrs Hewit of the 22d July, previous to one acquainting her of Mr Andrieux's supply of money: "In which "letter Mrs Hewit said, that though my "Lady had a good deal to do with money, "yet, she believed, she would send for the de-"ponent and Effie Caw."

Now,

Now, I think I can prove, to your Lordſhips ſatisfaction, that Iſobel Walker has here ſworn to the contents of a letter which ſhe never received.

THE letter which ſhe mentions could not have been written after the 26th of July; for, in the letter of that date, Mrs Hewit ſays, "She is recovered to a wonder, not indeed "without the greateſt care. She is ſtill very "weak; and her doctor has ordered her to "be taken to the country in eight days, to "make her perfectly fit for her journey home. "She was fully reſolved to have ſent for you "both the time ſhe was to ſtay; but as the "doctor is poſitive he will have her to the "country, ſhe has ſuch a good opinion of you "both, as to think the diſappointment of not "coming here juſt now will be ſmall."

AFTER writing this letter, Mrs Hewit could not write, that "ſhe believed my Lady "would ſend for the maids;" and this the more eſpecially, becauſe the plan here mentioned of going into the country was actually followed at the time propoſed.

NEITHER could the letter in queſtion have been written between the 22d, the date of the former one, and the 26th, the date of this one; for Mrs Hewit, in this letter of the

26th,

26th, writes, " Juſt as I was ſet down to write " to you, I got your's, wrote on the ſame day " I wrote you, which was the 21ſt day, tell- " ing you the happy news."

THE expreſſion ſeems to exclude the idea of an intermediate letter; and this may be confirmed by the following obſervation.

THE defender's hypotheſis is, that the letter 22d July was written on the 21ſt, but dated 22d, becauſe it was to be diſpatched on that day. By parity of reaſon, the defender muſt hold that the letter 26th July was written on the 25th, but dated 26th, becauſe it was to be diſpatched on that day. Now, according to this hypotheſis, when muſt the intermediate letter in queſtion have been written? It is not probable, that Mrs Hewit would write a letter on the 22d to be diſpatched on the 23d, becauſe ſhe had already diſpatched a letter on the 22d; and if ſhe had written on the 23d, to be diſpatched on the 24th, why write again on the following day, the 25th, which the defender muſt ſuppoſe to be the date of the letter 26th July?

3. ISOBEL WALKER depones, that in Mr Murray's dining-room, Sir John received a letter from La Marre; that this letter was ſent by

by a friend of La Marre's; and that it contained compliments to Mrs Hewit.

Isobel Walker told more circumſtances to Mrs Hepburn; nor has ſhe ever denied her converſation with Mrs Hepburn, or pretended that Mrs Hepburn had related more than really paſſed at that converſation. Take her oath and Mrs Hepburn's together, and it is plain, that the famous fourth letter is meant.

Now, it is in proof that Lady Jane left Mr Murray's in September 1751; yet the fourth letter from La Marre is not dated earlier than 9th June 1752. Has not this all the appearance of an unjuſtifiable inclination on the part of the witneſs to corroborate the evidence ſuppoſed to have ariſen from thoſe fatal letters?

I proceed now to conſider the chief circumſtances of evidence on the part of the purſuers. And here I begin with the evidence ariſing from Sir John Stewart's declaration.

An apology for the inconſiſtencies and improbabilities of that declaration is drawn from the vivacity of Sir John, and his own confidence in the goodneſs of his memory. But it muſt be obſerved, that Sir John, in his

anſwers

anſwers to the queſtions put to him, does not ſo much confide in his memory, as to be equally certain of every particular. On the contrary, he is careful to diſtinguiſh what he remembers preciſely, from what he is leſs poſitive of. Thus, for example, in his anſwer to the thirty-third interrogatory, he ſays, that he *knows*, that he *believes*, that he is *convinced*, that he is *not ſure*, that he is *not poſitive*, that he does *not know*, that he *cannot recollect*; that *ſo far as he remembers*, he did not ſee any of his countrymen at Peltier's coffee-houſe, except Con; and that while at Paris in 1748, *he did not ſee Clanronald.*

Here all the different modes of ſpeaking, from poſitive affirmation, to poſitive denial, do ſucceſſively occur; and this has not the appearance of a man who truſted too much to his memory, who was precipitate in his anſwers, or who, from a lively imagination, was ready to remember things whereof he knew nothing.

But ſuppoſing that his vivacity and lively imagination ſhould have ſo far miſled him upon his ſolemn examination in a court of juſtice, the ſame ſuppoſition will not apply to the accounts which he gave to Mrs Napier, when aſked by her to give an account of the princi-

pal

pal circumſtances relating to the tranſactions at Paris in 1748, he did not, from his lively imagination and confidence in his memory, proceed to tell her a circumſtantial ſtory; on the contrary, he heſitated; he made excuſes for not remembering; but, upon being preſſed by a woman of excellent underſtanding, to relate the circumſtances whereof he was certain, he gave her the outlines of that narrative which he made at greater length before your Lordſhips.

It has been further ſaid, "That Sir John "was very apt to forget *dates* and names; yet "had a very good memory of perſons and "facts."

I grant that Sir John has miſtaken ſome dates; whether he was apt to forget names, may be collected from the names which he remembered.

He remembered,

1. The name of the inn-keeper whoſe houſe he firſt went to at Paris, and the ſtreet of his reſidence, *Godefroy, Rue St Martin.*

2. The name of the perſon in whoſe houſe he lodged while at Paris in 1748, *Michell.*

3. The name and reſidence of the perſon who kept the coffee-houſe which he frequented, *Pelletier, quai Pelletier.*

4. THE name and ſituation of the tavern where he was in uſe to drink with his twenty-ſeven years acquaintance, Pier la Marre, *Sources de Bourgogne, Pont St Michell.*

5. THE name of his correſpondent at Rheims, *Monſieur Andrieux.*

6. THE name of the village where they went on leaving Paris, *Dammartin.*

7. THE name of the place where Mr George Leſlie reſided, *Villers Cotterets.*

8. THE name of the defender's laſt nurſe, *Manger*, which is the ſame in his way of pronunciation as Mangin.

THAT he particularly remembered the names of his acquaintance at Rheims, appears from his declaration, where he mentions the receiver-general's Lady, Madame L'Elue, the ſyndic's Lady, Madame Maillefer; and from his letter to Monſieur Maillefer, 18th January 1763, where he mentions Monſieur Maillefer of the regiment Royal Champagne; he alſo remembered where Clanronald lived, at a houſe about two leagues from Paris upon the ſide of the obſervatory.

HAVING thus mentioned the names which he remembered, let us now examine what names he *forgot*.

HE

He forgot,

1. The name of the ſtreet where La Marre lived.

2. The name of the ſtreet in which Madam le Brun lived, tho' he deſcribed it in a very ſpecial manner, as lying on the left hand when one goes from the *Pont Neuf* to the *Luxembourg*, by the *Rue de la Comedie*, in the *Fauxbourg St Germain.*

3. Which was juſt as natural, he forgot the name of the ſtreet where Michell lived.

4. The name of the village at which Sholto was nurſed; tho' he deſcribed it exactly, as being "two or three leagues from Paris, upon "the Amiens road."

5. The name of Mr Taſſin, from whom he received a conſiderable ſum of money immediately after his arrival at Paris.

6. The name of Mr Pannier, with whom he had a correſpondence, in conſequence of his *ſtupidity*, as he calls it, in taking double payment of the ſame quarter's annuity.

7. The names of all the nurſes at Paris, and particularly of the nurſe Favre, though he remembered her name many years after 1748, as appears by his note to Mr Loch.

That he ſhould not remember the names of ſervants, or of fellow-lodgers, is not extraordinary;

traordinary; it would have been more extraordinary had he remembered them; ſo that, as to this, there is no occaſion to find an excuſe in his age and infirmities.

It is ſtrange, that he ſhould have forgot all thoſe names; for they are all of great moment; and where-ever any of them have been diſcovered, ſuch diſcovery has tended to eſtabliſh material facts.

The inference which I draw from theſe obſervations is, that Sir John's memory was far from being defective as to *names*, when he choſe to remember. His memory, as to dates, may have been leſs diſtinct, though ſtill it has the appearance of being diſtinct enough. Indeed a cauſe may be aſſigned for his *not remembering* ſome names, and for his *miſtaking* ſome dates.

I do not propoſe to go through all the remarkable circumſtances in Sir John's declaration. In this I have been, in a great meaſure, anticipated by ſome of your Lordſhips.

I ſhall, however, ſpeak to ſome particulars, which have been either omitted or not fully treated.

Sir John's firſt journey to Paris, in June 1748, is acknowledged by the defender to be a miſtake, or more properly, it is a fiction.

The

THE defender apologizes for this part of Sir John's narrative in the following manner: "Sir John was at Godefroy's in Auguſt 1748; "but was not there in June 1748. He miſ-"takes the æras, and acknowledges a jour-"ney to Paris in June; but denies *that* in "Auguſt. This is from want of memory. "In like manner, he denied his having viſit-"ed Mr Hepburn at Boulogne, till the viſit "was proved by the circumſtance of a night-"gown, and an Amiens pye."

HAD nothing more been ſuppoſed to have happened on the firſt journey to Paris in 1748, than the preſenting a night-gown to a friend, or eating a part of an Amiens pye with him, the defect in memory might have been excuſed; but *here* the ſubject of the journey to Paris was no leſs than that of ſecuring a midwife to Lady Jane. Beſides, Sir John had reaſons for not remembering the journey which he *made* to Paris, as well as for remembering the journey which he did *not make*; an acknowledged reſidence at Godefroy's on the 8th Auguſt 1748, would have added to the credibility of Godefroy's teſtimony that he knew Sir John, and had not a month before entertained him in his houſe for upwards of a week.

SIR

SIR JOHN's account of La Marre, in itſelf improbable, becomes more ſo, as he mentions farther circumſtances.

HERE is a man called up to Paris about an *affaire epineuſe*, and declining to tell his lodging; yet walking every day, and ſometimes twice a-day, in the public gardens, and habitually frequenting a coffee-houſe.

SIR JOHN intruſts the care of Lady Jane to a man whom he did not know how to find, excepting in the morning, and perhaps in the afternoon. Had Lady Jane been ſeized with her pains in the night-time, Sir John admits, that he would have had another accoucheur to ſeek, where he beſt could. But this is not all; for, if Lady Jane had been ſeized with her pains on a rainy day, Sir John would have had another *accoucheur* to ſeek; nay more, the ſame thing might have happened, had her labour come upon her in the afternoon; for La Marre's *reſidence* in the Thuilleries or Luxembourg gardens, was not certain, but only occaſional in the afternoon.

NOTWITHSTANDING this monſtrous improbability, Sir John perſiſts in it throughout his declaration; and to rivet it the faſter, he mentions the manner in which he addreſſed

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his letters to La Marre: *à present demeurant à Paris, au bureau de poste*; which addreſs proceeds upon the ſuppoſition, that he did not know La Marre's abode.

When Sir John came to be again examined, there was an abſolute neceſſity of his having been in the knowledge of La Marre's reſidence. In 1749, he was to find *him*, in order to find Sholto. La Marre might, in July, be found walking every morning in a public garden. But how could this happen in the month of November? To overcome this difficulty, Sir John, at his ſecond examination, recollected, that La Marre had at laſt diſcloſed to him the place of his abode; but *where* it was, Sir John could not remember.

This recollection was very critically timed; for, without it, Sir John could not have got his ſon Sholto immediately upon his arrival at Paris, which was his intention, when he propoſed to remain at Paris for *one night*. Had he, upon his arrival at Paris, wrote to La Marre, by his addreſs, at the poſt-houſe, he might have waited for days before La Marre chanced to call at the poſt-houſe.

Supposing that this recollection of Sir John's is right and agreeable to truth, the next queſtion occurs, How came Sir John, for

fifteen

fifteen or ſixteen months, to be conſtantly writing to La Marre, *au bureau de poſte*, while he knew his addreſs? If it be anſwered, that, in this alſo Sir John was in a miſtake; why is any other particular in his declaration to deſerve credit?

One thing is plain, that, if the man-midwife intended by Sir John in his declaration, had been a practiſing man-midwife, having his fixed reſidence at Paris, there could not have been this uncertainty about his addreſs.

The next thing that I ſhall mention, is the *ſmoaky houſe*, which they were obliged to leave, as Sir John told Mrs Napier. What houſe was this? It could not be Godefroy's; for there is not the moſt remote inſinuation, that the ſcene of the delivery was ever intended to be laid at Godefroy's. It could not be Michell's; for they went from it to the country, by advice of the doctor, as Mrs Hewit ſays. It could not be Le Brun's; for that houſe is mentioned as being over-run with bugs, and is diſtinguiſhed from the ſmoaky-houſe. It follows then, that the ſmoaky-houſe was a non-entity, and only introduced when a woman of uncommon penetration put more queſtions to Sir John than he was prepared to anſwer.

If there was a ſmoaky-houſe, it was *one* which Sir John could not acknowledge in his declaration before the court.

Sir John, in giving an account of Sholto's nurſe, ſays, that " ſhe lived two or three " leagues from Paris, upon the Amiens road." This is exceeding remarkable; a La Marre, a Walloon ſurgeon, accidentally at Paris about an *affaire epineuſe*, knew of an excellent nurſe two or three leagues from Paris upon the Amiens road. This, in itſelf, is not a probable ſtory; but it agrees excellently well with Mrs Hewit's account of a farmer's wife, and of going a good way to find her. It alſo accounts for this extraordinary circumſtance, that Sir John, while at Paris, never viſited the child.

When Sir John came afterwards to make oath in this cauſe, he took an opportunity of ſaying, " That the village where the nurſe " lived was but a little diſtance from Paris." It will not eſcape obſervation, that, by this time, Sir John had heard of the Pariſian La Marre; and it ſeems pretty plain, that he was inclined, if poſſible, to adapt his former ſtory to new diſcoveries. But it ſurpaſſes all belief, that Sir John ſhould have miſtaken *Hauteborne*, a place cloſe upon the gates of Paris, and not

on the Amiens road, for a place two or three leagues from Paris on the Amiens road.

It is not enough to ſay, as the defender does, " That Sir John was miſtaken, and that " his memory was far from being accurate in " ſuch matters." If a man ſhould affirm, that his child was nurſed at a village five or ſix miles from Edinburgh on the road to Northberwick, and an attempt ſhould be made to ſhew, that a child nurſed at the Croſs-cauſeway on the Dalkeith road was that man's child, would it be enough for reconciling the hypotheſis with the affirmation of the man, to ſay, " that he was miſtaken, and " that his memory was far from being accu- " rate in ſuch matters?"

The whole ſtory of La Marre is eſſentially abſurd and inconſiſtent from beginning to end. It may be fit to take the whole of Sir John's account of La Marre in one view. He met him by accident in the Thuilleries in ſummer 1748. La Marre ſaid that he had been called up to Paris about *an affaire epineuſe*, and that he believed he would continue there for ſome time. Sir John continued to correſpond with La Marre at Paris till the end of the year 1749. In 1752, he writes to La Marre ſtill ſuppoſing him at Paris; for, as he ſays,

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the addreſs was, at the poſt-houſe, Paris; by this time the *affaire epineuſe* muſt have laſted four years. La Marre anſwers ſtill from Paris, ſays he had been at Naples and propoſed to return thither. Sir John, when examined, ſays, that he knows nothing more concerning La Marre, but that it is probable that he is about Liege, where their acquaintance commenced. Why did he think that he was about Liege rather than at Naples or at Paris? The beginning and the end of this ſtory are inconſiſtent.

I ſhall admit, that the Tournelle proceſs may have deterred Sir John from going to Paris, by reaſon of the *great* danger he run of being put to the torture.

——*Sciebat quæ ſibi barbarus*
Tortor pararet——

But thoſe apprehenſions could not have prevented him from going to the country of Liege, where he thought it was probable that La Marre was to be found; La Marre, the concluſive evidence of *his* innocence, and of the defender's birth. At Liege, Sir John would have been in ſafety, out of the reach of the French church, and of the French ſtate.

AFTER

After all the attention I have beſtowed on this proof, it is impoſſible for me to connect the *Pariſian* Delamarre with the La Marre deſcribed by Sir John Stewart.

It has been ſaid, "That there is nothing "incompatible in the appellation of Walloon, "which Sir John gives to his La Marre, with "that La Marre who was a native of *Montreuil* "*ſur mer* in Picardy: That the antient divi-"ſion of France was into the *Pais Romain*, "where the Latin language was uſed, and the "*Pais Gaulois*, by corruption *Walloon*, where "the antient language of the country was re-"tained: That, according to this diviſion, the "*Artois* was in the *Pais Gaulois*; and that Mon-"treuil, though in Picardy, which was part "of the *Pais Romain*, is ſituated upon a river "which takes its riſe in the *Artois*; that there-"fore there was no great impropriety in Sir "John's giving a native of Montreuil the ap-"pellation of *Walloon*."

The obſervation is exceedingly ingenious; but it may be anſwered, that it is more probable that Sir John would ſpeak according to vulgar uſage, than according to an antient geographical diviſion of countries. In common language, a Picard is never called a Walloon: and indeed, according to this apology

for

for Sir John, the argument in his favour would have been more conclusive, had he thought fit to say, that his La Marre was a *Roman*, not a *Walloon*; for the province of Picardy where Montreuil is situated, is confessedly part of the *Pais Romain*.

THE last article which I shall mention of Sir John's declaration, is that relating to the four letters of La Marre.

THE four letters produced are not the composition of a Frenchman. This is so clearly proved, that there is no occasion to refer to the evidence of that proposition.

THEY are not all originals, or some copies, some originals, as Sir John has, upon recollection, declared; but they are *all* copies made by a person ignorant of the French language.

ALL the four letters are of one hand-writing, although the defender has, by mistake, supposed that a postscript to one of them is in another hand.

THEY are, in several places, *corrected* by another hand. This will be plain upon ocular inspection.

FROM internal evidence, there is the highest probability that those letters were composed by Sir John himself, and very prudently given

ven by him to be copied by a perſon who did not underſtand their contents.

THE perſon who tranſcribed thoſe letters is ſtill unknown. Sir John not only aſſerted, that ſome of them were copied by Mr Andrew Clinton, but took much pains to make Mr Clinton believe that he was the copier.

THE defender ſays, "That notwithſtanding Clinton's diſavowal, there is reaſon to "believe they were wrote by him." How this is conſiſtent with the known rules of evidence, I do not ſee. The letters do not reſemble the hand-writing of Clinton: Clinton denies that he wrote them: That he did write them, there is no evidence but Sir John's declaration.

BUT further, Sir John's own hypotheſis is inconſiſtent with the ſuppoſition of their being written by Clinton. Sir John ſays, They were copied while he himſelf lived at Bedel's in Southwark; and he gives the following account of the cauſe for which he had the copies made: "That Lady Jane, after her "arrival in Scotland, having wrote to the "declarant, then at London, deſiring him to "ſend down thoſe original letters, the de-"clarant gave them to be copied by Andrew "Clinton, and alſo gave him ſome French pa-

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"per to copy them on; and, as far as the de-
"clarant can recollect, he ſent Lady Jane
"theſe original letters, or the copies made
"by Clinton, though he is not poſitive
"which."

Now Bedel ſwears, That Sir John left his houſe in May or June 1752, and Lady Jane did not arrive in Scotland till Auguſt 1752; therefore, according to Sir John's hypotheſis, Clinton could not copy the letters: Or, in other words, if in Auguſt 1752, or after that period, Lady Jane wrote for the letters, they could not, in conſequence of her writing, be copied before July 1752.

Without entering into a particular diſquiſition as to all thoſe letters, it may be proper to ſay ſomething as to the ſtrain of the fourth letter, 9th June 1752. It bears many internal marks of great art and deep contrivance.

The plain purpoſe of it is to ſerve as a certificate to the following effect: "I Pierre
"la Marre *accoucheur*, do hereby certify, That,
"on the 10th July 1748, I delivered Madame
"Stewart, wife of Colonel Stewart, of male
"twins: That Mrs Hewit was preſent at the
"birth; and that the youngeſt of the twins
"being weak, and in danger of death, I per-
"formed

" formed the ceremony of ſprinkling him by
" the name of Sholto-Thomas. In witneſs
" whereof, I have written and ſubſcribed theſe
" preſents, at Paris, this 9th day of June 1752.
" *Pierre la Marre.*"

When this fourth letter is accurately examined, many remarkable circumſtances in it will appear.

By mentioning his performing the function of a prieſt, the writer meant the *ondoyement*: But though he knew the thing, he ſeems to have been ignorant of the term; and therefore he uſes an aukward circumlocution, which is alſo profane in the mouth of a Roman Catholic.

By making the certificate in the form of a letter, the difficulty and danger of forging the ſubſcription of witneſſes, or of a notary, are avoided. A formal certificate was obtained from Madame Tewis, concerning the marks of pregnancy; but there is only a letter produced as from La Marre. The reaſon of the difference may be eaſily found: She who was to give the formal certificate exiſted; the ſuppoſed writer of the letter was an imaginary perſonage.

By mentioning his journey to Naples, his long reſidence there, and his intention of

ſoon

ſoon returning thither, an excuſe was always ready for not finding La Marre either at Paris or about Liege.

By mentioning the diſeaſe in his breaſt, which had been relieved, but not removed, there was a probability eſtabliſhed of La Marre's ſpeedy death.

By providing, that the letter ſhould be delivered by La Marre's friend, inſtead of coming by the poſt, the great difficulty ariſing from the want of a poſt-mark on a foreign letter was overcome.

The mention of the profeſſion of La Marre's friend, gave a more natural air to the whole. But circumſtances which give an air of truth to a forgery, afford alſo the means of detecting it. Since the defender has not ſo much as endeavoured to ſhow, that a miniature painter, of the name of Dubois, exiſted at London in 1752, I will preſume, that he is a perſon altogether imaginary.

Any one who knows London, muſt know, that the exiſtence of a painter may be eaſily proved; eſpecially the exiſtence of a foreign painter, and of one whoſe branch of buſineſs is that of painting in miniature,

which few painters, comparatively ſpeaking, profeſs.

THE defender might have learned any day at Slaughter's coffee-houſe in St Martin's lane, from the French artiſts who frequent that coffee-houſe, whether Dubois exiſted or not; and I am perſuaded, that an inquiry, ſo obvious, and eaſy, and momentous, cannot have been omitted, when ſo many inquiries, leſs obvious, much more difficult, and of ſmaller moment, have been made.

THE mentioning the name of the child, is alſo remarkable; and not only the name which he is underſtood to have born in common converſation, but alſo the name of *Thomas*, probably from Sir Thomas Stewart, Sir John's father.

ANY Scotſman, unacquainted with the rites of foreign churches, would naturally conclude, that La Marre gave him the name of *Sholto-Thomas*, when he performed the ceremony of ſprinkling.

NEVERTHELESS, it is certain, that a child at an *ondoyement*, receives no name at all. The name is given by the *parrains* and the *marrains*; and there are none ſuch at an *ondoyement*.

PERHAPS

PERHAPS I have dwelt too long on the letters of La Marre. But the truth is, that I always confidered them of exceeding moment in this caufe. When I firft heard of the fervice, and of the evidence *there* produced, I heard of the letters of a celebrated man-midwife; and I confidered them as a very cogent proof on the one fide: Now, that I am convinced, that thofe letters are abfolute forgeries, I muft confider them as a very cogent proof on the other.

I proceed now to make a few obfervations on the evidence arifing from the letters and depofition of Mrs Hewit. And here, in the entrance, I muft obferve, that, although the defender repreefents Mrs Hewit, as a perfon having her memory impaired through age and infirmities; yet that, upon the moft accurate examination, her memory appears to have been uncommonly tenacious,

IN her depofitions, fhe mentions *twenty-fix* different dates; in *nine* of them fhe is precifely right; in *fix* fhe is nearly right; in one fhe is miftaken, from an error in calculation; in *five* dates relating to things of no moment, fhe appears to have been miftaken from want of memory.

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THE remaining *five* dates are *1ſt*, that they ſet out on their ſecond journey to Paris in October 1749; *2d*, That they ſet out from Rheims for Britain about the firſt of November 1749; *3d*, The time ſpent in their journey to London; and here indeed, her calculation is monſtrouſly erroneous. It is plain, that the journey from Rheims to London took up at moſt thirty-four days. She has made ſeven lie-days at St Omers, fourteen at Dunkirk, fourteen at Margate; and thus ſhe has not left a ſingle day, for performing any part of the journey. Here are three dates exceedingly miſtaken; and, if Mrs Hewit thought it expedient to prove an *alibi* from Paris at the time of the *enlevement* of Sanry's child, the miſtake may be accounted for. The other two dates are the capital ones in this cauſe, the time of the departure from Godefroy's, and the time of the arrival at Michell's.

FROM this deduction, it will appear, whether Mrs Hewit's memory had failed her at the time of her examinations in the ſervice, and before this court.

BUT ſuppoſing, that the ideas of Mrs Hewit were very naturally confuſed, whereof I do not ſee ſufficient evidence, and ſuppoſing her memory

memory to have failed before ſhe was examined in this cauſe, whereof I think I have proved the contrary; yet ſtill it cannot be denied, that during the ſpace of a month after the 10th of July 1748, her memory muſt have ſerved her as to daily incidents; more eſpecially, when thoſe incidents related to the things which the defender muſt ſuppoſe to have taken up her whole attention at that period; namely, the care of Lady Jane and the children.

If during that month ſhe made a recital from time to time of what really happened, her recital muſt have been conſiſtent.

Three letters from her to the maids are produced; one of the 22d July; another of the 26th July; and a third of the 12th Auguſt, 1748. Iſabel Walker ſays, that there were two more between the firſt letter and the laſt. But I have already attempted to ſhew, that Iſobel Walker's memory is ſometimes defective, ſometimes exuberant. It is therefore juſt, that Mrs Hewit be tried upon the evidence of her own letters actually in court.

Here I muſt premiſe three propoſitions, which cannot well be diſputed.

1ſt,

1ſt, THAT, when Mrs Hewit wrote, and ſent off the letter of the 22d July, the nurſe Favre, therein termed the *milk-woman*, had got the child, and was ſuckling him; *2dly*, That Favre continued to ſuckle him, while the family remained at Paris; *3dly*, That ſhe went with them to Dammartin, and continued to ſuckle him there, until he was delivered over to Mangin.

THE *firſt* propoſition is clear from this: That parties are agreed that the family was at Michell's on the 22d; and that the child had no milk-woman but Favre at that time.

THE *ſecond* and *third* propoſitions are proved by Favre, who is a witneſs againſt whom the defender can take no reaſonable exception; for that her prejudices are in favour of the defender and his cauſe. All things conſidered, ſuch prejudices are natural. There is internal evidence of them from the circumſtance that ſhe mentions of Mrs Hewit's pronouncing the word *doux*; from whence the witneſs conjectures, that Mrs Hewit meant to ſay, that the defender was one of twins.

THUS much having been premiſed, let us inquire into the accounts given by Mrs Hewit, in her letters concerning the eldeſt child.

HER

HER letter of the 22d July would insinuate, that the eldest child had only one nurse before the *milk-woman* or Favre: "He "(the youngest) agreeing so well, (with the "country, or with being out of the house), "we are fond to send the other (that is out "of the house); some days after your master "went out to see him, and found the nurse "drunk; upon which he sent the coach for "me, and we brought him with us. *We* "*have got a fine milk-woman,* till we get a right "nurse."

The expressions, "*send the other,*" and your master went out, would naturally imply, that the eldest child was sent to the country; but as the expressions may only imply *out of the house,* not *out into the country,* it is best to understand them in the sense least liable to exception.

ON the 26th July, she writes, "Ill luck he "has had to his *nurses*, poor man; but has *at* "*last* got a fine one, and he not a bit the "worse."

As, at this time, the defender continued to be suckled by Favre, it follows, that Mrs Hewit by "*nurses*, and *at last* getting a fine "one," must have meant to make the maids believe, that previous to Favre, he had *more*

nurses

nurſes than one; the leaſt that is poſſible to be conceived is, that he had *two* before Favre.

So ſtands the calculation on the 26th July: Next, comes the letter 12th Auguſt, by which time he had been put into the hands of Mangin.

At the 12th of Auguſt, then, he muſt have had *three* nurſes according to the letter of the 22d July; 1. The drunk woman; 2. Favre; 3. Mangin. But according to the letter of 26th July, he muſt have had four nurſes; 1. and 2. two nurſes before Favre; 3. Favre; 4. Mangin.

On the 12th Auguſt, however, the ſcene changes. "Our dear little man that is with us, "he has been the moſt unlucky, poor dear, in "his nurſes, *no leſs has he had than five, all good* "*milks, but baſe jades, would not come along with* "*us for love nor money.*" She then mentions the reaper, Mangin, whom they had procured in their diſtreſs for want of a nurſe.

It follows from the letter of the 12th Auguſt, that the defender had *five* nurſes before Mangin, who were *all good milks, but baſe jades, that would not come along for love nor money.*

How are the five to be made out? By the letter of the 22d July, there were only two; 1. The drunk woman; 2. Favre. Again, by the

the letter of the 26th July, if there were two, before Favre, the drunk woman and another, ſtill there would be two wanting to compleat the number of five; and even this, upon the ſuppoſal that the drunk woman was a *good milk*, and one whom they would have deſired to go along with them.

In order to reconcile the letter of the 26th July with that of the 12th Auguſt, we muſt ſuppoſe that the defender had *four* nurſes before he got Favre; that is, that he had changed *four* nurſes before the 22d, or rather before the 21ſt, when the letter was wrote; and indeed, according to the evidence of Michell's family, by the 20th. But how can this be reconciled to probability, or to the letter of the 22d; more eſpecially as it is ſaid, that the defender was ſuckled for ſome days by the drunk woman?

If the defender was born on the 10th July between three and four in the afternoon, the ſooneſt that he can be ſuppoſed to have been ready for a nurſe, or a nurſe ready for him, muſt have been the morning of the 11th. Suppoſing that the drunk nurſe ſtaid but a day in the lodging with him, and had him but *two* days with her in her own houſe, which is the moſt limited explication of *ſome days*, here are three

days consumed. The milk-woman, Favre, could not be got latter than the 21st; here then are ten days before she was got; *three* at least are taken up by the *drunk nurse*; so that, in the remaining *seven* days, there were hired for the defender three *nurses*; and during that period, all *three* dismissed, not because they were bad nurses, but because "they "were base jades, who would not go to "Rheims for love nor money." It is plain, that this could be no reason for dismissing three nurses before the defender was ten days old.

It would be straining beyond measure to suppose, that Mrs Hewit, by saying "no less "has he had than five, all good milks," meant that he had the *offer* of no less than five; for, besides that the words do not bear this sense, she adds in the same letter, "*in spite of all that*, "he is the statelieſt dear." This necessarily implies, in spite of his having changed so many nurses.

Mrs Hewit, in her examinations, gave an account of the nurses different from any of the accounts contained in her letters. Her hypothesis is as follows,

The first nurse procured by Madame le Brun continued with the child till Sir John

found

found her drunk, and then the child was brought to Michell's, where it got 2d nurſe, the milk-woman Favre; 3d nurſe who was procured by Sir John, and proved a bad one with no milk; 4th, the milk-woman got back for the ſecond time; 5th, the nurſe Mangin.

When this hypotheſis is conſidered, it muſt be acknowledged to be very ingenious. It reconciles the letter of the 22d and 26th July. Thus, on the 22d, they had quitted the drunk nurſe, and got the milk-woman, by the 26th, they had got and had diſmiſſed the nurſe with no milk, and had got back Favre; and therefore, it might be ſaid, that the child had had ill luck to his nurſes, having changed two, the drunk woman, and the woman; without milk; and that he had now got a fine one, (*i. e.*) the milk-woman Favre for the ſecond time.

But this is ſtill irreconcilable with Favre's evidence, and with the five nurſes changed before the 12th of Auguſt.

The *roll* of nurſes in her letters 22d and 26th July, and in her depoſitions, will never anſwer to her account " of *five good milks*, who " would not come along with them for love " nor money." The drunk nurſe could not be ſaid to be a good milk, or one whom they de-

ſired

ſired to go along with them. The nurſe with no milk, and who was branded as a thief, could not be a good milk, or one whom they deſired to go along with them. The other two nurſes beſides Favre, are, in all probability, imaginary; ſo that, "*the five baſe jades* "*with good milk*," are reduced to the ſolitary Favre.

FROM what has been ſaid, it appears, that Mrs Hewit, when her ideas were clear, and her memory entire, has endeavoured, by heaping up minute circumſtances, to ſhow the diſtreſs they were in for nurſes, the difficulties they were daily encountering, and the great care and concern for Lady Jane and the children, expreſſed both by Sir John and herſelf; but that, in entering into this detail, ſhe has both contradicted herſelf, and the unexceptionable witneſs Favre.

FURTHER, Mrs Hewit, in her letter of the 26th July 1748, ſpeaks of the Doctor having ordered Lady Jane to the country in eight days. It muſt be admitted, that this means to convey the idea, that at this time there was a Doctor attending Lady Jane.

I think that there is convincing evidence, that there was no Doctor attending Lady Jane at that time; and that this may be proved without

without having any regard to the evidence of the people in Michell's houſe.

FROM Favre's evidence it is plain, that ſhe never ſaw a man-midwife or phyſician about Lady Jane or the child. Favre had the child under her care from the 21ſt July at lateſt: It is impoſſible to ſuppoſe that the man-midwife was in the courſe of viſiting Lady Jane after the 21ſt, and yet, that he never was taken to viſit the nurſe and child, who were either in the houſe, or within a door or two of it; a child almoſt ſtarved by a bad nurſe; a nurſe taken at a venture to ſupply her place; an anxious mother, a fond father, a careful female companion; and yet the man-midwife attending Lady Jane was never ſent to examine the condition, either of the nurſe or of the child! This paſſes belief!

IT would conſume too much time were I to take notice of all the contradictions and improbabilities in Mrs Hewit's evidence. One circumſtance, however, I cannot omit.

SHE has ſworn, that "ſhe had no converſa-"tion with Lady Jane concerning the man-"midwife, prior to the delivery." If this is true, and ſuppoſing a real delivery, I will be bold to affirm, that it is a ſingular fact, not to be parallelled in the hiſtory of human nature: That

That the confident of Lady Jane, her ſingle acquaintance in a ſtrange country, ſhould never have any converſation with her concerning a perſon whom they had come ſo far to ſeek; a perſon who was to be employed in the office the moſt intereſting that could be imagined! This circumſtance has always ſtruck me, and I cannot account for it upon the common principles of human nature.

It is further to be obſerved, that Mrs Hewit herſelf ſays, That Lady Jane would have lain in at Madame Obin's houſe in Bruſſels, had not Mr Obin been called away. Mrs Hewit muſt mean, that Lady Jane informed her of this. She further ſays, That Lady Jane had no nurſe beſpoke, and would not allow one to be beſpoke; becauſe ſhe did not know whether ſhe would bear a living child. She alſo ſays, That Lady Jane aſked Madame Andrieux about midwives at Rheims, heard her anſwer, and interpreted the converſation. Here are converſations about the place of lying in, about the procuring or not procuring a nurſe, and about the ignorance of the midwives at Rheims; and yet there was never any converſation about the perſon whom Lady Jane was to employ at her delivery. How can theſe things be

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reconciled? Can I believe them all? or which of them ought I to believe?

I come now to an unexceptionable, though a *Tournelle* evidence; I mean not Godefroy, but Godefroy's books.

THE residence at Godefroy's is one of the capital articles of the cause; for if it be once established, that Sir John and Lady Jane resided at Godefroy's until the 14th July, or past the 10th of July, the whole system of the defender, and every prop and pillar of it, fall at once to the ground.

THE more I examine those books, the more I am persuaded of this proposition, That Sir John and Lady Jane were at Godefroy's upon the 10th of July 1748.

THE following particulars seem clear:

1st, THAT the blank article in the household-book, *Jeudi, 4me Juillet*, relates to a company of *three* people at three livres *per* head. There is neither evidence nor probability, that any company ever came there and resided at the rate of four livres ten sous *per* head; and I cannot explain this article in a different manner from the other articles in the books.

2dly, THAT it relates either to a man having

ving perſons of another ſex with him, or to a man who acted as the maſter of a family.

3*dly*, THAT it relates to a company which entered in the evening of the 4th of July.

4*thly*, THAT it relates to a company of three perſons having no ſervant with them.

5*thly*, THAT the article, "*Monſieur a payé et* "*recommencé*," relates to the ſame company for whom an account was opened on the evening of the 4th of July.

ALL this appears from written evidence, and would equally well appear, although Godefroy and his wife had died fifteen years ago, without being ever examined, as it can do now while they are alive, and ſtand as witneſſes in this cauſe.

Now, the time of entry, the number of perſons, that one of them was the paymaſter, that they had no ſervant, do all preciſely agree with Sir John Stewart and his company.

THE queſtion then is, How is this article to be diſcriminated from Sir John Stewart and his company? By *article*, I mean *both articles*, as they confeſſedly relate to one company.

THE defender's hypotheſis muſt be, that an account was opened in Godefroy's houſe-

hold-

hold-book for a company, as entering on the 4th of July after dinner: That this company consisted of three persons; that one of them was the paymaster; that they had no servant with them; and that this company was different from Sir John Stewart's company, although agreeing with it in all those particulars.

To suppose that Godefroy kept a *third book*, is contrary to evidence, and without probality.

To suppose that the nameless company consisted of two persons at four and a half livres *per* head, is an ingenious conjecture; but, besides other objections, is liable to this, that the defender has repeatedly asserted, "that the book in question was merely a "book for the ordinary of the house;" and it is agreed, that that ordinary was at the rate of three livres *per* head.

The defender's hypothesis does further suppose, that *they* were in the house on the 7th of July, and yet were not inserted in the police-book, while Sir John Stewart and his company were, and that *they* had an account opened for them in the house-book, while Sir John and *his* company had none opened for them; or, in other words, that *they* were

in the houſehold-book and not in the police-book, while Sir John and *his* company were in the police-book and not in the houſehold-book.

FURTHER, as the defender holds, that the *inſpecteur* actually viſited the houſe on the 11th July, his hypotheſis muſt lead him to maintain, that this nameleſs company eſcaped not only one *viſa* of the *inſpecteur*, which is common, but two viſas, that of the 6th, and that of the 11th.

ALL this is poſſible; becauſe all this does not infer an abſolute contradiction; but it is exceedingly improbable, as every one at firſt ſight muſt perceive.

BUT the great improbability of this hypotheſis, and conſequently the great probability of the contrary hypotheſis, will further appear, when it is conſidered, that, in the whole of Godefroy's police-book, from February 1747 to the end of the year 1749, there is ſcarcely one ſingle inſtance of an entry of a company of two or more in the police-book, which has not a correſponding account in the houſehold-book. I have examined them all with care; and the only exceptions ſeem to be that of *Cliquinot* and *Mopinot*, No. 228.; and the one in controverſy; even the example

of

of *Cliquinot* and *Mopinot*, may, with appearance of reaſon, be diſputed. At the ſame time, during the period from February 1747 to the end of the year 1749, there are at leaſt forty-ſix examples of companies marked in the police-book.

This, of itſelf, affords a very ſtrong preſumption, that the article, "*Mr——ſont en-*" *très*, 4*me* *Juillet* 1748," has a correſponding article in the police-book; and, if it has, then the cauſe is determined.

I do not enter into the queſtion, as to *ſingle* perſons ſaid to be entered in the police-book, without a correſponding article in the houſehold-book; becauſe a ſingle perſon may be more eaſily omitted than a company. As to thoſe ſingle perſons, I think, that the purſuers have made the examples too few, the defender, too numerous.

It is not ſufficient to ſay, that this article of Godefroy's book would not be probative in a queſtion for half a crown. Moral evidence is not to be regulated by the ſtatute 1681.

Suppose, that there were produced a letter from Godefroy to Mr Maillefer, acknowledging his letter of recommendation of a Scots Colonel and two ladies, and mentioning, that they

they had been actually in his houſe, and did not leave it till after the 10th of July; ſuch letter, though not dated, and though not all written with Godefroy's own hand, would go very far indeed to terminate this great controverſy; and yet it might not be probative in a queſtion for half a crown.

HITHERTO, I have conſidered the queſtion as to Godefroy's books, as if Godefroy were dead, or no witneſs in this cauſe. But, when Godefroy's depoſition is conſidered, the evidence becomes more cogent.

I have ſhewn, that the articles continued down from the 4th to the 13th July 1748, do naturally and probably apply to Sir John Stewart.

Godefroy ſwears, that *they do apply;* and, if I am well founded in my premiſes, he ſwears nothing but what is *natural and probable.*

BY parity of reaſon, had Godefroy ſworn, that thoſe articles did not apply to Sir John Stewart, he would have ſworn what was neither *natural* nor *probable.*

HIS depoſition implies, that the article, *4th July,* continued on the *eight,* relates to the perſon, who on the oppoſite ſide of the book

book is designed Mr Stewart, and marked as entering by himself, 8th August 1748.

THIS, of itself, might be held a sufficient cause for Godefroy's remembering *who* they were that resided in his house for above eight days in July 1748.

IT is difficult always to assign the causes which originally fixed a fact in the memory of any man.

GODEFROY may have had many causes for remembering Sir John Stewart and his company, and for remembering the connection between them and the written evidence.

A person recommended to him by repeated letters from a man of distinction at Rheims; a Briton coming with his family to Paris before peace was declared; a Briton coming with ladies; the same person returning to his house within the space of a month: All those circumstances may have concurred in fixing the idea of Sir John Stewart upon Godefroy's memory.

THERE are many things which impress an idea upon the memory; and that idea will remain after the cause of the idea is effaced.

THE defender himself has suggested another cause, why Godefroy may have had the remembrance of Sir John Stewart and his company

impressed

impreſſed on his mind. He contends, that, on the 4th July 1748, there were in Godefroy's but two lodgers, Mr *Reſette* and Mr *Deſcourbons*, beſides the nameleſs company, and Sir John Stewart's company. Now ſuppoſing, that the two perſons firſt mentioned and Sir John's company were the only lodgers in the houſe, the memory of that company would be more lively in the mind of Godefroy, than if he had been in a hurry of buſineſs with his houſe quite full of gueſts.

If it was Godefroy's general and almoſt univerſal cuſtom, to fill up the names of his gueſts in his houſehold-book, the very omiſſion of that circumſtance might aid his memory to the blank article.

The circumſtance of there being few ſingle lodgers in his houſe, and no other *company* at all beſides Sir John and his family, made it of leſs moment whether the account was filled up or left blank.

Had there been another company in the houſe entering at the ſame time, and conſiſting of the ſame number of perſons, this circumſtance alone would have made it the more neceſſary to diſtinguiſh, by ſome name or appellation, between the one company and the other.

Many

MANY other *causes of knowledge* might be suggested. The only one I shall add, is derived from the language, manners, and address of Sir John Stewart.

OF this the proof in the present cause affords more than one example: He is remembered by one of the passengers in the stage-coach to Paris for a point of honour dispute about seats, and for saying *mon place*, instead of *ma place*. Madame Pelletier, though, as the defender observes, she was then very young, and probably did not attend the coffee-house; yet she remembers Sir John Stewart, and describes him with sufficient exactness. The mention which she makes of Sir John residing in the *Rue St Martin*, points out the time better than she herself could do from memory.

AFTER all this, why are we to suppose, that Godefroy is a perjured man, and unworthy of credit?

IT has been said, that people who eat in their own chamber paid more than in the ordinary; and that, as Sir John and his company eat in their own chamber, the blank article stated at the ordinary prices, cannot relate to them.

BUT this argument proceeds upon a mistake of the fact. Madame Godefroy says,

"That

"That at the ſame time, the perſons who "choſe to eat in their own apartments, if "they were not ſatisfied with the ordinary, "gave notice thereof; but that generally "they were all ſatisfied with it; and *that "the price of the ordinary was the ſame, whe-"ther people eat in their own apartments or at the* "table d'hôte." If Madame Godefroy is to be credited in any thing, it is in a circumſtance of this kind; and there is nothing in the proof which contradicts her.

It has alſo been ſaid, that it is incredible that Sir John would have remained at Godefroy's on the 10th of July, and yet have fixed upon that day as the æra of the delivery; for that the danger of a diſcovery, by means of the people at Rheims, was evident.

But it does not appear, that the people with whom Sir John and Lady Jane became acquainted at their return to Rheims, ever knew of the day fixed for the delivery of the twins. Mr Andrieux and his family may have heard it; but then, What could have induced them to have traced out Sir John, or to have inquired where he lodged upon the 10th of July?

After all that has been ſaid for proving that Sir John Stewart and Lady Jane were at

Godefroy's

Godefroy's upon the 10th of July 1748, I admit, that theſe circumſtances would be of little moment, were there better and more convincing evidence, that, after a ſtay of two or three days, Sir John removed from Godefroy's, and was at another houſe upon the 10th of July: And this leads me to inquire what proof there is of his reſidence at the houſe of a Madame le Brun, to which houſe it is aſſerted, that he removed about the 7th of July.

ALL the laborious ſearches in the capitation-rolls for a Madame le Brun have proved unſucceſsful; no diſcovery has been made of ſuch a Madame le Brun as might anſwer to the deſcription given by Sir John.

THERE is no evidence of a perſon having eluded the capitation who was poſſeſſed of lodgings capable of accommodating herſelf, her daughter grown up to woman's eſtate, and, at leaſt, one ſervant maid, together with a female lodger and *three* ſtrangers, who, at that time, muſt be ſuppoſed neceſſarily to have required three beds. It is plain, that there muſt have been five beds in this houſe, although one of the family had ſlept with the female lodger.

NONE of the *five* Madames le Bruns, mentioned in the proof, can poſſibly connect with the deſcription given of the ſuppoſed perſon in controverſy.

NOT Madamoiſelle le Brun, *Rue de Bievre*; becauſe ſhe lived ſingle, and in a fourth ſtory. Not Madamoiſelle le Brun, *Rue du Murier*; becauſe ſhe alſo lived ſingle, and in a fourth ſtory. Not Madame le Brun, *Rue des Amandiers*; becauſe ſhe and her daughter had a *ſingle* room in a third ſtory. Not Madame le Brun, *Rue Dominique*; becauſe her reſidence is abſolutely inconſiſtent with the deſcription of a ſtreet on the left hand of the *Rue de la Comedie*, as one goes from the Pont Neuf to Luxembourg.

LEAST of all, Madame le Brun, *Rue de la Comedie*, although ſhe is repreſented as the perſon whoſe deſcription bears the neareſt reſemblance to Sir John's Le Brun; for that the *Rue de la Comedie*, can never be ſaid to be on the left hand of the *Rue de la Comedie*; and Sir John would never have made an excuſe for not remembering the ſtreets to the left of the *Rue de la Comedie*, by reaſon of their number, if he had meant to place the houſe in queſtion, not in one of thoſe ſtreets, but in the *Rue de la Comedie* itſelf: Beſides, this Madame le Brun

was

was a ſingle woman: There is no appearance of her daughter or ſervant on the capitation-roll; and ſhe muſt have been of the very meaneſt rank, for ſhe is taxed at three livres, while the apprentice to a dealer in earthen-ware is taxed at four livres.

But, indeed, I much doubt of the propriety of all this ſearch in the capitation-rolls. I ſtill think that the Madame le Brun in queſtion muſt be ſought for among thoſe who kept either *hôtel garni*, or *chambres garnies*.

The accounts given by Sir John and Mrs Hewit are inconſiſtent with the ſuppoſition of Madame le Brun being a *garde malade*, or a woman keeping a *depôt* for an *accoucheur*. If ſo, then ſhe muſt have been, (if ſhe exiſted at all), a perſon who kept an *hotel garni*, or *chambres garnies*.

In the whole declarations and depoſitions of Sir John Stewart and Mrs Hewit, there is not the moſt remote hint of Madame le Brun being a *garde malade*, or keeper of a *depôt*.

1. They both ſpeak of a houſe like Michell's, in ſo much that the difference in deſcription is ſcarcely perceptible; and the deſcriptions ſeem like the ſame picture delineated on different canvaſſes.

2. Sir

2. SIR JOHN thinks that *his* Madame le Brun was recommended to him by Godefroy's people. This ſhows that he never thought of the hypotheſis of Madame le Brun being recommended by a man-midwife as a *garde malade*, or keeper of a *depôt*.

3. THERE is nothing in the whole proof, which even ſeems to inſinuate, that lodgers are ever received into the houſe of a *garde malade*, or of one keeping a *depôt*; and yet here, we have Sir John, Lady Jane, and Mrs Hewit, all ſuppoſed to occupy ſeparate beds; and alſo a woman-lodger.

4. THERE is nothing in the whole proof, which even ſeems to inſinuate, that a woman of Lady Jane's faſhion, and not obliged to lie in clandeſtinely, did ever think of being delivered in ſuch a place; in the aſylum of looſe women, or in a receptacle for the very meaneſt of the people, for a Mignon, not a Lady Jane Douglas.

IT is material to obſerve, that, during the lifetime of Sir John Stewart, this idea of a *garde malade*, or a keeper of a *depôt*, was never adopted. This is a circumſtance which merits particular attention. The information for the defender of July 1763, was certainly drawn up from materials furniſhed by

Sir

Sir John Stewart; it would be injurious to ſuppoſe, that the defender's counſel would draw up an anſwer to the *condeſcendence*, without taking Sir John's aſſiſtance, as to facts whereof he was the fitteſt perſon to inſtruct them. Had they anſwered the condeſcendence, without taking Sir John's aſſiſtance, they would have miſled the purſuers, and perplexed themſelves in the proof. They have too much candor for the one, and too much judgment for the other.

THUS ſtanding the caſe, it will be fit to read a paragraph or two from that information, p. 22. "To the condeſcendence, as to Madame Le Brun not being in the police-book, "it is anſwered, That there is no reaſon to think "that the books or regiſters at Paris are more "exactly kept, or that the officers entruſted "with them are more accurate, than thoſe "of the ſame kind kept in Britain; and "therefore theſe books referred to in Paris, "can have very little influence or weight in a "queſtion of this kind."

NOW, had Madame le Brun been ſuppoſed not to have kept an *hôtel garni*, or *chambres garnies*, here would have been the time to have ſaid ſo, and to have made the diſtinction between an *hôtel garni* and a *depôt*; and the defender

defender would have properly urged, that the non-existence in the register, of a Madame le Brun in 1748, keeping an *hotel garni*, or *chambres garnies*, was a circumstance extraneous to the cause, and absolutely immaterial; for that the Madame le Brun in question kept no such *hotel garni*, or *chambres garnies*, but kept a *depot*.

It is now said, that Sir John Stewart did not know the difference between an *hotel garni* and a *depôt*. I shall make that supposition, although it implies that Sir John Stewart did not know the difference between such a lodging-house as he would take his wife to at the eve of her delivery, and the wretched habitation of strumpets and beggars. But then, what will be said of the following paragraph in the defender's information, 1st July 1763? "As for a keeper to Lady Jane, their "finances would not admit of any extraordi-"nary expence; *nor was a keeper necessary*, as "Mrs Hewit was attending her."

If Lady Jane actually lay in at the house of a woman keeping a *depot*, or of a woman whose profession was that of a *garde malade*, is it possible to imagine that neither Sir John Stewart, nor Mrs Hewit, would have informed the defender's counsel, that Lady Jane actually

actually lay in at the houſe of a perſon, whoſe profeſſion was that of a ſick nurſe or keeper? Inſtead of ſearching for reaſons why Lady Jane had no keeper, the defender would have ſaid in his anſwers to the condeſcendence, that Lady Jane *had* a *keeper*, and lived in the houſe of a *keeper*.

THUS the ſuppoſition of a *depôt*, or the houſe of a *garde malade*, was not entertained during the life of Sir John Stewart. Afterwards ſome ſuppoſition of this nature was required; for it came out upon proof, that if Madame le Brun had kept an *hôtel garni* or *chambres garnies*, ſhe muſt have been in the regiſter of police; but that no ſuch Madame le Brun appeared upon thoſe regiſters, and conſequently that ſhe did not exiſt.

As the non-exiſtence of a Madame le Brun is proved; and as there is here aſſembled a variety of proofs inconſiſtent with the ſuppoſition of a delivery at a *depot*, or at the houſe of a *garde malade*, the inference is, That Madame le Brun, and her daughter, and her female lodger, are all imaginary perſonages, as much as Pierre la Marre the Walloon ſurgeon, and his intimate friend Dubois the painter in miniature.

THE

THE proof of the non-existence of this essential person in the drama, is of exceeding moment: By like proofs of the non-existence of persons introduced into other dramas, great and daring frauds have been detected.

YOUR Lordships will remember the unparallelled effrontery of the person who termed himself George Psalmanazar. This man invented a description of the island of Formosa; drew up an account of its laws and institutions; made a grammar of its language, and persisted in his fable for many years.—One great means of his detection was the proof of the non-existence of father Rhodes the Jesuit, whom Psalmanazar reported to have been his conductor into Europe.

AN imposture more recent was detected by a proof of the non-existence of Count *Vincenzo della Torre*, the imaginary husband of the daughter of *Signor Constantini of Fermo:* and it is remarkable, that, tho' the historian of Formosa did at length, with much contrition, acknowledge his imposture; yet that the other historian persisted in asserting the existence of Count *Vincenzo della Torre*, altho' there was compleat moral evidence that he had never existed, unless in the imagination of the professor at *Macerata*.

HAVING

HAVING already detained your Lordſhips ſo long, I will but juſt touch upon the proof as to the two *enlevements*.

WITH reſpect to the *enlevement* of Mignon's child; many of the circumſtances co-incide with the ſyſtem of the purſuers, others diſagree with it. The principal differences are in the deſcription of the perſon who carried off the child, and in the colour of the child's eyes: And it is remarkable that thoſe differences are mentioned by the witneſſes to whoſe teſtimony the defender has chiefly objected, by the *perjured* Mignons! Set their teſtimony aſide, and the connection between what paſſed in the *Fauxbourg St Antoine*, and at the *hotel D'Anjóu* * is wonderful.

THE *enlevement* of Sanry's child does ſtill more exactly reſemble the hiſtory of Sholto: The witneſſes to that *enlevement* are not liable to ſuſpicion; they were firſt diſcovered and examined by the defender's agents: Had they varied upon oath, from what they declared at their firſt examination, the defender would have availed himſelf of that material circumſtance. But it is not ſaid that they have ever varied; and indeed their evidence bears the marks of truth and candor. Although

* Michelle's.

I do not approve of the ſtile of the *Monitoire*, yet the witneſſes of the Fauxbourg St Laurent could not be inſtructed by the *Monitoire*. On the contrary, the *Monitoire* was drawn up in conſequence of the information previouſly received from thoſe witneſſes.

I have already detained your Lordſhips too long; and therefore I conclude as I began, that, with great unwillingneſs, I give my opinion for ſuſtaining the reaſons of reduction.

LORD

LORD JUSTICE-CLERK.

IT is now my duty to deliver my opinion upon this very interesting cause, which, taken in all its circumstances, and in all its consequences, is the most important to the parties, and to the public, that ever came before this court.

WITH respect to the pursuers, I cannot take upon me to determine, at this time, what interest they, or any of them, may finally be found to have in the succession of the late Duke of Douglas: But this I know, that the title of Duke Hamilton to carry on the present action has been sustained in this and the higher court, and the title of the two other pursuers has never been called in question: And therefore I shall find myself obliged to give the same judgment in this suit, as I would have given if the like suit had been brought by a younger sister, or the son of a younger sister of Lady Jane Douglas.

WITH respect to the defender, the importance of the decision to him is too affecting to escape the observation and feeling of any judge: None of your Lordships have felt

more

more for his ſituation than I have done; and if I could diſpoſe of my opinion, as I can of my charity, *unaccountably*; I know, and the world may gueſs, upon what ſide I would have given that opinion: But, ſitting in this place, I am not maſter of my own opinion, it does not belong to me, it belongs to ſacred juſtice, and I cannot with-hold it.

WITH reſpect to the public, the queſtion is no leſs important. On the one hand, it is of the higheſt conſequence, that the rights of filiation, upon which the peace of families, and all the important rights of mankind depend, may not be diſturbed by a challenge of birth, unſupported by legal and convincing evidence: On the other hand, it is of no leſs conſequence, that the ſame right of filiation, which includes all the rights which can deſcend to mankind through the blood of their remoteſt anceſtors, be not evaded, and rendered ineffectual by artifice and baſe impoſture. I am ſorry to give my opinion, that one inſtance occurs of this in the preſent caſe. For, after the fulleſt conſideration of the whole evidence, I am clearly of opinion, that this defender was not born of the body of Lady Jane Douglas; that he is a ſuppoſititious child,

and

and that the purſuers have ſufficiently proved their reaſons of reduction.

BEFORE I proceed to ſtate the grounds of my opinion, I muſt beg leave ſhortly to ſtate the rules of law, and of evidence, which appear to me to apply to this caſe: In doing which, I ſhall endeavour to obviate ſome obſervations which have been ſtated from the bench, in ſupport of a different opinion in this cauſe.

AND the *firſt* thing that occurs, is the queſtion, *cui incumbit onus probandi?* This appears to be a diſpute about words; for the counſel of both ſides, and all your Lordſhips ſeem to come to the ſame concluſion. The defender is in poſſeſſion of his filiation, by the acknowledgement of his reputed parents. That ſtate is aſcertained to him, *in prima inſtantia* by the ſervice of the jury. That ſervice has been followed by legal titles to the eſtate, and by the decree of the court ordering him to be put in poſſeſſion. Such title cannot be ſhaken, but by a reduction founded upon evidence ſufficient to overturn the ſervice. But every lawyer knows, and muſt admit, that of all the titles known in the law, that of a *ſervice* is the weakeſt, and moſt inſignificant. It is an act of volun-

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tary jurisdiction, may proceed before any judge, and before a jury of the claimant's own chusing. It is not a pleadable brieve; and the depositions of two witnesses to the propinquity by reputation, is held to be sufficient to found the verdict. But still it is a good title to the succession, till it is set aside by reduction; and accordingly, the parties have proceeded in this cause. And now, the matter comes before your Lordships, as the grand jury, to consider upon whose side the evidence lies. If the pursuers have, upon the whole matter, proved sufficient to satisfy your minds and consciences, that this is a false service, then you must reduce it. If not, you must leave the defender in the possession of his state and filiation, as proved by his service, and assoilzie him from this reduction.

2*dly*, ALL crimes, and all frauds, whether pursued criminally, or *ad civilem effectum*, admit of a twofold proof, either *direct* or *circumstantial*. Crimes of a latent nature, contrived of forethought, especially when pursued at a distance of time, seldom admit of a *direct* proof. In the present case, the proof is *circumstantial*.

3*dly*,

3dly, In ſuch an evidence, each circumſtance muſt be proved to the ſatisfaction of the judge or jury, before it can be taken into the general chain of evidence.

4thly, In trying the import of ſuch circumſtantial evidence, you are not to ſeparate the evidence, and try the import of each circumſtance by itſelf; you are to take the whole evidence together, in order to form a proper verdict or concluſion. And it is agreed by all judges and lawyers, that a circumſtantial evidence may lead to as certain a concluſion as a direct proof; in many caſes more certain: And the ſafety of the public depends upon this principle.

5thly, In a circumſtantial evidence, no part of the proof is ſo much to be regarded, no part of it can give ſo much conviction to the mind, as what ariſes from the conduct and behaviour of the parties accuſed. Providence may collect a chain of circumſtances together, in ſuch a manner, as to create an appearance, and ſometimes a conviction of guilt againſt an innocent perſon. But, I believe, ſcarce an inſtance can be given, where the principal part of the evidence from which the guilt is inferred, does ariſe from the conduct and behaviour of an innocent perſon.

6thly,

6thly, *Demonſtration* and *demonſtrative* evidence is not incident to human affairs, and is not neceſſary in the trial of any caſe, civil or criminal. Demonſtration implies an impoſſibility of the contrary. Such proof can occur in no caſe. The moſt important facts, whether in civil or criminal matters, muſt be tried by moral and legal evidence; and that is legal evidence, which gives full faith and conviction to the mind of the judge or jury. Such was the opinion of all my brethren of the court of Juſticiary, in the late trial of John Reid for ſheep-ſtealing *.

It

* The caſe here referred to was as follows. John Reid was indicted for ſtealing ſix ſcore of ſheep, from a farm in the county of Peebles. It was proved, that the priſoner was a perſon in low circumſtances, and of bad character; and that ſoon after the theft, he was ſeen driving the ſheep upon the road leading from the farm from whence they were ſtolen, towards Glaſgow. He was traced to the neighbourhood of Glaſgow, where he placed the ſheep in an incloſure, and treated with ſundry butchers for the ſale of them. But, before finiſhing any bargain, a ſurmiſe aroſe, that the ſheep were ſtolen; upon which the priſoner abandoned them, and fled the country; but was afterwards apprehended. Upon his trial, he offered no evidence whatever, that he had come by the ſheep in any lawful way; and yet, the jury, miſled by the idea, that there could be no legal proof

It was ſaid, "That if we admitted any evi-
"dence, ſhort of demonſtrative evidence, to
"take away the filiation of the defender,
"eſtabliſhed as it is, in this caſe, it would be
"a fatal deciſion to the public, and to our
"poſterity."

I am not moved by this alarm; for what is the right of filiation? It is not merely the right of being called the ſon, and of inheriting the ſucceſſion, of our immediate parents. It implies alſo the right of inheritance thro' their blood to all their anceſtors. Let us now ſee how far poſterity and the public is intereſted in the deciſion. We find that filiation cannot be taken away without demonſtrative evidence of the impoſture: But we find, at the ſame time, that that filiation, and the moſt important rights ariſing from it, may be diſappointed and robbed from us by any perſon who can conduct an impoſture, ſo as to avoid demonſtration of the guilt. No

proof of his guilt, becauſe there was a poſſibility, that he might have got the ſheep in a lawful way, though he had offered no proof of it, returned a ſpecial verdict, from which no guilt could be inferred; and thereupon, he was diſmiſſed from the bar. But the five judges preſent, delivered their opinion *ſeriatim*, that the verdict was erroneous, and contrary to evidence.

lawyer has ſaid, that the *crimen ſuppoſiti partus* is to be tried by a different rule of evidence from any other crime. I am for giving the defender the full benefit of every rule of law with regard to evidence, of every exception known in the law for ſetting aſide evidence: But I am not for inventing a new ſyſtem of law, and new rules of evidence, for ſecuring his filiation different from what the public and every individual enjoys for their ſecurity againſt the crimes of treaſon, murder, forgery, and falſehood of every kind.

It was ſaid, "That a direct proof by two "or more credible witneſſes cannot be redar-"gued by a circumſtantial evidence, which "may be conſiſtent with the poſitive proof; "and the caſe of theft was referred to, where "the ſtolen goods may be found in poſſeſ-"ſion of the accuſed perſon, and a variety of "other circumſtances concur to fix the guilt "upon him; and yet, if he ſhall prove by "two or more credible witneſſes that he "bought the goods from a third perſon, all "theſe circumſtances muſt fly off, and give "way to the direct proof of innocence."

This propoſition is ſolid in law; and ſuch of the judges as think, that Sir John Stewart and Mrs Hewit, the only witneſſes to the actual

tual delivery, are credible witneſſes, and that the circumſtances proved by the purſuers are conſiſtent with their evidence, or not ſufficient to deſtroy it, may adopt that ground for their opinion: But I, and the other judges who have the misfortune to differ upon both theſe points, cannot poſſibly be moved by this argument.

It was admitted, "That the mere acknow-"ledgement of parents was not ſufficient to "eſtabliſh filiation: But it was ſaid, That, "in this caſe, the acknowledgement of the pa-"rents is ſupported by univerſal habit and "repute of the country where the birth hap-"pened."

But what weight can any judge lay upon *habit and repute* in this caſe, when it muſt be admitted, that the ſame habit and repute muſt neceſſarily have attended the defender, if he had been a ſuppoſititious child. No veſtige of the houſe of the ſuppoſed delivery, or of Madame le Brun, or any of her family. His firſt appearance is at the houſe of Michell amongſt ſtrangers, who could have no reaſon to doubt that he was the child of the perſons who brought him thither and nurſed him as their own child. When carried to Dammartin, and afterwards to Rheims, and

there

there baptized as the ſon of Lady Jane Douglas, of whom ſhe had been delivered at Paris, Who, in that place, could entertain the leaſt doubt of the parentage that was aſcribed to him? Such habit and repute could not ariſe from any knowledge of the circumſtances of the birth: It reſts entirely upon the aſſertion of the ſuppoſed parents, and muſt ſtand or fall by the truth of that aſſertion.

"We have heard of the extent of the Bri-
"tiſh empire, and of the dangerous conſe-
"quences which muſt enſue, if a proof is re-
"quired of the actual delivery: And it was
"ſaid, That even of thoſe born at home, not
"one of a thouſand can prove their actual
"birth at a diſtant time."

This alarming argument proceeds upon a falſe hypotheſis; for it ſuppoſes that a child born at home or abroad, acknowledged by its parents, and habit and repute to be their child, by thoſe who had beſt acceſs to know, muſt alſo, in ſupport of ſuch filiation, prove his actual birth. But no propoſition can be more falſe in law. The child in poſſeſſion of ſuch filiation needs no evidence to ſupport his reputed birth; and he who brings the challenge muſt bring evidence ſufficient to diſprove it.

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The pregnancy, delivery, and reconvalescence of a woman, do not consist *in puncto*. They carry with them a train of circumstances which makes it impossible to disprove a true birth; and no instance has occurred where it happened.

"We have heard a load of imputation "thrown upon the pursuers for delaying their "action; whereas it was said, the defender "could bring no such action to declare his "birth."

This circumstance of the delay would have had more weight, if the challenge now brought had come on a surprise and unexpectedly: But the evidence is full, and public notoriety puts it beyond all doubt, that the suspicions of imposture were coeval with the defender's birth. His parents, if conscious of the truth of his birth, had it in their power to prevent the possibility of such a challenge. During the life of the Duke of Douglas, these pursuers had no interest to bring such challenge. I doubt if such action would then have been sustained at their instance. But there can be no doubt, that a declarator for establishing the proof of the birth of the defender would have been sustained at the instance of his parents. I impute nothing to them for not taking this

measure;

meaſure; but I cannot ſee that any imputation can lie againſt the purſuers for not bringing their action before they had an intereſt to challenge the birth: And I firmly believe, that the defender has ſuffered nothing in point of evidence by the delay.

"WE have alſo heard great weight laid upon "the illegality of the Tournelle proceſs; and "it was ſaid, that the witneſſes examined un- "der the authority of that court, were ſo far "from being *omni exceptione majores*, that they "were *omni reputatione minores;* and that no "more credit ought to be given to their evi- "dence than to a ſlave depoſing under the "terror of his maſter's ſcourge."

BUT whatever your Lordſhips opinion may have been of the propriety of that action before the parliament of Paris; and however much attached to the laws and conſtitution of your own country, you cannot entertain an opinion ſo derogatory to the honour and courſe of proceedings before that very reſpectable court, as this parallel would ſuggeſt.

WHAT are the grounds upon which this prejudice is taken againſt the evidence of theſe witneſſes? *1ſt*, That they were examined in preſence of the judge only, after reading the *plainte* over to them; and interrogating them

upon

upon the ſubject-matter therein contained: And, 2*dly*, By being thus examined upon oath before that judge, they were thereby prejudicated and tied down in their ſecond examination, under your Lordſhips authority, to ſwear agreeable to their firſt depoſitions, whether true or falſe.

As to the *firſt*. If any exception could be taken to the form of examining theſe witneſſes before the Tournelle, ſurely this cannot apply to their examination taken upon your Lordſhips commiſſion, according to your own forms, and in preſence of both parties: And it is this laſt examination only which is in evidence before you.

As to the *ſecond*. It has not been explained upon what principle of law or common ſenſe it is founded: Becauſe a witneſs has been examined in one court, where the action could not proceed, Is there any reaſon why he may not be examined before a more competent court upon the ſame facts? Does not this happen every day in both parts of the united kingdom, without any imputation to the credibility of the witneſs?

If the witneſſes examined in the Tournelle had been picked up from the ſtreets of Paris, and brought before that court to ſwear to

facts,

facts, of which there was no evidence that they had any knowledge, except from their own oaths, there might be ſome ground for this challenge? But who are the witneſſes to whoſe evidence this exception is taken? Are they not the very perſons whom Lady Jane Douglas confeſſedly made choice of as her confidents and attendants, and to whom ſhe committed herſelf, as the ſole witneſſes of her conduct during her ſtay at Paris?

One of your Lordſhips number took the liberty of repeating what he heard ſaid in the Houſe of Lords upon occaſion of the laſt appeal; and from thence propheſied, that the Tournelle evidence would be totally diſregarded in that court.

But, if any thing ſtrong was ſaid upon that occaſion, Was it not owing to the ſhameful invective which was there thrown out againſt the conduct of Mr Andrew Stuart, during the courſe of the inquiry at Paris; and to the bold charge then made of a falſification in the book of Michell, after they were exhibited by him, and lodged in the Tournelle by order of that court? No wonder that deep prejudices were conceived from ſuch an attack: But has not the ſame learned judge, with great honour to himſelf, now diſclaimed the grounds of that attack,

and

and certified, from his own proper knowledge, the purity and integrity of the whole of Mr Stuart's conduct in this cause from first to last.

After joining my own highest testimony to the honour and integrity of that gentleman's character, I will only add, that it has undergone a scrutiny upon this occasion, which nothing but the most upright and delicate conduct could have withstood, by a public exhibition, not only of the journal of all his transactions at Paris, but of the most private and confidential thoughts and observations which occurred to him and his assistants in the conduct of their clients cause.

And, therefore, without presuming to repeat what I heard in the House of Peers, I will likewise hazard a prophesy, That if the opinion of any of your Lordships shall proceed upon a total rejection of the Tournelle witnesses, that opinion will not be supported, but will be found inconsistent with the last judgment of that most Honourable House, which, for the sake of justice, and a fair trial, relaxed the fetters which your Lordships had imposed upon the pursuers by your interlocutor, and opened a method for facilitating the examination of these witnesses under the authority of your Lordships commission.

I ſhall now proceed to ſtate my opinion upon the different heads of the proof, referring to the evidence, which all your Lordſhips are poſſeſſed of, and which has been ſo fully ſtated by the judges who have ſpoken before me.

And, *firſt*, As to the character of Lady Jane Douglas, I agree in opinion with the learned judge who ſpoke laſt, that there is the ſtrongeſt evidence before us of the falſehood and duplicity of her character. Her letter to Mrs Carſe, her boſom-friend, upon the ſubject of her marriage to Sir John Stewart; her converſation with Lady Katharine Wemyſs upon the ſame ſubject; the falſehood and impoſition of her letter of the 7th of Auguſt 1748 to her brother, clearly implying, That ſhe was then at Rheims, and had been delivered at that place; her after letters from Rheims to Lady Mary Hamilton, Mr Haldane, and her other intimate friends, all calculated to impoſe that belief; and, above all, her being art and part in the forgery of La Marre's letters, and preſerving them with ſo much care for the purpoſe of creating falſe evidence of the defender's birth: All theſe things ſatisfy me, that this Lady was capable of the falſehood and impoſture, which is now the ſubject of trial.

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THE ſame thing I ſay of the character of Sir John Stewart, who ſtands now convicted, not only of the forgery of theſe letters, but of the groſſeſt falſehoods in his judicial examinations before your Lordſhips.

As for Mrs Hewit, the only other perſon privy to the ſuppoſed delivery; no attempt has been made to juſtify her from the groſſeſt perjury in many particulars of her evidence; and therefore I conſider her as very capable of being an accomplice in this impoſture.

As to the queſtion, *cui bono*, or from what motives can Lady Jane be ſuppoſed to have contrived and executed this impoſture?

IT is difficult to dive into the motives of the human heart in the commiſſion of crimes: But the proof preſents ſeveral motives which might actuate the mind of this Lady; her deſperate circumſtances; the bad terms ſhe ſtood on with her brother; her deſpair of recovering his favour and ſupport, without ſome remarkable change in her ſituation; reſentment againſt the partiſans of the family of Hamilton, to whom ſhe aſcribed the loſs of her brother's favour, and unjuſt views to his ſucceſſion. But, above all, the clear opinion which ſhe entertained of the indefeaſible right to the honours and eſtate of Angus as ſecu-

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red to her, and her iſſue, failing the iſſue of her brother, of which there was no proſpect. All, or ſome of theſe motives, might operate upon the mind of ſuch a woman, and greatly palliate the guilt of a fictitious delivery: For I cannot ſuppoſe that Lady Jane was ſo depraved as to have been guilty of this crime, if ſhe had the ſame ſentiments of it that all your Lordſhips muſt neceſſarily have.

As to Lady Jane's age, I admit ſhe was not paſt the poſſibility of iſſue; but ſhe was in the 50th year of her age, paſt the period of iſſue, according to the ordinary courſe of nature. I cannot therefore agree with one of my brethren, who ſaid that her pregnancy was as credible as if ſhe had been but 25 years of age. For, if the calculation were made, I believe, of women of this iſland, not one of 20,000 have iſſue at the age of 50. This is at leaſt a circumſtance of improbability againſt the defender; at any rate, it would have rendered Lady Jane more timorous, more communicative to perſons of experience, more anxious to have the beſt aſſiſtance, and to be well attended at the critical period of her delivery. How far this was the caſe, will appear to your Lordſhips from the whole of the evidence.

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As to the proof of the pregnancy, upon which the defender ſeems to lay the greateſt weight, every body knows the uncertainty of the appearances of pregnancy; and that, in every inſtance of a fictitious delivery, appearances of pregnancy have been, and muſt neceſſarily be aſſumed. It is the delivery alone which can aſcertain, whether theſe appearances are real or aſſumed; it is not the appearance of pregnancy which we are now to try, it is the actual delivery of Lady Jane Douglas, at Paris, of this defender: And if, upon conſidering the whole evidence for and againſt that delivery, I ſhall find any opening in my mind to a belief that there might have been a delivery at Paris, I ſhall hold the previous appearances of pregnancy to have been real; but if, on the contrary, I ſhall feel, from the whole evidence, a full conviction, that there was no delivery at Paris, I will then hold theſe appearances as only aſſumed, in order to pave the way for the fictitious birth.

At the ſame time, in paſſing, I muſt ſay, that the evidence of the pregnancy is not ſuch as I would have expected in a real caſe. I cannot account for Lady Jane's poſitive denial of her marrriage to Lady Katherine Wemyſs, if ſhe was then truly in the fifth

month

month of her pregnancy. I do not like the unneceſſary and unuſual coverings of her body for ſome months before her departure from Aix-la-Chappelle. I give no credit to the exaggerated deſcription of her belly and breaſts given by Mrs Hewit and Tibby Walker. If this laſt witneſs could have had any credit with me upon her former depoſitions, that is totally obliterated by her late examination before your Lordſhips. The only credible witneſs who depoſes to the ſize of Lady Jane's breaſts, is Mrs Hepburn. She appears to have had but an accidental and tranſient view; and under the prepoſſeſſion of Lady Jane's pregnancy, I can eaſily conceive, that a woman, without experience, might have been deceived in that appearance. Madame Negrette, a lady of experience, and the confident of Lady Jane, could perceive no ſymptoms of pregnancy, till Mrs Hewit aſſured her of it; and falſely told her, that ſhe had had a miſcarriage in Holland. And ſhe depoſes, that, in the end of March, *her breaſts were hollower than ordinary*, which ſhe aſcribes to a ſuppoſal, that this was the beginning of her pregnancy, though ſhe was then near her ſixth month.

I will not follow the hiſtory of Lady Jane's travels through the low countries. I will take her up at Rheims, where ſhe arrived near the laſt month of her pregnancy, and where it is ſaid ſhe intended to lie in. Advanced in age, pregnant with her firſt child, lately threatened with a premature birth, ſo big, that twins were prognoſticated by Mrs Hewit, it was natural for her to ſhow ſome anxiety about her delivery, and above all things, to have ſought out the moſt ſkilful midwife or accoucheur in the place, and to have beſpoke a nurſe. To none of theſe things does ſhe attend; and after ſtaying a whole month at Rheims doing nothing, ſhe takes the ſudden reſolution of going to Paris, when within a few days of the delivery.

Every thing was diſadvantageous to this journey; and the defender's counſel are ſenſible, that they muſt give ſome account of ſo ſudden and unſeaſonable a change of her firſt reſolution. The account given is, the want of proper aſſiſtance for her delivery at Rheims. But is it not ſtrange, that ſhe was not apprized of this ſooner, and that ſhe delayed taking ſo long a journey, till within a few days of her time? But the fact is diſproved by clear evidence; for a variety of

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ſkilful midwives and accoucheurs were to be had at Rheims; and the ſtory of Madame Andrieux being unſkilfully brought to bed, is contradicted by the beſt evidence that can now be had.

HAVING taken this ſtrange reſolution of leaving Rheims, and going to Paris to be delivered, it is natural to expect, that ſhe would have given notice thereof to ſome of her friends; that ſhe would have carried her maid-ſervants with her; that ſhe would have got proper recommendations from Rheims, for the neceſſary aſſiſtance ſhe wanted at Paris. But how different was her conduct in all theſe reſpects? No letters wrote to her friends; no letters taken from Rheims to direct her to proper aſſiſtance. The only letter carried from Rheims, was one from Mr Maillefer, from whom Lady Jane's ſituation was kept a ſecret, and who recommends them to Mr Godefroy, under the character of a Scots Colonel, with two ladies, who had gone to Paris for a ſhort time, and were to make ſome purchaſes.

BUT above all, Lady Jane's leaving her two maids at Rheims, is moſt unaccountable. All the lawyers who treat of this crime, mention ſuch a circumſtance as this, as one of

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the ſtrongeſt, and moſt uſually attending this ſpecies of impoſture. Sir John Stewart and Mrs Hewit are ſenſible of the force it, and endeavour to account for this part of Lady Jane's conduct, by the want of money to carry theſe ſervants to Paris. The account is abſurd; becauſe leſs than one pound Sterling would have carried them to Paris, where they could have lived in family with Lady Jane at leſs expence than they did at Rheims; and it is alſo falſe, becauſe it is clearly proved, that Sir John had credit at Paris ſufficient to anſwer all his expences.

It was ſaid for the defender, "That he "ought not to be obliged to account for eve-"ry ſtep of conduct of his parents, eſpecially "at ſuch a diſtance of time; and that Lady "Jane's marriage with Sir John Stewart was "as unaccountable a ſtep as any in her after "conduct."

The general propoſition may be true in matters of indifference, or in matters which admit of a variety of motives and conduct; but not in matters of the higheſt moment, and where reaſon, ſenſe, and the common feelings of mankind muſt neceſſarily direct our conduct.

HERE then we have Lady Jane Douglas ſetting out for Paris at two o'clock in the morning in a common ſtage-coach, in order to have better aſſiſtance at Paris than ſhe could have had at Rheims. Amongſt her fellow-travellers in that carriage, are, a lady who had born many children, and a young lady of ſome rank, and well acquainted with Paris, whoſe acquaintance Lady Jane ſeemed fond to cultivate; and yet, during a long journey of three days, not one of the company obſerved her pregnancy, nor had ſhe the leaſt converſation with any of them touching her ſituation, or the object of her journey to Paris.

SHE next arrives at the Hotel of Godefroy, one of the beſt in Paris for one in her ſituation, in reſpect of the character of Mr Godefroy, and of his wife, who had born many children. There they confeſſedly ſtay for ſome days; but nobody in that family obſerved the leaſt appearance of pregnancy: No diſcovery was made of Lady Jane's ſituation by herſelf or any of her company: No mention of an accoucheur, of a nurſe, or of proper lodgings for her delivery. What is the excuſe for this unaccountable conduct? Sir John had beſpoke Pierre la Marre; and he was to take care of

every

every thing. If it had been ſo, Why not ſpeak of her ſituation to Madame Godefroy? Or how could Lady Jane's ſituation, at the point of delivery, eſcape Madame Godefroy's obſervation for ſo many days? But why did not the accoucheur appear? It was the ſole object of the journey to find a good one; and, ſo ſoon as he was engaged, it was natural for Lady Jane to deſire to ſee him, and to make him acquainted with her ſituation; yet no ſuch perſon ever appeared during their ſtay at the houſe of Godefroy.

Her next remove, as it is ſaid, was to the houſe of Madame le Brun on the 7th or 8th of July, where ſhe was delivered on the 10th, and ſtaid till the 18th or 19th. If this had been true, Sir John Stewart, who knew Paris ſo perfectly well, could have had no difficulty in deſcribing and finding out the houſe where he had reſided for ten or twelve days, and where his lady had been delivered of twin-children. Such an event happening in any lodging-houſe to ſtrangers, who could have no plot to conceal it, behoved neceſſarily to draw alongſt with it a train of circumſtances ſufficient to lead to the diſcovery of the houſe; and yet, after the moſt diligent inquiry by both parties, aſſiſted with every

reſource

resource which the police of Paris could afford, no vestige or discovery has been made of any such house or family as that of Madame le Brun. The circumstance of Sir John's first account of the place of delivery, in his memorandum to Mrs Napier, is not immaterial. He said, it was the house of Madame Michell; and Mrs Hewit's letter to the Duke of Douglas, assigning the same place for the delivery, carries a strong appearance, that they had not then invented the fictitious house of Le Brun.

But to proceed with the defender's account of the matter: Here they are at Le Brun's on the 7th or 8th of July, and on the 10th of that month Lady Jane is delivered of twins.

Unfortunately for the defender, no less than four letters from Sir John Stewart, of that date, are extant, and not a word in any of them of Lady Jane's delivery. But this is not all; for it is proved, that Mrs Hewit wrote a letter to the maids at Rheims, bearing date the 11th of July, and no mention is made of the delivery. This must be absolutely fatal to the defender, if not taken off: And how is it taken off? By Mrs Hewit's

after

after correction of that date, in her ſubſequent letter to the maids of the 22d of that month. Now, is it poſſible to ſuppoſe, that Mrs Hewit, a weak inaccurate woman, would have thought of ſuch a correction? Two things muſt be here ſuppoſed, *1ſt*, That ſhe miſdated her letter of the 11th; and, *2dly*, That, at the diſtance of eleven days, ſhe recollected that miſtake, and thought it material to correct it in her letter of the 22d. If nothing wrong was going on, there was no occaſion for ſuch anxiety in recollecting and correcting the date of her firſt letter.

THE like correction of the date of Sir John's letter to the Earl of Crawfurd, written upon the 10th of July, falls under and ſtrengthens this obſervation: Both ſhow that there was no delivery upon the 10th; and that the after correction of the dates of theſe letters, at the diſtance of eleven days, took its riſe from after circumſtances, which obliged them to fix the delivery upon the 10th of July.

BUT further, What account can poſſibly be given of the profound ſilence with regard to Lady Jane's delivery, from the 10th to the 21ſt and 22d of July? For the firſt letters, giving account of this important event to their friends and correſpondents, are of theſe dates.

Two

Two reasons are assigned to account for this extraordinary conduct; *1st*, The hurry that Sir John and Mrs Hewit were in for the first eleven days after Lady Jane's delivery: And, *2dly*, Because Lady Jane behoved to write to her brother before any other person was informed of her delivery.

BOTH these accounts are equally absurd and false. No supposeable hurry can account for this silence for eleven days. From her own account, Lady Jane had a surprising recovery: And Mrs Hewit's own evidence clearly proves, that there was no such hurry as could have prevented her or Sir John from communicating the joyful news to their friends for eleven days: And the second reason is disproved by the letters produced, wrote by Mrs Hewit and Sir John before the 7th of August, when Lady Jane first communicated her delivery to the Duke of Douglas from Dammartin.

ANOTHER unaccountable circumstance in their conduct, is the false dating of all their letters written from Paris, and Lady Jane's letter to her brother of the 7th of August as from Rheims. One or two letters might be dated from a wrong place by mistake; but the false dating of so many letters could not be without design: And it is very remarkable, that this

this deſign of impoſing upon their friends as to the place of delivery, is followed out in a number of letters written by Lady Jane to her friends in Scotland, after her return to Rheims, in none of which is there the leaſt mention of her having been at Paris; but, on the contrary, they are all calculated to impoſe a belief, that ſhe was delivered at Rheims.

The only anſwer attempted to be made to this obſervation, was, that neither Sir John nor Lady Jane, in any of their letters, have ſaid, that ſhe was delivered at Rheims: So much the worſe, as it ſhows their deceit and artifice in impoſing upon their friends: But beſides, let any candid perſon read Sir John's letter to the Earl of Crawfurd, dated *Rheims, July* 22. and Lady Jane's letter to her brother, dated *Rheims en Champaign, 7th Auguſt* 1748, and they will there ſee the delivery fixed by Sir John and Lady Jane to have been at Rheims, with as much clearneſs and certainty, as if they had aſſerted it *totidem verbis*. The import of all this evidence, ariſing from ſo many letters wrote by Sir John, Lady Jane, and Mrs Hewit, during the period of Lady Jane's ſuppoſed in-lying and reconvaleſcence, carry the ſtrongeſt marks of falſehood and impoſture, and have great weight in my opinion.

But

But the moſt ſtriking and direct proof of the impoſture ariſes from the books of Godefroy, ſupported by the evidence of Mr and Madame Godefroy. This branch of the argument has been fully exhauſted by the learned judge who ſpoke immediately before me. I will therefore content myſelf with declaring my opinion that theſe books, ſupported by the depoſitions of Mr and Madame Godefroy, (againſt whoſe evidence I ſee no good objection), have conveyed to my mind a full conviction, that Sir John, Lady Jane, and Mrs Hewit, arrived at Godefroy's upon the night of the 4th of July, and remained there till the 13th of July, without any appearance of a delivery; which is totally inconſiſtent with, and diſproves the whole hiſtory of the defender's birth.

The complaint, that ſo much ſtreſs ſhould be laid on the books and evidence of an innkeeper and his wife, has already been obviated. They are not witneſſes picked up by the purſuers; they are the perſons with whom Lady Jane confeſſedly lodged, and to whom alone ſhe committed the evidence of her conduct during her ſtay there. If the defender could have produced the ſhadow of evidence of Madame le Brun's houſe and family, or

of

of any other houſe where ſhe could be ſuppoſed to have reſided, and to have been delivered upon the 10th of July; ſome argument might from thence have been formed to have impeached the credit of Godefroy and his wife, and of their books: But when there is no veſtige of any other place of reſidence to be ſet in oppoſition, I can ſee no ground in law or reaſon for denying my aſſent to the evidence ariſing from theſe books.

Both parties ſeem to agree that Lady Jane, Sir John, and Mrs Hewit, came to Michell's upon the 18th or 19th of July; and their conduct and tranſactions during their ſtay in this houſe are indeed remarkable, becauſe they prove that Lady Jane was in a ſituation upon the 18th and ſubſequent days of July, as appear to me incompatible with her ſuppoſed delivery on the 10th of that month. The reaſon aſſigned for her coming to Michell's ſo early as the 18th, is, that ſhe was forced to leave Le Brun's on account of bugs. It is ſcarce ſuppoſeable that this nuiſance would not have been diſcovered ſo as to make her change her lodgings before her delivery, or that that diſtreſs would have made Lady Jane, ſo lately delivered of twins, quit the houſe upon the 9th day after her delivery: But,

it is remarkable, that no ſuch thing is mentioned in Mrs Hewit's letter to the maids of the 22d July; nor indeed is any mention made of Lady Jane's having changed her lodgings.

But what appears more remarkable is, the undeniable proof of Lady Jane's having gone out in a coach from Michell's with Sir John and Mrs Hewit, early in the morning of the day after her arrival, in order to bring home the defender, and of her continuing abroad the whole day, and returning in the evening with the defender, and ſuch a nurſe as ſhe never could have intruſted her ſon with. No account is given why the defender was ſent away from Le Brun's, the place of his ſuppoſed birth; and it is impoſſible to account for Lady Jane's being abroad a whole day ſo recently after her delivery, in order to bring Archibald to Michell's houſe; when it is admitted, that, during her whole ſtay at Paris, ſhe did not make one viſit to her younger ſon Sholto, who was removed from her the day after his birth, and was at nurſe in the cloſe neighbourhood of Paris.

Mrs Hewit, in her letter to Mr Harper, ſays, upon the word of a dying woman, that it was upon the ſixth day after the deli-

very

very that they removed to Michell's. If ſo, then it was upon the ſeventh day after her delivery, that Lady Jane was thus unneceſſarily going abroad a whole day in queſt of her ſon Archibald.

I will paſs over the ſtrange and contradictory accounts given by Sir John and Mrs Hewit of the different nurſes. Nor will I lay much weight upon what Michell's family have depoſed; that theſe ſtrangers ſaid they were going to bring their child from St Germains, where they underſtood the lady had been delivered; and that the child, when brought to Michell's, appeared to be three or four weeks old. But what appears moſt remarkable is, the indiſputable proof of Sir John, Lady Jane, and Mrs Hewit, attended by Madame Blainville, having gone, within a few days after her arrival at Michell's, to Verſailles, and there ſpent a whole day ſeeing the palace and gardens. Their ſecond tour, in a few days after, to ſee the ſquares and public places in Paris, is alſo indiſputably proved; yet Sir John Stewart, and Mrs Hewit, who never was at Paris or Verſailles at any other time, have poſitively denied before your Lordſhips that they made either of theſe jaunts. The reaſon of this perjury is obvious;

they

they durſt not avow Lady Jane's making theſe unneceſſary jaunts ſo recently after her delivery; whilſt, at the ſame time, they acknowledge, that, during her whole ſtay at Paris, ſhe never once ſaw her weakly child Sholto. Put this in oppoſition to her tragical exclamation upon the death of Sholto, and what a figure does it make? The thing is impoſſible, and nature and reaſon will not ſuffer me to believe it.

It is alſo proved by Michell's family, that, from the time of their coming there, Lady Jane ſlept with Mrs Hewit, and roſe and went to bed with the reſt of the family; and, during their whole ſtay, no inquiry was made after them by Pier la Marre the ſuppoſed accoucheur, nor by any of Le Brun's family, where it is ſuppoſed Lady Jane was delivered.

The counſel for the defender, by fixing the period of Lady Jane's reconvaleſcence in Michell's houſe, only ſhow that they felt the neceſſity of proving ſome appearance of reconvaleſcence from a late delivery of twins by a lady paſt the 50th year of her age; but it is not only not proved, but, in my humble apprehenſion, clearly diſproved by the whole circumſtances of her conduct during her ſtay in Michell's houſe.

I will here only add that unaccountable part of Lady Jane's conduct in not providing a nurse before her delivery. The notable reason assigned by Mrs Hewit, *because* she said she did not know if she would bear a *living child*, is too shocking to reason and the feelings of a mother to admit of any explanation which can render it in the least degree probable.

To all these circumstances of evidence may be added, their studied privacy and concealment at Paris. We see Lady Jane and Sir John fond of company in every other place where they resided. But here in Paris, upon the most important and joyful occasion, they remain secreted in different houses, so as not only to be invisible, but unheard of, for near a whole month, by any of their acquaintance, or by any British subject: And indeed it is remarkable, that from the time of their leaving Rheims, and during their whole stay at Paris, no person has been found who saw Lady Jane in a state of pregnancy, or in the state of a lying-in-woman, or who heard of her being delivered in Paris; for, as to the oath of the person called *Lady Ardshiel*, it must be given up as standing contradicted by the evidence of Sir John

and

and Mrs Hewit themſelves; and it had been better, that ſuch a witneſs had not been brought to examination.

Having conſumed ſo much of your Lordſhips time, I will not enter upon the evidence of the *enlevements* of the children of Mignon and Sanry. It is fully ſtated in both the memorials; and the material parts of it have been ſpoke to by ſeveral of your Lordſhips. I will only ſay, that it is no ſmall confirmation of the impoſture to my mind, that there is ſuch clear evidence of the carrying off two male children from their parents at Paris, attended with ſuch circumſtances in point of time, ages of the children, and deſcription of the perſons to whom they were delivered, as, in my humble opinion, do ſtrongly apply to this caſe, and give me a conviction, that theſe were the children which Sir John Stewart and Lady Douglas have impoſed upon the world as their own iſſue.

In ſtating the chain of this circumſtantial evidence, it is impoſſible to overlook the unaccountable conduct of Sir John and Lady Jane, in abandoning themſelves and their children for ſo many years, not only to the ſuſpicions of the world, but to the diſbelief of their neareſt relations, of her being the mother

mother of theſe children. It was an object of too much importance to themſelves, and to their children, to be overlooked or deſpiſed; eſpecially, when the means of confuting theſe ſuſpicions were at hand, and could have been procured without expence or trouble. The advice aſcribed to Lord Preſtongrange, and referred to as the ſole excuſe for this conduct, cannot be believed by any perſon who knew that gentleman. If it had been given, Lady Jane and Sir John could have no motive to rely upon it, in a matter of that importance, and where they had ſuch eaſy acceſs to the evidence; and accordingly, we find them, in their letter to Madame Tewis, 13th February 1750, greatly irritated with the imputation of this impoſture; "and reſolving, for the ſake of their dear children, to have the circumſtances of the beginning of Lady Jane's pregnancy, and the progreſs of it until her happy delivery, as authentically proved as is poſſible." But, inſtead of following this natural and eaſy plan, they content themſelves with the examination of a few witneſſes at Aix-la-Chappelle, upon the appearances of the pregnancy; and there ſtop ſhort, without making any attempt

tempt to bring certificates or evidence of any kind from Paris of the actual delivery.

When to this unaccountable neglect of ſecuring true evidence of the birth, is added the unjuſtifiable contrivance of forging falſe evidence to ſupport the birth, the caſe becomes too ſtrong for my mind to reſiſt the concluſion. It is clearly proved and admitted, that the four letters of Pier la Marre, the pretended accoucheur, which were produced in the ſervice, are all and each of them forged letters. Sir John has admitted, that he was the contriver of that forgery, and that he tranſmitted them to Lady Jane Douglas. They remained in her poſſeſſion till her death, and were taken out of the trunk where her moſt valuable things were depoſited, and produced, and printed, with the other evidence laid before the jury at the ſervice. To overlook or diſregard this attempt in the defender's ſuppoſed parents to ſupport his birth, by the forgery of evidence, would ſtrike at the foundations of all law and public ſecurity. What ſtronger evidence of falſehood and impoſture, than a detection of evidence forged to ſupport it, and that forgery contrived, and made uſe of by the very authors of the impoſture? It is *in eadem genere malitiæ*

malitiæ, as the lawyers ſpeak; and he or ſhe that is capable of the one is capable of the other. A true birth does not require forgery to ſupport it. A true father and mother would not think of having recourſe to it. But this is none of the arguments that need illuſtration. If it does not touch the mind of a judge upon the bare ſtating of it, it cannot gather ſtrength by any enlargement.

If more were neceſſary to fix my opinion in this cauſe, I would, in the *laſt* place, refort to the account given by Sir John Stewart in his judicial declaration, of Pier la Marre, the man-midwife, who he ſays delivered Lady Jane. When I conſider the circumſtances in which Lady Jane came to Paris, paſt the 50th year of her age, big with child for the firſt time; leaving Rheims upon a notion that proper aſſiſtance could not be had there; undertaking a long and painful journey to Paris, in order to get the beſt aſſiſtance; ſufficiently provided with money, and under no difficulty at the firſt houſe where ſhe alighted to be adviſed where the beſt aſſiſtance, and every thing elſe neceſſary for her ſafe delivery, would be found: And when, in this view, I read the account given by Sir John Stewart of Pier la Marre, to whom he com-

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mitted the delivery of Lady Jane, and afterwards the care of Sholto, it ſtrikes me with ſuch inherent marks of falſehood, from beginning to end, and in ſo many material circumſtances, that I cannot reſiſt the concluſion that neceſſarily reſults from it.

And indeed, ſo ſenſible were the defender's counſel of the incredibility of Sir John's whole account of this Pier la Marre, that they have laid him aſide altogether, and have attempted to ſubſtitute a Lewis Pierre Delamarre in his place, as the perſon who delivered Lady Jane.

I obſerve, that this circumſtance has not ſtruck all your Lordſhips in the ſame light; but, for my part, when I firſt obſerved this ſtrange attempt to ſubſtitute another accoucheur in place of the one mentioned and deſcribed by Sir John Stewart the father, I thought the defender's cauſe was abandoned. Sir John has, at leaſt, fixed a clear and diſtinct deſcription of his Pier la Marre, by his intimate knowledge of him at Liege in the 1721; by his country; his employment as a ſurgeon in a Walloon regiment; his ſeeing him repeated times at Paris; correſponding with him for ſeveral years; and particularly, by this circumſtance, that he went to Naples

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in the 1752, from which place, Sir John ſays, he received a letter from him; and I ſubmit it to your Lordſhips, whether it is poſſible, by any ſtretch of invention or argument, to apply the deſcription and hiſtory given by Menager, the ſurgeon, of his Louis Pierre Delamarre, to the accoucheur thus deſcribed by Sir John Stewart.

THE whole appears to me to be a fiction, and that Menager has ſworn falſely in order to diſcover an accoucheur for Lady Jane Douglas, when no ſuch accoucheur ever exiſted. Sir John's account of his accoucheur is certainly falſe, and, in effect, given up by the defender; and Menager's evidence is a vain and falſe attempt, to ſubſtitute another accoucheur in his place.

I ſay the ſame thing of Garnier, the new invented nurſe for Sholto. The diſcrepancies as to the time when the child which ſhe nurſed was brought to her, and the time when that child was taken from her, the place of her reſidence, and a variety of other circumſtances, difference the child which ſhe nurſed ſo much from the account given by Sir John and Mrs Hewit of the ſuppoſed Sholto's nurſe, that it is impoſſible for me to conſider this part of the defender's evidence in any other light, than as an attempt to

make

make the hiſtory of that child as nearly to correſpond to that of Sholto, as could be decently contrived. And, if your Lordſhips are ſatisfied of the falſehood of Garnier's evidence, with regard to Louis Pierre Delamarre having been the accoucheur of Lady Jane, this of itſelf muſt neceſſarily deſtroy the whole ſtory of Garnier, the new invented nurſe of Sholto.

Upon the whole, after laying the circumſtances of this evidence together, I am ſorry, that I cannot help being clearly of opinion, that the reaſons of reduction of the defender's ſervice are ſufficiently proved.

LORD

LORD MONBODDO.

AS all your Lordſhips have already delivered your opinions, I have not vanity enough to think, that any thing I can ſay will have any effect. I do not pretend, in any cauſe, to make converts to my opinion, much leſs in this ſo great cauſe, which all your Lordſhips have ſtudied ſo much. Nor ſhould I give you the trouble of hearing any thing from me, eſpecially as I do not find myſelf in a very good ſtate of health, if I did not think myſelf bound in conſcience to declare, before your Lordſhips and this audience, my full conviction that the defender is the ſon of Lady Jane Douglas.

I ſhould have had ſome doubt of this propoſition, if the cauſe had ſtill ſtood on the ground which it was put upon, in the memorial laid before the French lawyers, or even in the condeſcendence given in to this court. I do not ſay, that, even upon that footing, there would have been legal evidence againſt Mr Douglas, according to my notion of the nature of the evidence required in this

this cauſe; but there would have remained doubts and ſuſpicions in my mind which never could have been removed. The facts then alledged were, 1*mo*, That Sir John had entered himſelf in Michell's book, in his own hand-writing, on the 8th of July 1748: 2*do*, That the child which was brought to Michell's the next day was two months old: 3*tio*, That no ſuch man as Pier la Marre ever exiſted; and, *laſtly*, That there were ſuſpicions of the birth in France at the time it is ſaid to have happened. But the ſhape of the cauſe is entirely changed. It is become altogether a new cauſe, with hardly a veſtige of the old, unleſs it be the four letters of La Marre, which are ſaid to be forged. And the grounds on which the cauſe now ſtands are, *firſt*, Certain particulars of the conduct of Sir John and Lady Jane, which cannot be explained otherways than upon the ſuppoſition of an impoſture; and under this head I take in Sir John's declaration and the four letters of La Marre. 2*do*, The *alibi* in Godefroy's, now inſiſted upon, inſtead of the *alibi* in Michell's. And, *laſtly*, The two enlevements. This diviſion, I think, comprehends the purſuers whole cauſe.

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In the entry, I cannot help obſerving, that this ſo great change of ground gives me but an unfavourable idea of the purſuers cauſe. In the very beginning of this action, they frequently told your Lordſhips, *that they had fully diſcovered the impoſture, having traced it to its ſource, and were able to produce proofs of it as clear as ſun-ſhine.* But inſtead of that, ſo late as a little while before the proof was concluded, I ſee them heſitating and balancing betwixt the two books of Godefroy and Michell, (the only direct evidence which they can pretend to have in the cauſe); and, at laſt, after much deliberation, preferring Godefroy's book, ſupported by his evidence and that of his wife; which, however, they tell your Lordſhips, that they themſelves did not at firſt believe; and their French procureur has gone ſo far as to ſay, that it was abſolutely incredible. This to me gives their cauſe the appearance of an artificial cauſe, built upon conjectures and opinions, not conſiſting of that plain, natural, and unambiguous evidence which compels the aſſent, and leaves no room for heſitation or doubt what hypotheſis to follow; and yet, in my apprehenſion, ſuch the evidence ſhould be that is to take away the birth-right of Mr Douglas.

Some

SOME of your Lordſhips are of opinion, that there is no queſtion of law here, but only of fact. I am of a very different opinion: And I think there are ſeveral queſtions of law, of very great importance, which enter into the deciſion of this queſtion; and which, therefore, I will beg leave to ſtate to your Lordſhips before I come to ſpeak of the fact.

AND the *firſt* is concerning the *onus probandi*, upon whom it is incumbent. The purſuers ſet out, in their memorial, with this propoſition, and make it the foundation of their whole cauſe: That Mr Douglas, tho' he has been ſo long in poſſeſſion of his birthright, was acknowledged by father and mother, and was habit and repute their ſon; yet is obliged to prove his birth, like any other fact upon which he was to found a claim. This, my Lords, I hold to be a moſt dangerous doctrine; and it is *that* which makes this truly a *great* cauſe: For it is not great names of parties; it is not the value of the ſubject, nor is it the queſtion of fact, of however great importance to the parties, and particularly to one of them, that makes this cauſe great and important in the eye of law. But it is this queſtion of ſuch general conſequence,

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which makes this cauſe not only the cauſe of Mr Douglas, but of every perſon who hears me, I may ſay, of mankind, and not only of the preſent race now living, but of all future generations;

Et nati natorum, et qui naſcentur ab illis,

are concerned in this queſtion: For if this were law, Who, of the age of this defender, can ſay, that he is ſure of his birthright, or that he has a ſtate, or belongs to a family? But ſuch a doctrine I hold to be as erroneous, as it is pernicious and ſubverſive of the common rights of men. For the acknowledgement of parents, joined to the habit and repute, is the charter which every man has for his birthright, and which cannot be declared to befalſe, forged, or feigned, except upon evidence the cleareſt and moſt unexceptionable. As to the poſitive evidence of birth by the teſtimony of witneſſes, it muſt, of neceſſity, be confined to a very few, and thoſe few in a few years will grow ſtill fewer, till at laſt they muſt be quite gone. But, as was very well ſaid by one of your Lordſhips, in proportion as the evidence by witneſſes grows weak, the preſumption of law grows ſtrong, till at laſt it becomes ſo ſtrong, that nothing

but evidence amounting to demonſtration, where there is not *a loop to hang a doubt on*, can overcome it.

But the caſe of Mr Douglas is much ſtronger than the common caſe; for his birthright is not only ſecured by the acknowledgement of parents, the habit and repute, and the lapſe of ſo many years; but he has brought a direct proof of it by the only two witneſſes now living, ſo far as appears, who were preſent at it: He has further brought a proof by many witneſſes of what muſt have been neceſſarily precedent and ſubſequent to it, *namely*, the pregnancy and reconvaleſcence; and, over and above all that, he has brought a circumſtantial proof, more pregnant perhaps than even the direct proof, and moſt wonderful at this diſtance of time. What, my Lords, can take away ſuch an evidence as this? Nothing but proof, the ſtrongeſt and moſt direct, of an impoſture, by witneſſes of greater number, and more credible than thoſe produced by the defender, or by an adamantine chain of circumſtances, which excludes even the poſſibility of a birth. In ſuch a caſe, your Lordſhips are not to weigh and balance, and proceed upon conjectures and probabilities, as in ordinary caſes, where the law allows you

to

to find proved, or not proved, according as the evidence appears, and is perfectly indifferent to either ſide. But, where there is ſuch a weight of poſitive proof, as well as of legal preſumption in the one ſcale, there muſt be in the other ſuch a preponderating weight of evidence, as does not ſuffer the balance to remain a moment *in æquilibrio*, but makes the oppoſite ſcale immediately to mount and kick the beam.

This I apprehend to be moſt clear and undoubted law: And therefore the plea of the purſuers, which is founded upon the contrary doctrine, and ſuppoſes it neceſſary for Mr Douglas to prove his birth, as he would be bound to prove any claim of debt, or other ground of action againſt the purſuers, muſt appear to me to be built upon a very rotten foundation: And your Lordſhips muſt agree with me, if you admit the principles above laid down; for I have not heard any of your Lordſhips ſay, that there is ſuch a proof upon the part of the purſuers, as is abſolutely incompatible with the birth, and excludes the poſſibility of it.

In order to ſupport this ſtrange doctrine, which they have choſen to make the foundation of their cauſe, the purſuers ſay, That

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Mr Douglas has not habit and repute in his favour, becauſe there were ſuſpicions raiſed in Scotland of his birth very ſoon after it happened: And one of your Lordſhips went ſo far as to lay down this general propoſition, That there is no habit and repute with reſpect to a man born in foreign parts. But this I hold likewiſe to be a moſt dangerous doctrine, eſpecially at preſent, when ſo many of his Majeſty's ſubjects live with their families in foreign parts. If indeed his Lordſhip had ſaid, that perſons had not a habit and repute of their birth at home, the propoſition might be admitted. For it is no doubt the opinion of thoſe who are upon the place where the birth happens, who are acquainted with the parents, ſee their behaviour, and know the circumſtances of the caſe, which makes what we call habit and repute; and a perſon born in France, or any other foreign country, has no habit and repute here, but what he brings over with him from that country. The queſtion therefore is, What was the opinion, concerning the defender's birth, of the people in France, Britiſh and others, who knew Sir John and Lady Jane, and the circumſtances of the caſe? Had they, my Lords, any ſuſpicion of the birth? Not the leaſt. For, tho'

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the purſuers have laid it as one of the articles of their condeſcendence, that there were ſuch ſuſpicions in France; yet not one of the hundreds of witneſſes which they have examined in France has ſaid ſo; nay, even their own witneſſes whom they have adduced to prove the impoſture, have ſhown the cleareſt conviction of the truth of the birth, notwithſtanding of very improper methods which were taken to make them doubt of it; particularly, Madame Michell, to whoſe houſe Lady Jane came, within eight or ten days after ſhe was ſaid to have been delivered, and who therefore, next to thoſe who were preſent at the birth, muſt have known moſt of the matter, in a converſation which ſhe had with Mr Andrew Stuart, recorded in his journal, wherein he moſt irregularly, and with a plain intention to prejudice the witneſs, did tell her as a piece of news, That the parents of one of the children were found: *Ne le croyez pas*, ſays ſhe; and there he gives her anſwer in her own words, which amount to this, That they were impoſing upon him; and that, tho' others might pretend to be the parents, Lady Jane was truly the mother: And ſhe added, That when ſhe came to her houſe, ſhe had all the appearance of a woman

newly

newly delivered. And tho' her evidence was much ſoftened by ſuch converſations, and by the Monitoire, before ſhe came to depoſe; yet even then ſhe ſays, That if Lady Jane was not the mother, *elle auroit joué un furieux rolle*, "ſhe "muſt have acted a moſt extraordinary part." And Madame Blainville, who was then in Michell's houſe, and ſaw Lady Jane every day, ſo far from doubting of the truth of the birth, ſhows, through her whole oath, the ſtrongeſt conviction of it. As to the ſuſpicions in Scotland, it is evident from the proof from whence they came, and upon what grounds they were raiſed; and altho' thoſe ſuſpicions had been ſtronger and more general, and had not been raiſed by the agents of the family of Hamilton, and ſupported by the groſſeſt calumnies; yet they can avail nothing againſt the opinion of the people in France, and the proof of habit and repute by ſo many credible witneſſes in the ſervice, to which the purſuers thought fit then to ſubmit, and did not attempt a contrary proof.

THE purſuers would likeways deprive the defender of the acknowledgement of his parents, at leaſt, of one of them, Sir John; becauſe, in his declaration, he has fallen into many miſtakes concerning the birth, and particularly

ticularly has coined out of his brain, as they ſay, an imaginary man for the accoucheur, who never had an exiſtence; therefore, ſay they, ſuch an acknowledgement of the defender can never avail him.

But the purſuers confound two things that are in their nature quite diſtinct, *viz.* the acknowledgement of parents, and their evidence when examined as witneſſes concerning the particulars of the birth. The firſt is called by lawyers the *tractatus*, that is, the behaviour and manner of treating the child, from which it is inferred, that they acknowledge him as their child; the other is, the teſtimony of a witneſs, which is to be conſidered like the evidence of any other witneſs; for a parent, as well as another witneſs depoſing to the particulars of the birth, at the diſtance of fifteen or ſixteen years, may fall into many errors, contradictions, and abſurdities. But this will not take from the child the *tractatus* or acknowledgement of his parent; nor will it hurt the evidence of his birthright, any more than the errors of any other witneſs: And indeed, it would be the hardeſt caſe in the world, if the miſtakes of an old man of a father, ſuch as Sir John was, examined upon ſuch an infinite number of particulars, which

happened

happened ſo long ago, ſhould be fatal to his child!

And this leads me to ſpeak of Sir John's declaration, which, though it has been allowed to be printed, and to make part of the ſtate, as a *circumſtance of evidence*; yet, like many other circumſtances in this cauſe, it has not with me the leaſt weight; not only becauſe it was not taken upon oath, without which, it cannot be legal evidence; but chiefly, becauſe it was taken in abſence of the defender. For, in ſuch a cauſe as this, the defender could be in court only one of two ways, either by the days of compearance being run, or by a condeſcendence being given in. And as neither of theſe was the caſe, Mr Douglas was as much abſent at that examination, as any other man. Now, that ſuch an examination ſhould be evidence againſt him, eſpecially in ſuch a cauſe, is contrary to the law of this, and, I believe, of every other country, unleſs where the inquiſition is eſtabliſhed: Even in the Tournelle, the examinations of witneſſes in abſence, are not evidence againſt the party, till he is brought into court, and confronted with the witneſs. And indeed, if your Lordſhips were to admit ſuch an examination for evidence, it is impoſſible to

know

know where to ſtop; for, by the ſame rule, every witneſs examined in abſence muſt be held as evidence, provided only he be examined before a judge. So that a party, in this way, may have a great deal of evidence againſt him, of which he never heard. And it ought to be further conſidered, that the defender made the objection, while Sir John was alive, that his declaration could not be evidence; and, by application to your Lordſhips, deſired, that it might be cancelled, and Sir John re-examined in the proper manner upon the ſame facts. So that, if the purſuers delayed the re-examination of Sir John, who was their own witneſs, till he was dead, they have themſelves to blame: And your Lordſhips muſt not, on account of their negligence, offer ſuch violence to the law of evidence, as to admit for proof, the declaration of a witneſs in abſence of the defender.

Besides this ſo ſtrong objection in law, the circumſtances of fact attending this declaration are ſuch as deſtroy its credit entirely with me. For, in the *firſt* place, it was obtained by ſurpriſe from the court, upon an averment of a fact abſolutely falſe, *viz.* That Sir John was immediately going out of the country, with an intention to withdraw him-

ſelf from your Lordſhips juriſdiction. Upon this information, Sir John, an old man of ſeventy-five, in a very bad ſtate of health, was taken out of his bed, and examined for three days, in preſence of your Lordſhips, upon a multitude of queſtions, prepared with great deliberation by the purſuers, but which had never been ſeen by Sir John, nor had he the common time for preparation and recollection which every witneſs is intitled to.

In this ſituation, it could have been no matter of wonder, if, depoſing to ſo many facts, at the diſtance of ſo many years, he had fallen into very great miſtakes. But he has not fallen into ſo many as the purſuers would make your Lordſhips believe; and particularly, with reſpect to La Marre, in ſaying, that he was a Walloon, he has not gone far from the truth; for *Montreuil ſur mer*, where La Marre was born, is within a few leagues of the Province of Artois, which is a part of the Walloon country; and it is very likely, that La Marre, and the people of Montreuil, ſpoke *a Patois*, reſembling that of Artois; from which Sir John imagined, that he was a Walloon. As to the time and place of his acquaintance beginning with him, *viz.* at Liege in the 1721,

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it is a miſtake that any witneſs might have fallen into at ſuch a diſtance of time; and it is very likely, that Sir John may have confounded him with another man of the ſame profeſſion, whom he had known at Liege, in the ſame manner as he has miſtaken a journey which he made from Dammartin to Paris, after the birth, for a ſuppoſed journey which he ſays he made from Rheims to Paris before the birth; and, as to the circumſtances of concealment concerning La Marre, which he mentions, they may have been ſo far real, that La Marre being at that time not licenced, and liable to a penalty for practiſing, did deſire that Sir John might conceal his being the accoucheur.

But, ſuppoſing Sir John had fallen into much greater errors concerning La Marre, it is a ſtrange inference, which the purſuers would make from them, that Sir John was ſpeaking of a La Marre quite different from the La Marre whom he had always named as the perſon who brought Lady Jane to bed, and who told Menager that he had delivered a Lady, deſcribed by him in ſuch manner, that it muſt have been Lady Jane, and who alſo gave the child to the nurſe Garnier in the year 1748, which could be no other than

Sholto.

Sholto. And from thence, they take occaſion to ſet up two La Marres, one the La Marre of Menager, as they call him, whoſe exiſtence they cannot deny; and the other, Sir John's La Marre, whom they treat as an imaginary perſon of his creation. But this, my Lords, is arguing moſt unfairly. If indeed they could have ſhown, that there was another man of the ſame profeſſion of the name of La Marre in Paris in the 1748, they might have pretended, that Sir John's deſcription applied to him, and not to the La Marre named by Menager. But, as they cannot pretend that, it is a very unfair concluſion, that the La Marre named by Sir John from the beginning as the accoucheur, and with whom he correſponded by letters, and who was the only man of that name and profeſſion at that time in Paris, was not the La Marre of whom he ſpeaks in his declaration, though he may have fallen into ſundry miſtakes about him.

But ſuppoſing ſtill further, that Sir John, in his declaration, had not only fallen into miſtakes, but had willfully ſaid what was falſe, which I am perſuaded none of your Lordſhips believe, What could be inferred from thence againſt the defender? Nothing more than a ſuſpicion that Sir John was tell-

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ing falſehoods, in order to cover a falſe birth. The ſame ſuſpicion, or a ſtronger, will ariſe againſt a party in whoſe favour a witneſs perjures himſelf; yet the party will not loſe his cauſe on account of the perjury of ſuch a witneſs: And, in a very late caſe of a borough-election, Sir John Anſtruther won his cauſe, though two of his witneſſes were convicted and puniſhed by your Lordſhips as being guilty of perjury and prevarication upon oath. And there is this difference betwixt the two caſes, in the defender's favour, that the witneſſes in Sir John Anſtruther's caſe, were witneſſes produced by him; whereas Sir John Stewart was the purſuers witneſs.

A fourth queſtion in law is, What the effect of the delay of the action in this caſe is? And, *1ſt*, Whether there be any delay? For one of your Lordſhips doubted, whether the purſuers could have inſiſted on this challenge immediately after the birth, and during the life of the Duke of Douglas. But I hold it to be certain law, that they could. For with reſpect to Sir Hugh Dalrymple, he had an immediate intereſt, being one of the Duke's heirs of line, if Mr Douglas was a ſuppoſitious child: And as to the Duke of Hamilton, or his brother Lord Douglas, they had

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an eventual intereſt, by which, in certain events, they might have ſucceeded to the Duke of Douglas, if Mr Douglas was taken out of the way; or, in certain events, Mr Douglas might have ſucceeded to them: And it was upon theſe grounds, that the Duke of Hamilton's title was ſuſtained to carry on this proceſs; tho' his intereſt was ſo eventual and contingent, that it was a thouſand to one that ever he ſucceeded to the Duke of Douglas, or Mr Douglas to him.

The delay then being certain, let us conſider what the effects of it are in law; and theſe can be no other than to give a double force to the preſumption of law in his favour, to ſupply every defect in his proof, and to deliver him from the neceſſity of accounting for many things which otherways he would have been obliged to account for: And, indeed, it would be the moſt cruel caſe in the world, if the challenge of a birth ſhould be delayed for ſo many years, then, when the party happens to ſucceed to a good eſtate, he ſhould be immediately attacked by thoſe who had the ſame title before, but not the ſame intereſt, and ſhould nevertheleſs be obliged to go to proof with his adverſaries upon equal terms; and yet this would be

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the caſe with Mr Douglas, if he were to reap no advantage by the purſuers delay. While the Duke lived, and the defender had nothing, they did not envy him the honour of being the ſon of Lady Jane Douglas. But, as ſoon as he ſucceeded to the Duke's eſtate, they began this ſuit againſt him: And they were the more inexcuſable for this delay, that they ſay they had ſuſpicions of the birth immediately after it happened; for otherways they might have pretended, that they had not the leaſt ſuſpicion of the impoſture till after the Duke's death; and therefore could not raiſe the action ſooner.

The defender, therefore, in this caſe, has no occaſion to ſeek for a Madame le Brun, an accoucheur, or the witneſſes that were preſent at the delivery: The law ſupplies all theſe: But, if any witneſſes are dead, yet if it can be proved that they ſaid ſo or ſo, the law will make this hear-ſay evidence, which, in other caſes, would not be good, effectual to the defender. And, in this manner, the law will revive both Mrs Tewis and Effy Caw, and make *them* evidences of Lady Jane having been with quick child, as well as Mrs Glaſs.

The other queſtions of law which I ſhall ſtate to your Lordſhips, are concerning the rule

rule of evidence: A moſt ſacred rule, upon which our lives, as well as our properties, depend. And the *firſt* is, That, in no action of this kind, where a crime is charged, the purſuers are intitled to ſay, that the witneſſes who are moſt neceſſary, as having beſt acceſs to know the fact, are accomplices in the crime. For this is plainly begging the queſtion; and, ſuppoſing the crime already proved. Thus, in a caſe ſuch as this, of a *ſuppoſitio partus*, the chief witneſſes for the defender, and, in many caſes, the only witneſſes, muſt be the perſons that are moſt about the Lady, ſuch as her chamber-maids, and her moſt intimate companions. And if theſe are rejected as witneſſes, who muſt beſt know the truth, upon pretence of their being accomplices, How is it poſſible that the defender can prove his birth? If La Marre had been alive, and Le Brun had been found, the purſuers would have ſaid, that they were likeways accomplices, as well as Mrs Hewit and Mrs Glaſs; and for the ſame reaſon: So that the purſuers require, that the defender ſhould prove his birth, and at the ſame time make it impoſſible for him to do ſo, by depriving him of the moſt neceſſary witneſſes.

BUT

But more particularly, with respect to Sir John, Mrs Hewit, and Mrs Glass, whom they make accomplices all three, and, for the same reason, they should have added a fourth, *viz.* Effy Caw; because, as she was about Lady Jane's person, and dressed and undressed her as well as Mrs Glass, she must have known if there was any imposture. If Sir John had been called upon by the defender as a witness, I apprehend, he ought to have been admitted, after so long a delay; though, in other cases, he no doubt would not have been a habile witness for the defender. At the same time, I own that his testimony in favour of the defender would have been suspicious, if he had been contradicted, or even not supported, by other less suspicious witnesses. But having been called as a witness by the pursuers themselves, it must appear to your Lordships something extraordinary, that they should object to their own witness as an accomplice, and desire your Lordships to reject him on that account. And I appeal to your Lordships, Whether, during so long an examination, he gave any signs of guilt, or of wilful falsehood.

As to Mrs Hewit and Mrs Glass, they were both likeways examined in your Lordships

preſence: And with reſpect to Mrs Hewit, your Lordſhips will remember, that ſhe behaved with the greateſt calmneſs and ſedateneſs, without any of thoſe emotions that muſt be ſuppoſed in a perſon guilty of ſuch a crime, and without the leaſt appearance of perjury or wilful falſehood, whatever miſtakes ſhe may have fallen into, being an old infirm woman, and depoſing to ſo many particulars at ſuch a diſtance of time. As to Mrs Glaſs, upon whoſe late examination your Lordſhip very juſtly laid ſo much weight, her behaviour upon oath was a perfect model for all witneſſes: The greateſt calmneſs, diſtinctneſs, and readineſs at the ſame time; and ſhe was ſo far from ſhowing any forwardneſs in favour of the defender, that tho' her depoſition was all very ſtrong in his favour, every queſtion that was put by the purſuers being anſwered againſt them, ſhe never went the leaſt beyond the interrogatory put to her, but contented herſelf with anſwering it ſimply and plainly: And though once, and but once, ſhe was a little fretted and ruffled, by the many teazing and captious queſtions put to her by the purſuers, not for information, but with a plain deſign to inſnare the witneſs in contradictions; yet I did

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not for that think the worſe of the witneſs, but rather the better, as ſhe ſhowed that proper indignation which every honeſt witneſs ought to have, when he ſees himſelf ſuſpected of perjury or prevarication. To believe ſuch a witneſs perjured is not only contrary to law, in my apprehenſion, and the rule of evidence, but it is want of common charity: And yet the purſuers, by making her an accomplice, do fairly admit, and your Lordſhips that have ſpoken hold it ſo too, that unleſs ſhe be perjured, the defender muſt be the ſon of Lady Jane Douglas. The cauſe is fairly put upon this iſſue; and your Lordſhips, by giving the cauſe for the purſuers, muſt pronounce this witneſs perjured, who behaved, at the time ſhe was examined, ſo well, that ſhe ſeemed to give ſatisfaction to all your Lordſhips, and to the numerous audience, in whoſe preſence ſhe was examined.

Your Lordſhips have heard a very critical examination of Mrs Hewit's letters to Mrs Glaſs, (then Tibby Walker), as well as of Mrs Hewit's evidence. The number of dates in which ſhe was right, and alſo the number of thoſe in which ſhe was miſtaken has been exactly calculated; and it has been

ſhown,

ſhown, that her letters are very blundering and inaccurate, contradicting ſometimes one another, and contradicted, in ſome particulars, by her evidence. But what can be from thence inferred? Nothing, in my opinion, but that Mrs Hewit was a woman of a memory not very accurate, nor of a head very clear or diſtinct. But with reſpect to the impoſture, ſo far from being a proof of it, they furniſh, in my apprehenſion, a very ſtrong argument againſt it: For Lady Jane is allowed by all your Lordſhips to have been a woman of very good parts, and Mrs Hewit muſt be ſuppoſed to have acted in concert with Lady Jane, and under her directions. Now, how is it poſſible to ſuppoſe, that ſhe would have allowed Mrs Hewit to write ſuch ſenſeleſs letters, loading the impoſture with ſo many particulars concerning Lady Jane, the children, and the nurſes? which was furniſhing juſt as many opportunities for detection; for Lady Jane, though ſhe did not underſtand Latin, would underſtand very well the meaning of the maxim that *Fraus latet in generalibus*, as there is nothing plainer or more obvious to a much weaker capacity than Lady Jane's, than that a feigned tale ſhould be as

little

little encumbered with circumſtances as poſſible.

But thoſe letters appear to me to prove one thing very clearly, that Mrs Glaſs was no accomplice: For, how is it poſſible to ſuppoſe, that Mrs Hewit, who certainly was an accomplice, if there be any impoſture, ſhould write ſo many particulars concerning the birth, Lady Jane's recovery, *&c.* to another accomplice who knew that the birth was all a farce? This is ſuch a thing as, it is believed, never happened before ſince the beginning of the world: And it is impoſſible to give any other account of it, except what I think a moſt improbable one, namely, that Mrs Hewit wrote thoſe letters on purpoſe to furniſh evidence in ſupport of the impoſture, if ever it ſhould be challenged. But, *firſt*, I think this is much too great a refinement of cunning: And if judges will indulge themſelves in ſuch ſuſpicions, they may make a deep plot of the plaineſt and ſimpleſt facts; and in that way turn the cleareſt and moſt direct evidence againſt the party in whoſe favour it is adduced. If Lady Jane had intended to procure ſuch evidence in ſupport of the ſuppoſition, ſhe certainly would have employed a better pen than Mrs Hewit's; or, at leaſt,

have

have revised and corrected those letters which she designed for evidence of the truth of the birth. But, *2do*, If Lady Jane or Mrs Hewit had intended that those letters should have furnished such evidence, we must suppose, that the confident Tibby Walker would have been enjoined to keep them carefully, and accordingly would have so kept them: Whereas it is evident, that there were many more letters that passed betwixt Mrs Hewit and Tibby Walker, which are now lost; and those which remain were preserved by mere accident.

And this observation may serve as an answer to a circumstance of strong suspicion much insisted on by the pursuers; namely, the correction of a date of a preceeding letter in Mrs Hewit's letter of the 22d of July, giving an account of the birth. For to what purpose this correction, as she was writing to an accomplice who knew the whole to be a farce? She had no more ado but to write a private note to her, or to desire her at meeting to destroy that preceeding letter of a wrong date.

Another device which the pursuers have fallen upon to deprive the defender of the possibility of proving his birth, while at the same time they insist upon the necessity of his

doing

doing ſo, is to lay hold of the miſtakes which the witneſſes neceſſarily muſt have fallen into, depoſing to ſo many particulars at ſuch a diſtance of time, and to infer from thence, that the witneſſes are perjured, and not to be believed. And this your Lordſhips will obſerve is one of the great hinges upon which the cauſe of the purſuers turns; for they have examined the witneſſes to every particular of the conduct of Sir John or Lady Jane for years together, both in France and Britain, however foreign to the iſſue. And if theſe witneſſes can be trapped in any miſtake, then ſuch witneſſes muſt be held to be perjured. Thus Mrs Hewit muſt be perjured, becauſe ſhe ſays, that the remittance from Rheims came to Sir John on the day of the birth; whereas it was ſome days after before it arrived, as if that circumſtance were in the leaſt material. Again, Mrs Glaſs is convicted of perjury, becauſe ſhe has fallen into the miſtake of ſaying, that Lord Blantyre ſaw Lady Jane at Aix during her pregnancy; and that nurſe Mangin's child was carried with them from Dammartin to Rheims; circumſtances equally immaterial. And in this way they have gone on examining witneſſes about every thing they could think of, though not in

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the leaſt connected with the cauſe. Thus your Lordſhips ſee a poor woman, I think it is Madam Boucault, is cloſely examined about the number and order of her own children; how they were nurſed, and how long they lived. And Monſ. Menager is obliged to give an account of all the acquaintance of his youth, and among many other things intirely foreign to the iſſue, he is aſked, whether or not he did not ſay in converſation, that ſuch a man told him, that he knew of a lady of 55 that was delivered? and this man is produced by the purſuers to prove Menager perjured.

Your Lordſhips will ſerioufly conſider, whether in this way any the cleareſt and moſt diſtinct evidence may not be ſet aſide. The witneſſes in this caſe, and in every other, come prepared to give evidence to the fact in iſſue; but beſides that, they were aſked in this caſe an infinite number of queſtions which they had never ſeen, and could not be prepared to anſwer, concerning a prodigious variety of particulars, which happened fifteen or ſixteen years ago; and if they commit miſtakes in any particular, or if in the courſe of ſuch long and teazing examinations, and re-examinations, ſuch as we have in this caſe, ſome of which

which lasted for days, the witness grows impatient, answers rashly, and by that means falls into contradictions and absurdities, then must such a witness be rejected as perjured, and not to be believed.

And if the mistakes or blunders of witnesses, under the torture of such examinations, with respect to facts not material to the issue, will not discredit their evidence as to the material fact, much less will their contradiction to another; and yet this is another principal hinge of the pursuers cause: for they have examined hundreds of witnesses in France, and in Britain, and almost in every country of Europe, concerning every particular of Sir John and Lady Jane's conduct, not only accompanying the birth, but preceding and subsequent to it, for a course of years; and when these witnesses disagree, as they necessarily must do in many particulars of facts which happened fifteen or sixteen years ago, then they conclude, that one or other of these disagreeing witnesses, or all of them, must be rejected. In this way they have set at variance Sir John and Mrs Hewit with nurse Garnier, concerning the history of the second child Sholto. And the pursuers counsel, as I remember, reckoned up

thirty-two diſcrepancies; from which he concluded, that the whole ſtory of Sholto is a mere fiction. In the ſame manner Sir John and Mrs Hewit are ſet at loggerheads, and made to deſtroy one another's evidence; and they are both ſaid to be perjured, becauſe they are contradicted by Madam Blainville, and ſome other witneſſes, who muſt have had the ſtory from her, concerning a journey ſaid to be made by Lady Jane to Verſailles. Now, this is another way, your Lordſhips ſee, by which any the cleareſt and directeſt proof may be taken away. If indeed the witneſſes differ in the material circumſtances of the principal fact, that will, no doubt, ſhake their credibility. But that is not the caſe here; for all the witneſſes concur as to the pregnancy and reconvaleſcence, and with reſpect to every material circumſtance of the birth itſelf; for they all agree as to the day, the place, the particular houſe, the name of the landlady, the man-midwife, the number, the ſex of the children, their condition as to health and ſtrength; and even with reſpect to the nurſes, the diſcrepancies about whom the purſuers ſo much inſiſt upon, they all agree, that the eldeſt child changed nurſes ſeveral times, but that the youngeſt got from the

the beginning a good one, and never had but one.

I have insisted the longer upon these rules of evidence, as I think they apply directly to this case, and are decisive of it. For your Lordships will observe how it stands. The defender has brought a clear proof of his birth, his mother's pregnancy and reconvalescence, both direct and circumstantial. The pursuers cannot pretend to have brought any proof strong enough to take away this. But, say they, 1*mo*, The defender's witnesses are accomplices, because they must have known the fraud, if there was any. 2*do*, They are perjured, because they are mistaken in sundry particulars. And, *lastly*, they contradict one another; and therefore none of them can be believed. This is the true complection of the pursuers cause; and if the rules laid down above are just, it is certainly a bad one; and to give it for the pursuers, would be to establish a most dangerous precedent, by which any the clearest proof in the world might be explained away.

I have only one observation more to make concerning the nature of evidence, and which, I think, is equally applicable to this case, where there is on one side clear and full evidence of the birth, and of what was necessarily

ſarily precedent and ſubſequent to it, I mean the pregnancy and reconvaleſcence; and on the other ſide, nothing, in my apprehenſion, but ſuſpicions and conjectures. The obſervation is, That it behoves a judge carefully to diſtinguiſh betwixt evidence and ſuſpicion. Parties, agents, and counſel, when they grow heated in a cauſe, may confound the one with the other, and may think, that a number of ſuſpicions amount to full evidence; and the people without doors, who are not accuſtomed to weigh evidence, and to judge of it by certain rules, may be excuſed for falling into the ſame error. But a learned and diſpaſſionate judge will not commit this miſtake, and he will carefully diſtinguiſh betwixt what forces his aſſent, by leaving no room to believe that the thing can be otherwiſe; and what only gives him a ſuſpicion that the thing may be. In ſhort, he will diſtinguiſh, like every man that is learned in any ſcience, betwixt what is certain, what is probable, and what is only contingent, that is, may be, or not be, as it happens. To trace the maze of ſuſpicions, to pile them up one above another, and link them ſo together, as to give them the appearance of evidence, ſhows do doubt very great parts and acuteneſs, and makes a

great

great figure at the bar; but allow me to ſay, it is a very dangerous talent in a judge. And if judges will take upon them to leave the broad patent road of evidence, and indulge themſelves in hunting the trail of ſuſpicions and conjectures, no man's life or property is ſafe; I ſay, my Lords, no man's life is ſafe. For I conſider this as a capital cauſe, not only on account of the great ſtake which Mr Douglas has depending upon it; but becauſe I think the ſame evidence which takes away the birthright of the innocent child, muſt have convicted the guilty parents of a capital crime; and your Lordſhips, in judging this cauſe, muſt conſider Sir John and Lady Jane as ſtanding before you under trial for their lives: And, before you can condemn Mr Douglas, you muſt lay your hands upon your hearts, and ſay, that there is evidence here, upon which you could have taken away the lives of the parents, as well as the birthright of the child.

And this leads me to examine more particularly the purſuers proof, beginning with the firſt head under which I have ranged it, *viz.* the conduct of Sir John and Lady Jane, both abroad and at home. I have already ſpoken of Sir John's declaration before your Lordſhips,

ſhips, by which they would deſtroy the whole account given by Sir John of his birth, and take away from the defender even the acknowledgement of his parents: And I come now to ſpeak of the four letters from La Marre, ſaid to have been forged by Sir John.

And, in the *firſt* place, The purſuers cannot, with any propriety, call thoſe letters forged, as the eſſence of that crime conſiſts in uſing the forged deed, knowing it to be ſuch. Now, that Sir John ever uſed thoſe letters as a proof of his ſon's birth, is not pretended: And as to Lady Jane, it was ſaid indeed by one of your Lordſhips, that ſhe did uſe them; but, in my opinion, that was ſaid altogether without evidence. For as to Mrs Menzies ſaying, that Lady Jane told her ſhe had evidence in her pocket that would make the matter clear, which evidence Lady Jane ſaid, was letters from the man-midwife. In the *firſt* place, this is but one ſingle witneſs, and an exceptionable one, being connected with one of the tutors of the purſuers. In the *ſecond* place, How does it appear that theſe letters were then in the poſſeſſion of Lady Jane; for this converſation happened a conſiderable time before Lady Jane's death, after which thoſe letters made their appearance for the

firſt

firſt time, and even before Lady Jane went to Douglas-caſtle, which was many months before her death? And, *laſtly*, If we ſhould ſuppoſe, without evidence, that thoſe letters were then in her poſſeſſion, How does it appear that the letters ſhe then ſpoke of were thoſe very leters, and not other genuine letters of La Marre's? For, if any thing is proved at all on the ſide of the defender, it is proved not only by parole, but by written evidence, that there was an intercourſe of letters betwixt Sir John and La Marre.

And, indeed, the letters, when attentively conſidered, are ſuch, that it is impoſſible they could be intended to be paſſed upon the world for originals from any perſon; for they are plainly copies made by a perſon who appears neither to have underſtood the language nor the hand-writing of the letters he was copying: That they are copies made by a man who tranſcribed them line by line, is evident from this, That, in the laſt of them, there are three words in the end of a line ſcored out, which three words are in the end of the preceeding line; ſo that it is clear, that the copier, in tranſcribing, has happened to caſt his eye too high, by which means he took the three words of the end of the preceed-

preceeding line inſtead of thoſe which ſhould have concluded the line he was writing. And further, it ſeems to me evident, that the letters he was tranſcribing were one or more of them letters written by a Frenchman; for I ſee phraſes in them which could not have come from Sir John, as we may judge from his other French letters, publiſhed in the proof, and hardly indeed from any Britiſh man. I will give but one inſtance: La Marre, ſpeaking of the nurſe, ſays, *Je ne puis pas trop me louer de la nourice.* This is an idiom purely French, not very common even among the French; but ſo remote from the Engliſh idiom, that I have known Britiſh men, who ſpoke and underſtood the French very well, that would not believe it was a French phraſe. Now, Sir John, if he had forged this letter, would undoubtedly have ſaid, *Je ne puis pas trop louer la Norice,* which is very good French likewiſe, and at the ſame time agreeable to the Engliſh idiom. But as it appears, that this copier could not well read the hand, whenever he was at a loſs, he foiſted in words and phraſes of his own, by which it has happened that there are no doubt ſeveral Engliſh idioms in them. And beſides this, there have been different

tranſcribers

tranſcribers employed, particularly the poſtſcripts to the laſt letter, wherein there is mention made of a journey of La Marre's to Italy, are written in a different hand, by which means it may have happened that a poſtſcript may have been taken from another letter written by a different man, and annexed to this, to which it did not belong.

THE whole amount therefore of the evidence upon this head is, That Sir John did make out, and give to his wife, very blundering and innaccurate copies of certain French letters, which Lady Jane never made any uſe of, but left them among other papers, when ſhe died. And it is ſubmitted to your Lordſhips, whether ſuch a *circumſtance* of evidence, will bear the weight the purſuers lay upon it.

BUT, ſuppoſing the letters to have been forged by Sir John; and ſuppoſing further, without evidence, that Lady Jane did make uſe of thoſe letters, and ſhow them to ſundry perſons, as an evidence of the birth of her children; What is this more than ſuſpicion, that ſuch a forgery was intended, not to maintain the truth, but to cover a falſehood? But does it prove, that Lady Jane

was not pregnant, or not delivered? Is it not very poſſible to ſuppoſe, that ſuch a man as Sir John, who was in ſuch poverty, and changed his lodgings ſo often, and was ſo careleſs and inattentive, as to throw by papers of the greateſt conſequence, in the manner Lady Stewart has depoſed, may have loſt letters, which he had from La Marre, and then forged thoſe, in order to pleaſe Lady Jane, who no doubt would be very deſirous, after the ſuſpicions in Scotland had gathered ſtrength, to have thoſe letters of La Marre in her poſſeſſion? It is not therefore evidence, but ſuſpicion; and even, the ſuſpicion flies off entirely, when we conſider the weight of the evidence on the ſide of the defender, and particularly the clear evidence of there having been a correſpondence by letters betwixt Sir John and a La Marre, who had the charge of his youngeſt child.

ANOTHER part of Sir John and Lady Jane's conduct, while in Britain, upon which the purſuers lay great weight, is their not making the proper inquiries concerning the birth of their children, in order to ſatisfy the world, after it came to be ſuſpected. It muſt appear to your Lordſhips very hard, to make the defender accountable for every negligence and omiſſion

omiſſion of his parents. And it is a ſufficient anſwer for him to ſay, that Sir John was a careleſs diſſipated man; that they were both high-minded perſons and thought themſelves much above ſuch imputations; and that, if they neglected to make inquiries on that or any other account, ſuch inquiries have now been made, and the defender's birth as much proved as any fact of that kind can be, happening in a foreign country, and at ſuch a diſtance of time. But, 2*do*, in point of fact, an inquiry was begun. Lady Jane ſent to Aix-la-Chappelle, and got a declaration from Madame Tewis, in whoſe houſe ſhe had lodged there, and who is one of thoſe that felt the living child in her belly. But, before the declaration came to her hand, Lady Jane was dead; ſo that the inquiry went no farther. But why, ſay the purſuers, begin at Aix-la-Chappelle? Why not go directly to Monſieur la Marre and Madame le Brun at Paris? This, my Lords, is putting ſtill a harder taſk upon the defender, to oblige him not only to ſhow that his parents did make inquiries, but to account why they did not make them in ſuch or ſuch a manner. This is an inquiſition which no man's birth can ſtand: And I ſhall only further ſay, that it appears from Lady

Jane's

Jane's converſation with Lord Preſtongrange, depoſed to by Mrs Glaſs, that Lady Jane did think of reſorting to La Marre; for, ſays ſhe, I believe the man-midwife is ſtill alive. But, by that time, Sir John may have loſt his addreſs; and it is poſſible (and I think the defender is at liberty to ſuppoſe every thing that is ſo) that La Marre, being diſobliged becauſe he had not been ſo well paid as it appears he expected, did not care to give any atteſtation of the birth.

I come now to Sir John and Lady Jane's conduct in France at the time of the birth, before and after it; and, during all the time they were at Aix-la-Chappelle, Rheims, and Paris; and, while they were journeying betwixt theſe places; for it ſeems the defender muſt anſwer for every thing they did, and alſo every thing they omitted to do: And your Lordſhips will obſerve, that all the purſuers objections under this head of conduct come to this; Why did not Sir John and Lady Jane do ſo or ſo? Why did they do ſo or ſo? Why did they go from Rheims to Paris for Lady Jane's lying in? or if they were to go, Why did they go ſo late? Why did they not inform their friends of the birth immediately after it happened? Why did they date their

letters

letters from Rheims, while they were at Paris? Why did they not inform the Duke, and their other friends, that the delivery was at Paris? *&c. &c.*

As I have already consumed so much of your Lordships time, I will not go thro' all those particulars, which have been already answered more sufficiently than I think is necessary for the defender; and particularly, the two last questions have, I think, been very well answered by one of your Lordships, by supposing what seems to me very natural, that Sir John, who wanted money from the Duke, and wanted also to borrow from my Lord Crawfurd, and no doubt from others of his British friends, did not care that it should be known to them that he was living in so expensive a place as Paris, which might have hurt his credit with them. For, with respect to his French acquaintance at Rheims, it is clear from the proof, that he made no secret of the journey to them. And indeed how could he, as he travelled in the public voiture, and took a recommendation from Maillefer to the inn at Paris to which the travellers from Rheims commonly went? And as to him and Lady Jane living in so private a manner in Paris, and seeing so few of their countrymen,

countrymen, (a circumſtance which the purſuers much inſiſt upon), it was the plan laid down for them by Madame Andrieux, according to Mrs Glaſs's laſt depoſition; and it was a rational plan, upon the ſuppoſition that Sir John was pinched for money, which undoubtedly was the caſe. For it is to no purpoſe that the purſuers reckon up the money that Sir John got when he was at Paris, unleſs they could tell your Lordſhips, at the ſame time, what occaſion Sir John had for money while there, and could aſſure you that he had no debts to pay there, nor loſt any money at game, to which it is proved he was addicted: For, that he had not money to anſwer his demands, is evident from his borrowing, or attempting to borrow, from almoſt all his acquaintance, ſuch as Lady Wigton, Lord Crawford, Sir William Stewart; and, even while he was at Paris, we have him demanding a ſmall ſum of 25 louis d'ors from Monſieur Andrieux, who appears to have been unwilling to truſt him, and only did it at laſt upon the credit of his trunks and cloaths at Rheims. It was therefore not to be wondered that Lady Jane ſhould chuſe to live very privately and ſoberly at Paris, and to ſee few or no company; eſpecially conſidering they

had

had then a houſe and family at Rheims, which they appear to have conſidered even then as the place of their reſidence.

But many of the oddities and inconſiſtencies which they charge to the account of Sir John and Lady Jane, ſo far from proving the impoſture, have, in my apprehenſion, the direct contrary tendency; and, in this view, I will mention ſome of them. And, in the firſt place, ſay the purſuers, Why did Sir John and Lady Jane make a journey from Rheims to Paris, but eight days before Lady Jane was brought to bed? Upon the ſuppoſition of no impoſture, the anſwer is obvious, namely, That after deliberating long whether Lady Jane ſhould truſt herſelf in the hands of the midwives at Rheims, ſhe at laſt determined, though late, to go to Paris. And, if ſhe had been brought to bed the very day ſhe arrived at Paris, it would have been nothing extraordinary, but a thing that has happened to many women. But, upon the ſuppoſition of an impoſture, it is not to be believed, that, as they had the day of delivery of their own chuſing, they would have furniſhed this argument againſt themſelves.

Again, ſay the purſuers, Why did they leave their maids at Rheims? I retort the queſtion;

queſtion; if there was an impoſture here, of which thoſe maids muſt have been accomplices, Why did they not take them with them, in order to have more witneſſes to the pretended birth? Why did they not at leaſt take Tibby Walker with them, whom the purſuers aver to have been an accomplice, eſpecially as the purſuers ſay that Sir John had plenty of money? And here one of your Lordſhips made an obſervation, which was indeed very ingenious, but I muſt be forgiven to ſay, did not appear to me very ſolid, *viz.* that they did not carry Tibby Walker with them to be a ſecond witneſs to the birth, becauſe Mrs Hewit and ſhe might have diſagreed when they were examined as to the particulars. This, I confeſs, is a refinement of cunning which I cannot ſuppoſe, that a perſon wanting to prove a fact by two witneſſes, ſhould take but one, for fear that two might, upon examination, have diſagreed in particulars. By this way of refining, the deepeſt plot may be made out of the ſimpleſt and plaineſt facts. This way indeed the purſuers have argued through their whole memorial. But it is a ſort of reaſoning that, I think, your Lordſhips ſhould not adopt. The grief, for example, that Lady Jane expreſſed

for

for the loſs of her ſon Sholto, and the pathetic lamentation over him, which hardly any body can read in Mrs M'Crabby's depoſition with dry eyes, they ſay was no more than acting a part, in order to furniſh evidence to ſupport the impoſture. But it is proved that Lady Jane died of grief for the loſs of this child. Was this acting a part? But, ſay ſome of your Lordſhips, the witneſſes who prove this, are accomplices, are perjured, or are over-run with prejudices, or have warm imaginations. If this manner of explaining away evidence is allowed, I aſk your Lordſhips how any thing can be proved? But to return to the maids: Upon the ſuppoſition of no impoſture, there is nothing more eaſy than to account for the leaving them. It has been ſhown that Sir John and Lady Jane were at that time, and indeed at every time while they lived, in want of money. In order therefore to ſave money both in the journey and in their living at Paris, and likewiſe to avoid the appearance of people of high rank and condition, which the travelling with ſuch a family muſt needs have given them, but which they were in no condition to ſupport, they determined to leave them at Rheims. This was not only very natural, but is clearly

proved by the depoſitions of ſeveral witneſſes.

And all the neglects and imprudencies, of which the purſuers accuſe Sir John and Lady Jane, are in my apprehenſion, to be underſtood in the ſame way, rather as arguments againſt the impoſture than for it. Why, ſay the purſuers, did Sir John delay ſo long to inform any body of the birth? Why did he date letters upon the very 10th of July, wherein he did not ſay a word of it? Why did he not inform the Duke of Douglas, and his friends in Britain, of the particular houſe where Lady Jane was brought to bed? of the man-midwife, and of the witneſſes who were preſent? *&c.* To all which I anſwer, that, upon the ſuppoſition of a real birth, all this is eaſily accounted for, from the known character of Sir John. And even, without laying any weight upon that, Who thinks of the birth of their children being called in queſtion? or who, to prevent ſuſpicions, of which he has no idea, writes to his friends a certificate of the birth of his child, containing all the particulars of the delivery? But, on the other hand, if there was here an impoſture, it is impoſſible to ſuppoſe, that Lady Jane, a woman of ſo

good

good parts, would have neglected the common and ordinary precautions. In that caſe, there would, no doubt, have been many letters written on the very day fixed for the delivery, giving an account of it: And they would certainly have taken care, that none of the letters ſhould be dated on that day, which did not give an account of it. And, if we could ſuppoſe Lady Jane capable of ſo much imprudence, Can we believe, that Sir John would have forgot thoſe neceſſary precautions, when he ſhowed ſo much readineſs, and preſence of mind, in the carrying on of the impoſture, that one day, travelling in a coach with Lady Jane, and Mrs Hepburn, when they were upon their way from Aix-la-Chappelle to Rheims, and ſeeing a beggar of a deformed and uggly aſpect coming up to the coach to aſk charity, he immediately ſprung out of the coach, and put away the beggar, that Lady Jane being then with child, might not ſee him?

The circumſtance of the firſt note to Mrs Napier, is much inſiſted on by the purſuers, as a proof of the impoſture; but which, nevertheleſs, appears to me quite irreconcileable with the ſuppoſition of an impoſture. For, upon that ſuppoſition, they muſt, of neceſſity,

ty, have concerted the name of the houſe where Lady Jane was brought to bed, as well as the name of the accoucheur. And it is impoſſible to believe, but that Sir John would have had the one name as well as the other at his tongue's end; or, if we could ſuppoſe, that he had forgot a circumſtance ſo eſſential in the impoſture, can we further ſuppoſe, that in place of Madame le Brun's, he would have named a public-houſe, ſuch as Michell's, where the falſehood muſt immediately have been detected? But, upon the ſuppoſition of no impoſition, it is intirely agreeable to the careleſs and diſſipated character of Sir John, and to the circumſtances of diſtreſs he had been in, when he mentioned to Mrs Napier, that he ſhould not have at firſt recollected the name of Le Brun, though he did immediately recollect that of La Marre, with whom he had been much more connected, having correſponded with him ſo frequently upon the ſubject of his youngeſt child.

But this miſtake, upon recollection, he afterwards corrected in his ſecond converſation with Mrs Napier, and a ſecond note which, upon that occaſion, he gave her. And here, ſome of your Lordſhips were in a miſtake, in ſuppoſing, that this correction was not till after

ter he had heard of the inquiry made at Michell's by Principal Gordon: For this is a ſuppoſition, not only without evidence, but contrary to evidence. It is without evidence, becauſe Mrs Napier has not ſaid ſo; and it is contrary to evidence, in ſo far as Mrs Napier has ſaid, that this ſecond converſation happened about the time of her lying in, and while ſhe was confined to her room on that account. Now, ſhe lay in upon the 5th of Auguſt 1756. Lady Frances Stewart's letter giving her an account of the ill ſucceſs of Principal Gordon's inquiries, was dated from Spa, the 28th of the ſame month of Auguſt, and conſequently could not have come to Mrs Napier's hand till towards the middle of the month of September. So that your Lordſhips who will ſuppoſe, that this ſecond converſation happened after this letter arrived, and after Sir John was informed of the contents of it, muſt likeways ſuppoſe, not only that this converſation happened after Mrs Napier's lying in, which the witneſs has not ſaid, but that Mrs Napier was confined to her chamber for above a month after her lying in. And your Lordſhips will obſerve here a miſtake with reſpect to the old and new ſtile, which the purſuers have fallen into in their memo-

rial,

rial, by which they make the 28th the date of Lady Fanny Stewart's letter, to be the 17th old ſtile; whereas, in the year 1756, there was not in Britain any ſuch diſtinction of ſtiles.

And now that I am upon the chapter of Madame le Brun, I will beg leave ſhortly to ſtate to your Lordſhips the amount of the evidence as to her: And, in the *firſt* place, I was much ſurpriſed to hear ſome of your Lordſhips deny the exiſtence of this woman; for, if any thing at all is proved upon the ſide of the defender, not only the exiſtence of a Madame le Brun in the year 1748 is proved, but alſo her connection with La Marre, both by parole and written evidence. For, in the *firſt* place, Menager has ſworn to ſo many particulars concerning Madame le Brun and her daughter, with whom he appears to have had a very intimate connection, that even, if your Lordſhips could ſuppoſe perjury in other parts of his evidence, you could hardly ſuppoſe it in this. Now, by his evidence, is not only proved the exiſtence of her and her daughter, but alſo her connection with La Marre. Further, this is alſo proved by a moſt unexceptionable witneſs with reſpect to the purſuer, *viz.* Francois la Marre, the brother of

Pierre,

Pierre, who in a converſation with Mr Andrew Stuart and Monſieur Danjou, told them, *ſur le champ et ſans heſiter*, that his brother was connected with a Madame le Brun; that he himſelf knew her; and accordingly he tells ſundry particulars about her; and, among others, ſays, he believes, ſhe was a ſcholar of his brother's in the art of midwifery: And this he repeated in a ſubſequent converſation without variation. And, in this laſt converſation, he told Mr Stuart and Monſieur Danjou, that he had concealed this circumſtance from the gentlemen upon the other ſide: Though that was not true, as it is proved that he told it likeways to them: But he was plainly in the intereſt of the purſuers, and had been employed by them to make a journey in ſearch of witneſſes, for which, no doubt, he expected to be very well paid: And this accounts for his denying every thing concerning Madame le Brun, when he came to be examined upon oath. And, *laſtly*, There is written evidence of the exiſtence of this woman and her connection with La Marre, from La Marre's compt-book, where there is a ſum of money ſet down given by him to Madame le Brun.

It is very true, that this Madame le Brun cannot

cannot now be found: But, in the *first* place, I ſubmit to your Lordſhips, whether it be not abundantly ſufficient, and even more than is incumbent upon the defender, to prove that a Madame le Brun exiſted in the 1748, was connected with La Marre, and very probably, as Menager ſuppoſes, kept one of La Marre's *depots d'accouchments*; and which is further confirmed by what Gilles ſaid in anſwer to the queſtions put to him by Morand, that La Marre told him the foreign Lady was brought to bed of twins in the houſe of Madame le Brun. 2*do*, The woman herſelf is not now to be found, for a very good reaſon, namely, that in all probability ſhe is dead, and it is not improbable that the daughter is alſo dead, conſidering the way in which ſhe lived. 3*tio*, A Madame le Brun has been found living in the *Rue Dominique*, in the *Fauxbourg St Germain*, in a houſe of that ſtreet now ruinous, which Madame le Brun anſwers, in every particular, to the Le Brun mentioned by Sir John and Mrs Hewit; for ſhe was a widow woman that was a *garde malade*, that took ſick women into her houſe, and had a young girl for her daughter. Whether this be really the woman or not, is of no importance to the defender. It is ſufficient for him to ſay,

that

that ſhe might have been the woman, and to have proved, that there was a woman of that name exiſting in Paris in the 1748, who was connected with La Marre. And the only defect of his evidence upon that head is, that no body has been found who heard this Madame le Brun ſay, that a foreign lady had been delivered of twins in her houſe. And yet, upon this mere negative, to be accounted for in many different ways, do the purſuers lay ſo much weight, that Mr Stuart told Sir William Stewart, that if only Madame le Brun could be found, he would give up the cauſe, being already quite ſatisfied as to the pregnancy.

And here your Lordſhips will obſerve, how natural it was, that Sir John, having employed La Marre for the accoucheur, ſhould carry Lady Jane to lie in in the houſe of Madame le Brun; for it would have been altogether improper, that ſhe ſhould have been brought to bed in an inn, ſuch as Godefroy's, or a *hotel garnie*, ſuch as Michell's. And accordingly, it appears, from Maillefer's letter to Godefroy, that it was Sir John's intention before he left Rheims, to go as ſoon as might be into private lodgings. Now, there was nothing more natural than that Sir John

ſhould take thoſe lodgings upon the recommendation of La Marre; and it was as natural that La Marre ſhould recommend this woman Le Brun, with whom he was ſo much connected.

And, indeed, all the great lines of the conduct of Sir John and Lady Jane in France have been ſhown, even at this diſtance of time, to be probable and natural, without ſuppoſing any fraud or impoſition. Their going abroad was a prudent ſtep, and the beſt thing they could do in their ſituation. Their going to Aix-la-Chappelle, is ſhown to have been on account of Lady Jane's health, who imagined that the waters there would do her good. Their going from Aix-la-Chappelle to Rheims, after much wavering and deliberation, is alſo accounted for; and likeways their laſt reſolution of going from Rheims to Paris. Even their happening to employ this man La Marre is pretty well accounted for, by the connection which he had with Britiſh and Iriſh people in Paris, one of whom may have recommended him to Sir John. Their chuſing Le Brun's houſe for Lady Jane to lie in, has been already accounted for; and the reaſon of their leaving this houſe ſo ſoon, and going to Michell's, is alſo

proved.

proved. And as they had a houſe taken at Rheims, nothing was more natural than that, as ſoon as Lady Jane was in a condition to travel, they ſhould ſet out for that place. Accordingly they did ſo; but, on account of Lady Jane's weakneſs, they ſtopped for ſome days at a pleaſant village on the road, called Dammartin. As to the children, it was very natural, and I believe commonly happens, that of the two, one ſhould be much ſtronger than the other; and as that other was a very weak child, it was alſo very natural that he ſhould not be kept in town, but ſent out to the country to be nurſed, under the care and direction of La Marre. And there is a circumſtance with reſpect to this youngeſt child, which is altogether extraordinary in this country, and never could have been invented by Sir John, Lady Jane, or Mrs Hewit, but which is very common in France, namely, the *ondoyment* or ſprinkling of this weak child by the man-midwife.

THUS the great lines of Sir John and Lady Jane's conduct in France are very well accounted for; and it can be no wonder, that at this diſtance of time, ſome particulars cannot be ſo well explained; but even of theſe, ſome have by accident been cleared up, which

otherwiſe

otherwiſe would have had a very ſuſpicious look. Thus, for example, their dropping their man-ſervant in their journey from Aix-la-Chappelle to Rheims, looked very ill, much worſe, in my opinion, than the leaving the maids at Rheims. But, by the accident of the man's wife being alive, this matter is ſo cleared up, that the purſuers no longer inſiſt upon it as a circumſtance of ſuſpicion. Again, it was alledged againſt Sir John, that, in the year 1749, when he and Lady Jane returned to Paris to ſteal another child, he lodged in one Renaud's, under his own name of Colonel Stewart; but when he went to the Croix de Fer, where the crime was to be perpetrated, he aſſumed the name of Duvernes. Now, by the accident likewiſe of the widow of Colonel Stewart of Ardſhiel being alive, it has been diſcovered that it was her huſband, not Sir John, who lodged at that time in Renaud's; and, in like manner, it muſt be preſumed, that every circumſtance of ſuſpicion would have been cleared up, if the purſuers had not delayed their proceſs ſo long; or even, if they had aſked Sir John Stewart when he was alive concerning ſome circumſtances which they now very much inſiſt upon, ſuch as their letters being dated at Rheims, while they were at

Paris;

Paris; their delaying for twelve days to give any account of the birth to their friends; and their not ſpeaking of it in their letters dated the ſame day that it happened.

Let us now conſider the tale of the impoſture as told by the purſuers, and ſee whether it be as probable and natural a ſtory, as that which is told by the defender. And here I muſt beg your Lordſhips particular attention, if I have not quite exhauſted it; as this point has been hardly touched upon by any of your Lordſhips, nor fully ſtated even in the defender's memorial; and yet, in a circumſtantial proof, which is all that the purſuers here pretend, it is a circumſtance of the greateſt weight, to conſider, whether the tale told by them is probable or natural; or, on the contrary, moſt improbable and unnatural, as I think I am able to ſhow it.

And I omit the improbability of a lady of virtue and piety, ſuch as Lady Jane is proved to have been, and a Lady who had ſo high a notion of the rank and dignity of her family, committing a crime of this kind, by which ſhe was to ingraft upon the ſtock of the illuſtrious houſe of Douglas, two beggars brats. I omit alſo the improbability, that a woman of Lady Jane's parts would have

have engaged in a crime, the commiſſion of which was ſo difficult, as it is a crime requiring many accomplices, not committed in an inſtant, but continued for a tract of time, and thereby liable to manifold occaſions of detection. I do not inſiſt neither how unlikely it was, that Sir John or Lady Jane ſhould even think of a crime that never was committed in this country; nor was it ever thought of by any body here, except Lady Kinnaird, who did only think and ſpeak of it; for ſhe never attempted to put it in execution. But even of this, it does not appear, that Sir John or Lady Jane, who were then abroad, ever heard. Nor do I inſiſt, how much more unlikely ſtill it is, that Lady Jane ſhould commit ſuch a crime, by which ſhe was not only to diſgrace her family, but might diſinherit her own future iſſue, as ſhe was certainly capable of having children; and this, without any motive to perſuade her; but, on the contrary, the ſtrongeſt reaſon to diſſuade her, namely, the fear of loſing her brother's favour and her penſion, upon her being obliged to own her marriage, which accordingly happened. All theſe conſiderations, however weighty, I lay aſide; and ſuppoſing Lady Jane capable of committing ſo

great

great a crime, and ſo abſurd a one in her ſituation, without any motive to induce her, I will examine the general plan of this ſuppoſition, and the manner in which they executed it; and then I will leave it to your Lordſhips to judge, whether perſons of the leaſt degree of common ſenſe could either have projected ſuch a plan, or executed it in the way that Sir John and Lady Jane did.

And, in *firſt* place, we have the project of ſuppoſing two children at once; a thing of which there is no example in all the many inſtances of this crime which have been collected by the purſuers from ſuch numbers of volumes. And the reaſon is obvious; for, in the *firſt* place, one ſerves any purpoſe that could be intended; and, 2*dly*, If the ſuppoſition of one is a crime of a long and difficult execution, the ſuppoſition of two muſt be infinitely more difficult, and liable to many more opportunities of detection; ſo that it is hardly poſſible to eſcape diſcovery. Whereas, on the other hand, as there was here no impoſture, according to my firm perſuaſion, the circumſtances concerning the one of the children, I mean Sholto, have wonderfully contributed to ſupport the birth of the other, and form a chain of evidence,

which

which I ſhall ſtate afterwards to your Lordſhips, ſuch as has hardly occurred in any caſe.

But, *2do*, What is more extraordinary ſtill, and exceeds all belief, is, that they ſhould publiſh to the world this plan of double ſuppoſition, before they had executed it, and give out that they had two, when they had but one, deſcribing very particularly the youngeſt, as a puny weak child, and telling many other particulars concerning a child that then had no exiſtence, whereby they laid themſelves in ſome ſort under the neceſſity of committing the crime over again, and of finding another child, anſwering exactly to the deſcription of Sholto; and which, at the ſame time, was of ſuch an age and ſize, as could be ſuppoſed to be born at the ſame time with his twin-brother.

But, *3tio*, What is more wonderful ſtill if poſſible, they go to Paris, at the diſtance of ſixteen months, and bring from thence a child, anſwering in every particular to the deſcription they had given of Sholto, a puny weak child, and a leſs child than the other; though, as the purſuers ſay, about four months older; with this additional circumſtance,

ſtance, which I wonder none of your Lordſhips has taken notice of, that he was as like Lady Jane, as it was poſſible that an infant could be to a grown perſon. This is ſuch a concurrence and combination of circumſtances in favour of the truth of the birth, as could not be the effect either of chance or deſign; and at the ſame time, makes the tale of the purſuers, not only improbable, but morally ſpeaking impoſſible: For, if we could ſuppoſe a public market of children in Paris, where they were to be got of all ages, ſizes, and complexions, it would be at leaſt a thouſand to one, that they ſhould have found a child ſo exactly anſwering the deſcription of Sholto, leſs than the other child, yet four months older, and at the ſame time, as like Lady Jane as it was poſſible. And, when we join to all this, the circumſtances Sir John and Lady Jane were then in, ſtarving in a manner at Rheims, and having juſt got a ſupply from my Lord Morton of only L. 300 Sterling, their laſt reſource, yet not ſufficient to pay off their debts at Rheims, and carry them back to Britain, that they ſhould think, in that ſituation, of returning to Paris, to commit over again the ſame crime, and to

burden themſelves with the maintenance of another child, after the ſuppoſition of the firſt had ſucceeded ſo well with them, and when they could have given out, with the greateſt probability, that this puny weak child, whom they had always repreſented as having but a ſmall chance to live, was dead, is a ſtory really incredible.

THIS is the plan of the impoſture concerted betwixt Sir John and Lady Jane, a woman of very good parts, as all your Lordſhips have acknowledged, which, I think, I may venture to ſay, was as abſurd and irrational, as it was without example or precedent. Let us now conſider how this plan was executed. And, in the *firſt* place, if they intended ſuch a fraud, it was natural for them to conceal themſelves as much as poſſible, and, for that purpoſe, to get private lodgings, and go as little as poſſible to public-houſes. Inſtead of that, they go directly to Godefroy's, a houſe perfectly well known to the people of Rheims, with a recommendation from the chief magiſtrate of Rheims to Godefroy. They ſtay there, ſay the purſuers, eleven days; and not only ſo, but they fix the delivery upon one of the days while they were there; a thing which Monſieur Danjou, the purſuers

French

French agent, ſays, in one of his memorials, was abſolutely incredible; and yet this is what the purſuers would have you believe, without telling you, why it is more credible now than it was then, that Sir John and Lady Jane, being to return to Rheims, ſhould fix the day of delivery while they were at Godefroy's, a houſe ſo well known at Rheims, that it was impoſſible they could eſcape detection.

FURTHER, after Lady Jane was ſaid to be brought to bed, it was obvious to common ſenſe that ſhe ſhould have remained ſo long in her private lodgings, where the purſuers admit ſhe was betwixt Godefroy's and Michell's, that ſhe might have appeared to be quite recovered: But inſtead of that, within eight days after the time of the delivery, away they go to another public-houſe, where it muſt have appeared to every body, more eſpecially as Lady Jane did not attempt to conceal herſelf, that ſhe was not newly brought to bed.

FURTHER ſtill, the choice of the man they named for the man-midwife of this pretended delivery, is moſt unaccountable. Neceſſary, indeed, it was, that they ſhould name ſomebody for the man-midwife, being, no doubt, an eſſential circumſtance of the tale

which

which they muſt have prepared to tell to the world. But, in order to find a proper name for the man who was ſuppoſed to have diſcharged this office, they ſhould have gone to the regiſter of St Côme, and there picked out the oldeſt man-midwife, who, in all likelihood, would be dead before the birth could be challenged. Inſtead of that, they named a young man then practiſing ſurgery and man-midwifery in Paris, but to be ſeen in no regiſter.

FURTHER, if there was here an impoſture, it was a neceſſary ingredient in it, that Lady Jane ſhould publiſh her pregnancy to the world; and it might have been expected, that Lady Jane would rather have over-acted her part, as is commonly the caſe in ſuch impoſitions, and have oſtentatiouſly ſhown her big belly to all the world. But inſtead of that, it is clear from the proof, that ſhe endeavoured to conceal it, even after ſhe had written to her brother the Duke that ſhe was with child, and after it was well known to my Lord Crawfurd, and her other intimate acquaintances. Now, a real pregnancy has been often concealed; but what could be the meaning of concealing a ſimulated pregnancy? Upon the ſuppoſition of no ſimulation, the concealment is eaſily accounted for, either from

Lady

Lady Jane's natural ſhyneſs or baſhfulneſs, and which is common to women of any faſhion while they are with their firſt child; or from her deſire to conceal her marriage, which one of the witneſſes ſays ſhe intended never to have publiſhed, if ſhe had not brought forth a living child.

AGAIN, as the two maids muſt have been accomplices, if there was any impoſture, how is it poſſible to ſuppoſe, that Lady Jane, having ſuch a ſecret upon their tongues, ſhould have treated them in the manner ſhe did; For it is proved, that in the journey betwixt Aix-la-Chappelle and Rheims, while Lady Jane was carrying on the farce of a big belly, the maids having refuſed to travel in the boot of the coach, Lady Jane rated them very ſoundly, and called them *ſaucy jades;* and one of them ſhe turned off after ſhe returned to Britain; with which, as the witneſſes ſay, Effy Caw, for that was her name, was much diſcontented.

I forbear to mention ſome other circumſtances which appear to me altogether improbable, upon the ſuppoſition of an impoſture, becauſe I have taken notice of them already; ſuch as the accident of the beggar, a ſmall, but a very ſtriking circumſtance; the leaving

of

of the maids at Rheims; the fixing the day of the birth ſo ſoon after Lady Jane's journey from Rheims; and the forgetting a circumſtance ſo material in their ſtory, as the name of the houſe where Lady Jane was brought to bed, together with Sir John's other omiſſions and imprudencies, which cannot be accounted for upon the ſuppoſition of an impoſture. And I ſhall only mention one further ſtriking improbability in the purſuers ſtory, viz. That Sir John coming to Paris to commit ſuch a crime, ſhould have been at no pains to conceal himſelf, by taking a falſe name, or a falſe country; but, on the contrary, ſhould have fairly given his name and his country at Godefroy's; and, even at Michell's, after he had committed the crime, tho' his name was ill written by the maid of that houſe: And inſtead of hiding himſelf while he was at Paris, he went out every day; and inſtead of running away as Duvernes did after he had ſtole the child, ſo as to get out of reach, he remained at Paris more than twenty days, lodging the greateſt part of that time in a public-houſe; and when, at laſt, he left Paris, he went no farther than Dammartin, and ſo on leiſurely, till he returned to Rheims, a place where every body knew that he had gone to Paris, in order that

Lady

Lady Jane might lie in there: And after he had left Paris, he returned again from Dammartin, goes back to Godefroy's houſe, where he had fixed the day of delivery, and at two other times returns again to Paris, juſt as if nothing had happened, without ſhowing the leaſt fear of detection.

SUCH being the caſe, I appeal to your Lordſhips, and to every body who hears me, whether this ſtory of the purſuers, which they deſire your Lordſhips to believe, is not ſo abſolutely incredible, in all its circumſtances, as hardly to be believed upon the faith of any evidence, even the moſt full, direct, and concluſive.

AND thus much with reſpect to the firſt head of the purſuer's proof, containing all the particulars of Sir John's conduct which they think unaccountable, except upon the ſuppoſition of an impoſture.

THE *ſecond* head, under which I have ranged the purſuer's proof, is Godefroy's evidence: With reſpect to which, I muſt again beſpeak your Lordſhips patience, as I think I can put that matter in a clearer light than hitherto it has been put; and as it is the only thing like direct evidence, which the purſuers

ſuers pretend to, it is very well worth your Lordſhips attention.

And, in the *firſt* place, I diſtinguiſh betwixt the evidence of Godefroy, and that of his books, and will, with your Lordſhips permiſſion, conſider them ſeparately.

And, *firſt*, As to Godefroy's own evidence, I have heard him praiſed by ſome of your Lordſhips as a witneſs moſt credible, and above all ſuſpicion; but I am ſo far of a different opinion, that I think he is a witneſs that cannot be believed; nay, I go further, and I ſay, he is ſuch a witneſs as with me goes near to diſcredit the purſuers whole proof: For I will ſhow, in the *firſt* place, that he is a witneſs that has been inſtructed; *2dly*, That he has varied his tale; and, *laſtly*, That he has ſworn falſely concerning a thing which he ſhould certainly have known, the method of keeping his own books.

The queſtion, your Lordſhips ſee, is concerning the application of the accompt blank in the name, beginning the 4th of July and ending the 13th, to Sir John, Lady Jane, and Mrs Hewit. In order to make this application, he muſt of neceſſity have known two things; *firſt*, That Sir John and Lady Jane

arrived

arrived in his houſe upon the 4th; and, *ſecondly*, That there was a third perſon with them, as he ſuppoſes the accompt to apply to three perſons. Now, it is abſolutely impoſſible, that, from his memory, he could have recollected, at ſuch a diſtance of time, that Sir John and Lady Jane, and one woman more with them, arrived at his houſe preciſely upon the 4th of July 1748; eſpecially, as both he and his wife have ſaid, that they paid no particular attention to theſe ſtrangers while they were in their houſe, and never thought of them after they went out of it, till the beginning of this proceſs. It is true, the purſuers have been at much pains to magnify the memory of Godefroy; but ſuch a memory as they would here ſuppoſe, is abſolutely incredible. Nor is Godefroy's memory ſo extraordinary as they would make it: For, in the *firſt* place, he has forgot his own hand-writing, when he ſays, in his firſt depoſition, that he believes the whole account of the 4th of July is of the hand-writing of Madame Godefroy; whereas a part of it, and I believe the greateſt part, is of his own hand-writing. And your Lordſhips will obſerve, that, at the time he ſwore this, the book had only been about two years in the Tournelle;

and before it was taken from him, he muſt be ſuppoſed to have looked at it himſelf, and ſhown to others this account; more eſpecially if it be true, as the purſuers aver, that he always told them the ſame ſtory, and conſequently muſt always have applied this account to Sir John Stewart.

2dly, At his firſt depoſition, he had forgot another thing more material, namely, that he kept two books in the 1748; for it is plain, that both he and his wife, when they were firſt examined, ſpoke only of one book which they kept in that year, though they thought proper afterwards to produce a ſecond, as it was apparent that this book did not contain the tenth part of thoſe who came to an inn ſo much frequented, not even the half of thoſe who were in their police-book. And as to the proof which the purſuers give of his good memory, from his remembering that Maillefer had written a letter to him, recommending Sir John; ſuppoſing that he had not at that time found the letter, for which we have only Godefroy's word, it was nothing very extraordinary, that being in uſe to correſpond with Maillefer about the affairs of the town of Rheims, and Maillefer, no doubt, being in uſe of recommend-

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ing perſons to him, he might have imagined, (and that is all he ſays), that Maillefer may have recommended Sir John, with whom it is likely he has heard that Sir John was acquainted.

FROM memory, therefore, it was impoſſible, that Godefroy could recollect that theſe three foreigners, neither one more, nor one leſs, had been at his houſe preciſely on the 4th of July 1748. And what only remains to be inquired is, whether he could have learned it from his police-book; for that is the only way, as your Lordſhips will obſerve, that Godefroy pretends to fill up any other accounts blank in the names. Now, what ſays his police-book with reſpect to Sir John and Lady Jane? It ſays, in the *firſt* place, that they arrived the 7th; and, in the *ſecond* place, it ſpeaks only of two perſons, Sir John and Lady Jane. It is therefore clear, that Godefroy muſt have learned, either from the Tournelle proceſs and Monitoire, or from private information, that Sir John and Lady Jane arrived in his houſe upon the 4th, and that there was another woman with them; and then, by mere conjecture, he has filled up the names in this blank accompt, in the

ſame

ſame manner as he has filled up other names in his compt-book.

And thus, it appears, that the very foundation of Godefroy's evidence, is from information of one kind or another; and that even after he got ſuch information, he applied the accompt merely by conjecture to Sir John and Lady Jane, and Mrs Hewit, rather than any other three perſons that might have been in his houſe at that time.

The *next* thing I undertook to ſhow was, that he had varied his tale. This is evident from Monſieur Danjou's memorial above mentioned, intitled, *Expoſé de faits*, written after Godefroy's depoſition in the Tournelle, to which it refers. There it is expreſsly ſaid, that Sir John and Lady Jane paid their bill upon the 8th, and then went out of Godefroy's houſe. Your Lordſhips therefore muſt preſume, that Godefroy did depoſe in the Tournelle, that they went out of his houſe upon the 8th; whereas, he now depoſes, that they remained in his houſe till the 14th.

And, *laſtly*, Godefroy, I ſay, has ſworn falſely as to the manner of keeping his accompts, when he has depoſed, that every body that came to his houſe had his name entered in one or other of the compt-books. For it

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is now evident, as ſhall be ſhown afterwards, that many people muſt have been in his houſe (ſome are admitted by the purſuers) who have no accompts opened for them in either of his books.

THUS it appears, that this witneſs is utterly incredible, having been inſtructed, having varied his tale, and having ſworn falſely as to a thing he certainly ſhould have known, *viz.* the way of keeping his accompts. And as to Madame Godefroy, it is plain, that ſhe has implicitly followed her huſband; for ſhe knew nothing of the matter, when ſhe was firſt examined in the Tournelle, not ſo much as remembering the name of Stewart, till ſhe found out her police-book; and yet, in direct contradiction to that book, ſhe takes upon her to apply an accompt, for three perſons of the 4th of July, to Sir John and Lady Jane, who by that book appear to have entered by themſelves, without any attendants, upon the 7th of July.

BUT I further ſay, that when you thus ſee a witneſs inſtructed, and ſwearing falſely, it muſt give your Lordſhips a very bad opinion of the whole of the purſuers evidence; more eſpecially when you compare this oath of Godefroy's concerning his own book

with

with Monſieur de Ruiſſeau's oath concerning Michelle's book. Theſe books were the two hinges upon which the purſuers cauſe turned; but as they were inconſiſtent with one another, it was long matter of deliberation with the purſuers, upon which of them they were to make the defender ſtand trial for his birthright. This doubt they had not determined in favour of Godefroy's book at the time they examined this Monſieur de Ruiſſeau; for otherways, to what purpoſe examine him concerning Michell's book? And it is beſides evident, from his examination, that they did not intend ever to have ſhown this book of Michell's, which at that time was locked up in the Tournelle; for, if the book itſelf was to be produced, to what purpoſe examine a witneſs concerning the ſtate of it, and the manner in which it was kept? In this ſtate of the cauſe, they produced this man Ruiſſeau to depoſe concerning it: And his oath, from beginning to end, is a ſeries of falſehoods, all tending to prove, that this book was an authentic record, regularly kept; and ſuch therefore as merited faith. And, among other things, he ſays, that the entry of Fluratl, upon the 8th of Auguſt, was in a hand different from any of the entries of that or

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the preceeding page; a manifeſt falſehood, intended to prove, or at leaſt to raiſe a ſuſpicion, of what had been averred by the purſuers in their *plaintes* to the Tournelle, that this entry was of Sir John's own hand-writing. Now, that theſe could not be miſtakes in the witneſs, but intended falſehoods, and downright perjury, is evident from this, that he had been employed by the purſuers, in the way of his office, to inſpect the ſtate of this book, to deliver it over to Monſieur Buhot, and, upon that occaſion, to make a *proces verbal.* And, as it is clear, from the proceedings in France, and indeed is of itſelf evident, that the purſuers, founding their claim intirely upon this book at firſt, muſt have conſidered it very diligently before they put it into the Tournelle, it appears to me, not only that this witneſs is perjured, but that there is the ſtrongeſt ſuſpicion of ſubornation of perjury, when I ſee the agents for the purſuers producing one employed by them, and therefore ſuppoſed to be under their direction, to depoſe what they muſt have known to be falſe; and, I think, I may further ſay, without ſtraining too much, that it was a ſpecies of forgery, to endeavour to make up in this way a falſe tenor of a wri-

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ting, by which Mr Douglas's birthright was to have been taken away.

To this witneſs, thus manifeſtly perjured, I muſt join Madame Mignon, acknowledged by the purſuers own counſel to be perjured. I muſt join alſo Francois la Marre, moſt groſsly and willfully perjured, about a fact of great conſequence in the cauſe, *viz.* his brother's connection with a Madame le Brun; and alſo Monſieur Giles, the ſurgeon, who has ſworn, that he gave the ſame account before your Lordſhips commiſſioner of the ſtory told him by La Marre of the delivery of a foreign Lady, that he gave to Morand and Moreau, when the contrary is clearly proved by written evidence. When I conſider, that all thoſe witneſſes are clearly perjured in favour of the purſuers, beſides others, whoſe evidence, like that of Madame Michell's, has been ſoftened, I muſt conclude, that it was not for nothing that thoſe witneſſes ſwore ſo. And when I further ſee it in proof, that one of the moſt material witneſſes, by whoſe evidence Mr Douglas was to be proved the ſon of one of the meaneſt mechanics in Paris, I mean Mignon, was practiſed upon by promiſes, and by ſome money actually given to her ſon, and more expected by him, I muſt confeſs to your

Lordſhips

Lordſhips, that I have the worſt opinion of the purſuers proof; and if they had proved ten times as much, I would not have believed it. It is true, the promiſes to Mignon are proved only by the woman herſelf imprudently telling to the people with whom ſhe drank, that ſuch promiſes had been made her. But how elſe could practices of this kind be proved? It is not before witneſſes that a perſon is corrupted; nor could your Lordſhips expect to find it ſet down in Mr Andrew Stuart's journal: But it is proved here in the ſame manner as it was proved to your Lordſhips, in ſundry election caſes that were lately before you, where the only evidence of the corruption was (and, indeed, it is almoſt the only evidence that, by the nature of the thing, can be) the imprudent acknowledgement of the party to their neighbours and acquaintance, that they had got money or promiſes. But, beſides the promiſes thus proved to have been made to Mignon, and which, your Lordſhips will obſerve, are ſpecial and particular promiſes, not general and vague profeſſions of kindneſs and ſervices, it is proved by a witneſs of their own, namely the ſon of this Mignon, that a ſmall ſum of money was actually given to him, under the name of loan,

by Monſieur Danjou, their French procureur, and the loan of a greater ſum was, by the ſame Danjou, negotiated for him.

THE character of the gentleman I have juſt now mentioned, Mr Andrew Stuart, has been much inſiſted upon by ſome of your Lordſhips, as ſetting him far above the ſuſpicion of ſuch practices. But, ſitting here, it is not characters that I am to regard, but evidence: And as the purſuers lawyers have uſed a great deal of freedom, more than I think the cauſe required, and, I am ſure, more than is ſupported by the evidence, with a character much more reſpectable, *viz.* that of Lady Jane Douglas, the friends of this gentleman will excuſe me, if I ſtate againſt him what appears in evidence, and what I think very material in the cauſe.

FOR I cannot at all agree with what was ſaid by one of your Lordſhips, That the conduct of the cauſe has nothing to do with the cauſe: But, on the contrary, I muſt always keep in my view both the private practices upon the witneſſes in France and the public proceedings in the Tournelle court, if the proceedings of ſuch a court can be called public. The purſuers have thought fit to publiſh a very elaborate defence of theſe proceedings,

ceedings, which, I muſt own, I thought improper, and even indecent, after what had paſſed. For, it is clearly my opinion, (and I ſpeak upon much better authority than my own), that theſe proceedings had a direct tendency to corrupt the very channels of evidence, and to ſhake the credibility of every witneſs on the ſide of the purſuers, however unexceptionable otherways; and I think, to this Tournelle proceſs, the Monitoire, which was the child of it, and to the private practices upon the witneſſes, the defender may fairly aſcribe more than one half of the purſuers proof, and all the defects and obſcurities in his own.

Having ſaid ſo much of Godefroy's evidence, and, upon that occaſion, of the evidence of other witneſſes in this cauſe, I will proceed now to examine the evidence of Godefroy's book, conſidered by itſelf; having ſhown, it is hoped, to your Lordſhips ſatisfaction, that it can draw no aid from his or his wife's oath. And here I muſt again beſpeak your Lordſhips patience, as I think I am able to ſtate a little more fully than has been done by any of your Lordſhips, the objection to the evidence of this book. And,

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in the *first* place, this is ſuch a record, *ex facie* of it, as I am perſuaded never was uſed to take away any man's birth-right, or to invalidate either legal preſumption, or poſitive proof. For it is ſo irregularly kept, ſometimes the huſband writing in it, ſometimes the wife; accompts prior in date being ſet down after others poſterior in date; and ſo many accompts without names, or even numbers of perſons, with every mark, in ſhort, of inaccuracy and irregularity, that it is impoſſible to give any faith to it: And with reſpect to dates particularly, it is remarkably inaccurate: For even the day of the week is frequently miſtaken, and in the groſſeſt manner: For we have a Thurſday, for example, not only in place of a Wedneſday or a Friday, but, in one inſtance, in place of a Sunday. And when we ſee ſuch miſtakes in the day of the week, which is not ſo ordinarily miſtaken, we muſt ſuppoſe that the miſtakes in the day of the month are much more frequent: And this evidence of inaccuracy, which ariſes from the book itſelf, is ſtill more confirmed by comparing it with his police-book, which he was bound, by the law of the country, to keep accurately, under ſevere penalties if he did not. Now, this book is confeſſed to be moſt inaccurate,

curate, not only with reſpect to the dates of perſons entering, but with reſpect to the perſons themſelves, of whom many are wholely omitted: So that but a ſmall part of thoſe that came to the houſe are to be ſeen in this police-book. Now, can we ſuppoſe that the compt-book, which he kept for his own private uſe, is more accurate than the book which he kept for the public, particularly as to dates? For your Lordſhips will obſerve, that accuracy in the compt-book, with reſpect to the preciſe date when the company entered, was of no moment either to Mr Godefroy, or his gueſts, provided they were not overcharged as to the number of days they ſtaid in his houſe, or the things extraordinary which they got. Such a book, therefore, does not prove to me, that the perſons who are ſaid to enter upon Thurſday the 4th of July, did truly enter upon that day. They might have entered a day ſooner, or a day later; and it was the ſame thing as to the gueſts, if they were charged for no more days than they really ſtaid.

But, ſuppoſing this company to have truly entered upon the 4th of July, how does it appear that this company was Sir John, Lady Jane, and Mrs Hewit? And here it certainly will not be ſufficient for the purſuers to ſay, that

that it may apply to them, becauſe it appears to be applicable to a company of three perſons: But they muſt further ſay, that it muſt neceſſarily apply to them, and can apply to no other company. Now, this they can ſhow only in two ways; either by ſhowing, that every accompt opened in the houſehold-book relates to a perſon entered in the police-book; and conſequently, that, if this accompt cannot apply to any other perſon ſtanding in the police-book, except Sir John, it muſt be his accompt; or, 2*do*, That at leaſt every body in the police-book has a place in the houſehold-book. Now, inſtead of the purſuers proving either of theſe two things, the defender has proved the direct contrary of both. As to the *firſt*, it is admitted, that there are above an hundred inſtances of perſons who have accompts in the compt-book, but who are not entered in the police-book. As to the *ſecond*, it is admitted, that there are ſix inſtances of perſons who are in the police-book, but not in the compt-book; and among theſe, one Wright an Engliſhman: And it is remarkable, that tho' Mr and Madame Godefroy ſpeak of Engliſhmen coming commonly to their houſe, as well as other foreigners; yet there is, I think, but one Engliſhman that is to be

found

found in their compt-book. But be that as it will, I think the defender has a right to ſay, that Sir John was the ſeventh inſtance of perſons reſorting to the houſe, and the ſecond of Britiſh men, ſet down in the police-book, and not in the compt-book. But beſides theſe ſix inſtances, there are certainly many more who are in the police-book, and are not in the compt-book. For, in the *firſt* place, there are inſtances to the number of about forty perſons who are marked in the police-book, but who have no accompts in the compt-book. Their names, indeed, the purſuers apply to accompts blank in the names of the perſons which they find in the compt-book about the ſame date. But this is mere conjecture, and the leſs probable for that, as has been already ſhown, there are above an hundred perſons in the ſpace only of three years, who are entered in the compt-book, but do not appear in the police-book; and accordingly they are often obliged to fill up two or three accompts in the compt-book, with one name in the police-book. But, 2*do*, There are fourteen inſtances of perſons who are marked in the police-book ſome days before they appear in the compt-book. Now, in that interval, they muſt have had a ſeparate ac-

compt,

compt, not appearing in the compt-book, which is the ſame thing as if there had been ſo many different perſons who had no accompts in the houſehold-book. And your Lordſhips will particularly obſerve, that their entry in the police-book does not depend upon the accuracy of Mr Godefroy in keeping that book, but upon the faith of the officers of police, who, by their *viſa* of ſuch a date, aſcertain that theſe perſons muſt have entered before that day: And, therefore, to ſuppoſe, as the purſuers do, that thoſe perſons are ſet down of a wrong date in the police-book, is plainly to accuſe thoſe officers, without proof, and contrary to proof, of falſehood and forgery in the diſcharge of their duty. And, 3*tio*, Beſides all theſe, it is evident, that there muſt have been many more from the manner in which thoſe books were kept, which Mr Godefroy has explained to us in his depoſition, and which is evident from inſpection of the books. For, ſays he, a man's accompt who entered, ſuppoſe, for example, upon the 20th of the month, is entered upon the 3d page, let us ſuppoſe, of the book; and his accompt is finiſhed, ſuppoſe, upon the 30th of the month; and there is ſome room left in the page, in which is filled up the accompt of a

man

man who entered, ſuppoſe, upon the 15th. Now, I deſire to know, where the accompt of this laſt man, from the 15th to the 30th, is to be found? And whether or not, in that interval, he muſt not have had a ſeparate accompt? And I aſk further, ſuppoſe he had gone away before the 30th, that is, before the preceeding accompt was cloſed, whether any accompt of his would have appeared in the houſehold-book?

THUS it appears, both from comparing the compt-book with the police-book, and from the manner of keeping the compt-book, that there muſt have been many perſons in the houſe who have no accompts in this houſe-hold-book, but muſt have had either ſeparate accompts in writing, or have accounted by memory with Godefroy and his wife. And when we join to all this, what is depoſed both by Godefroy and his wife, that their inn, which had nineteen beds, was ſo very much frequented, that there was hardly lodging to be got in it, unleſs beſpoke before; while, at the ſame time, it appears from their compt-book, that there are not there perſons ſet down ſufficient to fill a fifth part of their houſe; and particularly, betwixt the 4th of July, when Sir John entered to the houſe, and

the 20th of that month, there are but two companies to be found in the compt-book: And when further we confider, that, by great accident, there have been difcovered four fepa-rate accompts made out by Godefroy, the evidence becomes invincible, that there is not the leaft neceffity of applying this blank accompt to Sir John and Lady Jane; but that it may be applied to feveral other companies, which we may reafonably fuppofe to have been at the fame time with them in this houfe, which was fo much frequented.

But I go farther, and fay, not only that the application of this account to Sir John and Lady Jane is not neceffary, but that it is highly improbable. For, in the *firft* place, it is very probable that Sir John and Lady Jane, when they came into this inn, would do as they would have done in a Britifh inn, that is, they would have called for a room, and ordered fuch things as they thought proper for dinner or fupper, without fo much as inquiring, whether or not there was a *table d'hôte* kept in the inn, a thing which it is likely they never thought of, as this practice is utterly unknown in Britain, and even in France, except in great cities. And tho' they had known or fufpected fuch a thing, it is

not

not probable, that, being full of money as the purſuers ſay, and not at all frugal or ſaving perſons, they would have choſen to eat at the low rate of this paultry inn. *2do*, It is admitted that they did not eat at the *table d'hôte*, but got their victuals in their chamber; and yet, notwithſtanding the extraordinary trouble and attendance which that muſt have occaſioned in the houſe, eſpecially as they had no ſervant, they are charged in this account at no more than the ordinary rate of the houſe. If this was truly the caſe, I will venture to ſay, that no Britiſh man, either before or ſince, ever got ſo reaſonable a bill in a French houſe: Indeed, upon the ſuppoſition that they got any thing dreſſed for themſelves that was not at the public table, the houſe would have been wronged; ſo that the purſuers muſt ſuppoſe, that Sir John and Lady Jane, with ſo much money in their pocket, fed upon the ſcraps and offals of this miſerable ordinary; a ſuppoſition as improbable as that, if ſuch need truly been the caſe, Godefroy would not have charged them more for the extraordinary trouble they gave his houſe. And, *laſtly*, It is a very ſtrong proof, in my apprehenſion, of this account not belonging to Sir John and his company, that we ſee no break-

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faſts charged in it, as in other accounts in this book; for we cannot ſuppoſe that theſe Britiſh perſons lived without breakfaſt, or that they did not drink tea in a morning; as it is proved that Lady Jane did every where. And, ſuppoſing that ſhe brought her tea with her, yet ſhe muſt have had beſides ſugar, cream, bread, and butter. Now, it is a moſt improbable hypotheſis of the purſuers, that they got their butter from Mr Godefroy, and their ſugar, cream, and bread, from a coffeehouſe.

Thus, it appears, that it is not only not neceſſary, that this blank accompt ſhould be applied to Sir John, but that it is not at all probable: And the whole evidence which ariſes either from Godefroy's oath, or from his books, evaniſhes, if we only ſuppoſe, what is highly probable, that Sir John and Lady Jane eating in their room, did not eat at the ordinary rate of the houſe; and that they got the whole of their breakfaſt from Godefroy, as well as their butter.

And indeed, upon an accurate examination of Godefroy's oath, and his books, it appears to me that the purſuers, after much deliberation, have erred in preferring Godefroy and his wife's evidence, and applying this blank accompt to Sir John, in direct contradiction to

their

their police-book, to the book of Michell, where Sir John is ſet down by name, tho' wrong ſpelt, as entering upon the 8th of July, and this book ſupported by the oath of Michell and his wife, who ſwear poſitively that the very day Sir John came to their houſe they remember that his name was ſet down in the book; and Madame Michell further adds, That it was by this book they accounted with their lodgers for the rent of their rooms: It is certain that the purſuers at firſt put their cauſe wholely upon the credit of this book; and they have told your Lordſhips, that they did not then believe Godefroy's tale, which contradicted it. But they ſhould inform your Lordſhips, why they did not believe it then, and believe it now; or why your Lordſhips ſhould believe what they themſelves did not at firſt believe? The caſe has plainly been, that they were reſolved at any rate to find an *alibi*; and, having determined, after much deliberation, and contrary to their firſt reſolution, as appears evidently from Danjou's memorial above quoted, to fix the *alibi* in Godefroy's, they accordingly adopt his tale. But your Lordſhips not having come to ſtudy this cauſe with a reſolution to find an impoſture, but rather a contrary inclination,

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will be of opinion, that tho' the ſtories told by Michell and Godefroy cannot be both true, yet they may be both falſe; and that of the two it is more likely, that the evidence of Michell and his family, ſwearing in conformity to their police-book, ſhould be true, than the the evidence of Godefroy and his wife, ſwearing in direct contradiction to their police-book.

I come now to the *third* head of the purſuers proof, upon which I ſhall be exceeding ſhort: For the laſt counſel for the purſuers inſiſted upon them only as a *circumſtance* of evidence, (he ſhould have ſaid, I think, of ſuſpicion, for they are certainly not evidence, as they are not brought home to Sir John). And as to the firſt of them, *viz.* the taking away of Mignon's child in the 1748, one of your Lordſhips, though of a different opinion from me, was ſo candid as to own, that the deſcription of Mignon's child, particularly with reſpect to the colour of the eyes, did not agree with the defender; he might have added, That neither did the baby-cloaths of the child, nor did the deſcription of the perſons who carried him away, agree with Sir John and Lady Jane. And even as to the time of this *enlevement*, tho' ſome of the witneſſes

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fix it nearly to the time when Sir John and Lady Jane came to Michelle's, yet there are others who ſay the child was two months old when he was carried away. And as to the ſecond *enlevement*, it appears to me to be clearly proved by written evidence, that it did not happen while Sir John was at Paris. The written evidence I mean, is a private regiſter of police, kept by the Lieutenant-general in the year 1749, in which is marked, upon the 10th of January, a letter received from the Curé of St Laurent, informing him of a child being carried away by one Duvernes. Now, it appears evident from the Curé's depoſition, that he was informed of this *enlevement* as ſoon as it happened; and it is impoſſible to believe, that he would delay informing the lieutenant of it, as he muſt have ſuppoſed, that the perſon who ſtole the child would immediately make off with it; which accordingly happened. But, beſides this moſt probable conjecture, the Curé himſelf has ſaid upon oath, that he is perſuaded it was within three or four days after the thing came to his knowledge, that he gave information of it to the Lieutenant de police; though your Lordſhips will obſerve, that Mr Andrew Stuart gave him a very fair opportunity of

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adjuſting his oath to this new diſcovery, which was made in the books of police, of the letter of the 10th of January, by letting him know what he certainly ſhould not have known, that ſuch diſcovery was made.

The deſtroying in this manner one half of the tale of the purſuers, concerning the *enlevements*, is, in effect, deſtroying the other half; as it ſhows moſt evidently, a thing indeed that is evident enough of itſelf, that the memory of witneſſes, at ſuch a diſtance of time, cannot be truſted as to dates: For, with reſpect to this ſecond *enlevement*, there is nothing, one ſhould think, more clearly proved, ſo far as parole-evidence can go, than that it happened in the month of November, while Sir John was at Paris; whereas now it is made clear, that it muſt have happened at leaſt a month later, that is, in the end of December, or beginning of January.

Thus I have ſtated to your Lordſhips what occurs to me upon the purſuers proof, in which I find nothing but conjectures and ſuſpicions, without any the leaſt thing that deſerves the name of evidence, except Godefroy and his books; which are ſo far from being

being that plain, direct, unambiguous evidence, which I think neceſſary to take away the defender's birth-right, that the purſuers themſelves tell your Lordſhips, they did not at firſt believe it, without giving any good reaſon why they believe it now more than they did then. Such evidence I think not ſufficient to take away the legal preſumptions above ſtated in favour of Mr Douglas, and much leſs the poſitive evidence, which I am now to ſtate to your Lordſhips, but which I will endeavour to do very ſhortly, as your Lordſhips time is ſo much ſpent, and, I am afraid, your patience altogether exhauſted.

THIS proof is both direct and circumſtantial. The *firſt* conſiſts of the proof of the actual birth, and of what neceſſarily muſt have preceeded and followed it, *viz.* the pregnancy and the reconvaleſcence.

AS to the birth, it is proved by the only two witneſſes now alive, ſo far as appears, who were preſent at it, *viz.* Sir John and Mrs Hewit. As to Sir John, he was certainly not a habile witneſs for Mr Douglas; nor does it appear, that Mr Douglas ever propoſed to examine him; but, being called upon by the purſuers, I know nothing in law that hinders him to be a proper witneſs, in ſo far as he is legally examin-

ed upon oath, and when both parties were in court. And as to Mrs Hewit, I have already ſaid, that her evidence cannot be rejected, except for a reaſon which will be ſufficient for depriving the defender of the evidence of the moſt neceſſary witneſſes, and almoſt the only witneſſes that can be expected to ſuch a fact, namely the domeſtics and ſervants.

As to the pregnancy, it is proved by ſuch a multitude of witneſſes, and ſo inconteſtibly, that I muſt be forgiven to wonder, that any of your Lordſhips ſhould have the leaſt doubt of it. For it is certainly proved, if a fact of that kind be capable of proof, and that it is underſtood to be capable of proof, is clear, both in our law and the Roman law, from two examples that were mentioned by one of your Lordſhips, and which I will not repeat. And indeed, it were very extraordinary, if ſo common a phænomenon, as that of a woman being with child, could not be proved by witneſſes.

It was ſaid, by ſome of your Lordſhips, that the appearances of pregnancy, which could not be denied, were fictitious; and that the aſſuming ſuch appearances was a neceſſary part of the impoſture. But, in the *firſt* place, there is not the leaſt proof of any thing aſſumed or fictitious in Lady Jane's appearance;

appearance; and, *2do*, We muſt believe the direct contrary, and that the appearances of pregnancy of Lady Jane were natural and real, unleſs we believe at the ſame time, that not only Mrs Hewit, but Mrs Glaſs, Mrs Hepburn, and Mrs Greig, are groſsly and wilfulfully perjured. As to Mrs Glaſs, ſhe has not only ſworn to every external appearance of pregnancy, but alſo to that internal and ſure ſymptom in a woman who was regular in that reſpect at other times, I mean the *ſuppreſſio menſium*; and further, ſhe has ſworn that ſhe felt a living child in her belly. And, when to her is joined Effy Caw, the other maid, who is dead, and Mrs Tewis alſo dead, who ſaid the ſame thing to two moſt credible witneſſes, there are no leſs than three witneſſes to her being with live child. Then there is Mrs Hepburn, who has depoſed to appearances of pregnancy, in which ſhe could not be miſtaken; particularly the ſize of Lady Jane's breaſts, which ſhe ſaw naked, and which ſtruck her the more, that ſhe was intimately acquainted with Lady Jane, and knew that ſhe was naturally a flat-breaſted woman. And it is vain to mince the matter, and to ſay, as ſome of your Lordſhips have done, that Mrs Hepburn is a woman of a

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lively imagination, and that ſhe is miſtaken, and the like. But we muſt fairly ſay, that ſhe is perjured, if we do not believe, that Lady Jane had all the natural appearances of a woman with child. Now, it muſt appear to your Lordſhips, and to every body that hears me, a matter of very hard digeſtion, to ſay, that a woman of ſo unblameable a character as Mrs Hepburn, and ſo univerſally eſteemed by all her acquaintance, ſhould wilfully perjure herſelf in favour of an impoſture, carried on by perſons with whom ſhe had no connection, beſides that of acquaintance, nor the leaſt intereſt or concern whether Lady Jane was with child or not. Then there is Mrs Greig, Lady Wigton's woman, who has depoſed to every appearance of pregnancy, both in the face and perſon, in ſo much that, ſays ſhe, one muſt have been blind not to have ſeen it. And as this woman had occaſion to ſee her ſo often, and ſo familiarly, it was impoſſible ſhe could be deceived by aſſumed appearances; and if, upon the credit of thoſe witneſſes, it be once allowed, that Lady Jane had all the natural appearances of pregnancy, then all the other witneſſes, who had not occaſion to ſee her ſo familiarly, but have depoſed to the external appearan-

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ces, muſt be allowed to be all good witneſſes of the pregnancy; and, in that way, there are above twenty witneſſes of this fact.

WHAT further ſtrengthens this evidence, and ſhows that theſe appearances muſt have indicated a real pregnancy, is, that not only her capacity to have children is proved beyond all contradiction, but alſo her miſcarrying afterwards at Rheims; as to which, tho' there be that difference among the witneſſes as to time and other circumſtances which it is natural to expect at ſuch a diſtance of time; yet it would be puſhing incredulity much too far, to believe, that therefore there was no miſcarriage at all.

As to the negative proof which the purſuers have attempted of Lady Jane's not being with child, they have failed altogether; becauſe they have not brought one witneſs, who had ever ſeen Lady Jane before, that did not believe ſhe was with child. And as to the evidence of ſtrangers, who did not obſerve Lady Jane to be with child, if it proves any thing beſides their want of memory and attention to a perſon whom they had never ſeen before, it proves too much, namely, that Lady Jane, while ſhe was carrying on this impoſture, appeared before ſtrangers without

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the aſſumed appearances of pregnancy, even in the ſtage-coach of Rheims, to which place ſhe was to return after her pretended delivery at Paris.

THUS the pregnancy appears to be proved beyond all contradiction, as far as any thing of the kind can be proved by human teſtimony. And this alone appears to me to be deciſive of the cauſe. Nor, indeed, has any of your Lordſhips ſaid, nor any of the gentlemen at the bar, but that, if Lady Jane was pregnant, or if ſhe had all the natural appearances of a woman in that ſituation, ſhe muſt be preſumed to have been brought to bed, unleſs the purſuers will prove, either that ſhe miſcarried, or that ſhe had ſome diſeaſe which gave her thoſe appearances of a woman with child.

AS to the reconvaleſcence, I ſhall only mention one circumſtance, which none of your Lordſhips has touched upon, but which appears to me to be alſo deciſive of the cauſe, joined with the appearances of pregnancy. It is what the witneſſes, particularly Madame Blainville and Madame Michell, ſay of her appearance in Michell's. Madame Blainville, one of the purſuers own witneſſes, and whom they have not yet added to the liſt of the per-

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jured, has depoſed that ſhe had then all the appearance of a woman newly delivered, or newly recovered of ſome diſeaſe; and not contented with this general account of her, has deſcribed her perſon very exactly, and, among other things, has ſaid, that her breaſts were remarkably flat, and likeways her belly. Madame Michell, when ſhe was firſt inquired at about this affair, before ſhe was influenced by the Tournelle proceſs, Monitoire, or private converſations with Mr Andrew Stuart, ſpoke of her being newly brought to bed when ſhe came to her houſe, as a thing that could not be doubted. For, ſays ſhe, Madame Stewart kept her bed in my houſe on account of her being lately brought to bed. And in that converſation with Mr Andrew Stuart, in which he thought proper to tell her by way of news, that the parents of one of the children were found, ſhe told him poſitively, that, when ſhe came to her houſe, ſhe had the appearance of a woman newly delivered: And even at laſt, when ſhe came upon oath, ſhe ſaid, ſhe had the appearance of a ſick woman. Now, compare the deſcription of Lady Jane given by theſe two witneſſes, with her appearance at Aix-la-Chappelle, Liege, and Rheims, and ſay, whether ſomething

thing muſt not have happened betwixt her being in thoſe places, and her coming to Michell's about the 20th of July. What had become of thoſe big breaſts, and big belly, which it is proved were no aſſumed appearances, but real, which ſhe had at thoſe places? And how came ſhe by that ſickly air and look of recovery, which it is clearly proved ſhe had at Michell's, but of which no one witneſs ſays a word at any of the former places; not even thoſe in the ſtage-coach, who did not perceive that ſhe was with child?

This appears to me to be ſo ſtrong, that, in my apprehenſion, it comes very near to a proof of the actual delivery: And as it is by the purſuers own witneſſes, who they have not yet ſaid are perjured, and who certainly could not be miſtaken in a thing which appears to have drawn their attention ſo much, it does not occur to me what can be ſaid againſt it.

I come now (for I haſten to be done) to the circumſtantial evidence of this delivery. And, if I ſhall be able to ſtate it clearly to your Lordſhips, it will appear, I truſt, even ſtronger than the direct evidence; and ſuch as it is impoſſible there can be any fallacy or deceit in; unleſs we can ſuppoſe a number of wit-

witneſſes having no knowledge or acquaintance with one another, all combining and inſtructed (and it muſt have been a difficult leſſon) to link together different facts and circumſtances, ſo as to make one connected ſtory.

I will begin with Menager, who is proved by other witneſſes to have been the moſt intimate acquaintance that La Marre had. If the ſtory be true which he has told, of La Marre's informing him of the delivery, by him La Marre, of a foreign Lady of an advanced age, who came from Rheims, of twins, and for her firſt birth, and of male twins, and one of them a ſickly delicate child, which, on that account, was left to the care of him La Marre, and was by him given out to nurſe at Belleville or Menilmontant: If this, I ſay, be true, the purſuers do not deny, nor have any of your Lordſhips denied, that this foreign lady could be any other than Lady Jane Douglas, to whom the deſcription given ſuits in every particular. And as to the time when this happened, the witneſs has fixed it as well as it was poſſible to do from his memory, and by very good marks. For, ſays he, it was not in the year 1747, becauſe I was then in the army; it was not in the year 1750, becauſe, in that year, I

went to Spain upon a public occaſion, which he mentions; and, after that, I ſaw La Marre very little. It muſt, therefore, have happened betwixt theſe two periods, that is, either in the year 1748, or 1749. But, if he had not fixed the time ſo nearly, it is impoſſible to ſuppoſe, that La Marre could have brought to bed any Lady, anſwering in every particular to Lady Jane, that was not Lady Jane; eſpecially, if we join to the deſcription of Lady Jane, that of two male twins, the condition of one of them, and its being left under the care of La Marre, and being given out by him to nurſe at Belleville, or Menilmontant; at which laſt place, as we ſhall afterwards ſhow, there was actually a puny twin male-child given by La Marre to nurſe in the year 1748. And your Lordſhips will obſerve, that La Marre did not ſpeak of this thing to him once or twice overly, but ſeveral times, not only after the thing happened, but before, wanting he ſhould be preſent and aſſiſtant at the birth, as he apprehended there might be difficulty in it, on account of the age of the Lady: And, for that purpoſe, he ſent to ſeek him at his father's houſe about the time the thing happened; but he was out of the way.

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THE purſuers therefore are obliged to have recourſe to their ordinary ſhift, and to ſay, that this witneſs is wilfully and groſsly perjured. And your Lordſhips will now attend to the evidence upon which they make ſo bold an averment. And, in the *firſt* place, this Menager is one of the moſt credible witneſſes that was examined in France; for he is eminent in his profeſſion of ſurgeon, and is employed by the very beſt families in Paris. Then he was not firſt diſcovered by the defender's agents, but was firſt in the hands of Mr Andrew Stuart and Monſieur Buhot, his aſſiſtant; and, as he has ſaid, told the very ſame ſtory to them, which, however, Mr Andrew Stuart thought proper carefully to conceal; and it was only by mere accident that he was found out by the defender. Further, this witneſs is not contradicted in any the leaſt circumſtance of the ſtory by any credible witneſs, except that he ſays, he believes, that one Mellet was preſent when La Marre told the ſtory in the *Hotel Dieu*; and Mellet ſays, that he was not preſent: For as to the ſtories told by Mellet and Gilles, which they ſay they heard from La Marre in the 1747, they are ſtories quite different from Menager's; for Gilles ſays, he heard him only

ly ſpeak of the delivery of a lady of a foreign name, without ſaying any thing of the age of the lady, of twins, or from whence ſhe came; ſo that this deſcription of the lady may apply to twenty that La Marre may have brought to bed. And as to Mellet, he did not hear La Marre ſpeak of any delivery he had actually made, but of one he was to make, from which he expected great things.

Upon what grounds, therefore, ſhall I believe this ſo creditable witneſs, found out accidentally by the defender, to be perjured in his favour. I have heard but two reaſons ſuggeſted by any of your Lordſhips; the firſt is, that he ſays, that La Marre ſigned ſometimes with the addition of his Chriſtian name. Now, it appears by his contract of marriage, as well as by the evidence of other witneſſes, that he ſigned only by his ſurname: But tho' he may have done ſo in his contract of marriage, where there could be no miſtake about the perſon, may he not in his private letters, which Menager had occaſion chiefly to ſee, have ſigned by the name of Pierre, in order to diſtinguiſh him from his other two brothers? Is it not natural, nay even neceſſary, to ſuppoſe that he did, to avoid confuſion

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and miſtakes, more eſpecially as Francois La Marre was of the ſame profeſſion?

THE other ground upon which one of your Lordſhips maintained the charge of perjury againſt this witneſs was, that he has ſaid, that La Marre, whom his Lordſhip was pleaſed to conſider as a low paultry fellow, very ignorant of his profeſſion, gave leſſons of midwifery. But, in the *firſt* place, it is proved, that La Marre was ſkilful in his profeſſion, by one who had a good occaſion to know, having aſſiſted with him at an unnatural birth; and, *2dly*, That he did actually give leſſons of midwifery, is proved by the converſation betwixt Francois la Marre and and Monſieur Danjou, where he ſays it in the ſtrongeſt manner; becauſe he mentions it as a thing of which there could be no doubt; for ſpeaking of Madame le Brun, among ſundry other particulars which he tells of her, I believe, ſays he, ſhe was one of my brother's ſcholars for Midwifery.

BUT further, if Menager has told this falſe ſtory, ſo wonderfully adapted in all its circumſtances to the ſtory of Lady Jane, it is clear, that he muſt not only be perjured but corrupted. For, it is impoſſible to ſuppoſe, that for nothing, he would have contrived

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ſo circumſtantial a tale. Now, I deſire to know, who it was that corrupted him, and taught him ſo artificial a ſtory? The anſwer muſt be, that it was the Britiſh agents who conducted Mr Douglas's affairs at that time in France. For it is a fact well known, that, when this affair came to proof, it was wholely in the hands of Britiſh counſel and agents; and there was not on that ſide any French procureur, ſuch as Monſieur Danjou, who is proved to have given money to the ſon of one of the moſt material witneſſes. Now, what grounds have your Lordſhips to lay ſuch an imputation upon gentlemen from this country, whom your Lordſhips know, and who have hitherto behaved in ſuch a way, as not to merit ſuch an imputation?

But, ſay the purſuers, (for I think none of your Lordſhips ſaid ſo), the Dutcheſs of Douglas was at a great deal of pains with this witneſs, and had him ſeveral times dining with her. But, if your Lordſhips knew what teazing, or rather torturing examinations thoſe witneſſes underwent out of mere good will, without being obliged by any legal authority, you would not be ſurpriſed that the Ducheſs ſhowed great civilities to them, eſpecially to ſo creditable a man as Menager; for this very

ry witneſs at firſt underwent an examination, which laſted a whole night; and a ſecond examination could not be finiſhed in one day, but was carried on for three days ſucceſſively. How diſagreeable this muſt have been, as well as a great loſs of time, and interruption of buſineſs to a man ſo much employed as Menager, is eaſy to ſee.

The only objection, therefore, that remains to Menager's evidence is, that he is ſingle. If it were ſo, it were hard from thence to infer, that he is perjured, or that a ſingle witneſs in a circumſtantial proof is not to be believed. But the fact is not ſo; and, on the contrary, he has a wonderful concurrence to ſupport his evidence. And, in the *firſt* place, I ſet down Gilles, in whoſe preſence Menager ſays that La Marre talked of the delivery of this foreign lady. It is true, Gilles has depoſed the contrary; but he is manifeſtly perjured, in ſo far as he has ſworn, that he gave the ſame account of the matter to Monſieur Morand that he did upon oath. For it is proved, by written evidence, *viz.* his anſwers taken down from his own mouth to written interrogatories, that he gave an account quite different, agreeing almoſt in every particular with Menager's ſtory; nay, as Menager has

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ſaid, he remembered more than he did; for he remembered that La Marre had told him that the delivery was in the houſe of Madame le Brun; and, when this written evidence is ſupported by the teſtimony of ſuch men as Morand and Moreau, the two moſt creditable witneſſes that have been examined in France, there can remain no doubt with your Lordſhips, that this witneſs has been taken off, probably by the means of Monſieur Buhot, in whoſe family he was employed, as well as other witneſſes in this cauſe; ſo that, when he came upon oath, he wilfully ſuppreſſed and concealed the truth.

But, neither is Menager ſupported by Gilles alone; for there is ſtill a more wonderful concurrence with him of the nurſe Garnier, who has depoſed, that, in ſummer 1748, while ſhe was living in Menilmontant, ſhe got from this very La Marre, the friend of Menager, a weak delicate child, who was a male, a twin, and his brother alſo a male, who was a foreign child, and was viſited by foreign gentlemen, one of whom expreſſed ſuch a concern about him, that ſhe ſuppoſed he was the father; and at laſt, at the end of about eighteen months, this child was taken from her, not to be given to another nurſe at Paris, but to be carried

ried further off. In ſhort, the child agrees ſo exactly to the deſcription of Sholto, that it is impoſſible to ſuppoſe it could be any other; inſomuch, that the purſuers are obliged again to have recourſe to their ordinary ſhift, and to ſay, that this poor woman, whom the defender likeways diſcovered by mere accident, has adapted her ſtory to Sir John's; which is, in other words, ſaying, that ſhe likeways is perjured, and, I think, of neceſſary conſequence, alſo corrupted. But I have heard from none of your Lordſhips any reaſon to believe ſo, or to doubt, that this child ſhe got from La Marre was not Sholto, except that the time when ſhe ſays ſhe got this child from La Marre, does not exactly agree with the time when Sholto was given out to nurſe; for, as to the year when it happened, it is fixed by this child being nurſed upon the milk of her ſon Jerome, who is proved by the pariſh-regiſter to have been born in the month of March 1748; and the ſeaſon of the year is alſo fixed, *viz.* the ſummer; only Garnier ſays, that ſhe had nurſed her ſon Jerome ſix months before ſhe got this foreign child, which brings the time of getting this child to the end of Auguſt, or beginning of September, inſtead of the month of July.

But this is but a ſmall inaccuracy at this diſtance of time; and, if it were greater, it is impoſſible to ſuppoſe, that, in the ſame year 1748, this woman Garnier ſhould have got from this very La Marre, a child other than Sholto, but anſwering, in every the leaſt particular, to the deſcription of Sholto.

But it will not ſerve the purſuers purpoſe to ſay, that this poor woman is perjured. They muſt further add to that liſt her huſband and her ſiſter-in-law; nay, they muſt further ſet down as perjured, her neighbour Madame Boucault, who concurs with her in every particular, and has remembered ſome things more accurately than Garnier; for ſhe has ſaid, that the child was kept only ſixteen months, which is the truth; and ſhe has deſcribed one of the ſtranger-gentlemen that came to ſee the child, in ſuch a way, that there is little reaſon to doubt, but that it muſt have been Sir John. And to this woman's credibility I have not yet heard the leaſt objection.

Now, the fact being thus eſtabliſhed beyond, I think, all poſſibility of doubt, that there was a weak twin foreign child given out to nurſe at Menilmontant by La Marre in this year 1748, your Lordſhips are next to

conſider

conſider how this tallies with the evidence of Menager, and the ſtory told by Sir John and Lady Jane. Menager knows no more of the matter, than that La Marre informed him, that he had brought to bed a foreign lady, anſwering in every particular to the deſcription of Lady Jane, ſome time betwixt the years 1747 and 1750, of twins, one of whom being a puny delicate child, was therefore left to the care of La Marre, and by him ſent to nurſe in the country, either at Belleville or Menilmontant: And there he leaves the ſtory. But where he leaves it, Garnier and her whole family, and her neighbour Bocault, perſons all utterly unknown to Menager, take it up, and tell your Lordſhips, that in ſummer 1748, this very man La Marre, of whom Menager ſpeaks, living at the *But St Roch*, brought to Garnier, then living at Menilmontant, a weak twin-child, correſponding in every particular to Sholto, and to the child deſcribed by Menager; and, when to this evidence is joined the account which Sir John and Lady Jane have uniformly from the beginning given of the matter, *viz.* that La Marre was employed to deliver Lady Jane: That the youngeſt child was left under his care, being a weak delicate child, and was by him

him given out to nurſe at Menilmontant, and there kept for about ſixteen months, when he was taken away, and brought to Rheims; it is ſubmitted to your Lordſhips, whether this be not ſuch a chain of evidence, as neither chance nor deſign could have formed in ſupport of a falſehood.

And this, if I am not miſtaken, is preciſely what is called circumſtantial evidence, in oppoſition to direct evidence. For, in circumſtantial evidence, the witneſſes do not depoſe to the fact in iſſue; for that would be direct evidence; nor do two or more of them commonly depoſe to the ſame fact or circumſtance; but different witneſſes depoſe to different facts and circumſtances, which link and tally together, and thereby form what we call a chain of evidence, ſuch as, I think, is formed in this caſe, ſo ſtrong, that it appears to me impoſſible by any art or force of argument to break it. And in this reſpect, your Lordſhips will conſider the difference betwixt the circumſtantial evidence on the part of the defender, and the pretended evidence of the ſame kind on the part of the purſuers; for this laſt appears to me to form no chain compoſed of links hanging upon one another, but to be made up of a parcel of detached

circumſtances

circumſtances of ſuſpicion, having no connection or dependence. Thus, the circumſtance of their ſetting out for Rheims ſo ſoon before the lying in, and the leaving the maids at Rheims, have no connection with one another, that I can perceive, nor with the circumſtance of dating letters at Rheims while they were at Paris, or of dating letters upon the 10th, wherein they ſaid nothing of the delivery. Theſe are circumſtances which do not form any chain that can bind my aſſent: And they are ſuch, as I think, can be eaſily accounted for, upon the ſuppoſition of a real birth.

It was obſerved by one of your Lordſhips, that Garnier's evidence depends intirely upon Menager's; and that, if Menager, being corrupted and perjured, cannot be believed, ſo neither can Madame Garnier. But this is a miſtake; for, though Menager had never been examined, Garnier's evidence would have ſtood good by itſelf, and would have formed, independent of Menager, a wonderful chain of evidence. For, without Menager, it would ſtill have been proved, that Garnier received from La Marre, the ſurgeon named by Sir John as the perſon who brought Lady Jane to bed, and to whoſe care

Sholto

Sholto was left, a child in the 1748, anſwering in every particular to the deſcription of Sholto, to be nurſed at Menilmontant, the very place where Lady Jane ſaid at Rheims her youngeſt child was nurſing. So that there are two chains of evidence, which taken either ſeparately or together, afford to me irreſiſtible conviction.

And indeed, theſe circumſtances put together, not only perſuade me, that the account given by Sir John and Lady Jane is true; but that the tale told by the purſuers is impoſſible to be true. And here I muſt beg your Lordſhips particular attention, and correction, if I am wrong. For, as this is not ſtated in the papers, nor by any of your Lordſhips, it is poſſible, that I may lay more weight upon it than it deſerves.

The tale told by the purſuers is, that there was no delivery in July 1748; no Pierre la Marre employed; and no child belonging to Sir John and Lady Jane given out by him to nurſe at Menilmontant. Now, your Lordſhips will compare with this ſtory of the purſuers, what I apprehend is proved beyond all doubt on the other ſide: In the *firſt* place, That Sir John and Lady Jane mentioned a La Marre from the beginning as the man-

midwife

midwife who brought Lady Jane to bed; and this, without any the leaſt variation. The weight of this circumſtance the purſuers ſeem to feel, and want to evade, by alledging, without any probability or proof, that La Marre is a common name in France; and therefore, it was no wonder that Sir John ſtumbled upon his name; *2do*, It is a fact that cannot be denied, that a La Marre, though not licenſed, nor in any regiſter, from which Sir John could take his name, was practiſing ſurgery and midwifery in Paris in the year 1748; and the only man, ſo far as has been hitherto diſcovered, of that name practiſing then in Paris. *3tio*, It is proved beyond all diſpute, that Sir John and Lady Jane, while they were at Rheims, ſaid, that their youngeſt child was under the care of this man-midwife, this La Marre who had brought Lady Jane to bed, and was by him given out to nurſe in ſome place in the neighbourhood of Paris. *4to*, It is proved, both by parole-evidence and writing, that Sir John did correſpond with this La Marre, upon no other ſubject that can be ſuppoſed, except this child that was under his care. And, *laſtly*, It is proved, that Lady Jane, while ſhe was at Rheims, did name

Menil-

Menilmontant as the place where her ſon was nurſing under the care of this La Marre. This is proved firſt by Miſs Primroſe, who recollected, upon hearing Menilmontant named, that this was the place which Lady Jane named at Rheims as the place where her ſon was nurſing. Madame Rutlidge alſo remembers, that ſhe named the place to her; and though ſhe has forgot the whole name, remembers that it began with an M. And further, Mrs Greig depoſes, that Lady Jane deſired earneſtly of Lady Wigton, when ſhe went to Paris in the year 1748, that ſhe would ſend her accounts of her ſon Sholto; from which the witneſs very juſtly infers, that Lady Jane muſt have given Lady Wigton a direction where he was to be found: And it is one loſs, among many others, which the defender has ſuſtained by the delay of the action, that when this diſcovery was made of the nurſe at Menilmontant, Lady Wigton was by that time dead; ſo that he could aſk her no queſtions about this addreſs, which ſhe muſt needs have got for Lady Jane's youngeſt child: And even when ſhe was examined in the ſervice, ſhe was ſo ill as to be confined to her houſe; and was therefore examined, not in preſence

of

of the jury, but by a macer; ſo that her evidence is not ſo full in many things as that of other witneſſes.

THIS is the account given by Sir John and Lady Jane of La Marre and the youngeſt child. Now, your Lordſhips will be pleaſed to compare this account with what is proved to have happened to the only practiſing ſurgeon of the name of La Marre in Paris in the year 1748. It is proved, that in that year, or in the year 1749, he brought to bed a foreign Lady who had come from Rheims, correſponding in every particular with Lady Jane Douglas, of twins, one of which, being very delicate, was given out to nurſe by La Marre at Belleville or Menilmontant, in the neighbourhood of Paris: And it is further proved, that the ſame La Marre, who brought to bed this foreign lady, did give out a child to nurſe, anſwering in every particular to the deſcription of Sholto, in the very year 1748, to a woman living in Menilmontant. Now, let any impartial man combine thoſe circumſtances together, and ſay, whether it be poſſible, upon the ſuppoſition of the purſuers, That there was no delivery, no La Marre employed, no child belonging to Sir John given out by him to nurſe in the neighbour-

hood of Paris, in the year 1748: Whether, I ſay, it be poſſible, that Sir John or Lady Jane could have named, as the man-midwife, a La Marre to whom all the things above mentioned happened in the year 1748, adding too his Chriſtian name of Pierre; ſo that there could be no miſtake as to the perſon: That they could have ſaid, that he had the care of their youngeſt child; and further, have actually named Menilmontant as the place where he was given out to nurſe, to which very place it is proved that, in the 1748, La Marre gave a child to nurſe, anſwering in every the leaſt particular to the deſcription of Sir John's youngeſt child. As the purſuers deal ſo much in calculation, and have given your Lordſhips a very long one, the longeſt that, it is believed, ever was in a law-paper, but founded upon a fact which is certainly not proved; namely, that the two children, in the 1748 and 1749, were carried away by a Britiſh man; I wiſh they had calculated what chance it was, that Sir John ſhould ſtumble upon the name of this man La Marre, to whom all thoſe things happened in the year 1748; and ſhould further, by a moſt extraordinary kind of divination, tell a ſtory concerning a La Marre and a child,

which

which is, in every article, the ſame with what happened to La Marre, even to the very name of the place where he gave the child out to be nurſed. This double chance of their naming ſuch a man, and telling ſuch a ſtory concerning him, being compounded and combined, according to the rules of calculation, would, I am perſuaded, produce the odds of at leaſt 1,000,000 to 1 againſt Sir John being ſo fortunate; which is ſaying, in other words, that the thing is morally impoſſible.

And thus I think I have proved, that the purſuers ſtory is not only not probable, not only is not proved, but is really impoſſible to be true: And as I obſerved before, that the purſuers have not choſen the beſt ground, when they preferred the evidence of Godefroy and his book to Michell and his book; ſo I cannot help obſerving here, that they have ſtill judged it worſe, when they adopted the ſtory of the ſucceſſive ſuppoſition, and did not rather allow that Sir John had really got two children in 1748, when he wrote to all his friends, that Lady Jane was delivered of twins. Upon this ſuppoſition, they might have ſaid, as they deal ſo much in making accomplices, that this La Marre, whom they re-

preſented

preſented as a mean low man, was an accomplice, and aſſiſted Sir John in ſtealing two children. And ſurely, Sir John and Lady Jane, ſtrangers in Paris, and ſpeaking the language but imperfectly, had much need of the aſſiſtance of a native in committing ſo difficult a crime. And they might have further allowed, that this La Marre did truly give out to nurſe at Menilmontant the weakeſt of the two children. By framing their tale in this way, they would have got free of the moſt incredible hypotheſis of the ſucceſſive ſuppoſition, the one at the diſtance of fifteen months from the other. And they might have accounted for Sir John's naming La Marre as the man-midwife, and correſponding with him by letters; and for this La Marre giving out a child to nurſe in the year 1748, anſwering exactly to the deſcription which Sir John and Lady Jane gave of their youngeſt child; and alſo for Lady Jane naming the very place to which La Marre gave out this child. In ſhort, they would have evaded the whole weight of the evidence ariſing from Garnier's depoſition, and from Sir John's naming and correſponding with La Marre. Whereas, upon the hypotheſis they have adopted, they have told a tale ſo impro-

bable

bable in itſelf, and in ſuch direct contradiction to the evidence, that it is impoſſible to be believed.

THUS I have gone through the defender's proof likeways, in many more words than I propoſed; but I could not bring what I had to ſay into leſs compaſs, without omitting ſome things that I thought material. And to ſum it up, It does not appear to me, that the defender's cauſe reſts upon one or two things, but upon ſeveral points, any one of which, if you find proved, you muſt give the cauſe for him. For, not to mention the queſtions of law which I ſtated in the beginning, and which I think are deciſive of the cauſe in his favour; and ſuppoſing you ſhould ſee cauſe to reject the evidence of the birth itſelf by Sir John and Mrs Hewit; yet, if you believe that Lady Jane was pregnant, or had the natural appearances of it; or, if you believe that ſhe had an actual miſcarriage at Rheims; or, if you are convinced that her appearance in Michell's was ſo different from her appearance at Aix-la-Chappelle, Liege, or Rheims, or even in the ſtage-coach from Rheims to Paris; if you believe that Menager's ſtory is true; if you believe that the ſtory of Garnier and her whole family, and her

neighbour

neighbour Boucault is not a lie; if it be true that Sir John and Lady Jane named La Marre from the beginning as the perſon who delivered Lady Jane; or, if it be true, that they correſponded with him; that they had their youngeſt child under his charge at ſome place in the neighbourhood of Paris, and that they actually named the place where it is proved La Marre did put a weak twin child in the year 1748, correſponding in every particular to Sholto: If, I ſay, any one of all theſe particulars is true, then muſt the defender win his cauſe. Now, in order to diſbelieve all this, conſider how many witneſſes your Lordſhips muſt hold to be perjured. I cannot repeat their names from memory; but I will read them to your Lordſhips. There is firſt Sir John, Mrs Hewit, Tibby Walker, Mrs Hepburn, Miſs Primroſe, Mrs Greig, Nurſe Mangin, and others, who have ſwore to the miſcarriage at Rheims; Monſieur Menager, Madame Garnier and her family, Madame Boucault, Madame Maillefer, Madame Rutlidge, and all thoſe who have depoſed to the correſpondence with La Marre: Of theſe a muſter-roll might be made of above twenty, whom your Lordſhips muſt find all perjured by the decree you are to pronounce in fa-

vour of the purſuers. If, indeed, there was direct and poſitive proof upon the other ſide, by a greater number of more credible witneſſes, That Lady Jane, for example, had aſſumed the appearances of pregnancy, and wore pillows upon her belly, as Lady Kinnaird did; or that, on the day when ſhe pretended to be delivered, two new-born children were brought in to her; or, if failing of ſuch direct proof, there were a chain of circumſtances ſuch as made it impoſſible that the delivery ſhould have happened, which I have not heard any of your Lordſhips ſay is the caſe, I could very well underſtand how the witneſſes who have ſwore to the particulars above mentioned ſhould be accounted perjured, or accomplices in the fraud. But, without ſuch evidence on the other ſide, I muſt confeſs that I think it of moſt dangerous conſequence to reject ſuch evidence, both direct and circumſtantial, on the one ſide, and to pronounce ſo many witneſſes perjured. And I wiſh, with all my heart, that in drawing up the decree in favour of the purſuers, ſome reaſons might be expreſſed for doing ſo in this particular caſe, in order to prevent the conſequences of the precedent, which I think is moſt dangerous to our lives as well as our properties.

I am now come to a conclusion; and I have fatigued myself I believe very near as much as I have wearied your Lordships. If I have delivered my opinion with more warmth than usual, and more perhaps than becomes a judge, I hope your Lordships will forgive me, as I do feel very deeply for this young man the defender; and indeed it is a cause which excites the feelings of humanity more than any I have ever known. I hope, however, I have not mistated any part of the evidence, or laid more weight upon any thing than it would bear. If I have, I am sure it is undesignedly, and I hope to be corrected by your Lordship who have said you are to speak again, or by any other of my brethren. What I lay the cause upon chiefly, is the strange improbability of the pursuers story; the proof of the pregnancy; the appearance in Michell's; and the wonderful circumstantial evidence arising from the depositions of Menager, Garnier, and her family and neighbour Boucault; and from Sir John's naming La Marre from the beginning as the accoucheur, corresponding with him by letters, and naming the very place where he had put the youngest child to nurse. If your Lordships can show that I am wrong in those particulars,

ticulars, I ſhall very readily give up my opinion: But till that is done, I muſt continue to believe, that the tale told by the purſurs, is the moſt improbable that ever was told in any court of juſtice, ſupported by the ſlighteſt, and contradicted by the ſtrongeſt evidence, both direct and circumſtantial.

LORD PRESIDENT,

THE queſtion I put to your Lordſhips is, SUSTAIN or REPEL the Reaſons of Reduction? *

Lord Juſtice-Clerk,	Suſtain.	
Lord Strichen, - - -		Repel.
Lord Kaims, - - -		Repel.
Lord Alemoore, -	Suſtain	
Lord Pitfour, - - -		Repel.
Lord Gardenſtoun, - - -		Repel.
Lord Kennet, - -	Suſtain	
Lord Auchinleck, - -		Repel.
Lord Barjarg, - -	Suſtain.	
Lord Coalſton, - -		Repel.
Lord Elliock, - -	Suſtain.	
Lord Stoneſield, - -	Suſtain.	
Lord Hailes, - -	Suſtain.	
Lord Monboddo, - - -		Repel.

LORD PRESIDENT,

As this is a cauſe of civil property, I think myſelf bound to give judgment according to my own opinion; and therefore I am for SUSTAINING the Reaſons of Reduction.

* The Votes were collected according to the order in which the Judges ſat upon the Bench, beginning at the Lord Preſident's right-hand.

JUDGMENT

JUDGMENT OF THE COURT.

"THE Lords having considered the state of "the process, the writs produced, and testi-"monies of the witnesses adduced, and heard "parties procurators thereon, and having ad-"vised the same, with the memorials, obser-"vations, and other papers given in by each "party, They SUSTAIN the Reasons of Re-"duction, and reduce, decern, and declare "accordingly."

THE END.